

(ARTICLE XIV, RENUMBERED ARTICLE XVI, WHEN ADDING ARTICLES XIV-XV)

## ARTICLE XVI

### ADMINISTRATION AND ENFORCEMENT

#### SECTION

- 16-101 APPOINTMENT AND DUTIES OF THE ZONING ADMINISTRATOR
- 16-102 ZONING PERMITS
- 16-103 PLANS REQUIRED
- 16-104 BOARD OF ZONING APPEALS
- 16-105 ZONING VARIANCES
- 16-106 CONDITIONAL USE PERMITS
- 16-107 AMENDMENTS
- 16-108 REMEDIES AND ENFORCEMENT
- 16-109 PUBLIC NOTICE
- 16-110 FEES
- 16-111 EFFECTIVE DATE

#### 16-101 APPOINTMENT AND DUTIES OF THE ZONING ADMINISTRATOR

##### 16-101.1 Appointment of the Zoning Administrator

There is hereby created the office of Zoning Administrator. The Zoning Administrator shall be executive head of the office and shall be appointed by the Mayor in accordance with all applicable administrative procedures.

##### 16-101.2 Duties of the Office of the Zoning Administrator

The Zoning Administrator shall enforce this ordinance, and in addition thereto and in furtherance of said authority he is granted the following authority and responsibility:

1. Interpretation and Administration

The Zoning Administrator shall interpret and administer the provisions of this ordinance;

2. Use and Occupancy Permits and Certificates of Compliance

The Zoning Administrator shall be authorized to issue use and occupancy permits, to certify zoning compliance, to stop work that has commenced without obtaining a required zoning permit, and to impose additional fees for required permits when work has commenced or occupancy occurs without obtaining a required zoning permit. In any instance, however, where a site plan is required by the provisions of this ordinance no final use and occupancy permit shall be issued until a Certificate of Compliance is issued by the Zoning Administrator;

3. Enforcement of this Ordinance

The Zoning Administrator shall be responsible for enforcing all provisions of this ordinance;

4. Information and Advisement

The Zoning Administrator shall provide information to the public on all matters relating to this ordinance;

5. Maintain Records

The Zoning Administrator shall maintain permanent and current records of this ordinance, and subsequent amendments, including, but not limited to, all maps, amendments, conditional uses, variations, appeals, and applications, therefore; and

7. Right of Entry

The Zoning Administrator is authorized to enter upon any land within the jurisdiction of this ordinance for purposes of making examinations and surveys, conducting inspections of buildings, structures, and use of land to determine compliance with the provisions of this ordinance to and place or remove public notices as required by this zoning ordinance.

**16-101.3 Powers of the Zoning Administrator Regarding Enforcement of Performance Standards**

When the Zoning Administrator has reason to believe that there is a violation of applicable performance standards, he or she may issue notice specifying the nature of the alleged violation and demanding that it be corrected. The Zoning Administrator may engage appropriate governmental agencies or other experts to perform tests to determine the existence and extent of the violation. Where other experts are employed and a violation is verified, the owner of the use shall pay all test costs and correct the violation. In any instance where such fees are not paid the city may withhold issuance of any use and occupancy permits and/or create a lien on the subject property. If the owner does not correct the violation within a reasonable time, the Zoning Administrator may proceed to enforce as with any other violation.

**16-101.4 Board of Zoning Appeals Support**

It shall be the responsibility of the Zoning Administrator to provide support services to the Board of Zoning Appeals. These services shall include the following:

1. Administrative Coordination

The Zoning Administrator shall receive, file, and forward to all necessary agencies all applications for conditional uses, and for amendments to this ordinance;

2. Administrative Support

The Zoning Administrator shall receive, file, and forward to the Board of Zoning Appeals all applications for variances or other matters on which the Board is required to pass under the provisions of this ordinance.

**16-101.5 Duties of the Zoning Administrator in Enforcing Floodplain District Regulations**

In the enforcement of the provisions of Article VIII, Section 8-.301, "Floodplain District Regulations", the Zoning Administrator or his designated representative shall:

1. Review all development permits to assure that the requirements of this ordinance have been satisfied, and that proposed building sites will be reasonably safe from flooding.
2. Advise permittees that additional federal or state permits may be required, and if specific federal or state permit requirements are known, require that copies of such permits be provided and maintained on file with the development permit. This shall include Section 404, of the Federal Water Pollution Control Act Amendments, of 1972, 33 U. S. C. 1334.
3. Notify adjacent communities, the Tennessee Department of Economic and Community Development, Local Planning Assistance Office, and the Tennessee Department of Environment and Conservation prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency.
4. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.
5. Verify and record as the actual elevation (in relation to mean-sea-level) of the lowest floor (including basement) of all new or substantially improved buildings.
6. Verify and record the actual elevation (in relation to mean-sea-level) to which the new or substantially improved buildings and all mechanical and electrical equipment have been floodproofed.
7. When floodproofing is utilized for a particular building, the Zoning Administrator shall obtain certification from a registered professional engineer or architect.
8. Where interpretation is needed as to the exact location of boundaries of the areas of special flood hazard (for example, where there appears to be a conflict between a mapped boundary and actual field conditions) the Zoning Administrator shall make the necessary interpretation of the flood maps. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in this article.

9. When base flood elevation data or floodway data have not been provided then the Zoning Administrator shall obtain, review and reasonably utilize any base flood elevation and floodway data available from a Federal, State or other source, including data developed as a result of these regulations, as criteria for requiring that new construction, substantial improvements or other development in Zone A, on the Community FHBM or FIRM, meet the requirements of this article.

## **16-102 ZONING PERMITS**

### **16-102.1 Site Development Agreement and Permits Required (Deleted and Replaced by Ordinance No. 527, September 19, 2002)**

#### **1. Site Development Agreement**

Prior to the issuance of any permit, other than a building permit for construction of a one- or two-family dwelling, under authority of this ordinance applicants shall review and enter into a "Site Development Agreement" in a form that is approved by the Board of Commissioners for the purpose of acknowledging the understanding and agreement of the applicant with the policies and procedures of the City as they relate to proposed site development and construction activities.

#### **2. Permits Required**

##### **a. No Site Work Without Permit**

The permits indicated within this section are required before any site grading or construction activity of any type is initiated upon any zone lot or parcel of land or before extending or changing to another activity type on any zone lot.

##### **b. Application**

Except as hereinafter provided, no permit pertaining to the use of land or buildings shall be issued by any officer, department, or employee of the City, unless the application for such permit has been examined by the office of the Zoning Administrator and a determination made by that office that the proposed building or activity complies with all the provisions of this ordinance. An application for a zoning permit shall include all information and exhibits necessary to determine if the proposed activity and/or development is in compliance with the provisions of this ordinance. Any building permit or any other permit issued in conflict with this provision or any other provision of this ordinance shall be null and void.

##### **c. Permits**

The following zoning permits are required subject to the specific provisions of the referenced sections:

<u>PERMIT</u>	<u>APPLICABLE PROVISION</u>
Grading Permit	Subsection 16-102.2
Site Utilization and Reclamation Permit	Subsection 16-102.3
Foundation Permit	Subsection 16-102.4
Building Permit	Subsection 16-102.5
Use and Occupancy Permits	Subsection 16-102.6

**16-102.2 Grading Permits**

In any instance where no building or construction activity is to take place upon a site a grading permit may be issued by the City Engineer, provided that a tree inventory and protection plan meeting the requirements for such set out in Article X, has been approved and the applicant has demonstrated that the use or activity will comply with all provisions of this ordinance.

**16-102.3 Site Utilization and Reclamation Permits**

Site utilization and reclamation permits are required for any mining and quarrying uses and for the removal or stripping of topsoil in excess of ten thousand (10,000) square feet of land area; the excavation or placement of fill material in excess of one hundred (100) cubic yards; or any excavation or placement of fill material which would infringe upon a drainageway, floodplain or wetland area as determined by the City Engineer. This section expressly exempts excavation or fill for the purpose of constructing a swimming pool, basement, garage or similar use which is deemed to be an accessory structure to a principal residential building or minor grading one (1) foot or less in depth done for purposes of constructing a one or two-family dwelling..

**16-102.4 Foundation Permits**

In any instance where building or construction activity is proposed to take place upon a site, a building permit may be issued upon approval of a grading plan (as specified in Subsection 16-103.3, of this article). Such permit may be limited to preliminary site grading and construction of the foundation only .

**16-102.5 Building Permits**

Upon approval of a plot plan or site plan as specified in Subsections 16-103.1 or 16-103.2, a building permit for such use may be issued. A grading permit or building permit (limited to preliminary site grading and foundation construction) may be issued prior to the issuance of a building permit with an approved site plan or a site utilization and reclamation plan forming the basis for such action.

**16-102.6 Use and Occupancy Permit**

All buildings, excluding one- and two-family dwelling units, which are constructed after the effective date of this ordinance or are to be occupied by any commercial, industrial, multi-family residential or community facilities activity, and all additions to previous existing buildings to be similarly utilized or occupied and all land uses for such purposes shall be subject to this provision. A use and

occupancy permit shall be obtained as provided herein prior to occupancy of the building or land area. No change in a use to a use or activity of a different type or class shall take place until a use and occupancy permit has been obtained.

1. Permits for Use and Occupancy Where No Building Permit Is Required

No land, heretofore, vacant shall hereafter be used or an existing use of land be hereafter changed to a use or activity of a different class or type, unless a use and occupancy permit is first obtained for the new or different use. Every application for a use and occupancy permit for a new use of land where no building permit is required shall be made directly to the office of the Zoning Administrator.

2. Application to be Accompanied by Certified Final Site plans

Any application for a use and occupancy permit involving any development for which a site plan is required by the provisions of Subsection 16-103.2, of this article, shall be accompanied by the completed site certification required by Subpart 5, of Subsection 16-103.5, and/or a performance bond as provided in Subsection 16-103.7.

3. Permits Not to Be Issued

No use and occupancy permit shall be issued for any building, structure or part thereof, or for the use of land, which is not in accordance with all provisions of this ordinance. In all instances where a site plan is required in accordance with the provisions of Subsection 16-103.2, no final use and occupancy permit shall be issued until a final development review has been conducted and the development has been found to be in full compliance with the requirements of this ordinance.

4. Permits for Initial Occupancy of New Buildings

No new building shall be occupied nor any use of the land commenced before either a temporary use and occupancy permit or a permanent use and occupancy permit has been issued therefor. Provided, however, that no final use and occupancy permit shall be issued for any use until a final development review has been conducted and the development has been found to be in full compliance with the requirements of this ordinance. In any instance where the Zoning Administrator determines that due to the season of the year planting of landscape materials would not be desirable a final use and occupancy permit may be issued provided that a performance bond is established for the uncompleted portion of the landscaping as provided in Subsection 16-103.7, and a maintenance bond is established as required by Subsection 16-103.8.

5. Temporary Use and Occupancy Permits

In any instance where a site plan has been approved and site improvements have been bonded as provided in Subsection 16-103.7, a temporary use and occupancy permit may be issued for all or a portion of the development. No temporary use and occupancy permit may be issued until the building or portion thereof for which the request is made has been determined to meet all safety codes.

**16-103 REQUIRED PLANS**

The following plans and procedures for approval thereof are required for the uses indicated.

**16-103.1 Plot Plan Required for One- and Two-Family Dwellings**

A plot plan shall be submitted and approved prior to issuance of a building permit for any one- or two-family detached dwelling (including manufactured homes

located on individual lots). A copy of the final approved final subdivision plat indicating the size and location of the lot whereon the dwelling is proposed to be located shall be filed with each application for approval of a plot plan.

1. Plan Content

Plot Plans shall be submitted in a form and content established by the Zoning Administrator, and shall specifically describe the nature and scope of the development.

2. Plan Review

It shall be the duty of the Office of the Zoning Administrator to review and act upon all plot plans submitted under this section.

3. Critical Lots

Where any lot is declared a “critical lot” by the provisions of Article XII, Section 12-102, “Hillside Development Standards” or Section 12-103, “Development Standards for Flood Hazard Areas” no building permit shall be issued for any such lot until a grading plan meeting the specification of Subsection 16-103.3, is approved.

**16-103.2 Master Development Plans**

Certain uses and activities require approval of a master development plan by the Planning Commission to insure that development occurs in a coordinated manner. The following activities require such plans:

• **Multi-Family Developments**

Any development involving two (2) or more multi-family structures located upon the same zone lot.

• **Manufactured Home Parks**

Any development of a manufactured\_home park as defined by this ordinance.

• **Variable Lot Residential Developments**

Any development of a Variable Lot Residential Development (VLRD) as controlled by the provisions of Article V, Subsection 5-104.3, of this ordinance.

• **Commercial Complexes**

Any development of a commercial complex as defined by this ordinance.

1. Plan Content

The master development plan for the proposed development shall be a general concept plan which shall include:



a. Sufficient Information to Disclose

- i. The location and size of the area involved. A boundary survey prepared by a registered land surveyor of the property contained in the master development plan will be required for purposes of identifying the actual area involved in the approval request.
- ii. Transportation routes including streets, driveways, sidewalks, and pedestrian ways, and off-street parking and loading areas, showing sizes and fire lanes.
- iii. Location and approximate dimensions of structures including approximate height, bulk and the utilization of structures including activities and the number of living units.
- iv. Estimated population density and extent of activities to be allocated to parts of the project.
- v. Reservations for public uses including schools, parks, and other open spaces.
- vi. The ability of the proposal and the manner in which the proposed plan will comply with the provisions of ARTICLE X, (Landscaping and Screening Provisions), of this ordinance.
- vii. The general means for the disposition of storm water, with preliminary drainage calculations and including any detention or retention areas.
- viii. The location, and adequacy of utilities required to serve the development.
- ix. The proposed means of erosion and sediment control.

b. Tabulation of Land Area

A tabulation of the land area to be devoted to various uses and activities and overall densities.

c. Nature of Applicant's Interest

The nature of the applicant's interest in the land proposed to be developed and a written statement of concurrence from all parties having a beneficial interest in the affected property.

d. Substance of Covenants, Grants of Easements or Other Restrictions

The substance of covenants, grants of easements or other restrictions to be imposed upon the use of the land, buildings and structures including proposed easements for public utilities.

e. Preliminary Drainage Calculations

Preliminary drainage calculations showing twenty-five (25) year and one hundred (100) year flows and provisions for detention/retention of each.

f. Site Topography

Preliminary site topography at a vertical interval no greater than two (2) feet.

g. Development Schedule

A proposed development schedule indicating the stages in which the project will be built.

h. Off-Site Improvements

A detailed listing of off-site improvements to roads, storm water drainage systems, sanitary sewers, water supply systems, and other public facilities including easements which are required to mitigate the impacts of the proposed development.

i. Special Information

The following plans and diagrams, insofar as the proposed development creates significant impact of traffic, parking, landscaping or economic feasibility:

- i. A traffic study which shall include a circulation diagram indicating the proposed movement of vehicles, goods, and pedestrians within the development and, to and from existing and proposed thoroughfares. Any special engineering features and traffic regulation devices needed to facilitate or insure the safety of this circulation pattern must be shown.
- ii. An analysis of off-site easements which are required to facilitate the extension or improvement of roads and utilities needed to serve the site.

j. Information About Surrounding Area

Information regarding the physical characteristics of the surrounding area and developments within three hundred (300) feet of the proposed development, including the ownership of same.

k. Within Floodplain Districts

Within all floodplain districts, floodplain development permits are required prior to the initiation of any man-made change to improved

or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, permits are set forth in Article VIII, Section 8-301, "Floodplain District Regulations".

2. Plan Review

a. Plans to Be Complete

No application for approval of a site plan shall be considered until such plan is complete. An application is complete when it contains all the information required by Subpart 1, of this section, in a form sufficient for the Zoning Administrator to determine whether or not the development, if completed as proposed, will comply with the requirements of this ordinance.

b. Establishment of Plan Review Committee

A plan review committee to be comprised of representatives from the office of the City Engineer, the Department of Code Enforcement, and the Zoning Administrator along with representatives from the various organizations providing utility services is hereby established. The Plan Review Committee shall meet on a regular basis at the call of the Zoning Administrator for purposes of jointly reviewing and offering recommendations on development applications subject to approval by the Planning Commission.

c. Bases for Approval

In addition to satisfying all other applicable provisions of this ordinance, approval of a Master Development Plan shall be based upon a demonstration that the following design and development objectives have been satisfied.

i. Adequate Streets, Utilities and Drainage

Approval of a Master Development Plan shall be based upon a demonstration that streets, utilities and drainage features will be of adequate capacity to serve the development. As a part of a Master Development Plan proposal, a property owner may offer to improve or otherwise provide adequate facilities to support the proposed intensity of development. Public facilities already included in an adopted Capital Improvements Budget may be considered a demonstration of adequate capacity if properly timed with anticipated construction of the development.

ii. Vehicular Access and Traffic Generation

The vehicular access and internal circulation system of a Master Development Plan shall adequately support the

operational needs of the development itself in a manner which maintains and protects the operational integrity of the community's major streets and highways. The traffic circulation system for a Master Development Plan shall be designed in such a manner as to direct commercial traffic away from residential areas.

iii. Sensitivity to Adjacent Areas

The approval of a Master Development Plan shall be based on a demonstration that the project is designed and will be developed in a manner that maintains the long term stability and integrity of nearby development.

3. Planning Commission Action

Within thirty (30) days after receipt of written Plan Review Committee findings, the Commission shall take one (1) of the following actions: unconditional approval, conditional approval or disapproval. The Commission shall make a finding regarding the consistency of any master development plan having long-range development implications, and any such implications not specifically included in the General Plan shall be identified and analyzed and made part of the Commission's findings.

a. Conditional Approval

When the Commission's action is conditional approval, the Commission shall transmit to the applicant within ten (10) working days in writing the conditions or modifications which must be complied with in order that the proposed development receive approval. The application will not be considered approved until the applicant has concurred in writing with all conditions of approval.

b. Disapproval

If the Planning Commission acts to disapprove a Master Development Plan, the reasons for that action shall be stated in writing.

**16-103.3 Site Development Plans**

1. Activities Requiring Plans

A Site Development Plan containing the information indicated herein is required for specified community facilities and all commercial, industrial and residential activities (excepting one- and two-family dwellings) and for feed lots and stockyards contained within the agricultural and extractive activity grouping. This plan shall be approved prior to any grading and excavation, including the removal of trees, or of any construction activity of any type. This plan shall indicate:

2. Plan Content, Preparation and Submittal

a. Plan Content

A site plan shall be submitted in a form and content established by the Zoning Administrator. The plan shall be sufficient to fully describe the nature, scope, design features and ultimate appearance of the proposed development.

b. Plan Preparation

All site plans, excepting those subject to approval in the manner provided in Subpart 3, b, (Plans for Small Additions and Free-Standing Accessory Structures) of this section, shall be prepared and stamped by individual(s) licensed and/or certified by the State of Tennessee to perform such design service as may be required.

c. Plan Submittal

All site plans shall be submitted to the office of the Zoning Administrator for review and appropriate action as provided in Subpart 3, of this section.

3. Plan Review

a. Plans to Be Complete

No application for approval of a site plan shall be considered until such plan is complete. An application is complete when it contains all the information required by Subpart 2, of this section, in a form sufficient for the Zoning Administrator to determine whether or not the development, if completed as proposed, will comply with the requirements of this ordinance.

b. Plans for Small Additions and Free-Standing Accessory Structures

A site plan submitted for a structure which is either an addition to an existing building or a free-standing accessory structure up to two thousand (2,000) square feet in floor area or fifty (50) percent of the total square footage of the existing building, whichever is less, is authorized by the Planning Commission to be approved by the Zoning Administrator. This plan is exempt from the following requirements:

- i. The requirement that the plan be prepared and stamped by an individual licensed and/or certified by the State of Tennessee, to perform such design service.
- ii. The requirement that topographic features be shown.
- iii. Design review requirements.
- iv. Compliance with Subpart 5 (Certifications of Compliance Required) of Subsection 16-103.5.

If any of the above exempt requirements are deemed essential to consideration of the site plan, the staff maintains the right to rescind the exemption and request review by the Planning Commission.

d. Plans Subject to Planning Commission Approval

All site plans, other than those which may be approved by staff as provided in Subpart c (above), shall be subject to approval by the Planning Commission.

4. Planning Commission Action

a. Review by Plan Review Committee

The Zoning Administrator shall forward a copy of the application and supporting documents to all representatives of the Plan Review Committee and any other appropriate department or agency. The Plan Review Committee shall review the proposed plan and recommend action thereon prior to consideration by the Planning Commission.

b. Bases for Site plan Approval

A site plan shall demonstrate compliance with all applicable provisions of this ordinance. In any instance where the development activity proposed on the site plan is located within a development requiring a Master Development Plan (See Subsection 16-103.2), such development shall be in strict compliance with the approved Master Development Plan.

c. Planning Commission Action

Within thirty (30) days after receipt of written staff and departmental findings, the Commission shall unconditional approve, conditionally approve or disapprove the plan.

5. Transfer of Ownership

Unless, otherwise, provided as a condition of approval of a site plan, the landowner may subsequently divide and transfer parts of such development. The transferee shall complete each such unit and use and maintain it in strict conformance with the approved site plan.

**16-103.4 Grading Plans**

Grading plans containing the information required by this section shall be prepared, submitted and approved prior to any grading, placement of fill material or excavation, including the removal of trees, or any construction activity of any type.

1. Activities Requiring Plans

In any instance where a site plan is required by the provisions of Subsection 16-103.3, the grading plan shall accompany such plan and be acted on in the manner specified in that section. In addition to the grading plans required with site plans, grading plans shall be required for the following uses and activities:

- a. Any mining and quarrying uses.
- b. Any grading activity which involves removal or stripping of topsoil in excess of ten thousand (10,000) square feet of land area or the excavation or placement of fill material in excess of one hundred (100) cubic yards. This section expressly exempts excavation or fill for the purpose of constructing a swimming pool, basement, garage or similar use which is deemed to be an accessory structure to a principal residential building or minor grading one (1) foot or less in depth done for purposes of constructing a one- or two-family dwelling.
- c. Any excavation or placement of fill material which would infringe upon a drainageway, floodplain or wetland area as determined by the City Engineer.
- d. Any "critical lot", as defined by Subpart 3, of Subsection 16-103.1.

2. Plan Content, Preparation and Submittal

a. Plan Content and Preparation

Grading plans shall be submitted in a form and content established by the City Engineer. Plans shall be prepared and stamped by an engineer engaged in the practice of civil engineering who is licensed and/or certified by the State of Tennessee to perform such design service as may be required.

3. Plan Review

a. Plans to Be Complete

No application for approval of a site plan shall be considered until such plan is complete. An application is complete when it contains all the information required by Subpart 2, of this section. Application shall be made in a form sufficient for the City Engineer to determine whether or not the development, if completed as proposed, will comply with the requirements of this ordinance and generally accepted engineering practice.

b. Action by City Engineer

Within thirty (30) days after receipt of a complete grading plan the City Engineer shall unconditional approve, conditionally approve or disapprove the plan.

c. Appeal to the Fairview Regional Planning Commission

The applicant may, upon disapproval of a grading plan, appeal the decision of the City Engineer to the Fairview Regional Planning Commission. The appeal shall be filed within ten (10) days of the adverse decision and shall be placed on the next available agenda of the planning commission.

**16-103.5 Time Limits upon Approvals**

Due to rapidly changing conditions within the planning region, it is necessary to establish specific time periods after the passage of which approved plans shall become null and void, thereby assuring that no new development will, due to altered conditions, etc., damage the public interest.

1. Time Limit on Plot Plans, Site Plans and Grading Plans

Any plot plan, site or grading plan approved under the provisions of this ordinance shall become null and void one (1) year after the date of its approval, unless a building permit for the project has been obtained in which case the provisions of Subpart, 2 (below) of this section shall apply, provided, however, that in no instance shall an approved plot plan or site plan become null and void in less than one (1) year.

2. Time Limit on Building Permit

Any building permit issued shall become null and void six (6) months after the date of issuance, unless "actual construction" (as defined by this ordinance) has begun and been continued in a diligent manner.

**16-103.6 Construction to Be in Accordance with Approved Plans**

In general, all site construction and development activity shall proceed in strict compliance with the approved site plan. Minor modifications in the terms and conditions of the approved site plan may be made from time to time as provided in the following paragraphs. Any proposed modification which is not permitted under these provisions may be approved only as an amendment to the development plan (see Subpart 4, below). Any modification in site construction or development activity which exceeds the minor modifications permitted hereinunder shall, unless approved as an amendment to the site plan, constitute a violation of this ordinance and is punishable as provided in Subsection 16-108.3.

1. Minor Modifications During Construction

The Zoning Administrator may approve minor modifications in the location, and configuration of buildings and structures if required by engineering or other circumstances not foreseen at the time the development plan was approved so long as:

- a. No modification violates any provision of this ordinance.
- b. No modification involves an item for which modification is prohibited under the provisions of Subpart 3, below and



- c. The total of such modifications approved by the Zoning Administrator shall never **in aggregate** result in:
  - i. Any increase in residential density;
  - ii. A net increase in the floor area of any nonresidential building which exceeds the lesser of two (2) percent of the gross floor area or two thousand (2,000) square feet;
  - iii. An increase of more than three (3) percent in the total ground area covered by buildings, provided that no such increase shall be permitted which would exceed the impermeable surface ratio established for the site;
  - iv. A reduction of more than two (2) percent in the area set aside for open space (exclusive of parking area green spaces and required screening areas);
  - v. Movement of a point of access by a distance greater than fifteen (15) feet. (Within Planned Unit Development Districts, **no alteration** of access points shall be permitted.)
- d. No modification may be approved which is greater than the absolute minimum necessary as defined by the provisions of Subpart 2 (below) of this section.

2. Minimum Adjustments Only

Any modification identified below must be held to the minimum necessary. The Zoning Administrator must find that each of the following conditions apply to the particular circumstances prior to the granting of the adjustment.

a. Practical Difficulties or Unnecessary Hardship

That strict application of the provisions of this ordinance would result in practical difficulties or unnecessary hardship.

b. Not Detrimental

That granting the application will not be detrimental to the public welfare or injurious to property or improvements in the neighborhood of the premises.

c. Health or Safety Not Adversely Affected

That granting the application under the circumstances of the particular case will not adversely affect the health or safety of persons working or residing in the neighborhood containing the property of the applicant.

d. Maintains Intent of Ordinance and the Development Plan

That such adjustment is within the intent and purpose of this ordinance and will not adversely affect the community objectives of the comprehensive plan.

3. Subjects Not Included for Modification

The following are not subject to modification under the provisions of this section:

- a. Uses permitted;
- b. Increases in the number of dwelling units or increases in the nonresidential floor area permitted in excess of increases permitted as staff approved projects;
- c. Increases in building height (exception minor modifications in non occupied portions of the building) or reduction of the number of required parking spaces;
- d. Significant changes to the drainage pattern, as determined by the City Engineer;
- e. Any reduction in required screening area or planting plan the minimum required vision clearance area.

4. Amendments to Approved Site Plans

Any modification to an approved site plan which exceeds the minor modifications that may be approved by the Zoning Administrator shall only be approved as provided herein. All such amendments to development plans shall be presented to and acted upon by the Planning Commission. Should the Planning Commission approve the amendment to the site plan, the applicant may proceed with the amended plan as a basis for modifications. In the event that the Planning Commission disapproves the proposed modifications, the applicant may proceed with the original plan. In any instance where the Planning Commission disapproves proposed modifications to an approved site plan, the Commission shall note specific violations of this ordinance as reasons for it's action.

5. Certifications of Compliance Required

On at least three (3) occasions during the course of the construction or development activity which is taking place upon any site, certification shall be required as to the correspondence between actual conditions existing upon the site and the depiction of those conditions upon the approved development plan. In general, these certifications shall be as follows:

- a. The first certification shall be presented to the City Engineer when the building foundation is substantially complete. A licensed surveyor shall certify the building location and the first floor

elevation of the foundation. A certificate signed by both the individual conducting the survey and the owner shall indicate the location and first floor elevation for the building. \*

- b. The second certification shall be presented to the City Engineer when the site has been rough graded to the point where the drainage system has been installed and parking areas generally established. A licensed engineer engaged in the practice of civil engineering shall present to the city engineer a letter which shall indicate the extent of correspondence between actual conditions found upon the development site and those depicted on the approved site plan. This letter shall detail the location and extent of discrepancies between actual conditions found in the field survey and the depiction of those conditions upon the approved plan.\*
- c. The final certification shall be presented to the Zoning Administrator when construction upon the site is substantially complete and the building is ready for occupancy. This certification prepared by a licensed engineer engaged in the practice of civil engineering and a licensed landscape architect, shall indicate if actual conditions upon the development site are in substantial compliance with the plan approved by the Planning Commission. To be included are all aspects of the development project to include, but not be limited to:
  - i. Location and dimensions of all buildings, parking areas, and other site features;
  - ii. Location and sizes of all utilities and storm drainage facilities as established on the site.
  - iii. Location and material (to include plant names and size were specified) of all landscaping and site plantings.

#### **16-103.7 Plats to Be Filed with Site Plans**

Any development plan submitted which requires dedication of right-of-way or recording of any easements shall either be accompanied by a final plat of the property shown on said plan, or shall be accompanied by a legal instrument which is sufficient in form to record in the Register of Deeds Office. This document must be legally recorded in the Register of Deeds Office prior to issuance of a building permit.

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\* In the event that the first or second certification, as referenced in Subparts a and b, of this section, differ from that shown on the approved site plan, the plan shall be revised and submitted for review to the Plan Review Committee prior to any further work. The Zoning Administrator may approve minor modifications authorized, as per Subpart 1, "Minor Modifications During Construction", of this section. Where such modifications exceed those which may be approved under this section the plan shall be submitted to the Planning Commission for further consideration. Failure to submit the proper certification at the appropriate time will result in issuance of a stop work order and/or denial of use and occupancy permits. Any failure to stop work under order shall be deemed a violation of this ordinance.

## **16-103.8 Bonding of Site Improvements**

### **1. Completion of Improvements**

Prior to the issuance of any use and occupancy permit for development covered by any site plan or grading plan submitted in accordance with this ordinance an applicant shall be required to complete all site improvements indicated on the approved plan.

### **2. Performance Bond**

The Planning Commission may waive the requirement that the applicant complete and/or dedicate all public improvements and landscaping prior to being issued a final use and occupancy permit. A temporary use and occupancy permit may be issued in the alternative, upon posting an acceptable performance bond to insure the construction, installation and/or dedication of all remaining public and private improvements and landscaping. The bond shall be in the amount estimated by the Zoning Administrator, upon recommendation by the City Engineer as sufficient to complete the remaining improvements. The performance bond shall also secure site improvements and private access improvements required pursuant to this ordinance, including necessary off-site improvements. Posting of an acceptable performance bond shall constitute prior permission for the properly designated parties to enter upon said property to complete these improvements.

### **3. Bonding Period - Obligee**

The period within which required improvements shall be completed shall be specified by the Plan Review Committee, incorporated in the performance bond, and shall not exceed one (1) year from the date of approval of any Temporary Use and Occupancy Permit.

The performance bond shall name the Planning Commission and/or the city as obligees and shall be satisfactory to the City Attorney as to form, sufficiency and manner of execution. The performance bond shall remain in force in its full face amount until improvements are completed.

### **4. Surety**

A performance bond shall be secured by a surety bond, irrevocable letter of credit, escrow account or other surety deemed adequate by the city. The beneficiary of the surety shall be the Planning Commission and/or the city. If a surety bond is used, then the guarantor of the debt shall have a commercial rating of not lower than "A" as designated by the A.M. Best and Company or other similar corporate rating service acceptable to the Planning Commission. If an irrevocable letter of credit is used as surety, then the bank or other financial institution issuing the letter of credit shall have total capital and unrestricted surplus of not less than twenty million dollars (\$20,000,000). The bank or other financial institution shall allow the letter of credit to be presented for collection at a place physically located within the boundaries of Wilson County or Davidson County, Tennessee.

5. Release of Performance Bond and Surety

The performance bond, and the surety securing it, may be released by the Zoning Administrator upon completion of the site improvements and landscaping.

- a. A request for release of the performance bond shall be made by the applicant in the form of a letter to the Zoning Administrator requesting release of the performance bond, including a written statement from the engineer employed by the applicant stating that the improvements have been installed in accordance with the plans and specifications approved by the city departments.
- b. All costs incurred in connection with a request for release of the surety or of the performance bond (that is, engineering, inspection fees, legal fees, etc.) shall be borne by the applicant, regardless of whether his request is ultimately granted. No bond shall be released until the Zoning Administrator certifies that all fees have been paid.

6. Appeal to the Fairview Municipal Planning Commission

The applicant may, upon disapproval of a request for release of a bond, appeal the decision of the Zoning Administrator to the Planning Commission. The appeal shall be filed within ten (10) days of the adverse decision and shall be set for hearing on the next available agenda of the Planning Commission.

7. Failure to Complete Improvements

Where a performance bond has been posted, and required improvements have not been installed within the terms of the performance bond, then the City may declare the bond to be in default and authorize the calling of the bond and surety and the completion of the improvements under the supervision of the city departments.

**16-103.9 Maintenance Bonds**

1. Basic Requirement

Maintenance bonds shall be required for the purpose of insuring that landscape material which is installed to meet the requirements of this ordinance does not die or significantly deteriorate for a period of one (1) year.

2. Bonding Period - Obligee

The period of the bond shall be one (1) year from the date of approval of any Permanent Use and Occupancy Permit.

The maintenance bond shall name the Planning Commission and/or the city as obligees and shall be satisfactory to the City Attorney as to form, sufficiency and manner of execution..

## **16-104 BOARD OF ZONING APPEALS**

### **16-104.1 Establishment**

Pursuant to Sections 13-7-205 through 13-7-207, Tennessee Code, a Board of Zoning Appeals (hereinafter referred to as the "Board") is created.

### **16-104.2 Powers of the Board**

The Board is hereby vested with the following powers:

#### 1. Administrative Appeals

Pursuant to Section 13-7-207, (1), Tennessee Code, the Board shall hear and decide appeals from any order, requirement, decision or determination made by the Zoning Administrator or any other administrative official in carrying out the enforcement of this zoning ordinance, whereby it is alleged in writing that the Zoning Administrator is in error or acted arbitrarily.

#### 2. Variances

Pursuant to Section 13-7-207, (3), Tennessee Code, the Board shall hear and act upon applications for variances to alleviate hardships created by not being able to comply with this zoning ordinance by reason of unique shape, topography or physical features of the zone lot.

#### 3. Conditional Use Permits

Pursuant to Section 13-7-207, (2), Tennessee Code, the Board shall hear and act upon applications for conditional use permits. For the purposes of this ordinance, conditional uses shall be synonymous with "special exceptions", as controlled by Section 13-7-206, Tennessee Code.

#### 4. Referred Matters

Hear and act upon all matters referred to it on which it is required to act under this ordinance.

#### 5. Right of Entry upon Land

Enter upon any land within its jurisdiction to make examinations and surveys and place or remove public notices as required by this ordinance.

### **16-104.3 Membership**

The Board shall consist of five (5) members who have been bona fide residents of the Planning Jurisdiction for not less than three (3) years prior to appointment and who shall continue to be so eligible as long as they serve. Board members shall be appointed by the Board of Commissioners.

#### **16-104.4 Terms of Office, Removal and Vacancies**

Board members shall each serve for a three (3) year term, or until their respective successors are appointed and qualified. The Board first appointed shall serve respectively for the following terms:

**One member for one (1) year, two members for two (2) years, and two members for three (3) years.**

All members of the Board shall serve with such compensation as may be fixed by the City and may be removed from membership on the Board for continued absence or just causes. Any member being so removed shall be provided, upon request, a public hearing upon the removal decision. Vacancies of said Board shall be filled in the manner provided herein for the appointment of such member.

#### **16-104.5 Election of Officers**

The Board shall elect from its members its own chairman and vice-chairman, who shall serve for one (1) year and may upon election serve succeeding terms. The City of Fairview shall provide necessary secretarial services.

#### **16-104.6 Conflict of Interest**

Any member of the Board who shall have a direct or an indirect interest in any property which is the subject matter of or affected by, a decision of the Board shall be disqualified from participating in the discussion, decision, and proceedings of the Board in connection therewith. The burden for revealing any such conflict rests with individual members of the Board. Failure to reveal any such conflict shall constitute grounds for immediate removal from the Board for cause.

#### **16-104.7 Meetings of the Board**

Regular meetings shall be held at specified times and at such other times as the Board may determine. The chairman may administer oaths and compel the attendance of witnesses. All meetings shall be open to the public and proper notice of such meetings shall be given.

#### **16-104.8 Rules and Proceedings of the Board**

The Board shall adopt rules for the conduct of its meetings. Such rules shall at the minimum require that:

1. The presence of three (3) members of the Board shall constitute a quorum and the concurring vote of at least three (3) members of the Board shall be necessary to deny or grant any application before the Board.
2. No action shall be taken by the Board on any case until after a public hearing and notice thereof. Said notice of public hearing shall be a legal notice published in a newspaper of general circulation in the city at least

ten (10) days before the hearing of an appeal. No appeal shall be considered and heard by the Board less than fifteen (14) days after filing such appeal. If new information is uncovered regarding an action of the Board that could not have been reasonably presented in public hearing before the Board, the Board shall establish a date for the purpose of rehearing in accordance with the appropriate procedures herein.

3. The Board may call upon any other office or agency of the City Government for information in the performance of its duties and it shall be the duty of such other agencies to render such information to the Board as may be reasonably required.
4. The Planning Commission shall be permitted to submit an advisory opinion on any matter before the Board and such opinion shall be made part of record of such public hearing.
5. Any officer, agency or department of the City or other aggrieved party may appeal any decision of the Board to a court of competent jurisdiction as provided by State law.
6. Any decision made by the Board on a conditional use permit shall indicate the specific section of this ordinance under which the permit is being considered and shall state clearly the specific conditions imposed in granting such permit.
7. Appeals will be assigned for hearing in the order in which they appear on the calendar thereof, except that appeals may be advanced for hearing by order of the Board, upon good cause being shown.
8. At the public hearing of the case before the Board, the Appellant shall appear on his own behalf or be represented by counsel or agent. The Appellant's side of the case shall be heard first and those in objection shall follow. To maintain orderly procedure, each side shall proceed without interruption from the other.

#### **16-104.9 Stay of Proceedings**

An appeal shall stay all proceedings in furtherance of the action appealed from, unless the Zoning Administrator certifies to the Board, after such notice of appeal shall have been filed, that by reason of facts stated in the certificate such stay would cause imminent peril to life or property. In such instance the proceedings shall not be stayed otherwise than by a restraining order, which may be granted by a court of competent jurisdiction application, on notice to the Zoning Administrator, and on due cause shown.

#### **16-104.10 Liability of Board Members, Zoning Administrator and Employees**

Any Board member, Zoning Administrator, or other employee charged with the enforcement of this ordinance, acting for the City of Fairview, in the discharge of his/her duties, shall not thereby render themselves liable personally, and all such persons are hereby relieved from all personal liability and shall be held harmless by the City of any damage that may accrue to persons or property as the result



of any act required or permitted in the proper discharge of their duties. Any suit brought against any Board member, Zoning Administrator, or employee charged with the enforcement of any provision of this ordinance shall be defended by legal representatives furnished by the City, until the final termination of such proceedings.

#### **16-104.11 Rehearing**

1. No rehearing of the decision by the Board shall be held, except:
  - a. On motion to reconsider the vote.
  - b. On a written request for a hearing.
2. If the motion to reconsider receives a majority affirmative vote, the Board of Zoning Appeals may vote on the motion to grant the request for a rehearing, subject to such conditions as the Board may, by resolution in each case, stipulate.
3. No request to grant a rehearing will be entertained, unless new evidence is submitted which could not reasonably be presented at the previous hearing. If the request for a rehearing is granted, the case shall be put on the calendar for a rehearing. In all cases, the request for a rehearing shall be in writing, reciting the reasons for the request and shall be duly verified and accompanied by the necessary data and diagrams. The persons requesting the rehearing shall be notified to appear before the Board on a date to be set by the Board.
4. No rehearing for a variance shall be granted an applicant found by a court of competent jurisdiction to be in willful violation of the express provisions of a prior variance granted under the authority of this ordinance.

#### **16-104.12 Time Limitations on Obtaining Permits**

All permits authorized by the Board of Zoning Appeals after the effective date of this ordinance, whereby variances, or conditional uses are granted, shall be obtained within one (1) year from the date of the original authorization by the Board, otherwise, the right to obtain said permit shall expire and become invalid.

### **16-105 ZONING VARIANCES**

The Board of Zoning Appeals may grant variances where it makes findings of fact based upon the standards prescribed in this section.

#### **16-105.1 Limits to Jurisdiction**

Applications for variances to the following shall not be considered by the Board.

1. Intensity Increases

The Board shall not grant any variance permitting an increase in floor area or density above the maximum permitted by the zoning district.

2. Planned Unit Developments

Within Planned Unit Development districts the Board shall act as provided in Subpart 5, of Subsection 8-201.1 “(Jurisdiction of Planning Commission and Board of Zoning Appeals)”.

3. Nonpermitted Uses

The Board shall not grant any variance to allow a use other than those specifically authorized by this ordinance in the applicable zoning district.

4. Lack of Frontage

The Board shall have no jurisdiction to hear a variance from the denial of a zoning permit when such denial is due to the fact that such lot has no frontage on a public street.

5. Conditions Created by Parties Having Interest in Affected Property

The Board shall not grant any variance in any instance where the alleged difficulty or hardship has been knowingly and intentionally created by any person having an interest in the property after the effective date of this ordinance.

**16-105.2 Application for Variances, Notice of Hearing, Fee**

A written application for a variance shall be filed with the Board by the property owner or his designated agent on forms provided by the Board and the application shall contain information and exhibits as may be required under Subsection 16-103.3, (Site Plan). No more than ninety (90) days after the filing of the application, a hearing shall be held on the application, unless otherwise withdrawn or postponed by written request by the applicant. Notice of hearing shall be in accordance with Subsections 16-105.3 and 16-109.3. A fee payable to the City shall be charged to cover review and processing of each application for a variance, except that the fee shall be waived for a governmental agency.

**16-105.3 Notice to Affected Property Owners**

A public hearing shall be conducted with notice thereof provided as specified in Section 16-109, of this article, on any request for variance brought before the Board.

**16-105.4 Standards for Variances**

The Board shall not grant a variance, unless it makes findings based upon evidence presented to it as follows:

1. That by reason of exceptional narrowness, shallowness, or shape of a particular piece of property at the time of enactment of this ordinance, or by reason of exceptional topographic conditions or other exceptional and extraordinary situation or condition of such piece of property, the strict

application of any regulation contained within this ordinance would result in peculiar and exceptional practical difficulties to or exceptional or undue hardship upon the owner of such property.

2. That the variance is the minimum variance that will relieve such difficulties or hardship and thereby make possible the reasonable use of the land, building, or structure.
3. That the variance will not authorize activities in a zone district other than those permitted by this ordinance.
4. That financial returns only shall not be considered as a basis for granting a variance.
5. That the granting of the variance will not be detrimental to the public welfare, injurious to other property or improvements in the area in which the subject property is located, or a substantial impairment to the intent and purpose of the zoning district wherein such property is located or of the general provisions of this zoning ordinance.
6. That the proposed variance will not impair an adequate supply of light and air to the adjacent property, or substantially increase the congestion in the public streets, or increase the danger of fire, or endanger the public safety.
7. That the alleged difficulty or hardship has not been knowingly and intentionally created by any person having an interest in the property after the effective date of this ordinance.

**16-105.5 Nonconformity Does Not Constitute Grounds for Granting of a Variance**

No nonconforming use of neighboring lands, structures, or buildings in the same district, and not permitted or nonconforming use of lands, structures, or building in other districts shall be considered grounds for the issuance of a variance.

**16-105.6 Conditions and Restrictions by the Board**

The Board may impose such conditions and restrictions upon the premises benefited by a variance as may be necessary to reduce or minimize the injurious effect of such variation upon surrounding property and better carry out the general intent of this ordinance. The Board may establish expiration dates as a condition or as a part of any variances.

**16-105.7 Board Has Powers of Administrative Official on Appeals; Reversing Decision of Administrative Official**

In exercising the powers granted to it the Board of Appeals may, so long as such action is in conformity with the terms of this ordinance, reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination as ought to be made, and to that end shall have the powers of the Zoning Administrator from whom the appeal is taken.

The concurring vote of a majority of the entire membership of the Board shall be necessary to reverse any order, requirement, decision, or determination of the Zoning Administrator, or to decide in favor of the applicant on any matter upon which it is required to pass under this ordinance, or to effect any variation in the application of this ordinance.

**16-105.8 Variance Appeals**

Any person including any agency of the City Government aggrieved by a decision of the Board on a variance may appeal by certiorari to a court of competent jurisdiction. The judgment and findings of the Board on all questions of fact that may be involved in any appeal, cause, hearing or proceeding under this article shall be final and subject to review only for illegality or want of jurisdiction.

**16-105.9 Special Provisions Governing Variances from the Provisions of Article VIII, Section 8-301, "Floodplain District Regulations"**

The following provisions shall apply to the consideration by the Board of any variance from the provisions of Article VIII, Section 8-300, pertaining to floodplain districts.

1. Historic Structures

Variances may be issued for the repair or rehabilitation of historic structures (see definition) upon a determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum to preserve the historic character and design of the structure.

2. Standards to Be Applied

In its consideration of any variance from the provisions of the floodplain district regulations the Board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

- a. The danger that materials may be swept onto other property to the injury of others.
- b. The danger to life and property due to flooding or erosion.
- c. The susceptibility of the proposed facility and its contents to flood damage.
- d. The importance of the services provided by the proposed facility to the community.
- e. The necessity to the facility of a waterfront location, in the case of a functionally dependent facility.

- f. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use.
- g. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area.
- h. The safety of access to the property in times of flood for ordinary and emergency vehicles.
- i. The expected heights, velocity, duration, rate of rise and sediment transport of the flood waters.
- j. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

3. Conditions for Variances

Upon consideration of the factors listed above, and the purposes of this ordinance, the Board may attach such conditions to the granting of variances as it deems necessary to effectuate the purposes of this ordinance. The following conditions shall apply to any variance which may be approved by the Board.

- a. Variances may be issued upon a determination that the variance is the minimum relief necessary, considering the flood hazard; and in the instance of a historical building, a determination that the variance is the minimum relief necessary so as not to destroy the historic character and design of the building.
- b. Variances shall only be issued upon: (i) a showing of good and sufficient cause; (ii) a determination that failure to grant the variance would result in exceptional hardship; and (iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.
- c. Any applicant to whom a variance is granted shall be given written notice that the issuance of a variance to construct a structure below the base flood level will result in increased premium rates for flood insurance, and that such construction below the base flood level increase risks to life and property.
- d. The Zoning Administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

- e. Variances shall not be issued within any designated floodway if any increase in flood levels during the base flood discharge would result.

## **16-106 CONDITIONAL USE PERMITS**

### **16-106.1 Authority**

The Board of Appeals may hear and decide, in accordance with the provisions of this ordinance, requests for conditional use permits. For the purposes of administration of this ordinance, conditional uses shall be construed as synonymous with special exceptions, as controlled by Section 13-7-206, Tennessee Code.

### **16-106.2 Application for Conditional Use Permit, Notice of Public Hearing**

Application for a conditional use permit shall be made by the property owner or his designated agent and filed in writing with the Board on forms provided by the Board and shall contain information and exhibits as may be required under Subsection 16-103.3, (Site Development Plan) or in the case of buildings or other structures or uses to be located within floodplain districts, as may be required by Article VIII, and Subsection 16-106.5, (Special Provisions Governing Consideration of Conditional Uses Within Floodplain Districts), of this section. Not more than sixty (60) days after filing such application, a hearing shall be held on the application, unless, otherwise, withdrawn or postponed upon written request by the applicant. Notice of hearing shall be held in accordance with Section 16-109. A fee payable to the City shall be charged to partially defray cost of review and processing for each application for a conditional use permit, except that the fee shall be waived for any government agency.

### **16-106.3 Requirements for Conditional Use Permit**

General requirements are hereby established which shall apply to all applications for conditional use permits, and specific standards listed shall apply to the issuance of a conditional use permit, as appropriate. The Board may impose such other conditions and restrictions upon the premises benefited by a conditional use permit as may be necessary to comply with the provisions set out in Subsection 16-106.4, and the specific criteria for such presented in Article III, in order to reduce or minimize the injurious effect of such conditional uses upon and ensure compatibility with surrounding property. The Board may establish dates for the expiration of any conditional use permit as a condition of approval.

### **16-106.4 General Provisions**

#### **1. Burden of Proof**

A conditional use permit shall not be considered an entitlement, and shall be granted by the Board of Zoning Appeals only after the applicant has demonstrated to the satisfaction of the Board that all required standards are met.

2. Ordinance Compliance

The proposed use shall comply with all applicable regulations, including any specific standards for the proposed use set forth in this ordinance, unless circumstances qualify the proposed use for a variance. Any accessory use to a conditional use must receive express approval by the Board of Appeals.

3. General Plan

A conditional use shall be in accordance with the General Plan for the planning jurisdiction. The Board of Zoning Appeals shall determine from its review of the site plan that the location, design and operation of a conditional use is not an impediment to projected growth plans for the planning jurisdiction and to determine that adequate public facilities are available to accommodate the proposed use.

4. Traffic Impact

The proposed use shall not adversely affect the safety and convenience of vehicular or pedestrian circulation and, in the opinion of the City Engineer, shall not decrease traffic flow below "Level of Service D" along any portion of public roadway where the property has frontage.

5. Parking Adequacy

The facility shall provide off-street parking and loading facilities as required by the parking regulations of this ordinance.

6. Special Conditions

In addition, the Board may restrict the hours of operation, establish permit expiration dates, require extraordinary setbacks and impose other reasonable conditions necessary to protect the public health, safety and welfare.

**16-106.5 Special Provisions Governing Consideration of Conditional Uses Within Floodplain Districts**

The special provisions contained within this section shall apply to all applications for approval of a conditional use located within any floodplain district.

1. Special Information Required

In addition to the requirements for conditional uses set out elsewhere in the ordinance, any application for a conditional use to be located within any floodplain district shall contain the following and any additional information requested by the Board.

- a. A map drawn to scale showing the curvilinear line representing the regulatory flood elevation, dimensions of the lot, existing structures and uses on the lot and adjacent lots, soil type, and natural

protective barriers, if applicable, existing flood control and erosion control works, existing drainage elevations and ground contours, location and elevation of existing streets, water supply and sanitary facilities, and other pertinent information.

- b. A preliminary plan showing the approximate dimensions, elevation and nature of the proposed use, amount, area and type of proposed fill, area and nature of proposed grading or dredging, proposed alteration of natural protective barriers, if applicable, proposed flood protection or erosion control works, proposed drainage facilities, proposed roads, sewers, water and other utilities, specifications for building construction and materials included in the floodproofing.

2. Technical Review Required

The Board shall transmit one (1) copy of the application and all supporting information to the City Engineer for technical assistance in evaluating the proposed project in relation to flood heights and velocities, threatened erosion, the adequacy of the plans for flood and erosion protection, the adequacy of drainage facilities, and other technical matters.

3. Determination by the Board and Attachment of Conditions

The Board shall determine the specific flood or erosion hazard at the site and shall evaluate the suitability of the proposed use in relation to the flood hazard. Upon consideration of the factors listed herein and the purposes of this ordinance, the Board may attach such conditions to the approval of conditional uses as it deems necessary to further the purposes of this ordinance.

4. Consideration of Special Dangers Posed by Such Uses

In passing upon such applications, the Board shall consider the technical evaluation of the Engineer, all relevant factors, and standards specified in other sections of this ordinance, and:

- a. The danger that materials may be swept onto other lands to the injury of others;
- b. The danger to life and property due to flooding or erosion damage;
- c. The proposed water supply and sanitation systems and the ability of these systems to prevent disease, contamination, and unsanitary conditions;
- d. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
- e. The importance of the services provided by the proposed facility to the community;



- f. The necessity to the facility of a waterfront location, where applicable;
- g. The compatibility of the proposed use with existing development anticipated in the foreseeable future;
- h. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
- i. The safety of access to and from the property in times of flood for ordinary and emergency vehicles;
- j. The expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
- k. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges.

**16-107 AMENDMENTS**

**16-107.1 General**

The Board of Commissioners may, from time to time, amend this ordinance by changing the boundaries of districts or by changing any other provisions whenever it is alleged that there was an error in the original zoning ordinance or whenever the public necessity, convenience, and general welfare require such amendment.

**16-107.2 Initiation of Amendment**

Amendments may be initiated by the Board of Commissioners, the Planning Commission, Zoning Administrator or by an application by any other interested person(s).

**16-107.3 Application for Amendment**

An application for amendment shall be filed with the office of the Zoning Administrator.

The Zoning Administrator on receiving such application shall transmit copies, thereof, to the Plan Review Committee and the Planning Commission prior to any consideration of the proposed amendment by the Board of Commissioners.

**16-107.4 Review and Recommendation by the Planning Commission**

The Planning Commission in its review and recommendation, and the Board of Commissioners in its deliberations shall make specific findings with regard to the following grounds for an amendment and shall note the same in the official record as follows:

1. The amendment is in agreement with the general plan for the area.
2. It has been determined that the legal purposes for which zoning exists are not contravened.
3. It has been determined that there will be no adverse effect upon joining property owners, unless such effect can be justified by the overwhelming public good or welfare.
4. It has been determined that no property owner or small group of property owners will benefit materially from the change to the detriment of the general public.
5. It has been determined that conditions affecting the area have changed to a sufficient extent to warrant an amendment to the zoning map.

#### **16-107.5 Public Hearing and Notice of Hearing**

A public hearing shall be held on all proposed amendments to this ordinance. Notice of such hearing shall be displayed as specified in Section 16-109, of this article.

#### **16-107.6 Notice of Enactment**

Upon enactment of an amendment to this ordinance, a notice of such shall be published in a newspaper of general circulation within the City of Fairview, within five (5) days following such enactment announcing the new zoning classification of property affected. The change shall become effective upon the date of the announcement.

#### **16-107.7 Amendments Affecting Zoning Map**

Upon enactment of an amendment to the zoning map which is part of this ordinance, the Zoning Administrator shall cause such amendment to be placed upon the zoning map noting thereon the ordinance and effective date of such amendatory ordinance. No amendment shall be placed upon the zoning map until a boundary survey of the property is provided the City by the applicant.

#### **16-107.8 Effect of Denial of Application**

Whenever an application for an amendment to the text of this ordinance or for a change in the zoning classification of any property is denied, the application for such amendment shall not be eligible for reconsideration for one (1) year following such denial, except in the following cases:

1. Upon initiation by the Board of Commissioners, or Planning Commission.
2. When the new application, although involving all or a portion of the same property, is for a different zoning district than that for which the original application was made.

**16-107.9 Zoning Districts as Applied to Territory Added to Planning Jurisdiction of the City**

Whenever new territory is added to the zoning jurisdiction of the City of Fairview, by any means, the Planning Commission shall recommend to the Board of Commissioners appropriate zoning districting within thirty (30) days following the final approval of the annexation. Prior to the final enactment by the Board of Commissioners, of an amendment to this ordinance establishing zoning districting for said territory, the area shall be temporarily unclassified and no zoning permits shall be issued.

**16-108 REMEDIES AND ENFORCEMENT**

**16-108.1 Complaints Regarding Violations**

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint stating fully the causes and basis, thereof, shall be filed with the Zoning Administrator. The Zoning Administrator shall record properly such complaint, immediately investigate, and take action, thereon, as provided by this ordinance.

**16-108.2 Violations of Sign Provisions**

Any of the following shall be a violation of this ordinance and shall be subject to the enforcement remedies and penalties provided by this ordinance and by State law:

1. To install, create, erect, or maintain any sign in a way that is inconsistent with any plan or permit governing such sign or the zone lot on which the sign is located;
2. To install, create, erect, or maintain any sign requiring a permit without such a permit;
3. To fail to remove any sign that is installed, created, erected, or maintained in violation of this ordinance, or for which the sign permit has lapsed; or
4. Each sign installed, created, or maintained in violation of this ordinance shall be considered a separate violation when applying the penalty portions of this ordinance.

**16-108.3 Penalties for Violation (Amended by Ordinance No. 527, September 19, 2002)**

Violation of the provisions of this ordinance, or of policies and procedure, including "Site Development Agreements", adopted in pursuance thereof or failure to comply with any of its requirements (including violations of conditions and safeguards established in connection with grants of variance or conditional uses) shall constitute a misdemeanor and shall be punished as provided by law. Each day such violation exists shall be deemed a separate offense.

The owner or tenant of any building, structure, premises, or part thereof, and any architect, builder, contractor, agent, or other person who commits, participates in, assists in, or maintains such violation may each be found guilty of a separate offense and suffer the penalties herein provided.

#### **16-108.4 Remedies**

In case any building or other structure is proposed to be erected, constructed, reconstructed, altered, extended, or proposed to be used in violation of this ordinance, the Zoning Administrator or other appropriate authority of the City Government or any adjacent or neighboring property owner who would be especially damaged by such violation may, in addition to other remedies, institute injunction, mandamus or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, extension, conversion or use, to correct or abate the violation, or to prevent the occupancy of such building or other structure or land. Where a violation of these regulations exists with respect to a building or other structure or land, the Zoning Administrator may, in addition to other remedies, notify all public utilities and municipal service departments of such violation and request that initial or re-establishment of service be withheld, therefrom, until such time as the building or other structure premises are no longer in violation of these regulations.

#### **16-108.5 Special Enforcement and Remedies Pertaining to Signs**

In addition to the general remedies applicable to all violations set forth in this article the remedies specifically applying to signs shall include the following:

1. Issuing a stop-work order for any and all work on any signs on the same zone lot;
2. Seeking an injunction or other order of restraint or abatement that requires the removal of the sign(s) or the correction of the nonconformity;
3. In the case of a sign that poses an immediate danger to the public health or safety, taking such measures as are available to the city under the applicable provisions of the zoning ordinance and building code for such circumstances.
4. All remedies provided herein shall be cumulative. To the extent that state law may limit the availability of a particular remedy set forth herein for a certain violation or a part thereof, such remedy shall remain available for other violations or other parts of the same violation.

### **16-109 PUBLIC NOTICE**

#### **16-109.1 Applicability**

All public hearings required by this ordinance shall be preceded by public notice as provided by this section.

### **16-109.2 Notice By Newspaper**

Notice in a newspaper of general circulation within the City of Fairview, shall be given at least fifteen (15) days, but not more than thirty (30) days prior to the public hearing. This notice shall specify the location, current and proposed zoning classification, and it shall contain a graphic illustration of the area.

### **16-109.3 Notice by Mail**

At least fifteen (15) days prior to the public hearing concerning the affected property all owners of record of adjoining property, including those separated by a public way from the premises in question shall be notified. The notification required to meet this provision shall be accomplished by certified mail, return receipt request. Return receipts shall be maintained and subject to public examination upon request.

### **16-109.4 Notice by Signage**

No public hearing shall be conducted until public notice has been provided by the posting of signs pursuant to the provisions of this section.

#### **1. General Requirements**

The applicant shall post signs on properties for which either an action by the Board of Zoning Appeals or a request for change of zoning classification has been requested. Such signs shall be posted at least fifteen (15) days prior to the public hearing is to be conducted on the request. The applicant shall purchase such signs at the Office of the Zoning Administrator no less than twenty-one (21) days prior to the date of the public hearing. No public hearing shall be conducted nor any action taken on any request for which such notice is required until these signs are posted as required herein. The posting of the signs shall be as follows.

#### **a. Number**

One (1) sign shall be posted for each five hundred (500) feet of frontage.

#### **b. Location**

Signs shall be located facing and within twenty-five (25) feet of all public rights-of-way on which the property fronts.

#### **c. Size**

The signs shall have a minimum width of twenty-four (24) inches and a minimum height of thirty-six (36) inches.

d. Wording

The signs shall contain wording provided by the Office of the Zoning Administrator which shall be sufficient to convey the information that a zoning action is proposed for the subject property along with the date, time and place of the meeting at which the requested action is to be considered and the telephone number for additional information.

e. Fee

The signs shall be provided by the city, subject to payment by the applicant of a fee charged to defray the administrative and printing costs. The fee shall be waived for any agency of government.

2. Alternative Requirements for Zoning Actions Affecting Large Areas

When the area included within the requested zoning action contains one hundred (100) or more parcels the following alternative provisions shall apply:

- a. Signs shall be posted within the public right-of-way facing the inbound lane of all public streets at, or as near as possible to, the point the street crosses the boundary of property subject to the proposed action.
- b. Signs shall also be posted at the intersection of a local street with a collector or arterial street within the area of the proposed zoning action.
- c. Where a public street forms the boundary, or a portion of the boundary, of an area subject to a zoning action, one (1) double face sign shall be erected on the side of the street included within the proposed change within each one thousand (1,000) lineal feet of street frontage.

**16-110 FEES**

**16-110.1 General**

Standardized fee schedules may be established to partially defray the processing and administrative costs associated with each type of application associated with this ordinance. All fees are to be paid at the time of filing. Fees shall be waived for the following: (1) Applications initiated by any Federal or State agency or any department of the City of Fairview or the County of Wilson; and (2) Any changes in zoning initiated by the Planning Commission and Board of Commissioners to implement the general plan.

**16-111 EFFECTIVE DATE**

This ordinance shall be in force and effect from and after its passage and adoption, the public welfare requiring it.

Approved and Certified by Planning Commission

Brenda Russell  
Brenda Russell, Secretary  
Fairview Planning Commission

Robert Greene  
Robert Greene, Chairman,  
Fairview Planning Commission

September 3, 1998  
Date

Approved on Final Reading

Mark Miller  
Mark Miller, Mayor

September 3, 1998  
Date

ATTEST:

Kathleen Daugherty  
Kathleen Daugherty, City Recorder