

## **CHAPTER EIGHT**

### **ZONING AND APPLICATION PROCEDURES**

#### **ARTICLE I, APPLICATION OF REGULATIONS:**

This Chapter establishes the authority to amend this Code, including the zoning map, and establishes the appropriate procedures to do so. It specifies the application requirements and process for the following types of applications: amendments to the official text of this Code, amendments to the official zoning map/rezonings (hereafter only referred to as rezonings), conditional use permits (CUP's), home occupation permits (HOP's), sketch plats, variances, appeals of administrative decisions, appeals of Zoning Board of Appeals decisions, and zoning condition amendments.

#### **ARTICLE II, APPLICATION REQUIREMENTS:**

The following requirements shall be submitted for all applications, unless otherwise specified in the text of this Chapter. Additional requirements that vary per application type are delineated in Articles IV through IX of this Chapter. County initiated applications are exempt from these requirements, but shall otherwise follow all requirements of the Georgia Zoning Procedures Act. A summary of application requirements can be found in Table 8.1. An optional pre-application meeting may be requested by the applicant to discuss the general aspects of the proposal, the process, and information that will be required from the applicant in order to submit a complete application. Preliminary discussions are not binding on either the applicant or the County. This is often the first opportunity to review submittal requirements and procedures and is intended to assist in filing complete applications.

8-2.1 **Requirements for All Applications.** All applications specified in this Chapter shall be submitted

on forms provided by the County and shall be submitted with the documentation required for each type of application. The director is hereby authorized to establish administrative deadlines for the receipt of applications and associated information in accordance with the provisions of this Chapter.

(A) **Form.** All applications shall be submitted using the appropriate application form per each application type, as specified by the department.

(1) **Review of Application Completeness.** Upon submittal, each application shall be subjected to a Review of Application Completeness prior to being officially accepted by the County. An application shall be considered "complete" if it is submitted on the required form, includes all submittal information, including all exhibits specified by the director, and accompanied by the application processing fee as adopted by the Board of Commissioners and as may be revised periodically. The Review of Application Completeness shall be conducted by county staff within five (5) business days of the submittal deadline. If the County determines the application is complete, the application shall be processed pursuant to this Chapter. If the County determines that the application is incomplete, County Staff shall notify the applicant of that fact via the contact phone information provided and specify the ways in which the application is deficient. All incomplete applications shall receive no further processing until the deficiencies are corrected via a new submittal. Resubmittal of the application shall be treated as a new application. Under no circumstances may County staff delay conducting the Review of Application Completeness in excess of five (5) business days of the submittal deadline. If the Review of Application Completeness is not completed within five (5) business days of the submittal deadline, the application shall be determined complete.

(B) **Submittal Fees.** All applications shall be submitted with the required fee. The amount of each fee will be established by the director, and approved by the Board of Commissioners, which may be revised periodically. Applicants may apply for more than one application simultaneously and such applications may be simultaneously considered by the County as more specifically provided by this Chapter. In the case that more than one application is filed simultaneously, the applicant shall be responsible for filing the appropriate information and paying the specified fees for each application filed. All fees are nonrefundable once the application has been determined complete.

(C) **Boundary Survey.** All applications shall be accompanied by ten (10) copies of a boundary survey prepared by a registered land surveyor, and one (1) copy of the boundary survey shall be reduced to a size of 8.5 inches by 11 inches.

(D) **Legal Description.** All applications shall be accompanied by a written metes and bounds legal description. It must establish a point of beginning and from the point of beginning give each dimension bounding the property,

calling the directions (e.g. north, northeasterly, southerly, etc.) which the boundary follows around the property returning to the point of beginning. If there are multiple properties, all properties shall be combined into one legal description.

- (E) **Site Plan Minimum Requirements.** All applications shall be accompanied by ten (10) copies of a site plan prepared by a registered land surveyor, engineer, etc., and one (1) copy of the site plan reduced to a size of 8.5 inches by 11 inches. All details submitted on a site plan shall meet all requirements as identified in this Code and all other County regulations; or include reference to a specific variance request which shall also be included on the submitted application. Unless otherwise specified in the board approval, the site plan submitted as part of the application shall be considered binding on the applicant and must be followed. Site plans submitted under the requirements of this Chapter are not engineered, and as such the term 'binding' does not imply that it is site plan specific; rather it implies that the locations and/or uses are what the applicant intends to implement on the subject property. In any instance where the site plan conflicts with this Code, or any other County regulation, and there is not an approved variance, the regulation shall take precedent. The boundary of the site plan shall match the boundaries of the submitted boundary survey and the legal description. The site plan shall at minimum contain the following information (as applicable):
- (1) Proposed layout of streets, alleys, lots, and pedestrian circulation systems;
  - (2) Lot or tract dimensions with required setbacks shown;
  - (3) Required and proposed buffers;
  - (4) Required or proposed natural areas, landscape areas, common space, and opens space;
  - (5) Proposed structures with square footages (except for single family residential subdivisions);
  - (6) Proposed uses for each structure (e.g. retail sales, offices, townhouses, etc.);
  - (7) Existing zoning district of the subject property and abutting property, and the proposed zoning district;
  - (8) Proposed and existing location and use of all structures on the subject property and on abutting property;
  - (9) Existing and proposed right-of-way locations and dimensions and names of all roads and streets bounding the subject property;
  - (10) Driveways and parking areas with number of parking spaces;
  - (11) Loading and unloading facilities;
  - (12) Preliminary storm drainage and structures;
  - (13) Preliminary locations and point of access for all utility lines (e.g. water, gas, electric, etc.);
  - (14) Preliminary wastewater facilities including areas reserved for drain fields and septic tanks or point of access;
  - (15) Tax map/parcel number and owner name of subject property and all abutting property owners as shown on current County tax map records;
  - (16) Existing tree canopy (general location of existing canopy as indicated on the County GIS aerial photography); and
  - (17) Preliminary locations of environmental conditions (e.g. streams, wetlands, watershed protection districts, flood hazard areas, river corridor boundaries, groundwater recharge areas, etc.).
- (F) **Confirmation of Paid Taxes.** A copy of the paid tax receipt for subject property or a statement by an official in the Tax Commissioner's Office or other official document issued by the Tax Commissioner's Office indicating taxes have been paid for the last year that they were due.
- (G) **Additional Application Requirements.** Articles IV through IX of this Chapter identify additional application requirements per each type of application.

8-2.2 **Withdrawal of Applications.** Applications as specified in this Chapter may be withdrawn in conformance with the following provisions or as specified in this Code:

- (A) **Applicant Withdrawal.** All applications may be withdrawn upon the written request of the applicant. Withdrawal requests received prior to the date that public notice is provided in a newspaper of general circulation may be withdrawn without prejudice, and shall be permitted to be withdrawn without prejudice. Once public notice is provided in the newspaper of general circulation, the application shall be withdrawn with prejudice. However, the applicant may withhold the written request for withdrawal until the public hearing, in which the board with jurisdiction may permit applications to be withdrawn at the public hearing, but the withdrawal shall be with prejudice unless extenuating circumstances are evident and the board grants approval to withdraw without prejudice. There shall be no requirement that the pertinent board make specific findings of extenuating circumstances in order to allow withdrawal without prejudice. In no event shall an application be withdrawn more than once without prejudicing the right of the applicant to apply again within twelve (12) months from the date the application was made.

- (B) **Administrative Withdrawal.** In order to remove applications where there has been no action taken by the applicant for a period of one hundred and eighty (180) days, the director is hereby authorized to administratively withdraw said applications. The one hundred and eighty (180) days shall be measured starting from the last documented administrative or board action. Documentation shall be kept on file indicating the department's attempts to contact the applicant via the contact information provided. All administratively withdrawn applications shall be considered withdrawn with prejudice.

8-2.3 **Reconsideration of Applications.** If an application is withdrawn with prejudice or denied by the Zoning Board of Appeals or Board of Commissioners, then the same property with a substantially similar application may not be submitted for reconsideration until the expiration of at least twelve (12) months immediately following the withdrawal at the Planning Commission public hearing or defeat of the application by the Zoning Board of Appeals or Board of Commissioners at their public hearing, as the case may be.

8-2.4 **Copies of Policies and Procedures, etc.** Copies of this Chapter, and any rules of procedure adopted by the Planning Commission, Zoning Board of Appeals, or Board of Commissioners, shall be available for distribution to the general public by the department during regular business hours.

### **ARTICLE III, PUBLIC HEARINGS AND NOTICES FOR ALL APPLICATIONS:**

8-3.1 **Public Hearing Required.** All applications as specified in this Chapter shall require a public hearing prior to action on said application.

8-3.2 **Who Holds Hearings.** The Planning Commission, Zoning Board of Appeals, or Board of Commissioners shall hold a public hearing on all applications. The public hearing shall constitute the public hearing that is required by the State Zoning Procedures Law (*Title 36 of the Official Code of Georgia Annotated, sections 36-66-1 et seq.*). All public hearings shall be heard in accordance with the annual schedule prepared for and adopted by each individual board, and as may be amended periodically. Public hearings shall be heard by:

- (A) **Planning Commission.** The Planning Commission is hereby designated as the board that shall hold a public hearing on applications to amend the text of this Code, rezoning applications, conditional use permits, and home occupation permits. The Planning Commission shall also hold the public hearing on all variance requests that were filed and scheduled to be considered simultaneously and pertaining to the same property with a rezoning, conditional use permit, or home occupation permit application. Recommendations on approval or denial of variances shall be made in accordance with the provisions set forth in Article VI of this Chapter.
- (B) **Zoning Board of Appeals.** The Zoning Board of Appeals is hereby designated as the board that shall hold a public hearing on all appeals of administrative decisions and all variances; with the exception of variance requests that would simultaneously apply to four (4) or more existing or proposed lots or units within a single subdivision, or for variance requests that were filed and scheduled to be considered simultaneously and pertaining to the same property with another application in which the authority to hold the public hearing rests with either the Planning Commission or Board of Commissioners.
- (C) **Board of Commissioners.** The Board of Commissioners is hereby designated as the board that shall hold the second public hearing on all amendments to the text of this Code. The Board of Commissioners shall also hold public hearings on all sketch plat applications and all variance applications that would simultaneously apply to four (4) or more existing or proposed lots or units within a single subdivision that are not being simultaneously considered with a rezoning, conditional use permit or home occupation permit application. The Board of Commissioners shall also hold the public hearing for appeals of Zoning Board of Appeals decisions and zoning condition amendments. Delegation of public hearings to the Planning Commission or Zoning Board of Appeals in no way abrogates the right of the Board of Commissioners to initiate and conduct, at its discretion, a public hearing for any application.

8-3.3 **Advertisement of Public Hearings.** Applications to amend the text of this Code shall be advertised in accordance with (A) and (B) of this section. All other applications shall be required to meet the following public hearing notice requirements:

- (A) **Preparation of Public Notice.** Notice of public hearings before the Planning Commission and the Zoning Board of Appeals shall be prepared and presented for publication by the director. Notice of public hearings before the Board of Commissioners shall be prepared and presented for publication by the County Manager.
- (B) **Newspaper.** All applications shall publish a public hearing notice within a newspaper of general circulation in Forsyth County at least fifteen (15), but not more than forty-five (45) days prior to the date of any public hearing. All notices shall include, with the exception of amending the text of this

Code, the application number, date, time, location (including tax map/parcel numbers), and purpose of the public hearing. In addition, the following additional notice requirements shall be provided:

- (1) Rezoning: Existing and proposed zoning classifications;
- (2) Conditional Use Permits, Home Occupation Permits and Sketch Plats: Proposed use and existing zoning district;
- (3) Variances: Proposed Code provisions requested to be modified. Each article of this Code requested to be varied shall be separately identified in all required notices;
- (4) Appeals of Administrative Decisions: Purpose of the appeal;
- (5) Appeals of Zoning Board of Appeals Decisions: Purpose of the appeal;
- (6) Zoning Condition Amendments: Application number of which conditions are being requested to be modified.

(C) **Public Hearing Sign(s).** Public Hearing signs shall comply with the following procedures.

- (1) A public hearing sign shall be placed in a conspicuous location on the subject property at least twenty-one (21), but not more than forty-five (45) days prior to the date of the scheduled hearing. The required sign shall provide the same notice requirements as specified in 8-3.3(B), except that tax map and parcel numbers are not required.
- (2) Where the land owned by the applicant does not border upon a public road in order that a passersby may see the sign which provides the public notice, the required sign shall be placed on the right-of-way of a public road nearest the property in question as well as upon the subject property.
- (3) Acts of vandalism or natural occurrences which may diminish the effectiveness of the public notice provided shall not void any proceedings or actions taken by any of the three boards or the director.
- (4) Once the Zoning Board of Appeals or Board of Commissioners has made a final motion upon any application requiring a public hearing, the applicant shall be responsible for the removal of all public hearing signs. Failure to do so will result in a fine of one hundred dollars (\$100) per day until the sign(s) are removed. Calculation of the fine shall begin three (3) days after the motion to act on the application or the date the application is withdrawn.

(D) **Additional Information.** The director may request additional information regarding public notice if said information is deemed necessary to help the public understand the application request.

8-3.4 **Conduct of Public Hearings and Procedures for Considering Applications.** The following procedures shall govern public hearings held for purposes of considering applications as specified in this Chapter.

- (A) **Presiding officer.** The public hearing shall be conducted by the presiding officer. The presiding officer shall be the Chairman, or in the Chairman's absence, a designated member of the body hearing the request according to each board's rules and procedures.
- (B) **Requirements for speakers.** Persons wishing to speak in support (including applicant and designated spokesperson) or opposition to any application shall provide their name, address, and telephone number on the specified form to County Staff prior to speaking at the public hearing. In addition, each person shall be required to disclose any campaign contributions/gifts equal to or greater than \$100 given to any Forsyth County elected official within two (2) years of the public hearing date.
- (C) **Time limits.** Speakers at the public hearing shall be allowed up to ten (10) minutes per side, provided, however, that the presiding officer may at his or her discretion elect to extend this time period equally to proponents and opponents. The presiding officer may also, at his or her discretion, permit presentations by other persons and allow the same to exceed the allotted times.
- (D) **Actions made in public.** Any recommendation, decision, or other action taken by the Planning Commission, Zoning Board of Appeals, or Board of Commissioners will be made in public, at the time of the public hearing or at the time said application is continued or deferred for future consideration at a regular meeting of the respective body; provided, however, that an application may be tabled only by the Board of Commissioners.
- (E) **Effect of Board Decisions.** All findings of the Planning Commission shall be in the form of recommendations to the Board of Commissioners. The findings and decision of the Zoning Board of Appeals shall be final unless a person aggrieved shall, within ten (10) days of such decision, petition the Board of Commissioners of Forsyth County to review the decision. All decisions by the Board of Commissioners shall be final, although an appeal of a Board decision may be made in conformance with Article X of this Chapter.

**ARTICLE IV, AMENDING THE TEXT OF THIS CODE:**

8-4.1 **Purpose and Intent.** The intent of this article is to specify provisions for amending the text of this Code.

8-4.2 **Authority to Amend.** The text of this Code may be amended from time to time only by the Board of Commissioners.

8-4.3 **Statement of Policy.** Amendments to this text will be made only if they bear a substantial relation to the public health, safety, morality or general welfare.

8-4.4 **Procedures.** Amending the text of this Code shall be made in accordance with the requirements of this Chapter or as specified by the director.

(A) **Public Hearing.** All applications to amend the text of this Code shall receive two public hearings in accordance with the provisions as set forth in Article III of this Chapter.

(1) **Planning Commission recommendation.** The Planning Commission shall make a recommendation to the Board of Commissioners regarding amending the text of this Code. The Planning Commission's recommendation shall be in the form of a motion for approval, approval with modifications, or denial. The Planning Commission shall strive to make a recommendation following the closure of the public hearing; however, the Planning Commission shall have thirty-one (31) days from the date of the public hearing to provide its recommendation to the Board of Commissioners. If the Planning Commission does not provide a recommendation within the thirty-one (31) days from the date of the public hearing, the department shall automatically schedule it for consideration by the Board of Commissioners without the benefit of a recommendation from the Planning Commission.

(2) **Board of Commissioners Action.** Upon completion of the public hearing and recommendation by the Planning Commission, or upon expiration of the thirty-one (31) day time period allowed for the Planning Commission to provide a recommendation, all amendments to the text of this Code shall be scheduled for a second public hearing by the Board of Commissioners in accordance with Article III of this Chapter. The Board of Commissioners may return it to the Planning Commission or the department, or both, for further study, or it may approve it. In addition, the Board may approve it with modifications, or it may deny it.

a) **General Considerations for Decision.** The following items shall be considered when amending the text of this Code.

(i) Amendments to this text will be made only if they bear a rational relation to the public health, safety, morality or general welfare.

(3) **Board of Commissioner Decision.** Board of Commissioner approval to amend the text of this Code shall be in the form of a resolution.

8-4.5 **Director's Responsibilities.** The director shall conduct a continued study of the needs of the County and shall, from time to time, prepare such modifications, revisions, or amendments to this Code, including the official zoning map and any adopted overlay district maps, as may be necessary to conform to the Comprehensive Plan, land use studies, major transportation plans, and other documents. The modifications, revisions, or amendments shall include such text providing definitions, specifications, and conditions as may be appropriate to the matter considered, as well as maps delineating any geographical changes. Submissions shall be made to Planning Commission and the Board of Commissioners.

**ARTICLE V, REZONINGS, CONDITIONAL USE PERMITS, HOME OCCUPATION PERMITS, AND SKETCH PLATS:**

8-5.1 **Purpose and Intent.** The intent of this article is to specify provisions for filing and consideration of rezonings, conditional use permits (CUP's), home occupation permits (HOP's), and sketch plats.

8-5.2 **Authority to Amend.** The official zoning map may be amended from time to time through the rezoning process only by the Board of Commissioners. The Board of Commissioners is also the designated decision making authority on granting conditional use permit, home occupation permit, and sketch plat approvals.

8-5.3 **When Required.** All rezoning, conditional use permit, home occupation permit, and sketch plat applications shall be required in accordance with the following specifications:

(A) **Rezonings.** Applications for rezonings shall be required when proposed land use or land development is not in conformance with the existing zoning district.

(1) **Rezonings Not Permitted.** No rezoning shall be made nor accepted by the department involving a request to rezone to the following zoning districts:

a) R1R

- b) CR1
  - c) R1
  - d) R2R
  - e) R2
  - f) R3
  - g) R4
  - h) LR
  - i) OSR
  - j) PUD
- (2) **Rezoning Permitted.** Applications for rezoning may be filed for the following zoning districts:
- a) **Agricultural Districts:**
    - (i) A1—Agricultural District
    - (ii) Ag-Res—Agricultural Residential District
  - b) **Residential Zoning Districts:**
    - (i) Res1—Single Family Residential District
    - (ii) Res2—Single Family Residential District
    - (iii) Res3—Single Family Residential District
    - (iv) Res4—Single Family Residential District
    - (v) Res6—Multi Family Residential District
    - (vi) MHP—Manufactured Home Park District
  - c) **Commercial Zoning Districts:**
    - (i) BP—Business Park District
    - (ii) CBD—Commercial Business District
    - (iii) HB—Highway Business District
    - (iv) HC—Heavy Commercial District
    - (v) NS—Neighborhood Shopping District
    - (vi) O&I—Office and Institutional District
    - (vii) OR—Office Residential District
    - (viii) OCMS—Office Commercial Multiple Story
    - (ix) UV—Urban Village District
  - d) **Industrial and Mining Districts:**
    - (i) M1—Restricted Industrial District
    - (ii) M2—Heavy Industrial District
    - (iii) Mine—Mining Operations District
  - e) **Master Planned Districts:**
    - (i) MPD—Master Planned District
- (B) **Conditional Use Permits.** Applications for conditional use permits shall be required as specified in the Uses Permitted tables in this Code.
- (C) **Home Occupation Permits.** Applications for home occupation permits shall be required in accordance with Chapter 16, Article III of this Code.
- (D) **Sketch Plats.** Applications for sketch plats afford the director and the Board of Commissioners an opportunity, prior to construction or build-out of a proposed development, to review a detailed site plan (“sketch plat”) of the proposed subdivision or land development in order to ensure development compliance with the Unified Development Code and all other County ordinances and regulations. The sketch plat process is also an opportunity to allow public participation with respect to those developments for which a sketch plat is required. All major subdivisions and any other land development requiring a permit for land disturbance that involves either a tract of land five (5) acres or more, or an area of disturbance five (5) acres or more, shall require the submission of a sketch plat to the director. However, it is not the intent of this Code to require an applicant who already has a site plan that was approved as part of a rezoning or conditional use application, to go through a public review process a second time for the same or substantially the same development. Accordingly, a sketch plat shall not be required for major subdivisions or said land development when the development proposal found by the director is substantially in accordance with the site plan on file in the department. If a proposed sketch plat does not substantially conform to the site plan on file, or if there is no development plan on file for the subject property, then a sketch plat approval shall be required. Prior to the issuance of any permit for land disturbance, the Board of Commissioners shall hold a public hearing and must approve the sketch plat if required.

- (1) **Amendments to Approved Site Plans/Sketch Plats.** The director is authorized to approve minor amendments to site plans/sketch plats. Minor amendments shall include, but are not limited to, adjusting residential lot lines, modifying the layout of internal roads to a subdivision, or relocating open space. Any proposed amendment to a sketch plat that is determined by the director to constitute a public interest, that decreases the amount of open space by ten (10) percent or more, or that increases the density by ten (10) percent or more shall be deemed a major amendment. The relocation of an active amenities area from the interior to the exterior of the property or to a different location on the exterior of the property, reduction in minimum lot size, and change of proposed use shall constitute a major amendment. For all amendments to sketch plats determined to be major amendments, the Board of Commissioners shall be required to hold a public hearing, but such hearing shall be limited specifically to testimony regarding whether the proposed amendment should or should not be approved. The Board of Commissioners shall approve, conditionally approve, or deny the proposed major amendment to a sketch plat. Procedures for considering a major amendment to a sketch plat shall be the same as required for an initial application for sketch plat approval.

8-5.4 **Application Requirements.** All applications for rezonings, conditional use permits, home occupation permits, and sketch plats, not including County initiated applications, shall provide the information as specified in this section. If an applicant submits a variance or multiple variances simultaneously with a rezoning, conditional use permit, home occupation permit, or sketch plat application, a separate fee for each section of the Code being varied, as well as a written justification shall be required as specified in 8-6.3 (B). Application requirements as specified in sections 8-5.4 (A), (B) and (D) through (H) shall be submitted with the Application for Preliminary Zoning Review. Application requirements as specified in section 8-5.4 (C) shall be submitted with the Application for Board Consideration.

(A) **Requirements for All Applications.** All applications for rezonings, conditional use permits, home occupation permits, and sketch plats shall provide the appropriate information as specified in sections 8-2.1 (A) through (G) of this Chapter.

(B) **Public Participation Plan.** All rezoning, conditional use permits, home occupation permits, and sketch plat applications shall include a public participation plan in accordance with this section and as required by the department.

(1) **Purpose.** The purpose of the public participation plan is to:

- a) Ensure that applicants pursue early and effective citizen participation in conjunction with their applications, giving them the opportunity to understand and try to mitigate any real or perceived impacts their application may have on the community;
- b) Ensure that the citizens and property owners of Forsyth County have an adequate opportunity to learn about applications that may affect them and to work with applicants to resolve concerns at an early stage of the process;
- c) Facilitate ongoing communication between the applicant, interested citizens and property owners, County Staff, and elected officials throughout the application review process;
- d) The public participation plan is not intended to produce complete consensus on all applications, but to encourage applicants to be good neighbors and to allow for informed decision making.

(2) **Minimum Requirements.** At a minimum, the applicant shall submit the following:

- a) **Public Participation Letter.** A copy of the letter to be sent to all persons and/or organizations per department procedures. The letter shall meet the requirements as set forth by the department, but at a minimum shall include:
  - (i) Application number;
  - (ii) Applicant name;
  - (iii) Contact information;
  - (iv) Details regarding the date, time and location of the required public participation meeting and any additional proposed meetings. If the date, time and location of the required public participation meeting is not known at submittal, it shall be submitted at the Preliminary Zoning Review Meeting;
  - (v) Statement of what type of application was submitted to the County;
  - (vi) Brief description of the design of the project and/or scope of proposed development and where more information may be obtained, e.g. via the county's Web site;
  - (vii) 8.5 x 11" copy of the site plan (if applicable);

(C) **Public Participation Report.** All rezoning, conditional use permit, home occupation permit, and sketch plat applications shall include a public participation report that is submitted in accordance with this section and as required by the department. The public participation report shall include a written explanation of the results of

the implementation of the public participation plan. The report shall be submitted with the Application for Board Consideration. The report will be attached to the department's Staff Report and will be distributed to each Planning Commissioner and each member of the Board of Commissioners prior to the public hearing.

- (1) **Minimum Requirements.** At a minimum, the Public Participation Report shall include the following information:
    - a) Executive Summary:
      - (i) Summary of public participation meeting(s):
        - (a) Dates, times, locations of all meetings that occurred during the Applicant Work Time period;
        - (b) Number of people who attended meetings with reference to attendee lists provided with supporting documentation;
        - (c) Summary of attendee concerns per meeting.
      - (ii) Summary of other correspondence:
        - (a) Dates of mailings with reference to applicable certificate of mailing documentation provided with supporting documentation;
        - (b) Important phone calls, email correspondence, etc.
      - (iii) Composite summary of all concerns that will be addressed on the site plan or via applicant requested zoning conditions;
      - (iv) Composite summary of all concerns that will not be addressed and why?
    - b) Applicant Requested Zoning Conditions, including:
      - (i) List of all applicant requested zoning conditions;
      - (ii) List of all applicant requested modifications to recommended staff zoning conditions and reasons for requested change.
    - c) Supporting Documentation, including copies of:
      - (i) Meeting sign in sheets from all citizen meetings;
      - (ii) Signed Official USPS Certificate of Mailing forms;
      - (iii) Letters, notices, newsletters, or any other publication used for public participation efforts during the Applicant Work Time.
  - (2) **Incomplete Public Participation Report.** The Public Participation Report will be reviewed as part of the Application Review of Completeness at submittal of the Application for Board Consideration. If the Public Participation Report does not meet the criteria as set forth in the Public Participation Plan, section 8-5.4 (B) (2), then the application shall be considered incomplete and shall not be scheduled for a public hearing.
- (D) **Written Evaluation.** All rezoning and conditional use permit applications which involves ten (10) acres or more shall include a written evaluation of the proposed project that considers each of the following factors:
- (1) How the proposed project is in conformance with section 10-1.8 of this Code;
  - (2) The impact on the local population density pattern and public infrastructure, including, but not limited to, schools, utilities, and roads;
  - (3) Whether there are substantial reasons why the property affected cannot be used in accordance with existing zoning;
  - (4) The extent to which the proposed changes are consistent with the Comprehensive Plan; and
  - (5) Any other factors relevant to the balancing of interests in promoting the public health, safety, morality, or general welfare and in promoting the public health, safety, morality, or general welfare with the right to reasonable use of property.
- (E) **Traffic Study.** All rezoning and sketch plat applications shall include a traffic study for any residential applications containing one hundred and fifty (150) or more units, unless waived by the Director of Engineering.
- (F) **Title Opinion.** All applications for rezoning, conditional use permit, and sketch plat applications shall provide a title opinion issued by a duly admitted member of the State Bar of Georgia in good standing. In addition to confirming ownership of the subject property, the title opinion shall also identify and provide copies of any covenants, deed restrictions, and easements encumbering the property and shall further identify whether any of the identified covenants, deed restrictions, and/or easements prohibit the use being sought by the application. The title opinion shall be rendered no more than 120 days prior to the original Application for Preliminary Zoning Review.
- (G) **Sewage Disposal.** All rezoning and sketch plat applications shall identify and specifically describe a sewage disposal system which conforms to the requirements of this Code. If the project will be served by sewer, a pre-application meeting shall be required prior to submittal with the Forsyth County Water & Sewer Department and/or City of Cumming (whichever has jurisdiction) to identify the availability of sewer capacity and the

location, connection, and route of sewer lines. If applicant proposal relies upon future outlay of sewer, then a phasing plan shall be required that identifies: (1) how the projects coincides or differs from the County Sewer Master Plan; (2) properties affected along the proposed sewer infrastructure, including showing proposed easements required, and; (3) funding and construction time frame. County Staff shall assess the implications of sewer access not anticipated by the County Sewer Master Plan, as per 8-5.5 (F) (3) (b) (vii).

- (H) **Disclosure of Campaign Contributions and Gifts to Public Officials.** All rezoning, conditional use permit, home occupation permit, and sketch plat applications shall include disclosure, pursuant to the Forsyth County Code of Ethics (Forsyth County Resolution and Ordinance #77), of any campaign contributions/gifts equal to or greater than \$100 given to any Forsyth County elected official within two years of the application filing date.

8-5.5 **Procedures.** All rezonings, conditional use permits, home occupation permits, and sketch plats, not including County initiated applications, shall comply with the following procedures as set forth in this article.

- (A) **Application for Preliminary Zoning Review.** All rezoning, conditional use permit, home occupation permit, and sketch plat applications require an Application for Preliminary Zoning Review in conformance with the application requirements as set forth in section 8-5.4 of this Article. Each application will be subject to a Review of Application Completeness as specified in section 8-2.1 (A) (1). Upon acceptance of the application, the department shall schedule a Preliminary Zoning Review Meeting for each application and forward all submittal information to other County Staff for review and preliminary recommendations.

- (1) **Limitations on the Number of Residential Zoning Applications Processed Per Zoning Review Schedule.** The department shall only schedule seven (7) new residential rezoning applications per each scheduled Zoning Review deadline. Residential districts subject to this requirement are detailed in sections 8-5.3 (A) (2) (b) and (e) of this Article. Applications for Preliminary Zoning Review shall be processed in the order they are received, Reviewed for Application Completeness in accordance with 8-2.1 (A)(1), and any application determined complete but which would exceed the maximum number of permitted applications for rezoning to a residential district shall be scheduled for the next available Zoning Review meeting. If an applicant submits more than one rezoning application for a residential rezoning district, but all of the applications involve either the same parcel of property, i.e., a split zoning, or involve multiple parcels of property showing a unified residential development, it shall constitute one application. In determining if the applications constitute a unified residential development, the director shall consider if roads, common areas, amenities, and entrances are shared by the proposed developments, and if there is a single homeowner's association responsible for the developments.

- a) **Classifying MPD rezoning applications.** MPD applications shall be processed as residential if greater than fifty percent (>50%) of their proposed land use is residential in nature, or as otherwise specified by the director.

- (B) **Preliminary Zoning Review Meeting.** County staff will be available to discuss the rezoning, conditional use permit, home occupation permit, and sketch plat application and will provide a preliminary review to inform the applicant of additional necessary requirements as well as to provide an informal recommendation about the proposed project. If the date, time, and location of the required public participation meeting were not submitted with the public participation plan, they shall be submitted at the Preliminary Zoning Review Meeting.

- (1) **Informal Review and Recommendation.** At the Preliminary Zoning Review Meeting, County Staff will provide the applicant with a written document specifying the following:

- a) Applicability of County policies, plans, and requirements as they apply to the proposed development;
- b) Appropriateness of the development with respect to the policies set forth in the Comprehensive Plan and the regulations in this Chapter;
- c) Scope of public participation, including minimum contact requirements;
- d) Any site plan considerations or requirements;
- e) Any concerns or requirements related to the anticipated impact upon public rights-of-way and public improvements and appropriate requirements to mitigate those impacts;
- f) Any concerns related to land use and overall project design;
- g) Possible alternatives or modifications related to proposed application; and
- h) Procedures that will need to be completed prior to the Application for Board Consideration.

- (2) After the Preliminary Zoning Review Meeting, the same written document will be available to the applicant and the public and will also be disseminated to the Planning Commission and the Board of Commissioners.

- (3) The informal recommendations are not binding upon the applicant or the County, but are intended to serve as a guide and to advise the applicant in advance of the formal Application for Board Consideration of any issues which will or may subsequently be presented to the Planning Commission and Board of

Commissioners. The information presented by County Staff is intended to be used by the applicant during the Applicant Work Time to ensure the applicant is aware of all issues prior to submitting an Application for Board Consideration.

- (C) **Applicant Work Time.** Applicants who have received the Informal Review and Recommendation have a minimum of fourteen (14) days and a maximum of one hundred and eighty (180) days (approximately 6 months) to finalize their applications for rezoning, conditional use permit, home occupation permit, or sketch plat, finalize any site plan details, fully implement the required public participation plan, and determine all applicant proposed conditions.
- (1) **Duration.** The one hundred and eighty (180) day time frame automatically starts on the day after the Preliminary Zoning Review Meeting and can end in one of the following five actions:
- a) Applicant submits an Application for Board Consideration;
  - b) Applicant withdraws application without prejudice;
  - c) Applicant initiates or is required to resubmit for additional Preliminary Zoning Review Meeting;
  - d) Applicant does not meet the specified requirements within the one hundred and eighty (180) days and the director administratively processes the application as withdrawn in accordance with section 8-2.2 (B); or
  - e) Director grants an extension because the application has not finalized the mandated Development of Regional Impact (DRI) review, or is being delayed because of some other County, state, or federal requirements.
- (2) **Implementation of Public Participation Plan.** The applicant shall implement the public participation plan only during the Applicant Work Time.
- a) **Public Participation Letter.** The applicant shall obtain a list of all persons and/or organizations from the department at the Preliminary Zoning Review Meeting. Each contact shall be sent the Public Participation Letter postmarked no earlier than the date of the Preliminary Zoning Review Meeting. All letters shall be sent, at minimum, using the Certificate of Mailing process whereby proof of individual mailings is verified by the Postal Service. Copies of the forms signed by the Postal Service shall be attached to the public participation report. County staff will notify members on the official Interested Parties List and affected political jurisdictions/public agencies. At a minimum, the applicant shall contact the following in accordance with department procedures:
- (i) Adjacent or nearby residents or property owners;
  - (ii) Adjacent or nearby Homeowner Associations (HOAs).
- b) **Public Participation Sign(s).** The applicant shall obtain the Public Participation Sign from the department at the Preliminary Zoning Review Meeting.
- (i) **Content.** At a minimum, the sign shall include:
    - (a) Application number;
    - (b) Applicant name;
    - (c) Contact information;
    - (d) Proposed change in zoning or request, including proposed variances and/or conditional uses;
    - (e) Meeting date, time and location for the applicant sponsored Public Participation Meeting.
  - (ii) **Posting Requirements.** The sign shall be posted on the subject property during the entire Applicant Work Time duration. At least one sign shall be placed on the subject property along where said property abuts every public right-of-way. If a property line abuts the same right-of-way for greater than five hundred (500) feet, then two signs shall be required along said right-of-way. If the subject property does not abut a public right-a-way, then placement of the signs shall be in accordance with 8-3.3(C). A signed affidavit with a dated photo of the sign placing said sign against a verifiable property landmark shall be submitted to the department within two (2) business days after the Preliminary Zoning Review Meeting. Failure to submit the affidavit shall result in the public participation report being incomplete and the application shall not be accepted until all posting requirements are met as specified in 8-5.4 (B)(2).
- c) **Public Participation Meeting.** A public participation meeting shall be held in a location relatively near the subject property and shall be held no earlier than fourteen (14) days after the Preliminary Zoning Review Meeting and only during the Applicant Work Time. The meeting shall be announced by the public participation letter and the public participation sign.
- (D) **Major Application Change.** During the Applicant Work Time, the County anticipates, or even encourages that there may be various site plan and application changes that result from County staff comments, implementation of the public participation plan, or through discussions with the various stakeholders. However,

the department also has the responsibility to ensure that the Application for Board Consideration, including site plan, is submitted in conformance with this Code or any other County ordinance, state or federal regulations, as applicable. As such, this section defines the following criteria as a Major Application Change and requires the applicant to resubmit a complete revised Application for Preliminary Zoning Review if they meet or exceed any of the nine (9) criteria as specified below. Applicants shall continue their public participation efforts during and after resubmittal of an application, but shall not be required to hold additional public participation meetings. County Staff will distribute a revised Informal Review and Recommendation at the next available Preliminary Zoning Review Meeting. Resubmitted residential rezoning applications are not subject to the limitations as specified in section 8-5.5 (A) (1).

- (1) Any change from a less intense to a more intense zoning classification;
  - (2) Any change in method of sewage treatment;
  - (3) Any change from a less intense to a more intense use or housing type;
  - (4) Any change in the boundary of the subject property (not including minor surveying inconsistencies);
  - (5) Adding variances or conditional uses;
  - (6) 10% or greater increase in the number of lots;
  - (7) 10% or greater increase in the density;
  - (8) 10% or greater decrease in the amount of open space; or
  - (9) As specified by the Director.
- (E) **Application for Board Consideration.** Within one hundred and eighty (180) days from the Preliminary Zoning Review Meeting, the applicant shall submit to the department an Application for Board Consideration. The submittal shall be in conformance with the provisions set forth in Article II and this article. All applications determined complete by the department shall be subject to the following restrictions:
- (1) **Applicant Changes.** No changes shall be allowed to any Application for Board Consideration once it is determined complete by the department, except as specified by the Director.
  - (2) **Public Hearing Sign.** The applicant shall be required to replace the Public Participation Sign(s) with the Public Hearing Sign(s) on the subject property in accordance with section 8-3.3(C). The applicant shall be required to obtain the sign from the department and place the sign on the subject property in a timeframe as specified in department procedures.
  - (3) **Scheduling of Public Hearing.** The department shall both advertise and schedule the application for a Public Hearing in accordance to the provisions in Article III of this Chapter.
  - (4) **Staff Report.** County staff shall review each Application for Board Consideration in its entirety, compile a Staff Report, and submit all necessary information to Planning Commission and the Board of Commissioners with sufficient time for board review prior to the Public Hearing. The Staff Report will be based upon the general considerations set forth in 8-5.5 (F) (3) (a) and the special considerations set forth in 8-5.5 (F) (3) (b).
- (F) **Public Hearing.** All rezoning, conditional use permit, home occupation permit, and sketch plat applications shall receive a public hearing in accordance with the provisions as set forth in Article III of this Chapter.
- (1) **Planning Commission Recommendation.** The Planning Commission shall receive and review a complete submittal from the department which includes a completed application and site plan, fully implemented Public Participation Report, and all applicant proposed zoning conditions. The Planning Commission shall also receive and review from the department a completed staff Report including an analysis, a recommendation, staff recommended zoning conditions, and review and recommendation of all applicant recommended conditions. Therefore, the Planning Commission shall have all the information necessary to make a recommendation to the Board of Commissioners on all applications for rezonings, conditional use permits, and home occupation permits. The Planning Commission's recommendation shall be in the form of a motion for approval, approval with conditions, or denial. The Planning Commission shall strive to make a recommendation on the application following the closure of the public hearing; however, the Planning Commission shall have thirty-one (31) days from the date of the public hearing to provide its recommendation to the Board of Commissioners. If the Planning Commission does not provide a recommendation on the application within the thirty-one (31) days from the date of the public hearing, or within a maximum of one hundred and twenty (120) days from the date of the first Application for Board Consideration submittal, whichever comes first, the department shall automatically schedule the application for consideration by the Board of Commissioners without the benefit of a recommendation from the Planning Commission.

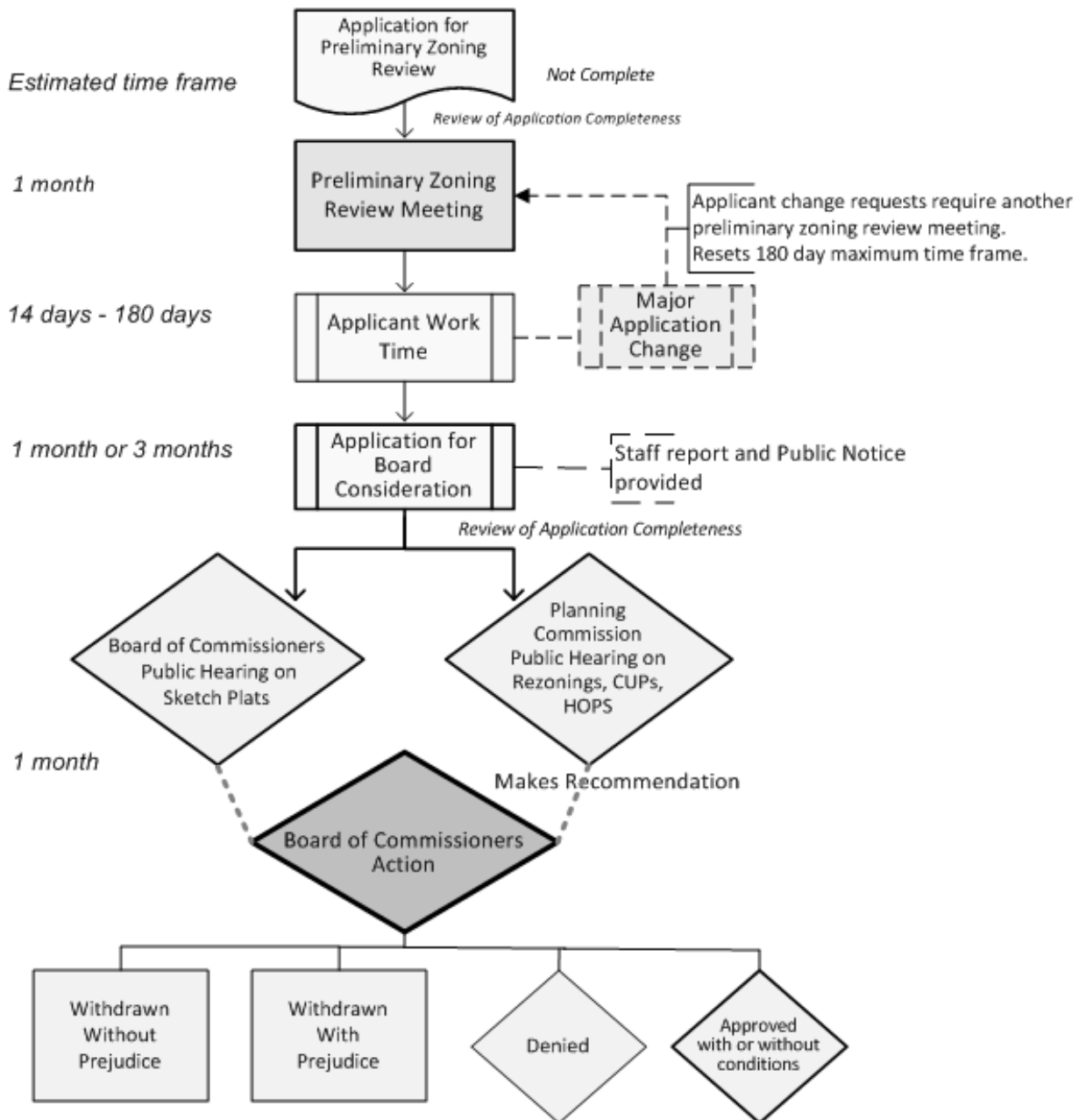
- (2) **Board of Commissioners Action on Rezonings, Conditional Use Permits, and Home Occupation Permits.** All applications for rezoning, conditional use permit, or home occupation permit shall be scheduled for consideration by the Board of Commissioners upon the completion of the public hearing and recommendation by the Planning Commission, or upon expiration of the thirty-one (31) day time period allowed for the Planning Commission to provide a recommendation, or if there is no Planning Commission recommendation rendered within the maximum of one hundred and twenty (120) days from the first Application for Board Consideration submittal, whichever comes first. Before taking action on said applications, the Board of Commissioners shall consider the Planning Commission's recommendation, if any, the Staff Report, and any application materials forwarded by the department to the Board. In addition, the Board of Commissioners may at its discretion recognize the applicant and consider information submitted by the applicant at the time the Board is considering the application. However, if the Board permits the applicant to provide testimony or to submit additional materials after the public hearing by the Planning Commission, in fairness to the public the Board of Commissioners should open the floor to comments or questions from the general public on the applicant's testimony or additional materials provided in support of the application. The Board of Commissioners may return the application to the Planning Commission or the department, or both, for further study, or it may approve the application. In addition, the Board may approve the application with conditions, or it may deny the application. Further, the Board may, in acting on said application, reduce the land area for which the application is made, change the zoning district to a less intense district than the one requested by the applicant, add or delete conditions or specifications of the application, or allow the application to be withdrawn with or without prejudice.
- c) **General Considerations for Decision.** The following items shall be considered for rezoning, conditional use permit, and home occupation permit applications:
- (i) Any requirements of this Code, the purpose of which is to give surrounding property owners notice of the use to which property would be put or zoning district requested, shall be strictly complied with;
  - (ii) The fact that there is already ample land in the requested classification shall not of itself justify denial or approval of an application for a change in zoning classification;
  - (iii) The mere fact that a certain zoning classification is in effect at the time property is acquired does not preclude the new owner from seeking a new classification;
  - (iv) No threat to the safety or morality of the citizens of the County shall be found to exist from a commercial development of land alone;
  - (v) The disposition of every rezoning shall be made on the facts applicable to that particular case, considering the merits of the land in question, the impact of a decision upon the landowner's property rights, and the legitimate interests of the community.
- d) **Special Considerations for Decision.** As appropriate, the following items shall be considered for rezoning, conditional use permit, and home occupation permit applications:
- (i) Land development plans, including projected densities;
  - (ii) Comprehensive Plan/future land use map:
    - (a) Whether or not the applicant's proposal is in conformity with the policy and intent of the Forsyth County Comprehensive Plan;
    - (b) Whether or not the applicant's proposal will permit a use that is suitable in view of the use and development of adjacent and nearby properties;
    - (c) Whether or not the applicant's proposal will have an adverse affect on the usability of adjacent or nearby property;
    - (d) Whether or not the applicant's proposal would result in a use that would cause an excessive or burdensome use of existing streets, transportation facilities, utilities, or schools;
    - (e) Whether or not there are existing and changing conditions affecting the use and development of the property which give supporting grounds for approving the applicant's proposal.
  - (iii) Existing uses and zoning of nearby property:
    - (a) Use and classifications of other property;
    - (b) Effect upon residents of adjoining property.
  - (iv) Land values:
    - (a) Impact of change on values of adjacent and nearby properties;
    - (b) Opinions as to most advantageous use.
  - (v) Roads and traffic:
    - (a) Character of adjacent and boundary roads;

- (b) Intersections;
  - (c) Planned development by public agencies;
  - (d) Planned private developments;
  - (e) Effect of increased traffic on safety.
  - (vi) Rivers, streams and drainage:
    - (a) Flood plains;
    - (b) Soil erosion and sedimentation;
    - (c) Protected areas;
    - (d) Pollution of surface and sub-surface water.
  - (vii) Utilities:
    - (a) Sewage disposal;
    - (b) Water supply;
    - (c) Whether the proposed method of sewage treatment is consistent with the County Sewer Master Plan;
    - (d) Whether the proposed rezoning and proposed water usage is consistent with the County Water Master Plan;
    - (e) Whether the proposed rezoning is consistent with any and all regional agreements, i.e., regional water agreements and regional sewer agreements.
  - (viii) Other special considerations:
    - (a) Buffer zones;
    - (b) Noise;
    - (c) Odor;
    - (d) Fire protection;
    - (e) Terrain or topography;
    - (f) Schools;
    - (g) Animals;
    - (h) Visual intrusions on neighbors;
    - (i) Aesthetics;
    - (j) Site plans and plats;
    - (k) Lighting;
    - (l) Hours of operation.
  - (ix) The Planning Commission may recommend changes and the Board of Commissioners may make changes as they deem appropriate to any submission.
- (3) **Board of Commissioner Action on Sketch Plats.** All sketch plat applications shall be scheduled for public hearing in front of the Board of Commissioners and consideration will be without the benefit of a Planning Commission recommendation.
- c) **General Considerations for Decision.** The following criteria shall be utilized by the Board of Commissioners in determining whether a submitted sketch plat is acceptable:
- (i) Whether the proposed development is in compliance with all pertinent sections of the Unified Development Code, including but not limited to densities, height restrictions, lot size, setbacks, buffers, roadway access, overlay districts, uses, streets, and open spaces;
  - (ii) Whether the proposed development is in compliance with all other Forsyth County ordinances, codes and regulations, including but not limited to the Tree Preservation Ordinance (81), Soil Erosion and Sedimentation Ordinance (73), Storm Water Management Ordinance (75), Flood Damage Prevention Ordinance (55), and the Public Sewer System Ordinance (6);
  - (iii) Whether provision has been made for a water supply system that is compliant with pertinent County ordinances and regulations and is otherwise sufficient in terms of quantity, dependability, and quality to provide an appropriate supply of water for the type of development proposed;
  - (iv) If a public sewage system is proposed, whether adequate provision has been made for such a system under pertinent County ordinances and regulations and, if other methods of sewage disposal are proposed including septic, that such systems comply with all pertinent federal, state, and local laws and regulations;
  - (v) If the tendered sketch plat reveals areas deemed by the director to be unsuitable for development due to the likelihood of flooding or improper drainage, or due to rock formations, topography, utility easements, or other characteristics rendering the proposed development harmful to the safety, health, and general welfare of the citizens of the County, whether the proposed

development makes accommodations for such characteristics such that the health, safety and welfare of the County is not unduly impacted;

- (vi) Whether proposed roads provide safe, convenient, and functional system for vehicular, pedestrian, and bicycle circulation and are otherwise consistent with the Comprehensive Plan and Master Transportation Plan.
- (G) **Board of Commissioner Decision.** Board of Commissioner approval of a rezoning application shall be in the form of a resolution. Approvals of conditional use permit, home occupation permit, and sketch plat applications shall be documented in a letter sent out by the department. Granting approval does not ensure the availability of utilities or other infrastructure in connection with development of the site.
- (H) **Application for Land Disturbance Permit or Building Permit.** Rezoning, conditional use permit, home occupation permit, and sketch plat applications approved by the Board of Commissioners are eligible to continue with the development process by applying for the appropriate land disturbance permit or building permit; provided however, that all subsequent submittals are in conformance with the approved Board of Commissioner's decision and all requirements identified in this Code, and other County, state, and federal requirements, as applicable.

**Figure 8.1.** Rezoning, Conditional Use Permit (CUP), Home Occupation (HOP) and Sketch Plat Process



**ARTICLE VI, VARIANCES:**

8-6.1 **Purpose and Intent.** It is the intent of this article to specify provisions for the filing and consideration of applications for variances.

8-6.2 **When Required.** A variance, as defined by this Code, shall only be granted for the dimensional or numerical requirements of this Code and shall not be granted for the purpose of permitting a use which is not permitted in the zoning district in which the subject property is located. Dimensional or numerical requirements of this Code that may be varied are as follows:

- (A) Performance standards specified for any of the various zoning districts, including buffer requirements and building setbacks and any land development regulations specified for any of the various zoning districts, but specifically excluding minimum lot size or maximum density requirements. The Board of Commissioners, however, may grant a lot size variance if in addition to the criteria found in 8-6.4(B)(4)(a), the Board of Commissioners' determines:
  - (1) The variance request is for an individual residential lot not in a platted subdivision; or
  - (2) The variance request is for a lot in a minor subdivision.
    - a) If the Board grants a lot size variance for either reason, the variance may not exceed ten (10%) percent of the total lot size required for a given zoning district, and it can only be granted for one lot in a minor subdivision.
- (B) The provisions of Chapter Ten, "General Provisions, and Nonconforming Situations."
- (C) The requirements of Chapter Sixteen, "Supplementary Regulations for Specific Uses."
- (D) The requirements of Chapter Seventeen, "Parking and Loading Regulations."
- (E) The requirements of Chapter Eighteen, "Subdivisions and Land Development."
- (F) The requirements of Chapter Nineteen, "Conservation Subdivisions."
- (G) The buffer and setback requirements established in Chapter Twenty-One, "Overlay Districts," but specifically excluding the variance of any provisions regarding permitted or prohibited uses or any minimum lot size established pursuant to that Chapter.

8-6.3 **Application Requirements.** All applications for variances, as defined by this Code shall provide the information as specified in this section.

- (A) **Requirements for All Applications.** All applications for variances shall provide the appropriate information as specified in sections 8-2.1 (A) through (G) of this Chapter. When more than one variance is simultaneously requested, the applicant shall pay a separate variance application fee for each article of this Code that is requested to be varied, but the applicant may file a multiple variance request as one consolidated application so long as each variance requested is individually justified according to the criteria for granting variances as specified in this article.
  - (1) **Site Plan.** All site plans submitted for variances shall be submitted in conformance with 8-2.1(E). For variance applications, the site plan shall clearly delineate and label the requested variance(s). Applications for variances that involve proposed modifications to a site plan that was already approved by one of the three boards in conformance with the Chapter, shall only include changes to the new site plan that directly relate to the variance being requested and shall not include any new site plan details which are not related to the variance being requested. Depending on the scope of changes, the director may require the applicant to also submit a sketch plat application.
  - (2) **Written Evaluation.** The applicant for a variance shall submit documentation justifying the variance and explaining why it should be granted. The justification must specifically address, for each variance requested, the criteria for granting variances as specified in this article.

8-6.4 **Procedures.** All applications for variances shall comply with the following procedures.

- (A) **Application for Board Consideration.** Applicants shall submit to the department an Application for Board Consideration. The submittal shall be in conformance with the provisions set forth in Article II and this article. All applications determined complete by the department shall be subject to the following restrictions:
  - (1) **Applicant Changes.** No changes shall be allowed to any Application for Board Consideration once it determined complete by the department.
  - (2) **Public Hearing Sign.** The applicant shall be required to place the Public Hearing Sign(s) on the subject property in accordance with section 8-3.3(C). The applicant shall be required to obtain the sign from the department in accordance with department procedures.
  - (3) **Scheduling of Public Hearing.** The department shall both advertise and schedule the application for a Public Hearing in accordance to the provisions in Article III of this Chapter.

- (4) **Staff Report.** County staff shall review each Application for Board Consideration in its entirety, compile a Staff Report, and submit all necessary information to Zoning Board of Appeals or the Board of Commissioners with sufficient time for board review prior to the Public Hearing.
- (B) **Public Hearing.** All variance applications shall receive a public hearing in accordance with the provisions as set forth in Article III of this Chapter.
- (1) **Applicant Initiated Postponement.** The applicant for a variance may request postponement of any public hearing for the application, and such postponement may be granted by the County, provided:
- Postponement is not requested more than three (3) times for any one application; and
  - The total period of time requested for postponement does not exceed six (6) months; and
  - The applicant agrees to pay for the costs of readvertising the application for public hearing and agrees to post public notice signs on the property, as may be determined by the Director to be necessary to ensure procedural due process.
- (2) **Zoning Board of Appeals Initiated Postponement.** The Zoning Board of Appeals ability to postpone applications shall be limited to situations in which the postponement will allow the respective board to obtain additional information from the applicant or allow the applicant and any opposition to negotiate.
- (3) **Board of Commissioners Initiated Postponement.** Shall follow the rules and procedures adopted by the Board of Commissioners.
- (4) **Zoning Board of Appeals or Board of Commissioners Action on Variances.** Following the completion of the public hearing on a variance request, the Zoning Board of Appeals or Board of Commissioners shall take action in accordance with Article III of this Chapter.
- General Considerations for Decision.** The Zoning Board of Appeals or Board of Commissioners as the case may be shall make a decision on each variance based on findings that consider each of the following:
    - The variance shall not have the effect of negating any of the various purposes and intentions of this Code;
    - The variance if granted will not be detrimental to the public safety, health, or welfare of the public or injurious to other property;
    - The conditions on which the request is based are unique to the property for which the relief is sought and are not applicable generally to other property;
    - Because of the particular physical surroundings, shape, size, or topographical conditions of the specific property involved, an extraordinary hardship or practical difficulty would result, as distinguished from a mere inconvenience, if the strict letter of these regulations is carried out;
    - The variance requested is the minimum necessary to accomplish the proposed development or building; and
    - In the case of an amendment to a buffer or setback required by this Code, including those specified in Chapter Twenty-One, the variance application shows how equal or greater protection will be achieved of the adjacent property or natural resource affected by the proposed development, should the variance be granted. The Director may grant a single 12 month extension to the term of the variance.
- (C) **Board Decision.** Zoning Board of Appeals or Board of Commissioner approval of a variance application shall be valid for a period of 48 months measured from the date of approval, the director may grant a single 12 month extension provided the intended use has not substantially changed. If an application for development approval or building permit is not made within the specified variance approval period, the variance approval shall expire and become null and void.
- (D) **Application for Land Disturbance Permit or Building Permit.** Variance applications approved by the Zoning Board of Appeals or Board of Commissioners are eligible to continue with the development process by applying for the appropriate land disturbance permit or building permit; provided however, that all subsequent submittals are in conformance with the approved variance decision, all requirements identified in this Code, and other County, state, and federal requirements, as applicable.

#### **ARTICLE VII, APPEALS OF ADMINISTRATIVE DECISIONS:**

8-7.1 **Purpose and Intent.** It is the intent of this article to specify provisions for the filing and consideration of applications for appeals of administrative decisions.

8-7.2 **When Required.** Appeals to the Zoning Board of Appeals may be taken by any person aggrieved by any decision of the director or other official, including but not limited to the Directors of Engineering and Water

and Sewer, in the administration or interpretation of this Code or other County ordinances granting jurisdiction of the Zoning Board of Appeals. Appeals of administrative decision applications shall be made within thirty (30) days of the date of the decision or action being appealed. The application shall be filed in accordance with the public hearing schedule adopted by the Zoning Board of Appeals, and the director shall schedule the matter to be heard on the next available hearing date.

- (1) **Stop Work Order.** In order to preserve the status quo while the parties' rights are being determined, the director shall have the authority to issue a stop work order if the appealed action or decision permits construction to commence or continue. Stop Work Orders shall comply with Chapter 5 and Chapter 22 of this Code. The director's entitlement to issue a stop work order shall in no way place upon the director an affirmative obligation to do so. The decision of whether to issue a stop work order shall be in the sole discretion of the director.

8-7.3 **Application Requirements.** All applications for appeals of administrative decisions, as defined by this Code shall provide the information as specified in this section.

- (A) **Requirements for All Applications.** All applications for appeals of administrative decisions shall provide the appropriate information as specified in sections 8-2.1 (A), (B) and (G) of this Chapter.

- (1) **Site Plan.** All site plans submitted for appeals of administrative decisions shall be submitted in conformance with 8-2.1(E). For appeals of administrative decisions, the site plan is optional and should only be submitted if said site plan graphically helps to present the applicant's case.

- (B) **Written Evaluation.** The applicant for an appeal of administrative decision shall submit a written notice of appeal within thirty (30) days after the date of the action or decision complained of. The written notice of appeal shall set forth concisely the action or decision being appealed as well as the grounds upon which the appeal is based.

8-7.4 **Procedures.** All applications for appeals of administrative decisions shall comply with the following procedures.

- (A) **Application for Board Consideration.** Applicants shall submit to the department an Application for Board Consideration. The submittal shall be in conformance with the provisions set forth in Article II and this article. All applications determined complete by the department shall be subject to the following restrictions:

- (1) **Applicant Changes.** No changes shall be allowed to any Application for Board Consideration once it determined complete by the department.
- (2) **Public Hearing Sign.** The applicant shall be required to place the Public Hearing Sign(s) on the subject property in accordance with section 8-3.3(C). The applicant shall be required to obtain the sign from the department in accordance with department procedures.
- (3) **Scheduling of Public Hearing.** The department shall both advertise and schedule the application for a Public Hearing in accordance to the provisions in Article III of this Chapter.
- (4) **Staff Report.** County staff shall review each Application for Board Consideration in its entirety, compile a Staff Report, and submit all necessary information to Zoning Board of Appeals with sufficient time for board review prior to the Public Hearing.

- (B) **Public Hearing.** All appeal of administrative decision applications shall receive a public hearing in accordance with the provisions as set forth in Article III of this Chapter.

- (1) **Applicant Initiated Postponement.** The applicant for an appeal of administrative decision may request postponement of any public hearing for the application, and such postponement may be granted by the County, provided:

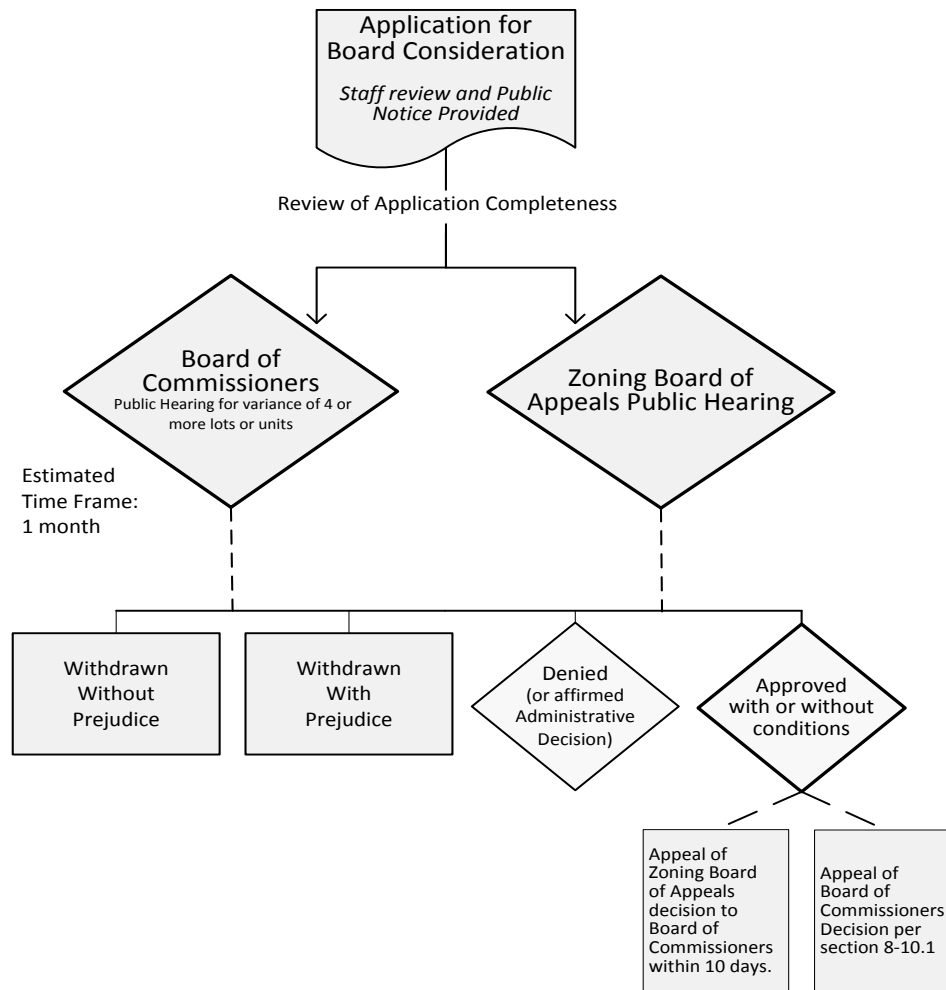
- a) Postponement is not requested more than three (3) times for any one application; and
- b) The total period of time requested for postponement does not exceed six (6) months; and
- c) The applicant agrees to pay for the costs of readvertising the application for public hearing and agrees to post public notice signs on the property, as may be determined by the director to be necessary to ensure procedural due process.

- (2) **Zoning Board of Appeals Initiated Postponement.** The Zoning Board of Appeals ability to postpone applications shall be limited to situations in which the postponement will allow the respective board to obtain additional information from the applicant or allow the applicant and any opposition to negotiate.

- (3) **Zoning Board of Appeals Action on Appeals of Administrative Decisions.** During the public hearing for an appeal of administrative decision, the Zoning Board of Appeals shall hear and consider all facts material to the appeal and render a decision. Following the completion of the public hearing on an appeal of administrative decision request, the Zoning Board of Appeals may affirm, reverse, or modify the action or decision appealed from, provided that the Zoning Board of Appeals shall not take any action which conflicts with or nullifies any of the provisions of this Code or any other County ordinances.

- (C) **Zoning Board of Appeals Decision.** A Zoning Board of Appeals decision on appeals stays all legal proceedings in furtherance of the action appealed from, unless the director certifies to the Zoning Board of Appeals, after the notice of appeal shall have been filed with him, that by reason of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life and property. In such case, proceedings shall not be stayed other than by a restraining order by a court of record on application, on notice to the director, and on due cause shown.
- (D) **Application for Land Disturbance Permit or Building Permit.** Appeal of administrative decision applications approved by the Zoning Board of Appeals are eligible to continue with the development process by applying for the appropriate land disturbance permit or building permit; provided however, that all subsequent submittals are in conformance with the approved board decision, all requirements identified in this Code, and other County, state, and federal requirements, as applicable.

**Figure 8.2 Variance and Appeal of Administrative Decision Process**



**ARTICLE VIII. APPEAL OF ZONING BOARD OF APPEAL DECISIONS:**

8-8.1 **Purpose and Intent.** It is the intent of this article to specify provisions for the filing and consideration of applications for appeals of Zoning Board of Appeal decisions.

8-8.2 **When Required.** Appeals of Zoning Board of Appeal decisions may be taken by any person aggrieved by any decision of the Zoning Board of Appeals. The appeal of a Zoning Board of Appeal decision shall be made within ten (10) days of the date of the public hearing in which the decision was rendered. The application shall be filed in accordance with the public hearing schedule adopted by the Board of Commissioners, and the Director shall schedule the matter to be heard on the next available hearing date.

8-8.3 **Application Requirements.** All applications for an appeal of Zoning Board of Appeal decisions shall provide information as specified in this section.

(A) **Requirements for All Applications.** All applications for appeals of Zoning Board of Appeals decisions shall provide the appropriate information as specified in sections 8-2.1 (A), (B) and (G) of this Chapter.

(B) **Written Evaluation.** The applicant for an appeal of Zoning Board of Appeals decision shall submit a petition in writing, justifying why said appeal is requested and should be granted. The director shall thereupon assemble the record in the case and submit the same to the Board of Commissioners within fifteen (15) days of service upon the director. The applicant shall set forth clearly and concisely the reasons why the Board of Commissioners should review the decision, including therein any error, procedural or substantive, allegedly committed by the Zoning Board of Appeals.

8-8.4 **Procedures.** All applications for appeals of Zoning Board of Appeals decisions shall comply with the following procedures.

(A) **Application for Board Consideration.** Applicants shall submit to the department an Application for Board Consideration. The submittal shall be in conformance with the provisions set forth in Article II and this article. All applications determined complete by the department shall be subject to the following restrictions:

(1) **Applicant Changes.** No changes shall be allowed to any Application for Board Consideration once it determined complete by the department.

(2) **Public Hearing Sign.** The applicant shall be required to place the Public Hearing Sign(s) on the subject property in accordance with section 8-3.3(C). The applicant shall be required to obtain the sign from the department in accordance with department procedures.

(3) **Scheduling of Public Hearing.** The department shall both advertise and schedule the application for a Public Hearing in accordance to the provisions in Article III of this Chapter.

(4) **Staff Report.** County staff shall review each Application for Board Consideration in its entirety, compile a Staff Report, and submit all necessary information to the Board of Commissioners with sufficient time for Board review prior to the Public Hearing.

(B) **Petition for Public Hearing.** The Board of Commissioners shall review the petition and the record in the case, within thirty (30) days of the receipt of the petition, and determine whether to grant review. In determining whether to grant review, the Board of Commissioners shall consider the petition for review, the record of the case, and the decision of the Zoning Board of Appeals. Upon the grant of a review by the Board of Commissioners, the director shall schedule the matter for the next available public hearing. The petitioner and the applicant for the appeal shall be notified of the time and place when the hearing in the case will be held.

(1) **General Considerations for Board of Commissioners Decision to Review.** A review shall be granted only in those cases in which the Board of Commissioners finds:

a) A procedural or substantive error which has materially prejudiced the rights of the applicant before the Zoning Board of Appeals, or undue hardship of a personal or financial nature upon the applicant before the Zoning Board of Appeals by reason of the denial of the application by the Zoning Board of Appeals, such hardship not being occasioned by a negligent or willful act on the part of the applicant or attributable to him; or

b) Substantial costs laid upon the applicant before the Zoning Board of Appeals, by reason of the denial of the application by the Zoning Board of Appeals, such costs not being occasioned by a negligent or willful act on the part of the applicant before the Zoning Board of Appeals or attributable to him; or

c) The director or any other official with the appropriate authority to administer the Code or other County ordinances requests the Board of Commissioners review a Zoning Board of Appeals' decision due to the Zoning Board of Appeals failing to base its decision on the criteria listed in Section 8-6.4(B)(4)(a) of the Code or in the case of overturning an administrative decision, the Zoning Board of Appeals failed to follow the letter and intent of the applicable Code or ordinance section; or

- d) The granted variance or reversal of an administrative decision works a substantial hardship to the rights and interests of an aggrieved person disproportionate to the benefit conferred to the applicant before the Zoning Board of Appeals; or
  - e) A decision by the Zoning Board of Appeals is detrimental to the general health, welfare and safety of the public.
    - (i) An "act" within the meaning of the preceding subparagraphs shall also include omissions. A review will not be granted by the Board of Commissioners in any case in which the relief sought by the applicant before the Zoning Board of Appeals is the direct and reasonable consequence of the applicant's violation of federal or state law or an ordinance of Forsyth County.
- (2) **Effect of Denial of Review by Board of Commissioners.** A denial of a review by the Board of Commissioners shall be an affirmation of the decision of the Zoning Board of Appeals.
- (C) **Public Hearing.** All appeals of Zoning Board of Appeal decision applications shall receive a public hearing in accordance with the provisions as set forth in Article III of this Chapter. Additional notice shall be given to interested parties as determined by the director. Such notice to interested parties shall be sent by first class United States postage to the address indicated in the official tax records of the County.
- (1) **Receipt of Evidence by Board of Commissioners.** The Board of Commissioners shall receive either oral or written evidence from the petitioner, the applicant before the Zoning Board of Appeals and from property owners and parties of record at the time the Zoning Board of Appeals considered the matter. The Board of Commissioners shall confine the evidence to matters relating to the issues set forth in the minutes of the Zoning Board of Appeals and the petition for review. The proceedings shall be recorded and shall be open to the public.
  - (2) **Board of Commissioners Action.** Upon conclusion of the public hearing, the Board of Commissioners shall consider the case and its action concerning the decision being reviewed. Its decision shall be announced in a public meeting, either following the hearing or at any other scheduled meeting. The decision of the Board of Commissioners shall be in writing and shall
    - a) Affirm the decision of the Zoning Board of Appeals, or
    - b) Return the case to the Zoning Board of Appeals for reconsideration, with or without direction, or
    - c) Take such action by way of relief to the applicant as the Board of Commissioners deems appropriate and lawful.
- (D) **Board of Commissioners Decision.** The decision of the Board of Commissioners shall be included in the minutes and a written report thereof shall be sent to the applicant before the Zoning Board of Appeals and the petitioner to an address provided by the applicant before the Zoning Board of Appeals and the petitioner. Upon the conclusion of the case, the record and all matters adduced at the hearing shall be transmitted to the director for retention.
- (E) **Application for Land Disturbance Permit or Building Permit.** The applicant is eligible to continue with the development process by applying for the appropriate land disturbance permit or building permit (if applicable); provided however, that all subsequent work and/or submittals are in conformance with the approved Board of Commissioner decision and all requirements identified in this Code, and other County, state, and federal requirements, as applicable.

#### **ARTICLE IX, ZONING CONDITION AMENDMENTS:**

8-9.1 **Purpose and Intent.** It is the intent of this article to specify provisions for the filing and consideration of applications for zoning condition amendments. By requesting Board action regarding zoning conditions, the applicant may be subject to additional conditions given that the Board of Commissioners must review the application in its entirety in determining whether an amendment is warranted.

8-9.2 **When Required.** Applications for zoning condition amendments shall be required when land development or proposed land development may be unable to comply with the approved zoning conditions that were adopted by the Board of Commissioners during approval of a rezoning, conditional use permit, home occupation permit, or sketch plat application. An application for a zoning condition amendment shall also be required to amend conditions as enacted by the Zoning Board of Appeals during an approval of a variance application. Applications for zoning condition amendments shall also be required to amend conditions placed on sketch plat applications for any application that was approved by the Planning Commission when they had jurisdictional decision making authority over sketch plat applications.

8-9.3 **Application Requirements.** All applications for zoning condition amendments, as defined by this Code shall provide the information as specified in this section. Changes in zoning conditions that conflict with

other parts of this Code shall also require an approved variance which may be heard simultaneously by the Board of Commissioners. Permitted variances shall be in conformance with 8-6.2 and 8-6.3 of this Chapter. Applications for zoning condition amendments may be heard simultaneously on the same public hearing date as an associated sketch plat application provided however, said applications shall retain their separate application files and numbers.

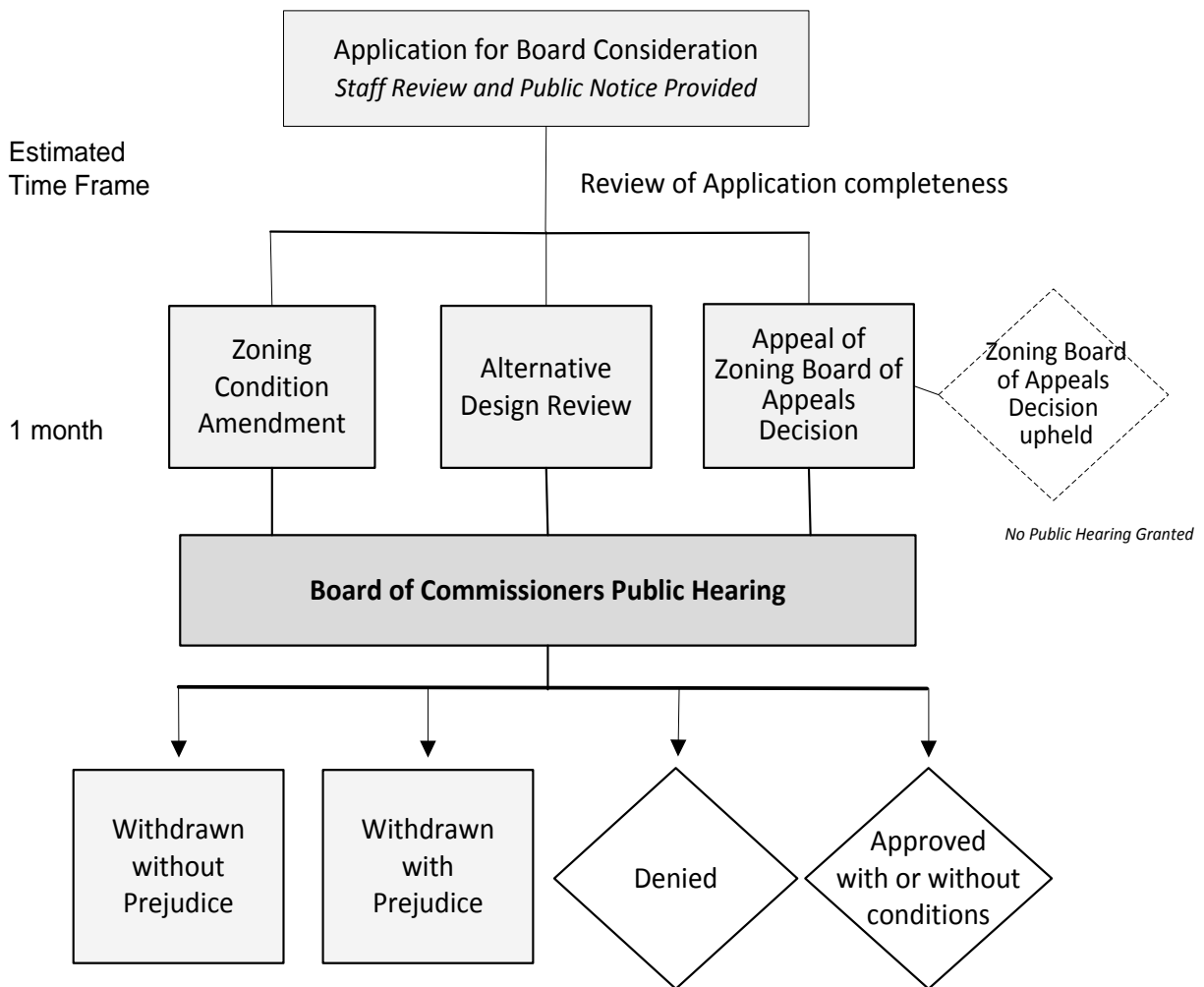
- (A) **Requirements for All Applications.** All applications for zoning condition amendments shall provide the appropriate information as specified in sections 8-2.1 (A) through (G) of this Chapter.
  - (1) **Site Plan.** All site plans submitted for zoning condition amendments shall be submitted in conformance with 8-2.1 (E). The site plan is only required if the requested language being modified involves a reconfiguration of the site plan approved as part of the original application. The reconfigured site plan shall only include changes that directly relate to the language being modified and shall not include any new site plan details which are not related to the language modifications. Depending on the scope of changes, the director may require the applicant to also submit a sketch plat application.
- (B) **Public Participation Plan.** All zoning condition amendment applications shall include a public participation plan in accordance with section 8-5.4 (B) of this Chapter, with the exception of public participation sign and public participation meeting.
- (C) **Public Participation Report.** All zoning condition amendment applications shall include a public participation report in accordance with section 8-5.4 (C) of this Chapter.
  - (1) **Incomplete Public Participation Report.** The Public Participation Report shall be required prior to the public hearing. If the Public Participation Report does not meet the criteria as set forth in the Public Participation Plan, section 8-5.4 (B), then the application shall be considered incomplete and shall be postponed from being scheduled for a public hearing.
- (D) **Written Evaluation.** The applicant for a zoning condition amendment shall submit sufficient written information describing why the conditions cannot be met and the exact language of zoning conditions requested to be modified and as proposed to be modified. The written evaluation shall also include written justification for any request of variances as specified in 8-6.2 and 8-6.3(A) (1) and (B).
- (E) **Disclosure of Campaign Contributions and Gifts to Public Officials.** All zoning condition amendment applications shall include disclosure, pursuant to the Forsyth County Code of Ethics (Forsyth County Resolution and Ordinance #77), of any campaign contributions/gifts equal to or greater than \$100 given to any Forsyth County elected official within two years of the application filing date.

8-9.4 **Procedures.** All applications for zoning condition amendments shall comply with the following procedures:

- (A) **Application for Board Consideration.** Applicants shall submit to the department an Application for Board Consideration. The submittal shall be in conformance with the provisions set forth in Article II and this article. All applications determined complete by the department shall be subject to the following restrictions:
  - (1) **Applicant Changes.** No changes shall be allowed to any Application for Board Consideration once it determined complete by the department, except as specified by the director.
  - (2) **Public Hearing Sign.** The applicant shall be required to place the Public Hearing Sign(s) on the subject property in accordance with section 8-3.3(C). The applicant shall be required to obtain the sign from the department in accordance with department procedures.
  - (3) **Scheduling of Public Hearing.** The department shall both advertise and schedule the application for a Public Hearing in accordance to the provisions in Article III of this Chapter.
  - (4) **Staff Report.** County staff shall review each Application for Board Consideration in its entirety, compile a Staff Report, and submit all necessary information to the Board of Commissioners with sufficient time for Board review prior to the Public Hearing.
- (B) **Public Hearing.** All zoning condition amendment applications shall receive a public hearing in accordance with the provisions as set forth in Article III of this Chapter.
  - (1) **Applicant Initiated Postponement.** The applicant for a zoning condition amendment may request postponement of any public hearing for the application, and such postponement may be granted by the County, provided:
    - a) Postponement is not requested more than three (3) times for any one application; and
    - b) The total period of time requested for postponement does not exceed six (6) months; and
    - c) The applicant agrees to pay for the costs of readvertising the application for public hearing and agrees to post public notice signs on the property, as may be determined by the director to be necessary to ensure procedural due process.
  - (2) **Board of Commissioners Initiated Postponement.** Shall follow the rules and procedures adopted by the Board of Commissioners.

- (3) **Board of Commissioners Action on Zoning Condition Amendments.** All zoning condition amendment applications shall be scheduled for public hearing in front of the Board of Commissioner and consideration will be without the benefit of a Planning Commission recommendation.
  - a) **General Considerations for Decision.** To determine whether a zoning condition amendment application should be approved, the Board of Commissioners shall utilize the same criteria used in the original determination when the conditions were enacted.
- (C) **Board of Commissioner Decision.** Approvals of zoning condition amendment applications shall be documented in a letter sent out by the department.
- (D) **Application for Land Disturbance Permit or Building Permit.** Zoning condition amendment applications approved by the Board of Commissioners are eligible to continue with the development process by applying for the appropriate land disturbance permit or building permit; provided however, that all subsequent submittals are in conformance with the approved Board of Commissioner decision and all requirements identified in this Code, and other County, state, and federal requirements, as applicable.

**Figure 8.3 Appeal of Zoning Board of Appeals Decision and Zoning Condition Amendment Process**



**ARTICLE X, APPEAL OF BOARD OF COMMISSIONER DECISIONS:**

8-10.1 **Appeal of Board of Commissioners Decisions.** Any person, persons, or entities jointly or severally aggrieved by a final decision by the Board of Commissioners regarding this Code or any application may make an appeal by writ of certiorari to the Superior Court of the County. The appeal shall be a de novo determination of the decision before the judge of the Superior Court without a jury. Any appeal must be filed within thirty (30) days of the decision, and, upon failure to file the appeal within thirty (30) days, the decision shall be final. For the purposes of this section, the appeal time shall run from the day the particular vote or action is taken.

