

5. Infrastructure improvements

- a. Site plans shall be conditioned to include requirements that street and utility or other improvements be made to the same extent as required by Section 23.12 of the city charter and Article 6, Subdivision Regulations.
- b. The approval may require payment in lieu of the dedication of property and rights-of-way or construction of improvements to the same extent as required by this chapter. This provision shall not apply to site plans for individual detached, single-dwelling and duplex dwelling units to be constructed on previously subdivided lots.
- c. This provision shall not apply to additions of less than five percent of gross floor area on an annual basis unless such addition causes an increase in the off-street parking requirement or a change in occupancy as defined by the North Carolina State Building Code.

D. Building permit issuance

Upon approval of a site plan, the building inspector may issue a building permit.

E. Effect and duration of plan approval

1. Approval of a site plan shall expire after 18 months from the date of such approval if the applicant has failed to make substantial progress on the site.
2. The city manager may grant a single, six-month extension of this time limit for site plans, for good cause shown, upon receiving a request from the applicant before the expiration of the approved plan.
3. In the event site plan approval has expired, for whatever reason, and the owner or applicant wishes to proceed with development, the owner or applicant shall be required to resubmit for approval of a site plan that meets current development standards, unless otherwise permitted in this article.

F. Appeals

All appeals from decisions under this section shall be to the board of adjustment.

Section 18-589: Special use permit

A. Purpose

1. The purpose of this section is to establish procedures for consideration of an application for a special use permit.
2. Special use permits add flexibility to the land development code. Subject to high standards of planning and design, certain land uses may be allowed in a district where these uses would not otherwise be acceptable. By means of controls exercised through the special use permit procedures, land uses that would otherwise be undesirable in certain districts can be developed to minimize any adverse effects they might have on surrounding properties.

B. Authority

1. Following an evidentiary hearing, special use permits shall be issued or denied by resolution of the city council or resolution of the board of adjustment for those uses of land and buildings requiring a special use permit as listed in each zoning district classification.
2. Special use permits may only be granted by the appropriate board, as designated in this article, after an evidentiary hearing conducted in keeping with the requirements of NCGS 160D-406.

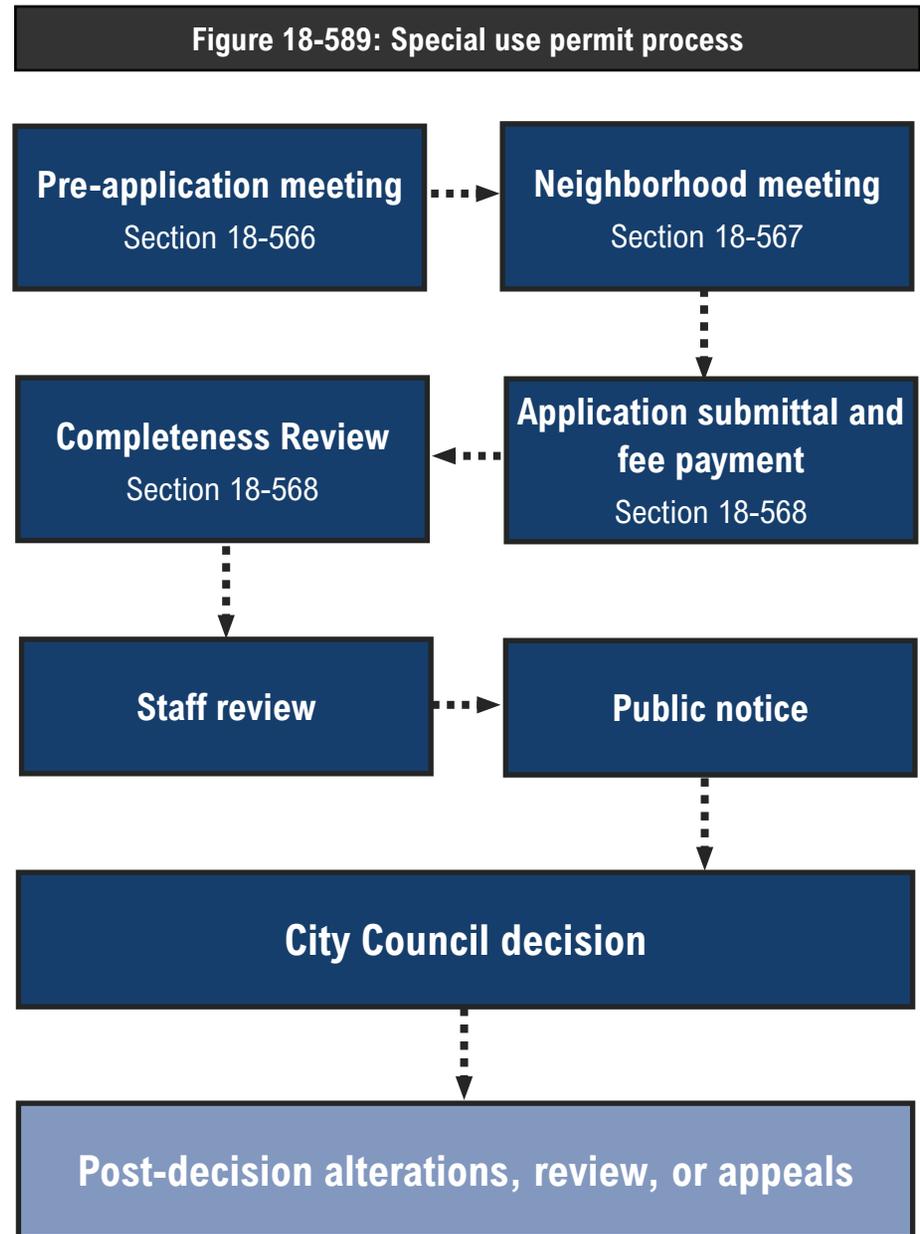
C. Process

A special use permit application shall be processed as described in Figure 18-589: Special use permit process.

1. Applicants shall be required to attend a pre-application meeting pursuant to Section 18-566: Pre-application meeting.
2. Applicants shall be required to hold a neighborhood meeting pursuant to Section 18-567: Neighborhood meetings.
3. A special use permit application shall be submitted in compliance with the requirements of Section 18-568: Applications, submissions, contents, fees.
4. Any special use permit that requires a quasi-judicial decision to be made by the Board of Adjustment, Historic Preservation Commission, or Design Adjustment Committee must attain approval of the request prior to being heard by the City Council.

D. Decision making

1. Public notice shall be provided as required in Section 18-569: Public notice.
2. Action by board
 - a. Review factors
 - i. The appropriate board, in granting a special use permit, must find that all four of the following factors exist:
 1. That the use would not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted and approved by the issuance of the special use permit;
 2. That the use meets all required conditions and specifications;
 3. That the use would not substantially injure the value of adjoining or abutting property, or that the use is a public necessity; and
 4. That the location and character of the use, if



developed according to the plan as submitted and approved, would be in harmony with the area in which it is to be located and in general conformity with adopted comprehensive plans, the CAMA plan, and adopted special area plans.

- ii. A finding of the decision-making body that the four required conditions exist, or a finding that one or more of the four required conditions do not exist, shall be based on sufficient and competent evidence presented to the decision-making body at the hearing at which the special use permit is considered.
- b. When issuing or denying special use permits, the decision-making body shall follow the procedures for boards of adjustment except that no vote greater than a majority vote shall be required for the city council to issue such permits, and every such decision of the city council shall be subject to review by the superior court by proceedings in the nature of a certiorari.
- c. In issuing or denying the special use permit, city council shall enter the reasons for its action in the minutes of the meeting at which the action is taken.

E. Appeal

No appeal may be taken to the board of adjustment from the city council in granting or denying a special use permit. Any appeal from an action of the city council on a special use permit shall be in accordance with NCGS 160D-1402.

F. Permit voidance

- 1. The city manager shall ensure compliance with plans approved by the city council or with any other conditions imposed upon the special use permit. In the event of failure to comply, no building permits for further construction or certificates of occupancy under this special use permit shall be issued, and all completed buildings and structures shall be regarded as nonconforming

uses subject to the provisions of this chapter.

- 2. A special use permit shall become null and void if construction or occupancy of the proposed use as specified on the special use permit has not commenced within two years of the date of issuance.
 - a. An extension of time for a special use permit, not to exceed two, one-year extensions may be granted by the city manager upon review and recommendation by the director of planning, development, and transportation, or its successor department.
 - b. A request for extension shall be submitted in writing prior to the original expiration date.
 - c. In granting an extension, the city manager shall not have the authority to amend the conditions of the special use permit nor to approve any major modifications to the approved plan as described in this section.
- 3. At any time after a special use permit has been issued, the city council may hold a hearing to determine whether the permit should be terminated. Upon findings that the conditions of a special use permit are not being fulfilled, council shall revoke it and the use of the property allowed by such permit shall be discontinued immediately. If a special use permit is terminated for any reason, it may only be reinstated after a full review and approval in accordance with the provisions of this division.

G. Modifications to approved site plan

- 1. Major changes to approved plans and conditions of development may be authorized only by city council in the same manner as outlined in this division for original submission. Major changes include, but are not limited to:
 - a. Change in use;
 - b. Increase in intensity of the development, such as increase

in density, whether residential, office, commercial, or industrial; an increase in number of off-street parking or loading spaces; or an increase in impervious surface area;

- c. An increase in overall ground coverage by buildings or structures;
 - d. A change in any site dimension by more than 10 percent;
 - e. A reduction in approved open space set aside, buffering, or screening;
 - f. A reduction in size of public utilities;
 - g. A change in the soil erosion and sedimentation controls, unless approved by the city engineer;
 - h. A change in access and internal circulation design.
2. Minor changes shall be those not otherwise classified as major changes. Minor changes may be authorized by the city manager if required by engineering or other physical circumstances not foreseen at the time of approval.

(Ord. No. O-2021-75, §7, 11-3-2021; Ord. No. O-2022-88, §16(Att. A), 11-1-2022)

Section 18-590: Appeal of administration determination

A. Authority

The board of adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by the city official charged with enforcement of this chapter.

B. Applicants

Appeals to the board of adjustment concerning interpretation or administration of this chapter may be taken by any person aggrieved or by any officer, department, commission, or board of the city.

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C. Process

1. Appeal of administrative determinations may be taken by filing a notice of appeal specifying the grounds thereof with the city clerk within 30 days after receiving active or constructive notice of the decision (see Figure 18-590: Appeal of administrative determination process).
2. Upon proper filing of an appeal, the official who made the decision shall transmit to the board of adjustment all papers then constituting the record upon which the action appealed was taken, as provided in the rules of procedure. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
3. The board shall fix a reasonable time for the hearing of appeal, give public notice, and give due notice to the parties of interest, and decide the same within a reasonable time. At the hearing, any person may appear in person or by agent or attorney.

D. Decision making

1. An evidentiary hearing shall be held on an application for appeal. Any person may appear at said hearing in person or by agent or attorney.
2. Board of adjustment decision making
 - a. In denying an appeal, the board of adjustment shall make findings of fact that one or more of the requirements of this section do not exist.
 - b. The findings of fact made by the board of adjustment shall be based on evidence presented at the hearing at which the variance is considered.

E. Stay of proceedings

1. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed, unless the official