

ARTICLE 10

ZONING ADMINISTRATION

Section 10.1 Zoning Administrator

10.1.1 The Town Council shall appoint an administrative official(s) to enforce and administer this Ordinance.

10.1.2 It shall be the duty of the Zoning Administrator to interpret and enforce this Ordinance under the general supervision of the Mayor. All decisions of the Zoning Administrator shall be in writing. Routine Zoning Permits may be issued by such other persons as appointed by the Town Council in the absence of the Zoning Administrator, provided that no investigative action is required to interpret the provisions of this Ordinance.

Section 10.2 Zoning Inspection: Duties Specified

If the Zoning Administrator shall find that any of the provisions of this Ordinance are being violated, he/she shall notify, in writing, the person responsible for such violations, indicating the nature of the violation and order that necessary actions be taken to correct the deficiency. He/she shall order discontinuance of illegal uses of land, buildings, or structures, removal of illegal buildings or structures, or of illegal additions, alterations or structural changes, discontinuance of any illegal work being done and shall take any other action authorized by this Ordinance to ensure its compliance or to prevent violation of its provisions. The Zoning Administrator shall keep and maintain records of all matters which require his/her action.

Section 10.3 Zoning Permit

It shall be unlawful to commence the excavation or filling of any lot for the construction of a building or structure, or to begin the construction of any building or structure or part thereof, or to erect or replace a sign (except as permitted in Section 8.2) or to move, alter or add to any structure, or to begin the development of land, until the Zoning Administrator has issued a Zoning Permit for such work. No zoning permit shall be issued except in conformity with the provisions of this Ordinance unless after written order from the Board of Adjustment.

10.3.1 Application for Zoning Permit

A zoning permit is required for all residential, institutional, commercial and light industrial uses, excepting those uses delineated in Section 10.7 of this Ordinance. A zoning permit application form can be obtained from the Zoning Administrator or the Town Clerk, and shall contain the following information:

- a) Non-Residential Uses - Two (2) copies of a scaled dimensional plan drawn by and certified as true and correct by a surveyor or engineer

registered with the State of North Carolina which show: (a) the exact shape, dimensions and location of the lot to be built upon, (b) the exact shape, dimensions, use and location of existing structures on the lot, (c) the exact shape, dimensions and location of the structure(s) to be developed upon the lot, (d) all set back lines on the lot once the proposed construction is completed, (e) proposed parking facilities (if required), (f) landscaping and buffering plans (if required) and (g) any other information that may be needed to insure that the proposed construction is in compliance with all applicable provisions of this Ordinance. In the event the subject property is a corner lot as defined in Section 2.2, the applicant shall designate which intersecting street shall be the front of the lot.

- b) Single-Family Residences - Two (2) copies of a scaled dimensional survey drawn by and certified as true and correct by a surveyor or engineer registered with the State of North Carolina which show (a) the exact shape, dimensions and location of the lot to be built upon, and (b) the exact shape, dimensions, use and location of existing structures on the lot. Upon this survey shall be sketched the following: (a) the exact shape, dimensions and area of proposed location of the proposed structure(s) to be placed upon the lot; (b) all setback lines on the lot once the proposed residence is completed, affirmatively showing that the area of proposed location will meet all set back requirements; and (c) any other information that may be needed to insure that the proposed structure is in compliance with all applicable provisions of this Ordinance. Provided, however, that if the tract that the residence is being constructed contains ten (10) acres or more, then the person applying for the zoning permit shall not be required to provide a drawing certified by an engineer or surveyor, but shall be allowed to present a non-certified sketch in lieu thereof; provided that the residence is not to be located closer than 200 feet from any of the boundaries of the tract. In the event that the proposed residence is to be located closer than 200 feet from any of the boundaries of the tract, then the applicant shall submit a certified survey with respect to those boundaries only. The sketch submitted shall in all other respects comply with the requirements set forth above. In the event the subject property is a corner lot as defined in Section 2.2, the applicant shall designate which intersecting street shall be the front of the lot.
- c) Accessory Buildings on Residential Property and Buildings for Agricultural Purposes - In the case of barns of 500 square feet or greater, two (2) copies of a scaled dimensional survey drawn by and certified as true and correct by a surveyor or engineer registered with the State of North Carolina which show (a) the exact shape, dimensions and location of the lot to be built upon, and (b) the exact shape, dimensions, use and location of existing structures on the lot. Upon this survey shall be sketched the following: (a) the exact shape, dimensions and area of proposed location of the proposed structure(s) to be placed upon the lot;

(b) distances to property lines and to the existing residence, affirmatively showing that the area of proposed location will meet all set back requirements; and (c) any other information that may be needed to insure that the proposed structure is in compliance with all applicable provisions of this Ordinance. Provided, however, that if the tract on which the barn is being constructed contains ten (10) acres or more, then the person applying for the zoning permit shall not be required to provide a drawing certified by an engineer or surveyor, but shall be allowed to present a non-certified sketch in lieu thereof; provided that the barn is not to be located closer than 300 feet from any of the boundaries of the tract. In the event that the proposed barn is to be located closer than 300 feet from any of the boundaries of the tract, then the applicant shall submit a certified survey with respect to those boundaries only.

In all other cases, two (2) copies of a sketch which show: (a) the shape, dimensions and location of the lot to be built upon; (b) the shape, dimensions, use and location of existing structures on the lot; (c) the shape, dimensions, use and location of the accessory or agricultural structure(s) to be placed upon the lot; (d) all setback lines on the lot once the proposed accessory building is completed; and (e) any other information that may be needed to insure that the proposed accessory structure(s) will be in compliance with all applicable provisions of this Ordinance.

- d) A fee for processing each application for a zoning permit shall be charged by the Town. Each structure requires a separate zoning permit application and, therefore, a separate fee. The fee shall be as established from time to time by action of the Town Council, and must be paid at the time an application for a zoning permit is received by the Town.
- e) If the proposed excavation, filling, or construction as set forth in the application are in conformity with the provisions of this Ordinance and the processing fee has been paid, the Zoning Administrator shall issue a zoning permit and return one copy of the approved plan with his signature to the applicant. The Zoning Administrator shall mark the plan as approved, indicate the date of approval and attest to the same by his signature. The second copy of the plan, similarly marked, and a copy of the zoning permit shall be retained by the Zoning Administrator.

10.3.2 Approval Process

The Zoning Administrator shall promptly review each Zoning Permit application, examine the accompanying plans and specifications, and may inspect the premises upon which the proposed structure is to be built. A permit shall be issued or denied within fifteen (15) calendar days of receipt of application. Failure to issue a zoning permit shall constitute denial. After obtaining a zoning permit from the Zoning Administrator, the applicant shall apply to Union County for a building permit. All building inspections in the

Town of Mineral Springs shall continue to be done by Union County. Zoning permits for conditional uses shall be issued only after the final plans have been approved by the Town Council, as set forth in Section 6.3.

10.3.3 Conditions for Approval

Zoning permits issued on the basis of dimensional plans approved by the Zoning Administrator authorize only the use, arrangement, and construction set forth in such approved plans and applications. Use, arrangement, or construction that differs from that authorized shall be deemed a violation of this Ordinance and shall be subject to any and all sanctions as indicated under Section 1.5.

10.3.4 Denial of Permit

If a zoning permit is denied, the Zoning Administrator shall specify the reasons for denial in writing and transmit the written denial within five (5) days of his/her decision to the applicant by first class mail.

10.3.5 Expiration of Zoning Permit

Any zoning permit shall become invalid unless the work authorized by it shall have been substantially begun within a period of six (6) months of the date of issue of the permit. Once a zoning permit has expired, construction work on the lot(s) in question cannot proceed until a new zoning permit is issued.

10.3.6 Right of Appeal

The applicant may appeal the Zoning Administrator's denial of any such zoning permit to the Board of Adjustment. Appeal of denial of a zoning permit must be made in writing and must specify the grounds thereof and said appeal must be received by the Zoning Administrator and the Town Clerk within ten (10) days of receipt by the applicant of the written notice of denial of a zoning permit application, or the passage of the time period specified in Section 10.3.2 which constitutes denial has occurred.

10.3.7 Records

The Zoning Administrator shall maintain a record of all zoning permits on file, and copies shall be made available upon written request by interested parties. A fee for these copies may be assessed.

10.3.8 Foundation Survey

Upon construction of a building foundation (subsequent to the issuance of a zoning permit for that building or structure) the applicant shall be required to submit a copy of the foundation survey of that building or structure to the Zoning Administrator in order to ensure that the foundation is in accordance with all applicable setback and bulk requirements. The foundation survey, in

scaled form and certified as being accurate by a surveyor or engineer registered with the State of North Carolina, shall show the location of the foundation on the lot and all applicable front, side, and rear yard setbacks. Failure to submit this foundation survey may result in the denial of a Certificate of Compliance.

Should the Zoning Administrator find that such foundation survey is not in compliance with the applicable provisions of this Ordinance, the applicant shall be so advised in writing within five (5) days of receipt of such foundation survey. If corrective action is not taken by the applicant within five (5) days of receipt of such notice, the Zoning Administrator may revoke the Zoning Permit; in which instance he shall so notify the Union County Office that issued the Building Permit, and a violation of this Ordinance shall be deemed to exist, and any and all sanctions under Section 1.5 shall apply.

The requirements for foundation survey submittal shall be waived if the structure is a single-family dwelling or manufactured home located on a tract of at least ten (10) acres in area and the proposed dwelling is also at least two-hundred (200) feet from the boundaries of the tract.

Section 10.4 Certificate of Compliance

No building hereafter erected or structurally altered or changed in use shall be used or occupied until a Certificate of Compliance has been issued by the Zoning Administrator. Such certificate of compliance shall state that the building or portion of a building is in compliance with the provisions of this Ordinance, with the information stated on the zoning permit, and with the Foundation Survey.

10.4.1 Application for a Certificate of Compliance

A Certificate of Compliance may only be issued after written application for same has been made in which the applicant must state that the building or structure erected or altered or changed complies in all respects with this Ordinance, or the zoning permit previously issued and/or (in the case of any building) the Foundation Survey previously submitted and accepted. If the application for certificate of compliance is for any building, the application shall include a scaled, dimensional plat drawn by and certified as accurate by a surveyor or engineer registered with the State of North Carolina which affirmatively shown that the building or structure was erected in compliance with this Ordinance and the zoning permit previously issued. Provided, however, for residential properties only, that the tract that the residence is constructed contains ten (10) acres or more, then the person applying for the certificate of compliance shall be allowed to present a non-certified sketch in lieu thereof, provided that the residence is not to be located closer than 200 feet from any of the boundaries of the tract. In the event that the proposed residence is to be located closer than 200 feet from any of the boundaries of the tract, then the applicant shall submit a certified survey of the

improvements with respect to those boundaries only. The sketch submitted shall in all other respects comply to the requirements set forth above.

10.4.2 Review of Certificate of Compliance

The Zoning Administrator shall take all necessary action to assure applicant's compliance with this Ordinance, or the zoning permit and/or the foundation survey (if any) prior to issuing a Certificate of Compliance and shall make written findings that applicant has complied with the zoning permit. After making such findings, the Zoning Administrator may issue a Certificate of Compliance.

10.4.3 Denial of Certificate of Compliance

In the event the Zoning Administrator finds that the applicant has not complied with this Ordinance, or the zoning permit previously issued, and/or the foundation survey (if any) previously submitted and accepted, he/she shall notify the applicant of same stating in writing the reasons, therefore, by first class mail.

10.4.4 Appeal

The applicant may appeal the Zoning Administrator's denial of any such Certificate of Compliance to the Board of Adjustment. Appeal of denial of a Certificate of Compliance must be made in duplicate written form, state the grounds thereof, and be received by the Zoning Administrator and the Town Clerk within ten (10) days of applicant's receipt of written notice of denial of said Certificate of Compliance.

Section 10.5 Remedies

Violation of this Article shall subject the violator to those enforcement and penalty provisions as set out in Section 1.5 of this Ordinance.

Section 10.6 Complaints Regarding Violations

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

Section 10.7 Zoning Permit Not Required

Notwithstanding any other provisions of this Ordinance, no zoning permit is necessary for the following uses:

- 1) Street construction or repair.
- 2) Electric power, telephone, telegraph, cable television, gas, water, and sewer lines,

wires or pipes, together with supporting poles or structures, located within a public right-of-way.

- 3) Specific signs exempted in Section 8.2 of this Ordinance.
- 4) Mailboxes, newspaper boxes, walls, fences, birdhouses, flagpoles, pump covers, animal pens and doghouses under thirty (30) square feet of gross floor area.

Section 10.8 Early Vesting Of Development Rights Upon Approval Of Site Plan

Pursuant to G.S. 160A-385.1 and notwithstanding any other provision of this Ordinance or amendment thereto, a landowner may apply for a site specific development plan approval which shall entitle said landowner to develop property in accordance with said site specific development plan. The procedure for establishing a vested right is set forth in this Section 10.8.

10.8.1 Definitions

For the purpose of this Section only, the following definitions shall apply:

1) Landowner

Any owner of a legal or equitable interest in real property, including the heirs, devisees, successors, assigns, and personal representative of such owner. The landowner may allow a person holding a valid option to purchase to act as his/her agent or representative for purposes of submitting a proposed site specific development plan in the manner allowed by this Ordinance.

2) Property

All real property subject to zoning regulations and restrictions and within the jurisdiction of the Town of Mineral Springs.

3) Vested Right

The right to undertake and complete the development and use of property under the terms and conditions of an approved site-specific development plan.

10.8.2 Submission Of A Site Specific Development Plan

To apply for a vested right, a landowner shall first submit to the Zoning Administrator a site-specific development plan. The plan shall be submitted in completed form (i.e., contain all information as herein prescribed) with a fee (in accordance with a fee schedule adopted by the Town Council) and an accompanying application which, at a minimum, shall contain the following information:

- a) All information listed in Section 6.3 of this Ordinance.

Once the Zoning Administrator deems the site-specific development plan to be complete, he/she shall schedule it to be reviewed by the Planning Board at their next regularly scheduled meeting. The Zoning Administrator must receive the complete plan at least ten (10) days prior to the Planning Board's next meeting date to place it on their agenda.

10.8.3 Planning Board Review And Recommendation

Once the site-specific development plan is forwarded, the Planning Board shall review the application and make a recommendation to the Town Council. The Planning Board shall have up to forty-five (45) days from their first meeting date to make such recommendation. Alternatively, the Planning Board may request additional information of the applicant in order to aid them in their review of the application. Such request may include additional data in addition to that listed in Section 6.3 of this Ordinance as deemed necessary. If no recommendation is made during said forty-five (45) day period (except as herein provided) the application shall forthwith be forwarded to the Town Council without a recommendation.

10.8.4 Public Hearing

Upon receipt of the plan and the recommendation from the Planning Board, if one is forthcoming, the Town Council shall schedule a public hearing.

Notice of the Town Council public hearing shall be given as follows:

- a) A notice shall be published in a newspaper having general circulation in Mineral Springs once a week, for two (2) successive weeks, the first notice to be published not less than ten (10) days nor more than twenty-five (25) days prior to the date established for the hearing.
- b) At least one (1) notice shall be conspicuously posted on the subject property at least ten (10) days prior to the public hearing. Such notice shall state the nature of the public hearing and the date, time and location at which it is to be held. The notice shall be removed only after the public hearing has been held.
- c) A notice of the public hearing shall be sent by first class mail by the Zoning Administrator to all contiguous property owners at least ten (10) days prior to the public hearing.

10.8.5 Town Council Action

Once the public hearing has been conducted and concluded, the Town Council shall determine whether or not to approve the site-specific development plan and accord the vested right. In approving an application for vested rights of a site specific development plan, the Town Council may attach fair and reasonable ad hoc conditions which tend to support the requiring finding of facts as herein listed.

The petitioner shall be given reasonable opportunity to consider and respond to any additional requirements prior to approval or denial by the Town Council. The Town Council may not require the landowner to waive his/her vested right as a condition of developmental approval.

The Town Council may approve the site-specific development plan if it has evaluated an application and determined that:

- a) The use meets all required specifications of the Zoning Ordinance, and
- b) The use will not materially endanger the public health, safety or general welfare, and will not substantially injure the value of adjoining property if located where proposed. Conditions, if any, placed on the site-specific development plan by the Town Council shall be adequate to fully satisfy this requirement.
- c) If the site-specific development plan is vested for a period of greater than two (2) years, this decision shall be based on one or more factors so described in Subsection 10.8.6 of this Ordinance.

The burden of proof of producing evidence to support these findings (and to overcome any challenges that approval of the site plan would be contrary to one or more of these findings) shall rest entirely with the landowner.

If the use or development for which the site specific development plan is submitted is a conditional use, the Town Council may approve the site specific development plan contemporaneously with the approval of the conditional use permit. In no case, however, may a site specific development plan be approved for a use or development which requires the issuance of a conditional use permit without the conditional use permit having first been issued.

10.8.6 Effect Of Approval

The effect of the Town Council approving a site-specific development plan shall be to vest such site plan for a period of two (2) years from the date of approval. If the landowner requests, however, the Town Council may approve a vesting period not to exceed five (5) years from the date of approval. The vesting of any site plan beyond a two (2) year period may only be authorized by the Town Council where it is found that due to (1) the sizing and phasing of the development; or (2) the level of investment; or (3) the need for the development; or (4) economic cycles; or (5) market conditions, building permits for all phases of the development cannot be secured within two (2) years.

A vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site specific development plan as provided for in this

Section. Failure to abide by the terms and conditions placed upon such approval will result in the forfeiture of the vested right previously accorded.

A vested right, once established as herein provided, shall preclude any zoning action by the Town which would change, alter, impair, prevent, diminish or otherwise delay the development or use of the property as set forth in the approved site specific development except under the following conditions:

- 1) The affected landowner provides written consent to the Town of his/her desire to terminate the vested right; or,
- 2) The Town determines, after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety and welfare if the project were to proceed as indicated in the site specific development plan; or,
- 3) Compensation is made by the Town to the landowner for all costs, expenses, and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or,
- 4) The Town determines, after having advertised and held a public hearing, that the landowner or his/her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Town of the site specific development plan; or,
- 5) Upon the enactment or promulgation of a State or Federal law or regulations which precludes development as contemplated in the site-specific development plan. In such case the Town may (after having advertised and conducted a public hearing) modify the affected provisions upon a finding that the change in State or Federal law has a fundamental effect on the plan.

Any public hearing called for in Subsections 10.8.6 (4 and 5) herein shall be conducted by the Town Council and advertised as indicated in Subsection 10.8.4. Recommendation by the Planning Board and final action by the Town Council shall be undertaken provided in Subsections 10.8.3 and 10.8.5, respectively.

Once a vested right is granted to a particular site-specific development plan, nothing in this Section shall preclude the Town from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are not inconsistent with the original approval.

10.8.7 Revocation Or Expiration Of A Vested Right

The vested right resulting from the approval of a site-specific development plan may be revoked by the Town Council as provided for in subsection 10.8.6. In addition, a revocation may occur if the Town Council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the Zoning Ordinance. The vested right shall otherwise expire at the end of the approval period established by the Town Council.

10.8.8 Revocation Of Building Permit

A building permit issued by the Union County Building Inspector pursuant to G.S. 160A-417 may not be revoked because of the passage of time regarding a piece of property for which a site-specific development plan has been approved and the vested right period has not otherwise expired.

10.8.9 Amendments To The Zoning Ordinance

The establishment of a vested right on a piece of property for a site-specific development plan shall not preclude the Town from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this Ordinance.