

## ARTICLE 7

### PERMITS AND PROCEDURES

#### 7.1 Permit and/or Approval Required

7.1-1 Approval Required. No person shall undertake any activity subject to this Ordinance without first obtaining approval from the Town. Upon approval of the activity by the Town, a permit shall be issued for the approved activity. Certain permits are issued by agencies other than the Town of Andrews, as noted below; all other permits are issued by the Town. In any case where an application is made to operate more than one (1) use on a property, the Planning, Zoning & Subdivision administrator shall determine which use or uses shall be the principal use or uses and the type of permit that is required; zoning compliance permit, Conditional Use Permit, or Use Listed with Additional Standards.

The permits and/or approvals required are:

(A.) **Zoning permits** (also known as *Zoning Compliance Permit*) are issued by the Town of Andrews for all new use (See Table 8.1, Sections 1-3), building and/or development projects, which also applies to the following:

- (1.) Special Event/Temporary Structures
- (2.) Signage (size, type, location, etc.)
- (3.) Site Development Plan/Preliminary Plat Approval
  - (a.) Zoning compliance (land use, density, open space, connectivity, tree preservation, parking, flood, watershed, etc.)
  - (b.) Public works compliance (utilities, street designs, stormwater, etc.)
  - (c.) Public safety compliance (fire lanes, hydrants, etc.)
  - (d.) Access compliance (driveway, street intersections, etc.)
- (4.) Construction Plans
  - (a.) Infrastructure Plans (streets, water & sewer)
  - (b.) Driveway Permit – NCDOT or Town (based upon responsible maintenance department)
  - (c.) Stormwater Plans (BMP)
  - (d.) Floodplain Development and Certification Permit
  - (e.) Grading Permit - Issued by the North Carolina Department of Environment and Natural Resources (a.k.a. “NCDENR” or “DENR”) following issuance of *Zoning permit* by the Town of Andrews.
- (5.) Subdivision **Final Plat** Approval

(B.) **Building Permit**—Cherokee County Building Inspections Department issues building permits following issuance of *Zoning permit* by the Town of Andrews.

(C.) **Certificate of Occupancy** (a.k.a. “CO”) - Cherokee County Building Inspections Department issues upon final building inspections and site plan compliance approval by the Town.

7.1-2 **Fees.** The Town Board of Aldermen shall establish a Schedule of Fees, Charges and Expenses, and a collection procedure, for approvals and permits to be issued by the Town. No approval, permit, certificate, variance, etc. shall be processed and/or issued unless or until such charges have been paid in full.

## 7.2 Periodic Inspections

The *Planning, Zoning and Subdivision Administrator*, or his/her designee, shall have the right, upon presentation of proper credentials to enter on any premises within the Town's jurisdiction at any reasonable hour for the purposes of inspection, determination of plan compliance, or other enforcement action.

## 7.3 Permit Expiration

7.3-1 **Expiration of Zoning Permits and Approvals.** Permits and approvals, other than those identified in section 7.3-2 below, shall expire as set forth in the process for each permit and/or approval below.

7.3-2 **Building Permit Expiration.** The Cherokee County Building Inspections Department may void a building permit for a project within the Town jurisdiction if the authorized work has not begun within 180 days after issuance of the permit, or work was commenced but was discontinued for a period of one year.

## 7.4 Certificates Issued by Cherokee County

The Cherokee County Building Inspections Department issues certificates of occupancy, temporary certificates of occupancy, and certificates of floor elevation/flood proofing upon completion or partial completion of a project permitted by the Town provided the standards and specifications of this Ordinance are met.

## 7.5 Zoning permits (*Zoning Compliance Permit*)

7.5-1 **Purpose.** A *zoning permit* shall be required for the construction or development of any new use within the planning and regulation jurisdiction of the Town of Andrews. In addition to new uses, a *zoning permit* shall also be required for expansions of existing uses, as well as for changes of use. The expedited procedure set forth immediately below shall be followed to obtain a Zoning Compliance Permit for the

construction of single-family and duplex residential structures and expansions of uses and changes of use that do not require permits and/or approvals other than:

- (1.) Use permit,
- (2.) Driveway access permit, and/or
- (3.) Soil erosion and sedimentation plan approval, as set forth elsewhere in this Ordinance.

7.5-2 Plan submittal.

- (A.) Filing of application. An application for a *zoning permit* may be filed by the owner of the property or by an Officer duly authorized to execute on behalf of the owner, specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a *zoning permit* shall be filed with the *Planning, Zoning and Subdivision Administrator* on a form provided by the *Planning, Zoning and Subdivision Administrator*.
- (B.) Information required. Each application for a *zoning permit* shall contain the information required on the application form, including a *Site Plan* showing the dimensions of the proposed use or uses and its location on the property or site. Other information necessary to show that the use or structure complies with the standards set forth in this Ordinance shall also be provided.

7.5-3 Staff review. The *Planning, Zoning and Subdivision Administrator* shall review the application and determine whether it is complete within ten working days of its submittal. If the application is found to be incomplete, the *Planning, Zoning and Subdivision Administrator* shall notify the applicant of any deficiencies. No further steps shall be taken to process the application until the applicant corrects the deficiencies. The *Planning, Zoning and Subdivision Administrator* shall issue a *zoning permit* only upon finding that the proposed use or structure satisfies the requirements set forth in this Ordinance.

7.5-4 Permit validity. Upon the approval of a *zoning permit*, the applicant shall have one year to obtain the required building permit(s) if any. Failure to obtain requisite building permit(s) within this time shall render the *zoning permit* void. The *Planning, Zoning and Subdivision Administrator* may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension. Upon issuance of a building permit(s), the *zoning permit* shall remain valid as long as a valid building permit exists for the project. Any unapproved change, as determined by the *Planning, Zoning and Subdivision Administrator* in the approved plans shall render the *zoning permit* invalid.

## 7.6 Special Events/Temporary Structures permits

- 7.6-1 Purpose. To insure that proposed special events and temporary structures comply with the requirements of this Ordinance, no use that is classified as a special event or no structure that is classified as a temporary structure and permitted as such in the zoning district in which it is located shall be placed or established on the property without first receiving a special event/temporary structure permit from the *Planning, Zoning and Subdivision Administrator*.
- 7.6-2 Plan submittal.
- (A.) Filing of application. An application for a special event/temporary structure permit may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent, files the application, the agent shall provide the *Planning, Zoning and Subdivision Administrator* with documentation that the owner of the property has authorized the filing of the application. The application for a special event/temporary structure permit shall be filed with the *Planning, Zoning and Subdivision Administrator* on a form provided by the *Planning, Zoning and Subdivision Administrator*.
- (B.) Information required. Each application for special event/temporary structure permit shall contain the information required on the application form. The application shall be accompanied by a *Sketch Plan* showing the boundaries of the property, the use of adjacent properties, the location of the special event or structure on the property, access and parking provisions, restroom facilities, and other information sufficient to show that the special event or structure complies with the standards set forth in Article 15 of this Ordinance. Persons seeking issuance of a special event/temporary structure permit for an event shall file an application with a minimum of five (5) days prior to the proposed event date, unless this time frame is reduced by the *Planning, Zoning and Subdivision Administrator*.
- 7.6-3 Staff review. The *Planning, Zoning and Subdivision Administrator* shall review the application and determine whether it provides the information required. The *Planning, Zoning and Subdivision Administrator* shall issue a special event/temporary structure permit only upon finding that the proposed special event or temporary structure satisfies the requirements set forth in Article 15 of this Ordinance.
- 7.6-4 Permit validity. The special event/temporary structure permit shall be valid only for the time period stated on the permit.
- 7.6-5 Public emergencies. In the event of a natural disaster, catastrophic event or public emergency the *Planning, Zoning and Subdivision Administrator* or her/his designee may waive any special event/temporary structure permit procedures and authorize the placement of temporary structures and other facilities that are deemed necessary or

desirable in conjunction with the management of the emergency in accordance with Section 1.15.

## **7.7 Site Development Plan Approval**

### **7.7-1 Major site development plans.**

(A.) Purpose. The site development plan review process is required for development projects located within the Town of Andrews in order to prepare for expected impacts upon public services and facilities. This review process is established to assure that adequate services and facilities can be provided for these developments and to assure that they do not negatively impact the area in which they are proposed to be located or the Town as a whole. Proposed developments involving new construction, additions, renovations, and changes of use which fall into one or more of the following categories are subject to the major site development plan review process:

(1.) New construction and changes of use.

(a.) Commercial buildings, structures, or developments with a gross floor area of more than 1,000 square feet;

(b.) Office or institutional buildings, structures, or developments with a gross floor area of more than 2,400 square feet;

(c.) Any residential development containing more than 4 individual units; and/or

(d.) Any development where public streets are extended.

(2.) Additions to existing buildings increasing gross floor area by fifty (50) percent or more of the above threshold for new construction for that land use, or additions with a gross floor area of 25 percent of the above threshold for new construction for that land use if the resulting total gross floor area, when combined with the existing floor area, would result in a gross floor area meeting or exceeding the above threshold for new construction for that land use if the structure did not previously meet the above threshold.

(3.) In the case of residential development, additions of four (4) or more dwelling units on one parcel of land.

(4.) Properties located within 1,500 feet of each other, under the same ownership and/or developed by the same developer over a period of three years or less shall be considered to be one development and reviewed as such.

(B.) Pre-application procedure.

(1.) All applicants for major site development plan review are required to schedule a predevelopment conference with the *Planning, Zoning and Subdivision Administrator* prior to the preparation of development plans. This conference allows the applicant and *Planning, Zoning and Subdivision Administrator* an opportunity to discuss the review process, the requirements for completing the

review schedule, contact persons for services and permits, and information regarding *Site Plans*, landscaping, and development requirements.

- (2.) It is required that the developer meet with representatives of the *Neighborhood* or area in which the proposed project is to be located. This meeting shall be held at the pre-application stage for the developer to explain the proposed project and to be informed of the concerns of the *Neighborhood* or area. The applicant shall coordinate the time and date of the meeting to enable the *Planning, Zoning and Subdivision Administrator* to attend and address procedural questions that arise.

(C.) Plan submittal.

- (1.) Application required. An application shall be required for all major site development plan review requests. This application shall contain pertinent information regarding the proposed project and shall be accompanied by a conceptual *Site Plan*. The conceptual *Site Plan* shall contain the following:
  - (a.) Property boundaries with dimensions
  - (b.) PIN for property
  - (c.) Location of adjacent streets and utility easements
  - (d.) Dimensioned footprint and setbacks of the existing and proposed structures with gross floor area indicated
  - (e.) Dimensions of existing and proposed impervious surfaces
  - (f.) Location and number of parking spaces
  - (g.) Location and size of buffer and landscape areas
  - (h.) Location of existing and proposed driveways and/or streets
  - (i.) Location of all flood zones (if applicable to the property)
  - (j.) Location of adjoining properties and the zoning and use of these properties
  - (k.) Names and addresses of adjoining property owners
  - (l.) Number of stories and overall height of all structures (existing and proposed)
  - (m.) Location of proposed stormwater detention facilities
  - (n.) Location of existing and proposed dumpster and recycling containers
  - (o.) Generalized depiction or description of natural features on and immediately adjoining the site, including streams and other water bodies, steep slopes, areas covered by tree canopy, etc., and
  - (p.) Other information determined by the *Planning, Zoning and Subdivision Administrator* as necessary to evaluate the request.
- (2.) Preparation by professional. *Site Plans* for developments requiring major site development plan review shall be prepared by a registered architect, engineer, landscape architect, or land surveyor licensed in the State of North Carolina for the work in which he is trained and licensed to perform.

(D.) Staff review.

(1.) Planning Department staff review.

Plans for development requiring major site development plan review shall be reviewed by the *Planning, Zoning and Subdivision Administrator* for compliance with the requirements of this Article.

(2.) Submittal of plans to Technical Review Committee.

The *Planning, Zoning and Subdivision Administrator* shall provide *Site Plans* for developments requiring major site development plan review to members of the *Technical Review Committee* for review. The *Technical Review Committee* members shall review the *Site Plans* for compliance with the applicable requirements of this Ordinance and other applicable Ordinances and laws, to which their respective departmental role applies. This review shall be made by the members of the *Technical Review Committee* and by any other agencies or officials as requested by the *Planning, Zoning & Subdivision Administrator*.

(E.) Permit validity. Approval of *Site Plans* and permits for developments requiring major site development plan review shall be valid for one year from the date of approval. Failure to initiate construction, or otherwise begin the permitted use, within this time shall render the site development plan approval void. The *Planning, Zoning and Subdivision Administrator* may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.

7.7-2 Minor site development plan review process.

(A.) Purpose. The minor site development plan review process is required for development projects within the Town of Andrews involving new construction, additions, renovations, and changes of use which do not meet the minimum size requirements of the major site development plan review processes as set forth in subsection 7.7-1(A), but do fall into one or more of the following categories.

- (1.) All new developments not meeting the threshold for major site development plan review, except residential projects containing not more than one dwelling unit;
- (2.) Additions with a gross floor area of 100 square feet or more (excluding single-family and duplex residential units);
- (3.) Additions that displace existing parking;
- (4.) Additions that generate the need for more parking;
- (5.) Renovations which exceed 50 percent of the assessed value of the building, as determined by the Cherokee County Tax Assessor;
- (6.) Changes of use;
- (7.) Properties located within 1,500 feet of each other, under the same ownership

and/or developed by the same developer over a period of three years or less shall be considered to be a single development and reviewed as such.

(B.) Plan submittal.

- (1.) Application required. An application shall be required for all minor site development plan review requests. This application shall contain pertinent information regarding the proposed project and shall be accompanied by a conceptual *Site Plan*. The conceptual *Site Plan* shall contain the following:
  - (a.) Property boundaries with dimensions
  - (b.) PIN for property
  - (c.) Location of adjacent streets and utility easements
  - (d.) Dimensioned footprint and setbacks of the existing and proposed structures with gross floor area indicated
  - (e.) Dimensions of existing and proposed impervious surfaces
  - (f.) Location and number of parking spaces
  - (g.) Location and size of buffer and landscape areas
  - (h.) Location of existing and proposed driveways and/or streets
  - (i.) Location of all flood zones (if applicable to the property)
  - (j.) Location of adjoining properties and the zoning and use of these properties
  - (k.) Names and addresses of adjoining property owners
  - (l.) Number of stories and overall height of all structures (existing and proposed)
  - (m.) Location of proposed stormwater detention facilities
  - (n.) Location of existing and proposed dumpster and recycling containers
  - (o.) Generalized depiction or description of natural features on and immediately adjoining the site, including streams and other water bodies, steep slopes, areas covered by tree canopy, etc.
  - (p.) Other information determined by the *Planning, Zoning and Subdivision Administrator* as necessary to evaluate the request.
  - (q.) The application and conceptual *Site Plan* shall be submitted to the *Planning, Zoning and Subdivision Administrator*.
- (2.) Preparation by professional. *Site Plans* for developments requiring minor site development plan review shall be prepared by a registered architect, engineer, landscape architect, or land surveyor licensed in the State of North Carolina for the work in which he is trained and licensed to perform.

(C.) Staff review.

(1.) Planning Department staff review.

Plans for development requiring major site development plan review shall be reviewed by the *Planning, Zoning and Subdivision Administrator* for compliance



with the requirements of this Article.

- (D.) Permit validity. Approval of the *Site Plan* for projects requiring minor site development plan review shall be valid for one year from the date of approval. Failure to initiate construction, or otherwise begin the permitted use, within this time shall render the *Site Plan* approval null and void. The *Planning, Zoning and Subdivision Administrator* may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.

## 7.8 Conditional use approvals

- 7.8-1 Purpose. Conditional uses are established to provide for the location of those uses which are generally compatible with other land uses permitted in a zoning district but which, because of their unique characteristics or potential impacts on the surrounding *Neighborhood* and the Town of Andrews as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may also identify cause(s) for the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location and to ensure protection of the public health, safety, and welfare. Any use identified in Section 10.2 of this Ordinance as a conditional use in a zoning district shall not be permitted without the approval of the Town Board of Aldermen in accordance with the requirements and procedures set forth in this section 7.8.

### 7.8-2 Pre-application procedure.

- (A.) Conference. Every applicant for a conditional use is required to meet with the *Planning, Zoning and Subdivision Administrator* in a pre-application conference prior to the submittal of a request for approval of a conditional use. The purposes of this conference are to provide additional information regarding the review process and assistance in the preparation of the application.
- (B.) Neighborhood meeting. It is required that the developer meet with representatives of the *Neighborhood* in which the proposed conditional use will be located. This meeting shall be held at the pre-application stage for the developer to explain the proposed use and to be informed of the concerns of the *Neighborhood*. The applicant shall coordinate the time and date of the meeting to enable the *Planning, Zoning and Subdivision Administrator* to attend and address procedural questions that arise.

### 7.8-3 Plan submittal.

- (A.) Filing of application. An application for a conditional use permit may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide

documentation that the owner of the property has authorized the filing of the application. The application for a conditional use permit shall be filed with the *Planning, Zoning and Subdivision Administrator* on a form provided by the *Planning, Zoning and Subdivision Administrator*.

- (B.) Information required. Each application for a conditional use permit shall contain all information identified as required by the *Planning, Zoning and Subdivision Administrator*. The application shall be accompanied by at least 4 copies of a *Site Plan* containing all information required by Section 7.7 of this Ordinance.

#### 7.8-4 Staff review.

- (A.) Planning, Zoning and Subdivision Administrator review. Following submittal of the application and *Site Plans* for the conditional use, they shall be reviewed by the *Planning, Zoning and Subdivision Administrator* for compliance with the requirements of this section 7.8 of this Ordinance. Provided the application and *Site Plan* are complete, the *Planning, Zoning and Subdivision Administrator* shall schedule the request for review by the *Technical Review Committee*.

- (B.) Submittal of plans to Technical Review Committee.

The *Planning, Zoning and Subdivision Administrator* shall provide *Site Plans* for developments requiring site development plan review to members of the *Technical Review Committee* for review. The *Technical Review Committee* members shall review the *Site Plans* for compliance with the applicable requirements of this Ordinance and other applicable Ordinances and laws, to which their respective departmental role applies. This review shall be made by the members of the *Technical Review Committee* and by any other agencies or officials as requested by the *Planning, Zoning & Subdivision Administrator*.

#### 7.8-5 Formal review.

- (A.) Public hearing. Upon receipt of a notice from the *Planning, Zoning and Subdivision Administrator* of the applicant requesting a public hearing on the application and *Site Plan* for a conditional use permit, a public hearing shall be scheduled. A public hearing before the Andrews Town Board of Aldermen shall be held for all conditional use permit applications.

- (B.) Action by the Andrews Town Board of Aldermen.

- (1.) The Andrews Town Board of Aldermen shall consider the request within 35 days of receiving information regarding the conditional use permit application from the *Planning, Zoning and Subdivision Administrator*.

- (2.) The Andrews Town Board of Aldermen, after conducting the quasi judicial public hearing, may: (1) deny approval; (2) continue the application pending

submittal of additional information; or (3) approve the proposed conditional use permit.

(C.) Findings and Conditions. In granting the permit, the Board of Aldermen shall find:

- (1.) That the use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- (2.) That the use or development complies with all required regulations and standards of this Ordinance and with all other applicable regulations;
- (3.) That the use or development is located, designed, and proposed to be operated so as not to substantially injure the value of adjoining or abutting property, or that the use or development is a public necessity; and
- (4.) That the use or development will be in harmony with the area in which it is to be located and conforms to the general plans for the land use and development of Town of Andrews and its environs.

There shall be competent, material, and substantial evidence in the record to support these conclusions and the Town Board of Aldermen must find that all of the above exist or the application shall be denied.

(D.) Additional Conditions. In granting the conditional use permit, the Town Board of Aldermen may designate only those conditions, in addition and in connection therewith, as will, in its opinion, assure that the use in its proposed location will be harmonious with the area in which it is proposed to be located, with the spirit of this Ordinance and clearly in keeping with the public welfare. All such additional conditions shall be entered into the minutes of the meeting, at which the conditional use permit is granted, on the conditional use permit itself, and on the approved plans. All specific conditions shall run with the land and shall be binding on the original applicants, their heirs, successors, and assigns. The conditional use permit, as approved, shall be recorded by the Planning, Zoning & Subdivision Administrator with the Cherokee County Register of Deeds the same as a deed restriction. The permit recipient shall be responsible for paying the recording fee. No permit shall be issued for the subject property until the recording is made.

The minutes of the Andrews Town Board of Aldermen shall state if the proposed conditional use meets or does not meet each of the conditions set forth in section 7.8-5.(D), the standards set forth in Article 10 of this Ordinance for the proposed conditional use, and all other requirements set forth by this Ordinance for the proposed conditional use. The decision on the conditional use application shall be by a simple majority vote of those members of the Andrews Town Board of Aldermen present at the meeting at which the action is taken.

7.8-6 Transfer of approval. A conditional use approval is not transferable from one property to another, but is transferred to a subsequent owner of the property to which applied.

7.8-7 Resubmission of denied applications. No application for approval of a conditional use shall be filed with, or accepted by, the *Planning, Zoning and Subdivision Administrator* that is identical or substantially similar to an application that has been denied by the Andrews Town Board of Aldermen within one year of the final action by the Town Board of Aldermen denying the request. This waiting period may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths of the members of Town Board of Aldermen.

7.8-8 Public notification. Notice of public hearings or public meetings required under this section for conditional use approvals shall be provided in accordance with the requirements established by the North Carolina General Statutes for public hearing notification. In addition, the *Planning, Zoning and Subdivision Administrator* shall prepare a public notice as described herein below which indicates the official receipt of an application and *Site Plan* for a conditional use permit approval. This will serve to encourage public involvement in development projects in Andrews. This notice for publication shall include the following.

- (A.) Brief description of the conditional use project proposed;
- (B.) The time, date, and place at which the request will be considered; and
- (C.) Contact information for staff receiving comments concerning the proposed conditional use.

The notice shall be posted in a conspicuous place at Town Hall, on the Town's website, or a combination of these two, at least five days prior to the date on which the application is to be considered.

7.8-9 Project phasing. If a project approved as a conditional use is to be developed in phases, a master plan for the entire development site must be approved by the Andrews Town Board of Aldermen at the same time and in the same manner the conditional use permit application is considered.

- (A.) Final plans for phases of the conditional use may be submitted in stages and shall be approved by the *Planning, Zoning and Subdivision Administrator* provided that the following requirements are met:
  - (1.) All stages shall be shown with precise boundaries on the master plan and shall be numbered in the expected order of development.
  - (2.) Each phase must be able to exist independently of subsequent phases by meeting all applicable laws and regulations as if the phase were a separate project.
  - (3.) All the data required for the project as a whole shall be given for each stage shown on the plan.
  - (4.) A proportionate share of the open space, common facilities, amenities, play areas,

etc. shall be included in each stage of the development, except that centralized common facilities shall be guaranteed by bond or other irrevocable financial instrument valid for the duration of the project implementation period.

(5.) The phasing shall be consistent with the traffic circulation, drainage, and utilities plan for the entire master plan for the conditional use.

(6.) Each phase of the conditional use must comply with any and all conditions attached to the approval of the conditional use permit by the Andrews Town Board of Aldermen.

7.8-10 Variances. In issuing conditional use permits, the Andrews Town Board of Aldermen may prescribe dimensional requirements (height, setback, etc.) that are different from the requirements of the corresponding general zoning classification, and may prescribe development and design standards that are different from those set out in Article 9; provided, that any request for a modification to a dimensional requirement or development and design standard that is less restrictive than would be applicable for the underlying general zoning classification must be specifically described in any notices required for the public hearing on the conditional use permit application, and must be set out separately in any Ordinance issuing said conditional use permit, together with an explanation of the reason for the modification. Except as modified pursuant to this paragraph, all standards and requirements applicable to the underlying general zoning district must be met. Variances to the standards established by any conditional use permit shall not be allowed.

7.8-11 Appeals. An appeal from the decision of the Andrews Town Board of Aldermen regarding a conditional use application and *Site Plan* may be made by an aggrieved party and shall be made to the Superior Court of Cherokee County in the nature of certiorari. Any such petition to the Superior Court shall be filed with the court no later than 30 days after a written copy of the decision of the Town Board of Aldermen is received by the applicant.

7.8-12 Permit validity. Approvals of a conditional use application and *Site Plan* shall be valid for one year from the date of approval by the Andrews Town Board of Aldermen. Failure to initiate construction, or otherwise begin the permitted use, within this time shall render the conditional use approval null and void. The *Planning, Zoning and Subdivision Administrator* may grant a single extension of this time period of up to six (6) months upon submittal by the application of sufficient justification for the extension. Permits for the phased development of a conditional use project shall remain valid for the time approved by the Andrews Town Board of Aldermen as part of the conditional use approval of the master plan for the conditional use.

7.8-13 Failure to Comply with Plans or Conditions. In the event of failure to comply with the plans approved by the Town Board of Aldermen or with any other conditions

imposed upon the conditional use permit, the permit shall thereupon immediately become void and of no effect. No building permits for further construction or certificates of occupancy under this conditional use permit shall be issued. If a failure to comply with conditions in a conditional use permit occurs after occupancy, the owner, lessee, or other responsible person shall be notified in writing of the violation. No earlier than five days after the receipt of the written notice, the body issuing the conditional use permit may issue a finding of fact that a violation of the requirements of this Ordinance exists. If such finding of fact is made, it shall be unlawful for any person, firm or corporation to continue the conditional use until the responsible party makes the necessary corrections and the Town Board of Aldermen conducts a public hearing and finds that the violation no longer exists.

## **7.9 Uses Listed with Additional Standards**

7.9-1 Purpose. Uses listed with additional standards are uses permitted by right, provided that the additional standards set forth in Section 10.1 of this Ordinance are met. The additional standards are intended to ensure that the uses fit the intent of the zoning districts within which they are permitted, and that the uses are compatible with other development permitted within the zoning districts. Review and approval of these uses are the authority of the *Planning, Zoning and Subdivision Administrator*, who has no discretion to modify the additional standards.

### 7.9-2 Plan submittal.

(A.) Filing of application. An application for a permit for a use with additional standards may be filed by the owner of the property or by an agent specifically authorized by the owner to file such application. Where an agent files the application, the agent shall provide documentation that the owner of the property has authorized the filing of the application. The application for a permit for a use with additional standards shall be filed with the *Planning, Zoning and Subdivision Administrator* on a form provided by the *Planning, Zoning and Subdivision Administrator*.

(B.) Information required. Each application for a permit for a use with additional standards shall contain all information required by the *Planning, Zoning and Subdivision Administrator*. The application shall be accompanied by a *Site Plan* meeting the requirements for *Site Plans* as established by section 7.7 of this Ordinance.

7.9-3 Staff review. Notwithstanding the procedures applicable in section 7.7 of this Ordinance, the *Planning, Zoning and Subdivision Administrator* shall review the proposed use and determine if the additional standards for that use have been met. If the additional standards have been met, the use shall be approved provided all other applicable standards and procedures have been met. Failure to meet all the additional

standards shall result in denial of a permit for the proposed use. The *Planning, Zoning and Subdivision Administrator* shall approve or deny the proposed use with additional standards or request more information, if needed, within ten (10) working days of submittal. If the application is found to be incomplete, the *Planning, Zoning and Subdivision Administrator* shall notify the applicant of any deficiencies. No further steps will be taken to process the application until the applicant corrects the deficiencies. The *Planning, Zoning and Subdivision Administrator* shall approve the use only upon finding that the proposed use satisfies all applicable requirements set forth in this Ordinance.

7.9-4 Permit validity. The permit for a use with additional standards shall be valid for one year from the date of its issuance. Failure to initiate construction or otherwise begin the permitted use within this time shall render the permit void. The *Planning, Zoning and Subdivision Administrator* may grant a single extension of this time period of up to six months upon submittal by the applicant of sufficient justification for the extension.

## **7.10 Sign permits**

7.10-1 Purpose. In order to regulate the provision of sign standards and sign restrictions within the planning and regulation jurisdiction of the Town of Andrews, it shall be unlawful to erect or maintain any sign or sign structure without first obtaining a sign permit.

7.10-2 Application submittal.

(A.) Filing of application.

(1.) An application for a sign permit may be filed by the owner of the property or signed by an agent specifically authorized by the owner to file such application. The application for a sign permit shall be filed with the Town of Andrews *Planning & Community Development Department* on a form provided by the *Planning, Zoning and Subdivision Administrator*.

(2.) Sign contractor's license. No person shall engage in the business of erecting or maintaining signs in the Town of Andrews unless said person has been issued a sign contractor's license which has not expired at the time said work is done. This requirement shall exclude those persons who construct and erect a principal use identification sign when that sign is used at that person's place of business, provided all construction and installation is properly permitted and inspected for compliance with the applicable building codes of the Town of Andrews and other sections of this Ordinance.

(B.) Information required. Each application for a sign permit shall be accompanied by complete information as required by the *Planning, Zoning and Subdivision*

*Administrator* and shall include, without being limited to, a *Site Plan* and elevation drawings of the proposed sign, a drawing of the building facade indicating the proposed location of the sign (if the sign is to be attached to a building), height, dimensions and square footage of the proposed sign and any other data as the *Planning, Zoning and Subdivision Administrator* may determine to be necessary for review of the application.

7.10-3 Staff review. Provided the application is complete, the *Planning, Zoning and Subdivision Administrator* shall review the application and determine whether it is complete within ten working days of its submittal. If the application is incomplete, the *Planning, Zoning and Subdivision Administrator* shall notify the applicant of any deficiencies. No further steps shall be taken to process the application until the applicant corrects the deficiencies. The *Planning, Zoning and Subdivision Administrator* shall issue a permit only upon finding that the proposed sign or sign structure satisfies the requirements of Article 17.

7.10-4 Permit validity. Upon issuance of a sign permit, the applicant will have six months to commence work on the approved signage, after which the permit shall automatically become null and void. The *Planning, Zoning and Subdivision Administrator* may grant a single 60-day extension of time within which operations must be started or resumed. All requests for such extensions and approval thereof shall be in writing.

## **7.11 Subdivision Plat Approval**

### 7.11-1 Major Subdivisions.

(A.) Purpose. The *Major Subdivision* review process is required for those divisions of land as described below. Review and approval of the *Preliminary Plat* by the *Technical Review Committee* is required under the *Major Subdivision* review process, with review and approval of the *Final Plat* by the *Planning, Zoning and Subdivision Administrator*.

### (B.) Pre-application procedure.

(1.) Conference. It is required that every applicant for a *Major Subdivision* meet with the *Planning, Zoning and Subdivision Administrator* in a conference prior to the submittal of a *Subdivision Plat*. The purpose of this conference is to provide clarification and assistance in the preparation and submission of *Plats* for approval.

(2.) Sketch Plan. A *Sketch Plan* shall be submitted to the *Planning, Zoning and Subdivision Administrator* prior to or at the pre-application conference. Upon submittal of the *Sketch Plan*, the *Planning, Zoning and Subdivision Administrator* shall conduct an initial review to determine whether the proposed *Subdivision* is a



*Major Subdivision.*

- (3.) Neighborhood meeting. It is required that the developer meet with representatives of the *Neighborhood* in which the proposed *Subdivision* is to be located. This meeting shall be held at the pre-application stage for the developer to explain the proposed project and to be informed of the concerns of the *Neighborhood* or area. The applicant shall coordinate the time and date of the meeting to enable the *Planning, Zoning and Subdivision Administrator* to attend and address procedural questions that arise.

(C.) Preliminary Plat/Site Plan submittal.

- (1.) Preliminary Plat(s) required. A *Preliminary Plat(s)* for a proposed *Major Subdivision* shall be prepared by a professional land surveyor, licensed landscape architect, or licensed engineer and shall be prepared in accordance with the standards set forth by the *Planning & Community Development Department* and applicable state standards.
- (2.) Filing of application. A complete application containing all information as required by the Town of Andrews shall be submitted, along with applicable fees, to the *Planning, Zoning and Subdivision Administrator*.

(D.) Staff review.

- (1.) Planning Department staff review.

Plans for development requiring major site development plan review shall be reviewed by the *Planning, Zoning and Subdivision Administrator* for compliance with the requirements of this Article.

- (2.) Submittal of plans to Technical Review Committee.

The *Planning, Zoning and Subdivision Administrator* shall provide *Preliminary Plat/Site Plans* for developments requiring major site development plan review to members of the *Technical Review Committee* for review. The *Technical Review Committee* members shall review the *Site Plans* for compliance with the applicable requirements of this Ordinance and other applicable Ordinances and laws, to which their respective departmental role applies. This review shall be made by the members of the *Technical Review Committee* and by any other agencies or officials as requested by the *Planning, Zoning & Subdivision Administrator*.

- (E.) Permit validity. Approval of the *Preliminary Plat/Site Plan* for *Major Subdivisions* shall be valid for two years from the date of approval by the Town of Andrews. The *Final Plat* for the *Major Subdivision* shall be presented for approval prior to the end

of this two-year period. Phased *Subdivisions* shall be exempt from this time limit as set forth in section 7.11-1(G)(2) of this Ordinance.

(F.) *Final Plat.* *Plats* for recording *Major Subdivisions* shall be prepared by a professional land surveyor in accordance with the standards set forth by the applicable state standards and in accordance with the standards and specifications of this Ordinance. The *Final Plat* of a *Major Subdivision* shall be reviewed by the *Planning, Zoning and Subdivision Administrator* for compliance with the requirements of this Ordinance and for conformity with the approved *Preliminary Plat*. Substantial changes from the *Preliminary Plat*, as determined by the *Planning, Zoning and Subdivision Administrator*, shall require an additional review by the *Technical Review Committee*, as determined by the *Planning, Zoning and Subdivision Administrator*, to ensure compliance. No *Final Plat* shall be approved by the *Planning, Zoning and Subdivision Administrator* until all improvements are installed or their execution guaranteed as permitted by this Ordinance and all certificates required for final *Plats* by this Ordinance or approvals by state law have been properly completed and signed. Provided the *Final Plat* is complete, and no further review is determined to be required, the *Planning, Zoning and Subdivision Administrator* shall act on the *Final Plat* of *Major Subdivisions* within ten working days of receipt of the *Plat*. The *Planning, Zoning and Subdivision Administrator* is authorized to approve the *Final Plat* for recording and to present the *Final Plat* to the Town Board of Aldermen to grant approval and acceptance of dedications by resolution. Following *Final Plat* approval, the applicant shall record the *Plat* for a *Major Subdivision* in accordance with this subsection.

(G.) Signatures and recordation.

- (1.) Signatures. Upon approval of a *Final Plat* for *Major Subdivisions*, the *Plat* shall be signed in the appropriate place by the *Planning, Zoning and Subdivision Administrator* and by the owner(s).
- (2.) Recordation. A *Final Plat* for *Major Subdivisions* shall be recorded in the office of the register of deeds for Cherokee County in compliance with North Carolina General Statutes within 60 days following approval by the Town of Andrews. No *Subdivision Plat* shall be considered finally approved until the *Plat* has been recorded. If the *Final Plat* of all or part of the area shown on an approved *Preliminary Plat* for a *Major Subdivision* is not recorded in the office of the register of deeds within two years of the approval by the Town of the *Preliminary Plat*, the *Preliminary Plat* shall be resubmitted to the *Planning, Zoning and Subdivision Administrator* for consideration following the process set forth in this Article. *Final Plats* for *Subdivisions* developed in phases shall be recorded in accordance with the schedule presented by the applicant during the *Preliminary*

*Plat* approval and approved as part of the *Preliminary Plat* approval process. If the *Final Plat* of all or part of the area shown on an approved *Preliminary Plat* for a *Major Subdivision* to be developed in phases is not recorded in the office of the register of deeds within the schedule approved by the Town, the *Preliminary Plat* shall be resubmitted to the *Planning, Zoning and Subdivision Administrator* for consideration following the process set forth in this Article. No lots in a *Subdivision* shall be sold prior to approval by the *Planning, Zoning and Subdivision Administrator* and recording of a *Plat* for the *Subdivision*.

7.11-2 Minor Subdivisions.

- (A.) Purpose. The *Minor Subdivision* review process is required for those divisions of land described below. Review and approval of the preliminary and *Final Plat* by the staff permits a speedy review while ensuring that the proposed *Subdivision* meets all requirements established by the Town of Andrews.
- (B.) Pre-application conference. It is required that every *Subdivision* applicant meet with the *Planning, Zoning and Subdivision Administrator* prior to the submittal of a *Minor Subdivision Plat*. The purpose of this conference is to provide clarification and assistance in the preparation and submission of *Plats* for approval.
- (C.) Plat submittal.
  - (1.) Plat required. *Plats* for *Minor Subdivisions* shall be prepared by a professional land surveyor in accordance with the standards set forth by applicable state standards and this Ordinance.
  - (2.) Filing of application. A complete application containing all information as required by the Town of Andrews shall be submitted, along with applicable fees, to the *Planning, Zoning and Subdivision Administrator*.
- (D.) Staff review.
  - (1.) Planning Department staff review.

Plans for development not requiring major site development plan review shall be reviewed by the *Planning, Zoning and Subdivision Administrator* for compliance with the requirements of this Article.
- (E.) Final Plat approval.
  - (1.) Recordation and signatures.
    - (a.) Signatures. Upon approval of a *Plat* for *Minor Subdivisions*, said *Plat* shall be signed in the appropriate place by the *Planning, Zoning and Subdivision Administrator* and by the owner(s). Additionally, approval shall be shown by a Certificate of Approval for recording.

(b.) Recordation. A *Plat* for *Minor Subdivisions* shall be recorded by the Town of Andrews in the office of the register of deeds for *Cherokee County* within 60 days following approval by the *Planning, Zoning and Subdivision Administrator*. No *Plat* shall be considered finally approved until the *Plat* has been recorded. No lots in a *Subdivision* shall be sold prior to approval by the *Planning, Zoning and Subdivision Administrator* and recording of a *Plat* for the *Subdivision*.

(F.) Permit validity. *Minor Subdivision Plats* which have been granted approval shall be recorded as set forth in section 7.11-2(E)(1)(b) above within 60 days following approval or the approval becomes invalid.

## **7.12 Floodplain development and certification permit**

7.12-1 Purpose. No approval shall be granted for construction in an area designated as a special flood hazard area as shown on the *Flood Insurance Rate Maps (FIRM)* for the Town of Andrews, as provided by the Federal Emergency Management Agency, and also adjoining lands, which, because of their characteristics, the Town determines as being susceptible to flooding or determines as being susceptible to flooding or damage by flooding until the requirements of Article 18 of this Ordinance are met. Procedures for assuring compliance with these requirements are set forth below.

7.12-2 Pre-application procedure. Developers are required to meet with the *Floodplain Administrator*, prior to submitting an application for development in the designated a *Special Flood Hazard Area*. This will provide developers with the opportunity to obtain information regarding details of the application process and regulations affecting development within *Special Flood Hazard Areas*.

7.12-3 Plan submittal.

(A.) Application required. Application for a floodplain development permit shall be made to the *Floodplain Administrator*, herein after the *Planning, Zoning and Subdivision Administrator*, prior to performing grading, development, or construction on lands designated as *Special Flood Hazard Areas*. Applications shall be made on forms furnished by the *Planning, Zoning and Subdivision Administrator*, shall provide all requested information, and shall be accompanied by a *Site Plan*. The application, with all requested information, and *Site Plan* shall be provided to the *Planning, Zoning and Subdivision Administrator*.

(B.) Plan required. A *Site Plan* drawn to scale shall be provided with the application for a *Floodplain Development Permit*. The *Site Plan* shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

(1.) The nature, location, dimensions, and elevations of the area of

development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

- (2.) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in this section, or a statement that the entire lot is within the special flood hazard area;
  - (3.) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 18.2-4(B)
  - (4.) The boundary of the floodway(s) or non-encroachment area(s) as determined in Section 18.2-4(B);
  - (5.) The *Base Flood Elevation* (BFE) where provided as set forth in Sections 18.2-4(B) or 18.6
  - (6.) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;
  - (7.) Certification of the plot plan by a registered land surveyor or professional engineer.
  - (8.) Proposed elevation, and method thereof, of all development within a *Special Flood Hazard Area* including but not limited to:
    - (a.) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
    - (b.) Elevation in relation to mean sea level to which any non-residential structure in Zone AE or A will be flood-proofed; and
    - (c.) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or flood-proofed;
  - (9.) If flood-proofing, a Flood-proofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of flood-proofing measures.
- (C.) A Foundation Plan, drawn to scale, shall be submitted with the application. The foundation plan shall include details of the proposed foundation system to ensure all provisions of this Ordinance are met. These details include but are not limited to:
- (1.) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);
  - (2.) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section 18.4-2(A)(4)(b), when solid foundation perimeter walls are used in Zones A and AE;
- (D.) Usage details of any enclosed areas below the regulatory flood protection elevation.

- (E.) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (F.) Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)
- (G.) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Section 18.5-1(B)(6) of this Ordinance are met.
- (H.) A description of proposed watercourse *alteration* or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse *alteration* or relocation.

7.12-4 Preparation by Professional. *Plats*, plans, designs, calculations, working drawings, and specifications for work shall be prepared by an authorized professional properly registered and licensed in North Carolina for the work in which they are engaged.

7.12-5 Submittal of Plats/Plans. Applications for floodplain development and certification permits, with all required information, shall be submitted to the *Planning, Zoning and Subdivision Administrator*. All review(s) shall be coordinated by the *Planning, Zoning and Subdivision Administrator*.

7.12-6 Staff Review. Plans for development requiring major site development plan review shall be reviewed by the *Planning, Zoning and Subdivision Administrator* for compliance with the requirements of this Article.

7.12-7 Permit Requirements. The Floodplain Development and Certification Permit shall include, but not be limited to:

- (A.) A description of the development to be permitted under the floodplain development permit.
- (B.) The *Special Flood Hazard Area* determination for the proposed development per available data specified in Section 18.2-4(B).
- (C.) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (D.) The regulatory flood protection elevation required for the protection of all public utilities.
- (E.) All certification submittal requirements with timelines.

- (F.) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- (G.) The flood openings requirements, if in Zones A and AE.
- (H.) Limitations of below BFE enclosure uses (if applicable). (i.e., Parking, Building Access and Limited Storage only).

7.12-8 Certification of Floor Elevation/Flood-proofing. When a property is located in a flood hazard area or when a structure is flood proofed, a certificate shall be provided in accordance with the following standards.

(A.) Elevation Certificates.

- (1.) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the *Planning, Zoning and Subdivision Administrator* a certification of the elevation of the reference level, in relation to mean sea level. The *Planning, Zoning and Subdivision Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
- (2.) An Elevation Certificate (FEMA Form 81-31) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the *Planning, Zoning and Subdivision Administrator* a certification of the elevation of the reference level, in relation to mean sea level. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The *Planning, Zoning and Subdivision Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop work order for the project.
- (3.) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the *Planning, Zoning and Subdivision Administrator* a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The *Planning, Zoning and Subdivision Administrator* shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built

construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

- (B.) Flood-proofing Certificate. If non-residential flood-proofing is used to meet the regulatory flood protection elevation requirements, a Flood-proofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the *Planning, Zoning and Subdivision Administrator* a certification of the flood-proofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Flood-proofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The *Planning, Zoning and Subdivision Administrator* shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

7.12-9 Permit validity. Permits for construction activity in designated flood hazard areas shall be valid for one year. Failure to initiate construction, or otherwise begin the permitted use, within this time shall render the permit void.

### **7.13 Zoning Vested Rights Approval**

7.13-1 Purpose. The zoning vested right is a right which is established pursuant to N.C. Gen. Stat. sec. 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan. Upon issuance of a building permit, the expiration provisions of N.C. Gen. Stat. sec. 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section 7.13 is outstanding. Obtaining *Site Plan* approval or *Preliminary Plat Subdivision* approval through the vested rights procedure gives the applicant the right to start construction of the development as approved within two years of approval. A vested right is obtained:

- (A.) automatically when a conditional use permit is granted by virtue of Town Board of Aldermen approval of a conditional use permit;
- (B.) automatically when a *Subdivision Plat* is approved and the *Plat* recorded in accordance with the procedure set forth in this Ordinance ; and
- (C.) automatically when the Town Board of Aldermen approves a site specific development plan submitted by a developer in conjunction with an application for a



*zoning permit* with vested rights as described below.

7.13-2 Application procedure.

(A.) Pre-Application Conference. The applicant for *Site Plan* approval with vested rights shall meet with the *Planning, Zoning and Subdivision Administrator* to inquire about specific zoning requirements. The applicant and the *Planning, Zoning and Subdivision Administrator* shall discuss the *Site Plan* review process and applicable meetings, scheduling, and deadlines. In addition, the *Planning, Zoning and Subdivision Administrator* shall advise the applicant of the specific requirements the project needs to address and discuss other aspects of the vested rights procedure.

(B.) Plan submittal.

(1.) Filing of application. In order to apply for *Site Plan* review under the vested rights procedure, the applicant must indicate his/her intent to obtain vested rights in the form of a letter to the *Planning, Zoning and Subdivision Administrator*. The letter shall include the property address, County Tax Office parcel identification number, name of the property owner, and any other pertinent information.

(2.) Site Plan required. *Site Plans* prepared in accordance with the standards set forth by this Ordinance shall be submitted when applying for vested rights. The standards for the *Site Plan* to be submitted depend upon the particular review process and are specified in sections 7.7 and 7.11 of this Ordinance for the particular review process.

7.13-3 Staff review. The *Planning, Zoning and Subdivision Administrator* shall review the application and accompanying *Site Plan(s)* for compliance with the requirements of this Ordinance and other applicable regulations. After review and approval through the appropriate staff level review process, the request for vested rights will be scheduled for a public hearing before the Andrews Town Board of Aldermen. The public hearing will be scheduled as provided by the Town Board of Aldermen's rules of procedure.

7.13-4 Formal review. Requests for vested rights for *Site Plans* shall be scheduled for review at the next regular meeting of the Andrews Town Board of Aldermen following review and approval by staff and/or the applicable advisory boards. At this time, the Town Board of Aldermen shall hold a public hearing to review the *Site Plan* and evaluate its conformance with the requirements of this Ordinance and other applicable requirements of the Town of Andrews. In considering an application for *Site Plan* approval with vested rights, the Town Board of Aldermen shall give due regard to whether issuance of the permit would serve the purpose and intent of this Ordinance, secure public safety and welfare, and do substantial justice. If the Board of Aldermen should find, after public hearing, that the proposed permit should not be

granted, the permit should be denied. If the Town Board of Aldermen finds that the request meets the requirements stated above, it then shall take one of the following actions.

- (A.) Approve the *Site Plan* with vested rights request. The *Planning, Zoning and Subdivision Administrator* is then directed to issue a vested rights *zoning permit*.
- (B.) Approve the *Site Plan* with vested rights request subject to conditions which are necessary to protect the public health, safety, and welfare. The *Planning, Zoning and Subdivision Administrator* is then directed to issue the vested rights *zoning permit* subject to the changes in the *Site Plan* to be made by the developer.
- (C.) Continue the *Site Plan* with vested rights request pending the submittal of additional information.

7.13-5 Findings. In granting a *zoning permit* with vested rights the Town Board of Aldermen shall make the following affirmative findings.

- (A.) The use requested is among those permitted in the district in which the property is located and complies with all the requirements of this and other applicable Ordinances;
- (B.) The requested permit is either essential or desirable for the public convenience or welfare;
- (C.) The requested permit will not impair the integrity or character of the surrounding or adjoining districts and will not be detrimental to the health, safety, or welfare of the community; and
- (D.) Adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.

7.13-6 Additional Restrictions and Requirements. In granting a *zoning permit* with vested rights, the Town Board of Aldermen may impose such additional restrictions and requirements upon the permit as it may deem necessary in order that the purpose and intent of this Ordinance are served, public welfare secured and substantial justice done. Approval of a site specific development plan with the condition that a variance or modification be obtained shall not confer a vested right unless and until the necessary variance or modification is obtained. If all requirements and conditions are accepted by the applicant, the Town Board of Aldermen shall authorize the issuance of the permit; otherwise the permit shall be denied. Any permit so authorized shall remain vested for two years from the date of the action granting the permit. No change or amendment to any *zoning permit* with vested rights shall be made except after public hearing and except as provided for in this Ordinance for the original

issuance of such permit. If, at the time of consideration of a proposed change or amendment to an existing permit, the permit or proposed change or amendment could not be lawfully made under Ordinance conditions existing at that time, the proposed change or amendment shall be denied. In addition, in no case shall there be an extension of the two-year time period for which the development right is vested. Nothing herein shall exempt plans related to the permit from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approvals.

- 7.13-7 Variations. Variations from the procedures and requirements for obtaining vested rights as set forth in section 7.13 of this Ordinance shall not be permitted. Requests for variations from the development standards established by this Ordinance shall be heard by the *Board of Adjustment* under the procedures established by Article 6 of this Ordinance.
- 7.13-8 Permit validity. A zoning right that has been vested as provided in section 7.15 shall remain vested for a period of two years from the date the permit is issued. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approving authority at the time the amendment or modification is approved. A *zoning permit*, conditional use permit, or *Subdivision* approval shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding. A vested right shall terminate under the termination conditions as specified in subsection 7.13-6 of this Ordinance.
- 7.13-9 Violations. Violations of the terms and/or conditions of the vested rights approval shall be considered a violation of this Ordinance and shall be subject to the enforcement and penalty provisions set forth in Article 23 of this Ordinance. In addition, the Town Board of Aldermen may, after public hearing, revoke any such vested rights for failure to abide by any such term or condition.
- 7.13-10 Status at Expiration of Term. A right which has been vested shall terminate at the end of the two-year vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply except that a building permit shall not expire or be revoked because of the running of time while a vested right under this Article is outstanding. Any development constructed pursuant to a *zoning permit* with vested rights for which the vested term has expired and which is not in conformance with all the terms of the Ordinance because of changes made in the provisions of this Ordinance, including the zoning map, after the issuance of the permit shall be subject to the provisions of this Ordinance relating to non-conformities the same as any other nonconformity.

7.13-11 Annexation Declaration. Any landowner who signs an annexation petition to the Town pursuant to G.S. 160A-31 or G.S. 160A-58.1 shall, as part of that petition, file a signed statement declaring whether or not vested rights with respect to the property subject to the petition have been established under G.S. 160A-385.1. If the statement declares that such rights have been established, the Town may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established by law shall be binding on the landowner and any such vested right shall be terminated.

## **7.14 Notices and Public Hearings**

### 7.14-1 General notice requirements.

- (A.) All notices which this Article requires for public hearings or public meetings shall identify the date, time and place of the public hearing/public meeting and the nature and character of the proposed action. Where the action being taken concerns a particular property or properties, the notice shall also identify the location of the subject property.
- (B.) Where specific notice requirements are set forth in the North Carolina General Statutes for a particular type of public hearing, the requirements set forth in the North Carolina General Statutes shall be followed. Where these requirements conflict with procedures as stipulated in this subsection or elsewhere in this Article, the requirements contained in the North Carolina General Statutes will control.

7.14-2 Notice procedure. The following guidelines detail the notification procedure to be followed for public hearings required by this Article unless otherwise set forth in this Article. Failure to follow procedures set forth in this section, other than those required by the North Carolina General Statutes, shall not affect the validity of any action taken at a public hearing or public meeting.

- (A.) Published notice. Notice for public hearings required by this Article shall be published in a newspaper of general circulation within the Town of Andrews.
- (B.) Mailed notice. First class mailed notice for public meetings or public hearings required by this Article shall be provided to owners shown on the County tax listings.
- (C.) Posted notice. A sign (or signs) providing information concerning a public hearing or public meeting required by this Article will be posted on property which is the subject of said hearing/meeting. The sign(s) shall be prominently placed on the subject parcel or on an adjacent public street or highway right-of-way. When multiple parcels are involved, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons.

7.14-3 Special notice requirements for telecommunications towers/structures. For any public hearing for conditional use applications for telecommunication towers as required by section 10.2-14 hereinafter, additional notice and public hearing requirements shall be provided as set forth in section 10.2-14 of this Ordinance.

## **7.15 Development Agreements**

### 7.15-1 Authorization

(A.) The North Carolina General Statutes authorize the use of Development Agreements for the development of land in accordance with the criteria and procedures established in sections G.S. 400.20 through G.S. 400.32.

### 7.15-2 Content of Development Agreement

(A.) The development agreement shall establish the period of time for completion of the development and construction of the project subject to the agreement.

(B.) The development agreement shall establish the property to which the agreement shall apply by metes and bounds description attached to the agreement as “Exhibit A”.

(C.) The development agreement shall cite all terms and conditions applicable to the development of the land subject to the agreement including standards and/or specifications that are more stringent than the provisions of this Ordinance.

(D.) The development agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development.

### 7.15-3 Procedures for Entering into Development Agreements

(A.) The development agreement shall be presented to the *Planning Board* for a formal recommendation at a regularly scheduled meeting. Said meeting shall be held prior to notification for a public hearing by the Board of Aldermen.

(B.) The development agreement and the *Planning Board* recommendation shall be published for public inspection and notification shall be made in accordance with the provisions of G.S. 160A-364.

(C.) The notice for the public hearing must specify the location of the property subject to the development agreement, the development uses proposed on the property, and must specify a place where a copy of the proposed development agreement can be obtained.

(D.) The development agreement shall be presented at a Public Hearing allowing an opportunity for the public to comment on the proposed development agreement. The

information presented at the Public Hearing shall be considered by the Board of Aldermen in formulating its decision on the approval of an ordinance authorizing approval of said agreement.

(E.) Upon finding that said agreement is in the best interest of the Town of Andrews, the Board of Aldermen may by adoption of an ordinance adopting the development agreement and authorizing its execution by the Mayor, approve such agreement to be administered in full force and effect by the *Planning, Zoning & Subdivision Administrator*.

(F.) The development agreement shall be recorded in the office of the Register of Deeds of Cherokee County within fourteen (14) days of execution and prior to the issuance of any development permits authorizing development activities to commence.

#### 7.15-4 Administration of Development Agreements and Termination for Material Breach

(A.) The development agreement shall run with the land obligating the parties to the agreement to any and all stipulations therein and may only be amended in accordance with the laws of North Carolina governing such agreements as stipulated in section 7.15-1 herein.

(B.) The *Planning, Zoning & Subdivision Administrator* shall conduct a periodic review at least every 12 months, at which time the developer is required to demonstrate good faith compliance with the terms of the development agreement. If, as a result of a periodic review, the *Planning, Zoning & Subdivision Administrator* finds and determines that the developer has committed a material breach of the terms or conditions of the agreement, the *Planning, Zoning & Subdivision Administrator* shall serve notice in writing, within a reasonable time after the periodic review, upon the developer setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the developer a reasonable time in which to cure the material breach.

(C.) If the developer fails to cure the material breach within the time given, then the Town of Andrews may unilaterally terminate or modify the development agreement. In accordance with G.S. 400.27(C) the notice of termination or modification may be appealed to the Board of Adjustment in the manner provided by G.S. 160A-388(b).

(D.) A development agreement adopted pursuant to this Section shall not exempt the property owner or developer from compliance with the State Building Code or State or local housing codes that are not part of this Ordinance.