

CHAPTER 3: DEVELOPMENT REVIEW PROCESS

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Chapter 3: Development Review Process

Section 3.1 General (Amended 6/25/14)

3.1.1 Purpose

The purpose of this Chapter is to establish an orderly process to develop land within the Village of Whispering Pines and its ETJ. It is also the intent of this Chapter to provide a clear and comprehensive development process that is fair and equitable to all interested parties including the petitioners, concerned neighbors, Village staff, related agencies, the Architectural Review Board, the Planning and Zoning Board, and the Village Council. Approved plans shall be guiding documents for final approval and permitting.

The development review process applies to all new development within the Village and its ETJ.

3.1.2 Application Processing Fees and Application Review Deposits

- A. Applications for the various permits and approvals required by this Ordinance shall be accompanied by the appropriate application processing fees as specified in the current version of the Village of Whispering Pines Permit and Fee Schedule.
- B. Applications for the various permits and approvals required by this Ordinance shall also be accompanied by an application review deposit in an amount specified in the current version of the Village of Whispering Pines Permit and Fee Schedule. The deposit shall be used by the Village to obtain the assistance of engineers, architects, planners, attorneys, or other professionals as necessary to determine whether an application for development permission complies with the applicable requirements of this Ordinance.
- C. Any portion of the deposit not used by the Village for the purposes set forth in subsection B shall be returned to the party that paid the deposit when the Administrator concludes that the review process is complete.
- D. If the deposit is exhausted by disbursements made in accordance with the above subsection B and the Administrator concludes that it is reasonably likely that additional assistance of consultants under the above subsection B will be required, the Administrator shall require the applicant to submit an additional deposit in an amount of one-half the original deposit amount. Successive additional deposits may be required in accordance with this subsection.

3.1.3 Property Owned by Applicant

An application for approval of any permit required by this Ordinance shall be filed only by the owner of the property on which the use is to be located, or an agent specifically authorized by the owner to file such application, or any unit of government which is not the owner of the property but proposes to acquire the property by purchase, gift, or condemnation. Where an agent files the application, the agent shall provide the Village with notarized documentation from the owner of the property authorizing the filing of the application.

3.1.4 Administrator to Determine the Completeness of All Initial Applications

- A. All applications made under this Chapter shall be filed with the Administrator, unless otherwise noted, on a form prescribed by the Administrator;
- B. The Administrator shall determine whether any initial application required under any Section of this Chapter is complete. If the Administrator determines that the application is not complete, then the Administrator shall notify the applicant of any deficiencies and shall take no further steps to process the application until the applicant remedies the deficiencies. Once the application is complete, the Administrator shall begin the appropriate review process as set forth in this Chapter.

3.1.5 Simultaneous Process of Applications of Different Permits and Approvals for the Same Development

It is the intent of the Village to accommodate the simultaneous processing of applications for different permits and approvals, which may be required for the same development project, in order to make the review process as reasonable as possible. Even though this Chapter establishes an intent to accommodate the simultaneous processing of different types of applications, the applicant should note that each of the permits and approvals set forth in this Ordinance has its own timing and review sequence and should take this into consideration in planning the development;

3.1.6 Development Permit Required (Amended 3/11/15)

(A) A Development Permit is the final form of approval for the use of land and development within the jurisdiction of this Ordinance and is a prerequisite for receiving a Building Permit from Moore County Building Inspections. Development Permits are issued by the Planning and Zoning Administrator. A Development Permit may be issued for development involving multiple activities on a property or for a single purpose such as change of use, or to place a single sign. Issuance of a Development Permit shall be contingent upon the applicant having received all other permits and approvals related to the land development activities that are to take place on the property, excepting the Building Permit.

(B) No development shall take place within the jurisdiction of this Ordinance unless all development permits shall have been issued by the Administrator stating that the proposed development complies with all provision of this Ordinance and no use of the property for which a Development Permit has been issued shall be permitted until a Certificate of Compliance has been issued.

(C) No Development Permit shall be issued for any development located within a subdivision, and no plat for a subdivision, may be recorded with the Moore County Register of Deeds, until a plat for such subdivision or phase of such subdivision has been approved, all required dedications of land have been made, all required improvements have been installed and inspected, and a warranty on improvements has been established in accordance with this Chapter. All improvements shall be made in accordance with the procedures and requirements of this Ordinance.

(D) The issuance of a Development Permit shall confer with it the right to undertake the development or use of property under the terms and conditions of such permit provided that such action as authorized by the permit is commenced within one hundred eighty (180) days of issuance and provided that all other permits have been obtained.

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(E) Any extensions require the approval of Village Council. If the project that is the subject of the Development Permit is not completed within the time period set forth herein, including any extensions, and appeals, then such permit shall be deemed null and void, and, if work continues, the Administrator can impose a daily fine in the amounts set forth in Chapter 15.

(F) Where a valid vested rights certificate has been issued, the term of a Development Permit for the area specified by the vested rights certificate shall be for the term of the vested rights certificate or one hundred eighty (180) days, whichever is the longer term.

3.1.7 Appeal of Development Permit Denial

If the development permit is denied, the applicant may appeal the action of the Administrator to the Board of Adjustment as provided for in Chapter 12.2.

3.1.8 Notice Requirements

Notice of a public hearing required in connection with an amendment to the text of this ordinance or to the Official Zoning Map shall be provided as required in Chapter 13 of this ordinance. Notice of any other public hearing required by this ordinance in connection with any other form of development approval (including but not limited to special use permits, vested rights certificates, variances, or administrative appeals) shall be provided in accordance with the following provisions:

(1) At least ten days before the date of the hearing, the Administrator shall send a notice by first class mail to the applicant or appellant as well as to the owners (as shown on the Moore County tax records) of real property any portion of which is located within 100 feet of the lot or tract that is the subject of the application or appeal. A street right-of-way shall not be considered in computing the 100 foot distance so long as the width of the right-of-way does not exceed 100 feet. The notice shall state the date, time, and place of the hearing, reasonably identify the property that is the subject of the application or appeal, and give a brief description of the action requested or proposed.

(2) At least ten days before the date of the hearing, the Administrator shall also post a notice of the public hearing on the lot or tract that is the subject of the application or appeal. The notice shall state the date, time, and place of the hearing and indicate that some action affecting the zoning status of the property is proposed. When multiple parcels are the subject of the appeal or application, a posting on each individual parcel is not required, but the Administrator shall post sufficient notices to provide reasonable notice to interested persons.

3.1.9 Quasi-Judicial Hearing Procedures

The procedures and requirements set forth in this Chapter shall apply to all quasi judicial hearings regarding the approval of a special use or variance, the approval of a vested rights certificate or an administrative Appeal.

A. When the Administrator has determined that an application is complete and that a public hearing is required by this Ordinance, the Administrator shall advise the Village Clerk to schedule a date, time, and place for the required hearing, and ensure that all notices are provided pursuant to this ordinance.

B. Any person may appear at the public hearing and request to submit evidence in explanation or rebuttal, either individually or as a representative of an organization, upon receiving proper recognition from the chairperson of the body conducting the hearing.

C. Each person who appears at a public hearing shall provide his / her name and address and, if appearing on behalf of an organization, shall state the name and mailing address of the organization. Anyone representing an organization shall present notarized evidence of authority to speak on behalf of the organization in regard to the matter under consideration.

D. All testimony and evidence given in a quasi-judicial hearing shall be given under oath or by affirmation to the body conducting the hearing.

E. Any person participating in a quasi-judicial hearing, upon receiving proper recognition from the chairperson, may question other persons appearing as witnesses who present adverse evidence or testimony.

F. The body conducting the hearing shall exclude any testimony, evidence, or questioning that it determines to be incompetent, irrelevant, immaterial, or unduly repetitious.

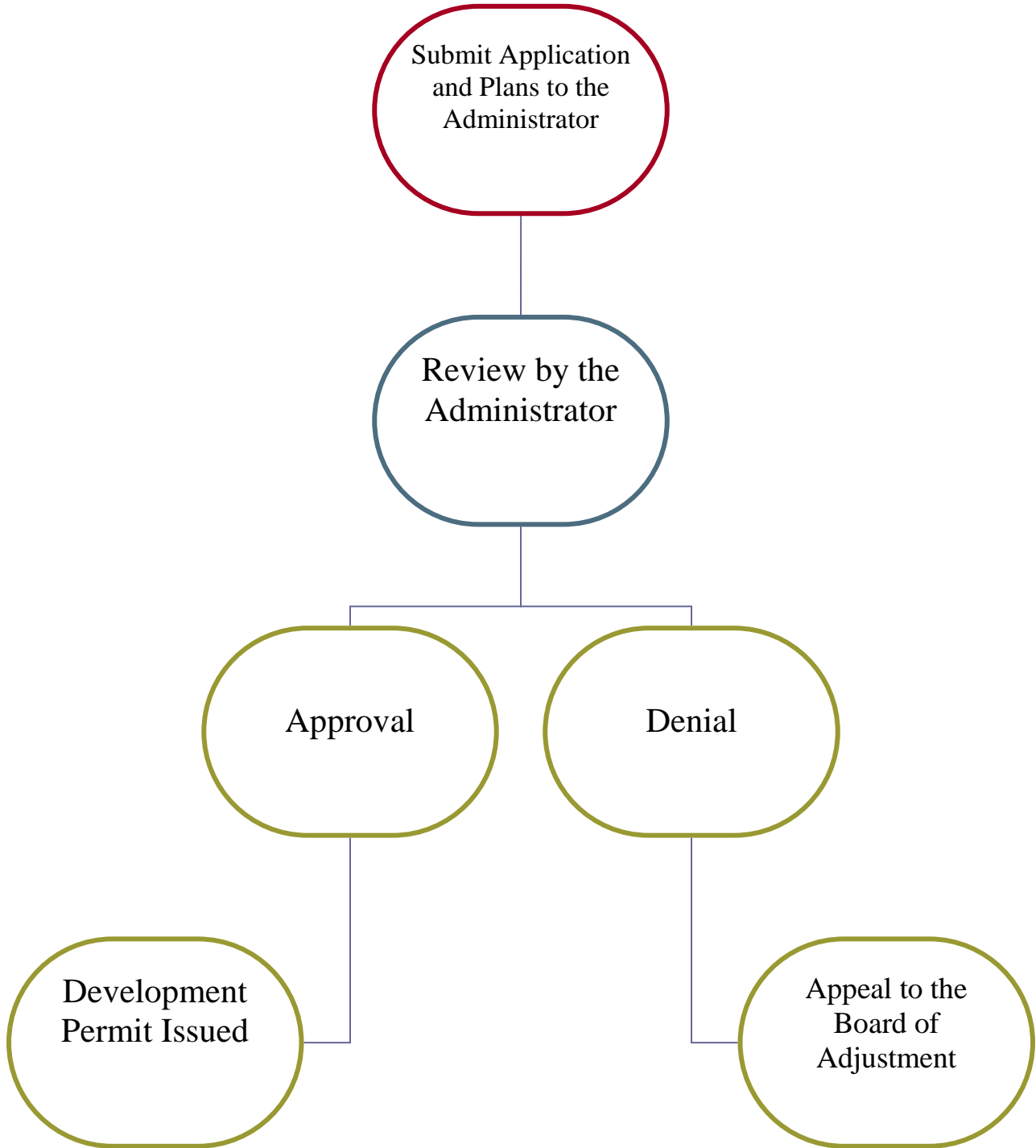
G. At any time upon reasonable request, any person may examine the application and materials submitted in support of, or in opposition to, an application for approval under this Chapter. The Administrator shall make copies of such materials available at cost.

Section 3.2 Residential Development Review Process

3.2.1 Applicability

This permit review process is for the construction of or additions to all single family or multi-family dwellings permitted in a given district.

3.2.2 Residential Development Permit Process Flow Chart



3.2.3 Review Procedure for Residential Development Permits

A. The applicant shall submit the Residential Development Permit Application and the appropriate fee together with all the requirements stated in Appendix A of this Ordinance to the Administrator.

B. The application shall be reviewed by the Administrator for compliance with the standards and requirements set forth in this Ordinance and for compliance with other local, State and Federal permits or approvals applicable to the property on which residential development is proposed. As deemed appropriate, the Administrator may review with and request written comments from Village staff, engineers, attorneys, or other consultants. All appropriate comments shall then be made available to the applicant and this process may continue until the application is ready to be presented to the Architectural Review Board (ARB). (4/12/17)

C. If the application is deemed complete and found to be in compliance with this Ordinance, and other applicable local, State and Federal permits or approvals, the Administrator may issue a development permit. If the application is denied, the Administrator will notify the applicant in writing of the reasons for denial. Such denial may be appealed to the Board of Adjustment as provided for in Section 12.2

D. A Certificate of Compliance must be obtained within two (2) years after issuance of a Development Permit.

Section 3.3 Subdivision Development Review Process

3.3.1 Applicability

This process is required for the divisions of a tract or parcel of land into two (2) or more Lots, building sites, or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and shall include all division of land involving the dedication of a new street, or right-of-way, or a change in existing street or right-of-way. The following activities shall not be required to be approved through the Subdivision Development Review Process:

A. The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of this Ordinance;

B. The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved;

C. The public acquisition of strips of land for the widening or opening of streets or for public transportation system corridors;

D. The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) Lots, where no street right-of-way dedication is involved and where the resultant Lots are equal to or exceed the standards of this Ordinance;

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- E. The division of a tract into plots or lots used as a cemetery; and
- F. The division of a tract into not more than five lots pursuant to a directive contained in a will, where the resultant Lots are equal to or exceed the standards of this Ordinance. However, no plat shall be recorded for any division of land exempt from this Ordinance unless the following Certificate of Exemption is signed by the Administrator:

Certificate of Exemption

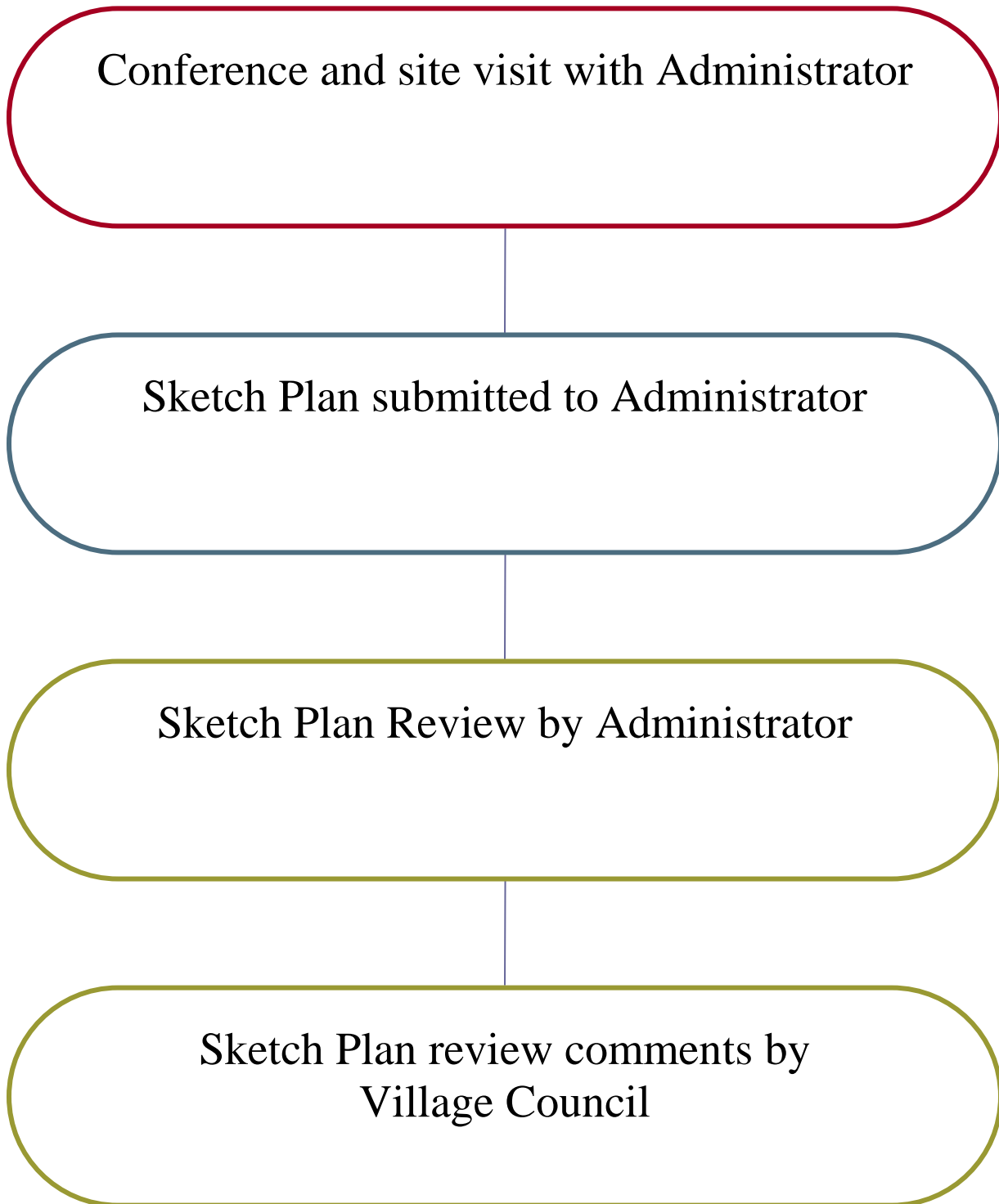
I certify that the plat shown hereon is exempt from the subdivision process in accordance with Section 3.3 of the Whispering Pines Land Development Ordinance.

3.3.2 General Provisions

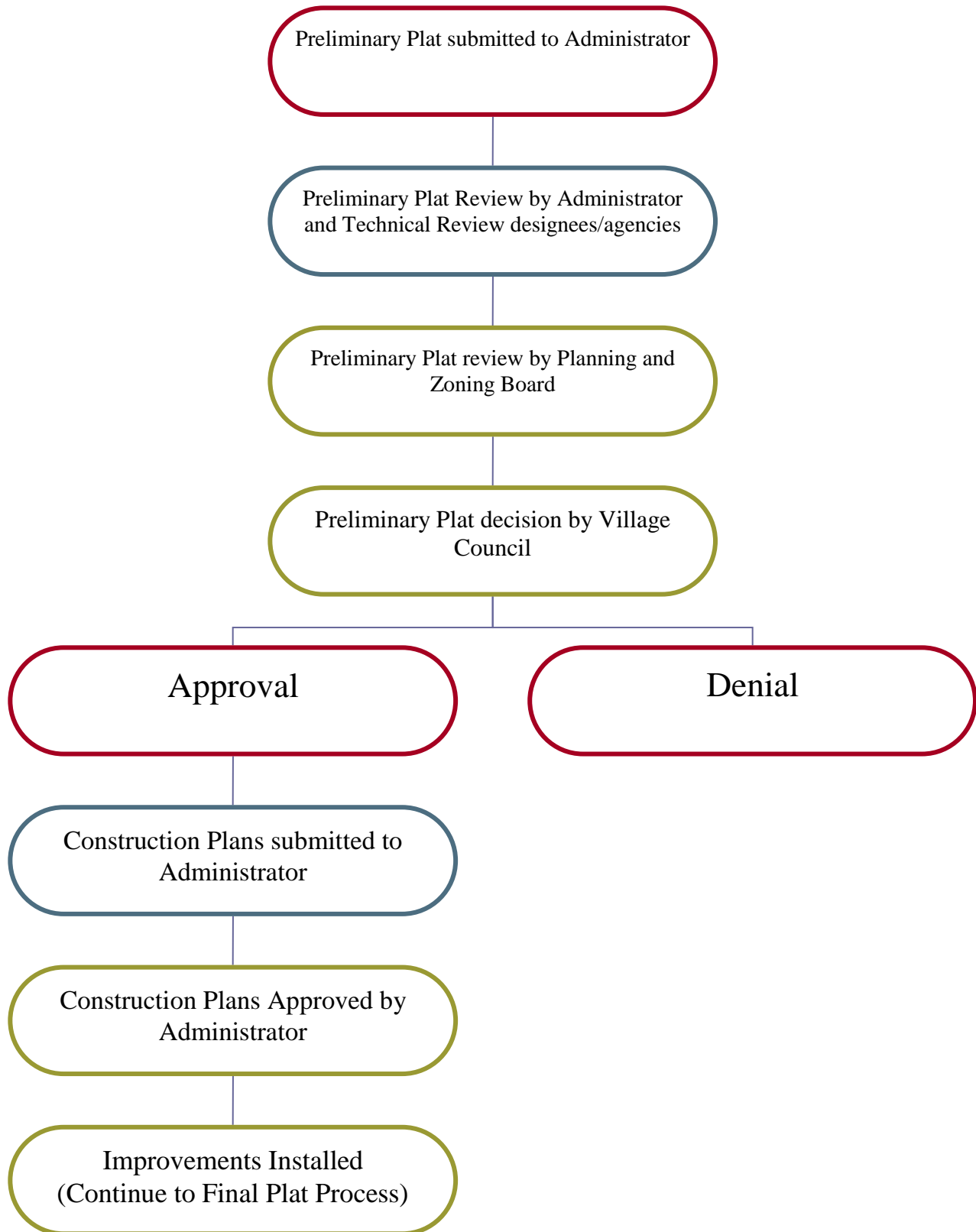
- A. Nothing in this Chapter or elsewhere in this ordinance shall be interpreted to allow the consecutive subdivision of land into not more than three lots in order to avoid making dedications and improvements for streets and other facilities otherwise required by the Village for subdivisions; no such subdivisions shall be approved or permitted by the Village Council .
- B. The name of the subdivision shall not duplicate nor closely approximate the name of an existing subdivision within Moore County unless it is an extension of that subdivision and may be adopted only with the approval of the Village Council.

3.3.3 Subdivision Approval Process Flow Chart

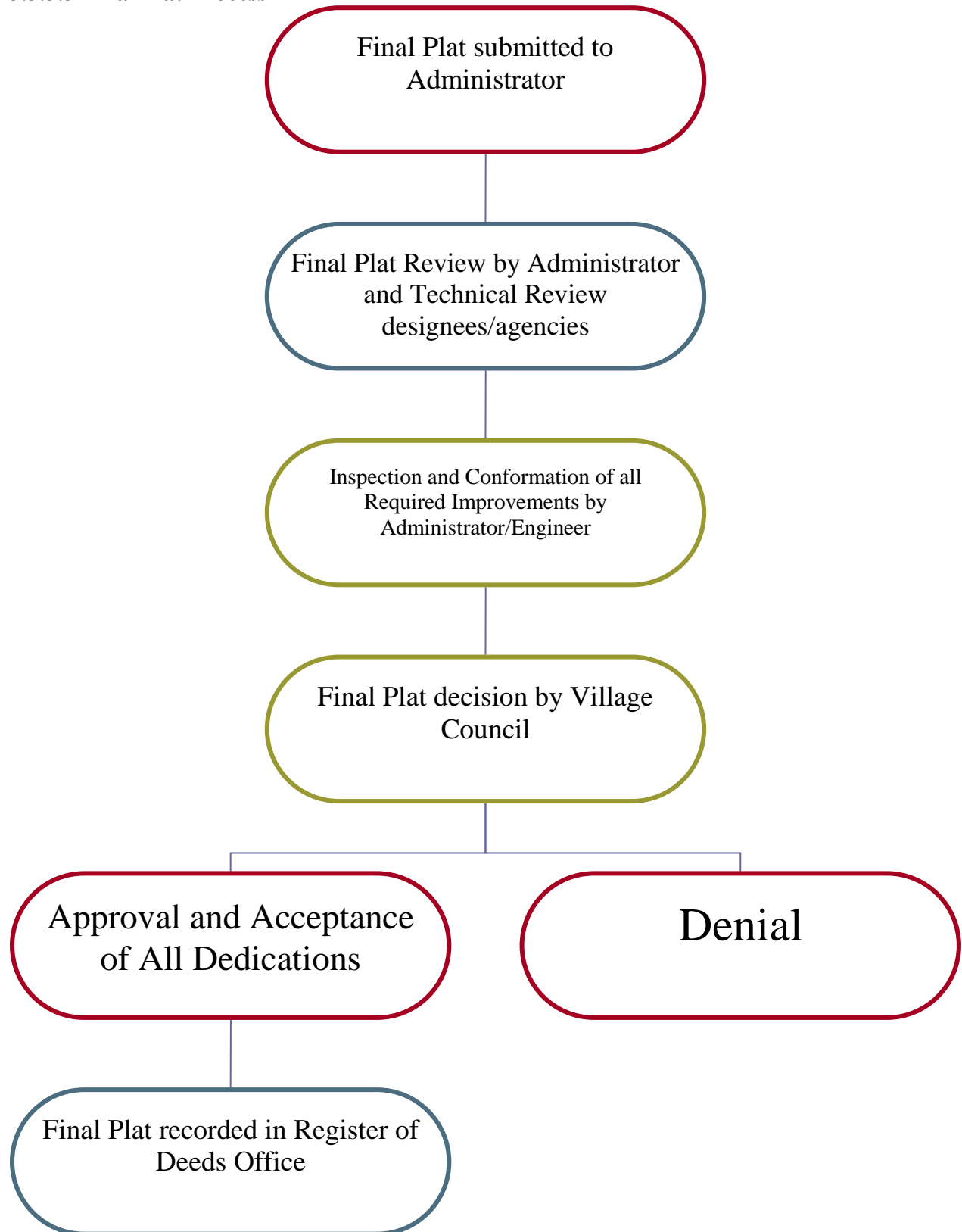
3.3.3.1 Sketch Plan Process



3.3.3.2 Preliminary Plat and Construction Plans Process



3.3.3.3 Final Plat Process



3.3.4 Sketch Plan Process (Amended 9/14/16)

3.3.4.1 Applicability

Prior to the submission of a subdivision preliminary plat a Developer may submit a sketch plan in accordance with the following process. No fee shall be charged for the sketch plan review nor shall any vested rights be established. Submission of a sketch plan is optional and does not constitute an application for a subdivision approval. Should a Developer choose not to utilize the sketch plan process, the Developer may proceed directly to the submission of a preliminary plat.

3.3.4.2 Conference and Site Visit

The Administrator and the Developer shall walk the land to discuss the developer's vision for the site, identify unique characteristics of the site, and how the proposed development / infrastructure is coordinated with existing development / infrastructure.

3.3.4.3. Submission Requirements

If a sketch plan is submitted, it must contain the information required in Appendix B, subsection B.

3.3.4.4 Administrator Review:

(1) The Administrator shall review the sketch plan for compliance with design standards and requirements set forth in Appendix B. The Administrator may review with and request written comments from Village staff, engineers, attorneys or other consultants

(2) The Administrator may request additional information deemed necessary to fully understand the proposed development and to improve discussions.

(3) A sketch plan which is incomplete, incorrect or which may include necessary or suggested revisions, shall be returned to the applicant with written comments. The applicant shall review the comments, may adjust and return the sketch plan with a written response to the comments and a summary of all revisions

3.3.4.5 Review and Recommendation by Village Council:

(1) The sketch plan comments from the Administrator and if applicable, comments from Village staff, engineers, attorneys and consultants shall be reviewed by the Village Council and discussed with the applicant

(2) Upon receipt of the Council's review comments, the applicant may proceed with submission of the preliminary plat to the Administrator.

3.3.5 Preliminary Plat Approval

3.3.5.1 Applicability

A subdivision preliminary plat shall be submitted, reviewed and processed as follows:

3.3.5.2 Conference and Site Visit

If a sketch plan was not submitted and no site visit conducted, the Administrator and the Developer shall walk the land to discuss the developer's vision for the site, identify unique

characteristics of the site and how the proposed development / infrastructure will be coordinated with existing development / infrastructure

3.3.5.3 Submission Requirements

- (1) A preliminary plat must be submitted with the appropriate fee and contain the information required in Appendix B and any other requirements set forth in this Ordinance
- (2) Preliminary Plats require submission at least 30 days prior to a Planning and Zoning regular meeting to be considered at the meeting.
- (3) A subdivision preliminary plat may be submitted in phases, provided that no phase is smaller than twenty percent (20%) of the entire area of the subdivision, or two (2) Lots, whichever is larger and provided that the Village Council finds that the infrastructure for the phase can support the phase as an independent unit.

3.3.5.4 Administrator Review:

- (1) The Administrator shall review the preliminary plat for compliance with all design standards and requirements set forth in Appendix B and elsewhere in this Ordinance. The Administrator may review with and request written recommendation for Village staff, engineers, attorneys or other consultants.
- (2) A preliminary plat which is incomplete or incorrect shall be rejected and returned to the applicant with written comments. The applicant shall review the comments, may adjust and return the preliminary plat with a written response to the comments and a summary of all revisions;
- (3) The Administrator shall forward a preliminary plat, meeting all review requirements, to the Planning and Zoning Board together with, (a) any written recommendations of Village staff, engineers, attorneys or other consultants, (b) any written applicant responses and, (c) the written recommendation of the Administrator

3.3.5.5 Review and Action by the Planning and Zoning Board:

The Planning and Zoning Board shall review the preliminary plat considering, (a) the recommendations of the Administrator, (b) any written comments of Village staff engineers, attorneys, consultants, the applicant and, (c) the requirements of this Ordinance. If no changes are requested the Planning and Zoning Board shall forward the preliminary plat to the Village Council with a written report detailing its review and decision.

If changes are requested by the Planning and Zoning Board, the Planning and Zoning Board may return the plat for corrections and resubmission at its next regular meeting or it may, at its discretion, convene prior to the next Regular meeting for a Special Meeting. At this subsequent meeting, the Planning and Zoning Board will review the resubmitted "clean" copy of the plat to make its recommendation to the Village Council. If approved, the plat shall be forwarded to Village Council with its written recommendation and the recommendations and comments of the Administrator, Village staff, engineers, attorneys and consultants.

3.3.5.6 Review and Action by Village Council (Amended 11/12/14)

(1) The Village Council shall review the preliminary plat and information received from Planning and Zoning and either approve, conditionally approve or reject the preliminary plat. If the subdivision complies with the requirements of this Ordinance, it must be approved. Further, the conditions that may be imposed should be a type designed to bring the subdivision into compliance with this Ordinance, i.e. they cannot go beyond this Ordinance to establish new requirements.

(2) Approval of the preliminary plat shall authorize the applicant to proceed with obtaining construction plan approval from the Administrator and obtaining construction permits for the necessary improvements indicated on the preliminary plat in preparation for approval of the final plat.

(3) If the Village Council approves a plat with conditions, all conditions, and the reasons for requiring the conditions, shall be stated in the record of approval of the preliminary plat.

(4) If the Village Council rejects the preliminary plat, then the reasons shall be stated in the record of action, along with recommended revisions.

(5) Any proposed change to an approved preliminary plat shall be submitted to the Council. Based upon the extent to which the proposed change is complex or substantial in nature, the Council may choose to (i) refer the proposed change to the Planning and Zoning Board (with or without prior consideration by the Administrator), or (ii) take action upon the requested change (in accordance with subsection (1) of this section) without seeking the recommendation of the Planning and Zoning Board.

3.3.5.7 Expiration of Preliminary Plat (Amended 3/11/15)

(A) A preliminary plat approved by the Village Council shall expire automatically at the end of two years after the date of the approval as follows:

(1) A Development Permit has not been issued by the Planning and Zoning Administrator as provided in Section 3.1.6. above, or

(2) if the use authorized by the preliminary plat and Development Permit has not commenced, and where Subsection (E) below does not apply

(B) A preliminary plat approved by the Village Council shall also expire if as follows:

(1) There are twelve (12) consecutive months of no work ending on or after twenty-four (24) months following the preliminary plat approval date, or

(2) thereafter, at the end of any period of twelve (12) consecutive months of no work.:

(C) Failure to begin construction of the improvements as provided in Subsection (A) above or ceasing work as provided in Subsection (B) above shall automatically void the undeveloped portions of the subdivision plat unless the Village Council finds the provisions of the following Subsection (D) are met:

(D) **EXTENSIONS:** The Village Council may grant a single one-year extension of a preliminary plat if all of the following have been met:

- (1) A written request for extension has been made to the approving authority at least thirty (30) days before the expiration of the approved preliminary plat; and
- (2) unconstructed portions of the subdivision conform to all ordinances, policies and plans of the Village in effect at the time of the requested extension including:
 - (a) Any provisions of this zoning ordinance governing nonconforming situations or uses, or
 - (b) the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to the LDO.

(E) Except that the preliminary plat shall remain in effect, and Subsections (A) through (D) above do not apply, if ten per cent (10%) or more of the total cost of all permitting, planning, engineering, construction, erection, alteration, excavation, demolition or similar work on a development as authorized by the preliminary plat and Development Permit has been completed on the property.

3.3.6 Required Dedications and Improvements

3.3.6.1 Applicability

The requirements of this Section refer to all subdivisions, both residential and non-residential, unless otherwise noted.

3.3.6.2 Construction Plan Approval Effect

Upon obtaining construction plan approval from the Administrator and any necessary construction permits, the applicant is authorized to proceed with construction of the improvements and completion of any conditions indicated on the approved preliminary plat. Construction shall be in conformance with the requirements of this Ordinance.

3.3.6.3 Street and Public Facilities

The Village shall accept and maintain no street, or other public facility, until and unless a final plat for such subdivision has been approved and recorded in accordance with the requirements set forth in this Chapter.

3.3.6.4 Installation of Dedications / Improvements

All dedications / improvements, shall be installed in accordance with the appropriate standards prior to the approval of the final plat. This applies to a subdivision or the phase of a subdivision which the dedications / improvements serve. These dedications / improvements include but are not limited to the following:

- (1) Land, easements, or fees in lieu thereof, for parks, greenways, recreations, and open space purposes. No subdivision improvements shall be placed on open space unless approved by the Village council.

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- (2) Monuments and markers in conformance with the Standards and Practice for Land Surveying;
- (3) Streets, including dedication of any additional right-of-way necessary to achieve the width required by the subdivision provisions herein, or if applicable, the Village's Thoroughfare Plan or as reasonably required by Village Engineer for all streets adjoining property;
- (4) Right-of-way for highways to which the development is prohibited from having access;
- (5) All rights-of-way adjoining the property in accordance with the requirements set out in State regulations and this Ordinance.
- (6) Stormwater management facilities including dedication thereof to the Village;
- (7) Sidewalks, greenways and paths;
- (8) Public Utilities;
- (9) Street signs and traffic control signs and devices;
- (10) Street lights;
- (11) Landscaped street yards, street trees and landscaped Buffers around the perimeter of the subdivision.
- (12) Comprehensive landscaping plans as it pertains to retention/detention ponds and islands;
- (13) Water service in accordance with Section 4.7;
- (14) Fire Protection as approved by the Fire Marshal

3.3.6.5 Inspection of Improvements

- (1) The developer or sub-divider shall notify the Administrator that all improvements, which will be accepted and maintained by the Village or other body, are ready for inspection.
- (2) Prior to forwarding the final plat to the Village Council for approval consideration or the issuance of any Certificates of Compliance, the Administrator shall inspect all improvements for conformance with the requirements of this Ordinance, approved Construction Plans, and the Approved preliminary plat. As deemed appropriate, the Administrator may review the improvements with and request written comments from Village staff, engineers, attorneys or other consultants.
- (3) If defects or deficiencies are noted, the Administrator shall provide the applicant with a list of repairs needed to bring the improvements into conformity with the approved plans.

(4) If no defects or deficiencies are noted or after corrections have been made, the Administrator shall provide the applicant notice that the final plat is being forwarded to the Village Council.

3.3.6.6 Two (2) Year Improvements Warranty Period

A two (2) year improvements warranty period begins after the Village Council has approved the final plat and the dedication of the improvements is accepted.

3.3.7 Final Plat Approval

3.3.7.1 Applicability

A recorded final plat is required by the Village prior to the issuance of a residential permit.

3.3.7.2 Submission Requirements: (Amended 3/11/15)

Final Plats require submission at least 30 days prior to a Village Council regular meeting to be considered at that meeting.

(A) A final plat must be submitted with the appropriate fee for the complete approved development; or, if an approved phased development, for the phases proposed to be currently developed.

(B) The final plat shall include the information on the preliminary plat and the information, certificates and notes as shown in Appendix B

3.3.7.3 Administrator Review

The Administrator shall review the final plat for compliance. If the Administrator deems the final plat conforms with the approved preliminary plat and the requirements of this ordinance, the final plat shall be forwarded to the Village Council for action.

3.3.7.4 Action by Village Council

(1) The final plat shall be approved by the Village Council if it conforms with the preliminary plat, and the applicant has completed the improvements or made payments in lieu thereof, as indicated on the preliminary plat.

3.3.7.5 Recording of Final Plat

After obtaining approval of the final plat, the Village Clerk shall record with the Moore County Register of Deeds a final plat containing a description of any and all lands and rights-of-way dedicated as part of the approved site plan and a Resolution adopted by the Village Council accepting such dedicated lands and rights-of-way. Such plats and resolutions shall be recorded within thirty (30) days after the date the final plat is approved by the Village Council.

Section 3.4 Site Plan Development Review Process For Non-Single Family Residential Properties

3.4.1 Site Plan Approval Required

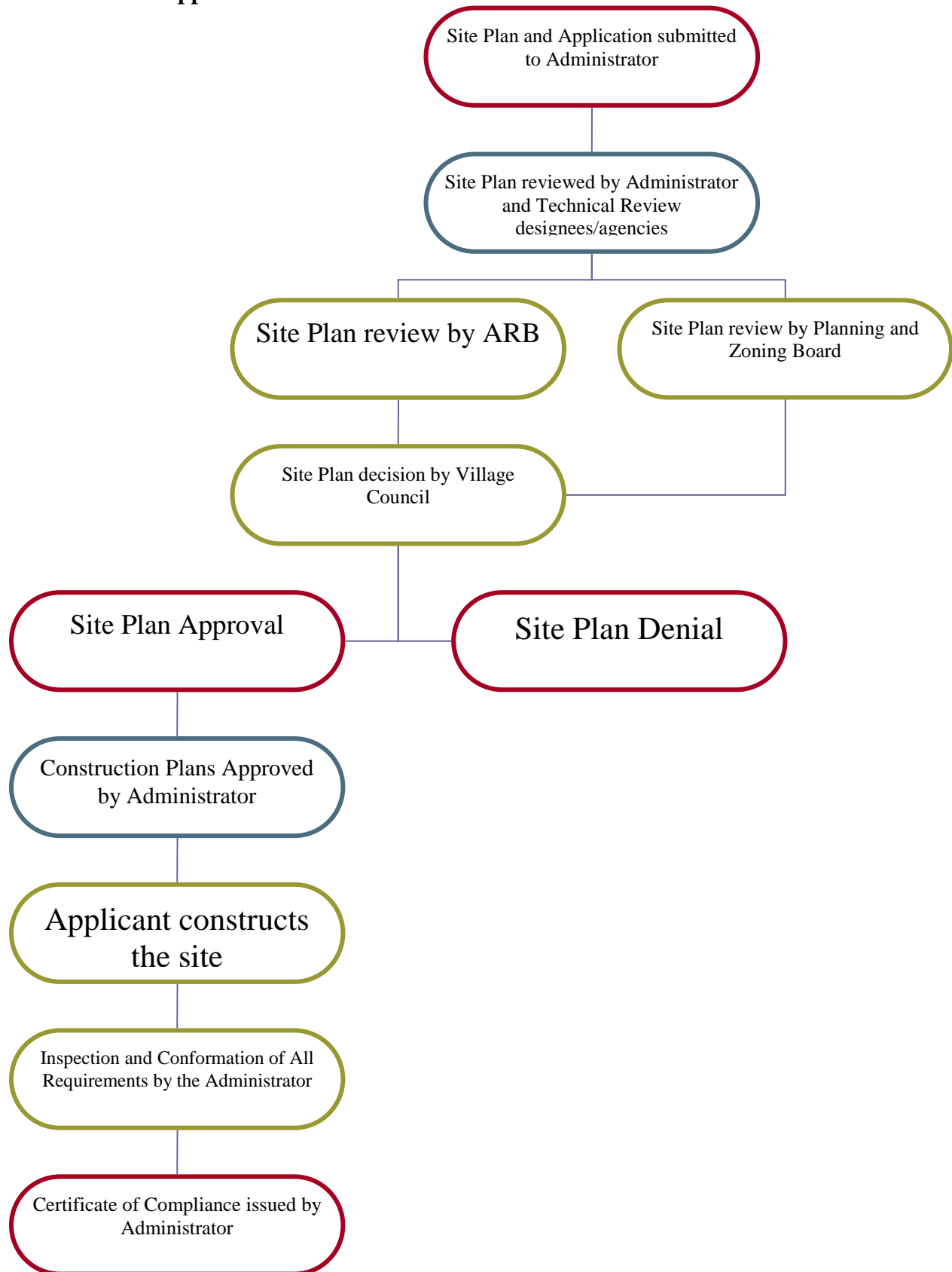
Site Plans for non-single family residential development require submission at least 30 days prior to a Planning and Zoning Board regular meeting to be considered at that meeting.

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A site plan showing the proposed development of the property must be approved by the Village Council in accordance with the procedures and requirements of this Section before a development permit may be issued. All non-residential uses require a site plan approval before development except for:

- A Temporary uses that are regulated by Special Use Requirements in Chapter 6.
- B. A change in use which does not:
 - (1) Require any physical changes to the Building exterior or property;
 - (2) Cause any change in utility infrastructure;
 - (3) Require street or sidewalk construction.

3.4.2 Site Plan Approval Process Flow Chart



3.4.3 Application Requirements for Site Plans

- A. The applicant shall submit a site plan together with the applicable fees in order to obtain approval. The requirements for a site plan application are found in Appendix C.
- B. During the review of the site plan, the Administrator, Village staff, other agencies, the Architectural Review Board, the Planning and Zoning Board, or the Village Council, may require such additional information as may be necessary to review the submitted site plan.

3.4.4 General Design Standards

All site plans that require Village Council approval as well as all site plans for residences and accessory buildings, shall meet the following standards:

- A. The proposed development shall comply with all general and specific development standards for the zoning district in which it is located, as set forth in this Ordinance, and with all other applicable local, State and Federal permits or approvals applicable to the property; (4/12/17)
- B. Traffic circulation and control patterns within the site shall be adequate to provide access to adjoining properties and streets; and to minimize congestion and promote safety.
- C. Walkways shall be located so that pedestrians may walk from store to store or building to building on the site and on adjacent properties;
- D. Where on-site travel lanes and/or driveways connect to adjacent properties and allow traffic movement between adjacent properties, such lanes and driveways shall be constructed in accordance with the requirements of the Village's standards and this Ordinance;
- E. Parking shall not be allowed along travel lanes and driveways and adequate no-parking signs shall be installed along all such travel lanes and driveways;
- F. Water supplies, fire protection facilities and sanitary sewer facilities shall be adequate to serve the type and amount of the total planned development;

3.4.5 Consideration of Site Plans

A. Review by the Administrator, Village staff and other agencies:

- (1) The application and site plan shall be reviewed by the Administrator, Village staff and other agencies for compliance with the standards and requirements set forth in this Ordinance. The comments of the Administrator, Village staff and other agencies shall then be made available to the applicant;
- (2) The applicant shall resubmit the site plan along with a written response to these comments for further review by the Administrator, Village staff and other agencies. The Administrator and the Technical Review designees/agencies shall review the resubmitted plan and then submit comments about the resubmitted site plan to the applicant;

(3) The process continues until the site plan is ready to be presented to the Planning and Zoning Board and the Architectural Review Board for review;

B. Review by the Architectural Review Board (ARB):

(1) The Administrator shall transmit the site plan materials to the Architectural Review Board, along with the written recommendations of the Administrator, Village staff and other agencies;

(2) The ARB shall review the site plan for conformity with the architectural, landscaping and other appearance requirements set forth in this ordinance, the comments and recommendations of the Administrator, Village staff, other agencies and the responses and comments of the applicant, and the requirements of this Ordinance, and formulate a written recommendation to the Village Council for appropriate action on the site plan. Failure of the ARB to make a recommendation to the Village Council within ninety (90) days of the first consideration by the Board shall be considered a favorable recommendation.

C. Review by the Planning and Zoning Board:

(1) The Administrator shall transmit the site plan materials to the Planning and Zoning Board, along with the recommendations of the Administrator, Village staff and other agencies prior to a regularly scheduled meeting of the Board;

(2) The Planning and Zoning Board shall review the site plan, the comments and recommendations of the Administrator, Village staff, other agencies and the responses and comments of the applicant, and the requirements of this Ordinance, and formulate a written recommendation to the Village Council for appropriate action on the site plan. Failure of the Board to make a recommendation to the Village Council within ninety (90) days of the first consideration by the Board shall be considered a favorable recommendation.

D. Action by Village Council on Site Plans: The site plan, the recommendations of the Planning and Zoning Board, the Architectural Review Board, the Administrator, Village staff and other agencies shall then be forwarded to the Village Council for action. The Village Council shall review this information and either approve, approve with conditions, or deny approval of the site plan:

(1) The Village Council may approve a site plan only if it meets the standards and requirements set forth in this Ordinance and provides for the dedications and improvements, required by this Section;

(2) The Village Council may refer the plan back to the Planning and Zoning Board or the Architectural Review Board for additional consideration;

(3) If the Village Council denies approval of a site plan, then the reasons therefore shall be stated in the record of action on the site plan;

(4) The Village Council shall act on the site plan within a reasonable time of receiving the site plan and recommendations from the Planning and Zoning Board and ARB. This shall not apply where the delay of the site plan approval is caused by the applicant's failure to obtain other approvals required for the proposed development, submit required information, or where the applicant consents to such a delay.

3.4.6 Effect and Duration of Site Plan Approval (Amended 3/11/15)

(A) Approval of the site plan and final construction drawings shall authorize the applicant to proceed with any applications for permits and approvals required in order to develop the property in

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conformity with the approved site plan. A permit, certificate, or other approval may be issued by the Village only if it conforms to the approved site plan and final construction drawings;

(1) A Development Permit (issued by the Administrator pursuant to Section 3.1.6 above) and Building Permit may be issued for any Building or structure on the property, and a Building or structure on the property may be occupied, only where the applicant has complied with the approved site plan and Development Permit, and made all dedications and improvements required by this Ordinance. A Certificate of Compliance shall be issued only upon completion of the terms of the Development Permit and the Building Permit. No permanent electrical hookup shall be activated until a Certificate of Compliance has been issued.

(2) An approved site plan shall expire automatically at the end of two years after the date of the approval as follows:

(a) A Development Permit has not been issued by the Planning and Zoning as provided in 3.1.6 above, or

(b) if the use authorized by the site plan and Development Permit has not commenced and Subsection (E) below does not apply.

(B) An approved site plan shall also expire if as follows:

(1) There are twelve (12) consecutive months of no work ending on or after twenty-four (24) months following the site plan approval date, or

(2) thereafter, at the end of any period of twelve (12) consecutive months of no work.

(C) Failure to begin construction of the improvements as provided in Subsection (A) above or ceasing work as provided in Subsection (B) above shall automatically void the undeveloped portions of the site plan unless the Village Council finds the provisions of the following Subsection (D) are met:

(D) EXTENSIONS: The Village Council may grant a single one-year extension of a site plan if all of the following have been met:

(1) A written request for extension has been made to the approving authority at least thirty (30) days before the expiration of the approved site plan; and

(2) unconstructed portions of the site plan conform to all ordinances, policies and plans of the Village in effect at the time of the requested extension including:

(a) Any provisions of this zoning ordinance governing nonconforming situations or uses, or

(b) the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to the LDO.

Section 3.5 Vested Rights (Amended 12/14/16)

3.5.1 Purpose and Authority; Establishment of Vested Right

A. G.S. 160A-385.1 authorizes the establishment of vested rights upon approval of a site specific development plan.

B. In accordance with the procedures listed in Section 3.5.2 below, a vested right shall be deemed established upon approval of a site specific development plan, which includes a site plan, a special use permit, or a preliminary subdivision plat.

C. A vested right obtained pursuant to this section is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such rights.

3.5.2 Procedure

A. Pursuant to G.S. 160A-385.1(c), a statutory vested right may only be established after notice and a public hearing.

B. Special Use Permits. A vested right shall be automatically established upon approval of a special use permit. No separate hearing on the vested right shall be required.

C. Site Plans and Preliminary Plats. Because no notice and public hearing is required to approve a site plan or preliminary subdivision plat, these approvals do not automatically confer vested rights. At the time of application to the Village, the applicant must request that a public hearing be held for the limited purpose of establishing a vested right pursuant to this section. After receiving a request for a vested rights public hearing, the Village shall provide notice of the hearing in the same manner as is required for a special use permit public hearing. The hearing on the vested right request shall be legislative in nature.

3.5.3 Vested Rights Periods

A. Except as otherwise provided in this subsection, a vested right shall remain vested for a period of two (2) years.

B. Multi-Phased Development. As provided in General Statute 160A-385(b1), amendments to the Land Development Ordinance shall not be applicable or enforceable without the written consent of the owner with regard to a multi-phased development. A multi-phased development shall be vested for the entire development with the Land Development Ordinance provisions in place at the time a site specific development plan, such as but not limited to a preliminary plat, is granted for the initial phase of the multi-phased development. A vested right established by this subsection shall remain vested for a period of seven (7) years from the time the site specific development plan is granted for the initial phase of the multi-phased development. For the purposes of this subsection only and as provided in General Statute 160A-385.1(b)(7), a “multi-phased” development is a development containing 100 acres or more that (i) is submitted for site specific development plan approval for construction to occur in more than one phase and (ii) is subject to a master development plan with committed elements, including a requirement to offer land for public use as a condition of its master development plan approval.

C. The Village Council may, in its sole discretion, extend the vested rights period up to five (5) years, upon a finding that such extension is warranted in light of all relevant circumstances,

including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions.

3.5.4 Effect of a Vested Right

A. Once established pursuant to this section, a vested right precludes any zoning action by the Village 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 plan, except:

1. With the written consent of the affected landowner;
2. Upon findings, by ordinance after notice and a public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan;
3. To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Village, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;
4. Upon findings, by ordinance after notice and a hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the Village of the site specific development plan; or
5. Upon the enactment or promulgation of a State or federal law or regulation which precludes development as contemplated in the site specific development plan, in which case the Village may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

B. A right which has been vested as provided in this section shall terminate at the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed.

C. Following approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the Village to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the Village from revoking the original approval for failure to comply with applicable terms and conditions of the approval or this ordinance.

D. The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject

to land-use regulation by the Village, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new regulations shall become effective with respect to property which is subject to a site specific development plan upon the expiration or termination of the vesting rights period provided for in this section.

E. Notwithstanding any provision of this section, the establishment of a vested right shall not preclude, change or impair the authority of the Village to adopt and enforce zoning ordinance provisions governing nonconforming situations or uses.

Section 3.6 Temporary Uses

3.6.1 No use that is classified as a temporary use in the zoning district in which it is located shall be placed or established on the property without first receiving a temporary use development permit from the Administrator.

Section 3.7 Special Uses

3.7.1 Purpose and Applicability; Major Special Uses and Minor Special Uses

The classification of special uses is established to provide for the location of those uses which are generally compatible with the other land uses permitted in a zoning district but which, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Village as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may also call for the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location;

Accordingly, any use designated as a major special use or a minor special use in an individual zoning district shall not be established without the approval of the Village Council or Board of Adjustment in accordance with the procedures and requirements set forth in this Section. Final approval of major special use permits shall be the responsibility of the Village Council. Final approval of minor special uses shall be the responsibility of the Board of Adjustment.

3.7.2 Special Uses Requiring Variances

If the proposed special use involves one or more structures or elements which do not conform to the regulations of the district in which the special use is to be located, then no special use permit shall be granted unless the applicant has corrected such nonconforming elements or the Board of Adjustment has first granted variances with respect to such nonconforming features pursuant to this Ordinance. For minor special uses, a variance application may be processed simultaneously although the decisions shall be separate, with the variance issue determined first.

3.7.3 Application Requirements; Determination of Completeness

The application shall contain or be accompanied by such information and plans as required on the application form. Where the proposed special use will require site plan approval pursuant to this Chapter, the application shall also be accompanied by a site plan meeting the application requirements of this Chapter;

After determining that the application is complete, the Administrator shall complete a review of the site plan and transmit all applications, plans, and other records pertaining to the proposed special use to the appropriate body.

3.7.4 Lapse of Special Use Approval for Failure to Obtain Site Plan Approval

Approvals of special uses shall be automatically conditioned on the approval of the site plan required under this Chapter. Accordingly, the approval of any special use shall lapse and become null and void where the applicant has failed to receive the corresponding site plan approval and the special use permit within 2 years after the date of the approval of the Special Use. The Village Council may grant an additional six (6) months when good cause is shown. The Special Use Permit expires when the Development Permit for the development expires.

3.7.5 Major Special Uses

3.7.5.1 Action on Major Special Uses

- A. Review by the Village Council: The Village Council shall review the application and conduct a quasi-judicial public hearing. Notice of the quasi-judicial public hearing shall be provided and the quasi-judicial public hearing shall be conducted in accordance with this Ordinance. The Village Council shall review the application materials including the proposed site plan, the general purpose and standards set forth in this Section for the approval of special uses, any additional standards set forth in this Ordinance for approval of the proposed use, and all evidence and testimony received by the Village Council at the quasi-judicial public hearing;
- B. Action by the Village Council: At the conclusion of the public hearing, the Village Council shall approve, approve with conditions, deny or take any other action consistent with its usual rules of procedure on the Special Use Permit Application. Any approval or denial of the application shall state the findings of fact that establish whether the proposed use meets or does not meet each of the standards set forth in herein below and all other requirements set forth by this Chapter for the proposed special use. The decision on the application shall be by a simple majority vote of the members of the Village Council. The decision must specify an effective date and before that effective date the decision must be filed with the Administrator.
- C. Conditions Attached to Approval: In approving the major special use, the Village Council may attach such conditions to the approval as it deems necessary to have the proposed use meet the standards set forth for the proposed special use in this Chapter and elsewhere in this Ordinance, and to protect the public health, safety, and general welfare. All such conditions shall be stated in the resolution approving the application;
- D. Nature of Conditions: Such conditions may be stricter than any requirement or limitation stated elsewhere in this Ordinance for the proposed use. Such conditions may include, but are not limited to, those conditions set forth herein below:
 - (1) Limitations on the size, bulk and location of structures;

- (2) Requirements for landscaping, signs and outdoor lighting;
- (3) The provision of adequate site ingress and egress;
- (4) Dedication of rights-of-way for streets or utilities;
- (5) Provision and location of open space and/or active recreational space and facilities;
- (6) Limitations on the duration of the approval and the time period within which the use will be developed;
- (7) Limitations on hours of operation;
- (8) The mitigation of environmental impacts;
- (9) More restrictive set backs and parking facilities.

E. Appeals to Courts: Appeal from the decision of the Village Council in regard to special use permits shall be by petition for certiorari to the Moore County Superior Court. Any such petition to the Superior Court shall be filed with the Court Clerk no later than thirty (30) days after the effect date or passed by Village Council is filed with the Administrator, or after the date a written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Village Council at the public hearing, whichever is later. The copy of the decision shall be delivered to the aggrieved party either by personal service or registered or certified mail, return receipt requested.

3.7.5.2 Standards of Review

The Village Council shall not approve the major special use unless and until it makes the following findings, based on the evidence and testimony received at the quasi-judicial public hearing or otherwise appearing in the record of the case:

- (1) The use is listed among the special uses in the district for which application is made;
- (2) The use shall, in all other respects, conform to the applicable regulations of the district in which it is located;
- (3) The use will not materially endanger the public health, safety and morals if located where proposed and developed according to the plan as proposed;
- (4) The use will not be injurious to the use and enjoyment of the other properties in the immediate vicinity nor substantially diminish or impair property values in the neighborhood.
- (5) The use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.

- (6) The exterior architecture and functional plan of any proposed structure (s) is not at variance with either the exterior architectural appeal and functional plan throughout the Village.
- (7) Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been, or are being provided;
- (8) Adequate measures have been or will be taken to provide site ingress and egress so designed as to minimize traffic congestion.
- (9) The use will not unduly congest or limit the existing use of amenities and recreational facilities

3.7.5.3 Effect of Approval or Denial

- A. Subsequent Permits and Approvals: Subsequent Permits and Approvals: Approval of the application for a major special use by the Village Council authorizes the applicant to proceed with construction permits for the proposed development. The Administrator shall review applications for these permits for compliance with the terms of the special use approval granted by the Village Council. A development permit, certificate, or other approval shall be issued or valid only for work that complies with the terms of the special use approval;
- B. Transferability of Approval: A special use approval is not transferable from one property to another, but may be transferred to a successor-in-interest of the subject property;
- C. Resubmission of Denied Applications: No application for approval of a special use shall be filed with, or accepted by, the Administrator, which is identical or substantially similar to an application, which has been denied by the Village Council within the previous three hundred sixty-five (365) days. This waiting period requirement may be waived in an individual case, for good cause shown, by the affirmative vote of a simple majority of the members of the Village Council.

3.7.5.4 Changes to Terms and Conditions of Approval

Any major changes to the terms or conditions of approval of the major special use shall require separate review and approval by the Village Council. Major changes are changes which materially alter the terms and conditions previously approved by Village Council. Any application for approval of such a change shall be filed, processed, reviewed, and Approved or denied in the manner set forth in this Section for an original application for special use approval. Minor changes shall include scrivener's errors and other changes that do not materially alter the terms and conditions previously approved by the Village Council. Minor changes shall be approved or disapproved by the Administrator.

3.7.6 Minor Special Uses

3.7.6.1 Action on Minor Special Uses

- A. Review by the Board of Adjustment: The Board of Adjustment shall review the application and conduct a quasi-judicial public hearing. Notice of the quasi-judicial public hearing shall be provided and the quasi-judicial public hearing shall be conducted in accordance with the provisions of this Ordinance. The Board of Adjustment shall review the application materials, the general purpose and standards set forth in this Section for the approval of special uses, any additional standards set forth in this Ordinance for approval of the proposed use, and all evidence and testimony received by the Board of Adjustment at the quasi-judicial public hearing;

- B. Action by the Board of Adjustment: At the conclusion of the quasi-judicial public hearing, the Board of Adjustment shall approve, approve with conditions, deny or take any other action consistent with its usual rules of procedure on the Special Use permit application. Any approval or denial of the application shall state the findings of fact showing whether the proposed use meets or does not meet each of the standards set forth below and all other requirements set forth by this Chapter for the proposed special use, and the standards for site plan approval. Approval of the minor special use permit shall require an affirmative vote of a majority of the Board members who are in attendance and qualified to vote on the matter.

- C. Conditions Attached to Approval: In approving the minor special use, the Board of Adjustment may attach such conditions to the approval as it deems necessary to have the proposed use meet the standards set forth for the proposed special use. All such conditions shall be stated in the resolution approving the application;

- D. Nature of Conditions: Such conditions may be stricter than any requirement or limitation stated elsewhere in this Ordinance for the proposed use.

- E. Appeals to Village Council: Appeal from the decision of the Board of Adjustment in regard to special use permits shall be by petition for de novo hearing by the Village Council as set forth hereinabove. Any such petition to the Village Council shall be filed with the Village Clerk no later than thirty (30) days after the effective date the decision of the Board of Adjustment is filed with the Administrator, or after the date a written copy of the decision is delivered to every aggrieved party who has filed a written request for such copy with the Board of Adjustment at the public hearing, whichever is later. The copy of the decision shall be delivered to the aggrieved party either by personal service or registered or certified mail, return receipt requested. Appeal from the decision of the Village Council shall be as provided for hereinabove.

3.7.6.2 Standards of Review

The Board of Adjustment shall not approve the minor special use unless and until it makes the following findings, based on the evidence and testimony received at the public hearing or otherwise appearing in the record of the case:

- A. The use is listed as a minor special use in the district for which application is made;

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- B. The use shall conform to the applicable regulations of the district in which it is located;
- C. The use will be in general conformance with the adopted Land Development Plan;
- D. The use will not materially endanger the public health, safety, or morals if located where proposed and developed according to the plan as proposed;
- E. The use will not be injurious to the use and enjoyment of the other properties in the immediate vicinity nor substantially diminish and impair property values within the neighborhood.
- F. The use will not impede the normal and orderly development of the surrounding property for uses permitted in the district.
- G. The exterior architecture plans are aesthetically consistent within the immediate neighborhood.
- H. Adequate utilities, access roads, drainage, sanitation or other necessary facilities have been, or are being provided;
- I. Adequate measures have been or will be taken to provide site ingress and egress so designed as to minimize the traffic congestion in all streets;
- J. The use will not unduly congest or limit the existing use of amenities and recreational facilities.

3.7.6.3 Effect of Approval or Denial

- A. Subsequent Permits and Approvals: Approval of the application for a minor special use by the Board of Adjustment constitutes approval of the special use and authorizes the applicant to apply for site plan approval, if required, and such other permits or approvals which the Village may require for the proposed development. The Administrator shall review applications for these permits for compliance with the terms of the special use approval granted by the Board of Adjustment. A development permit, certificate, or other approval shall be issued or valid only for work that complies with the terms of the special use approval;
- B. Transferability of Approval: A special use approval is not transferable from one property to another, but may be transferred to a successor-in-interest of the subject property;
- C. Resubmission of Denied Applications: No application for approval of a special use shall be filed with, or accepted by, the Administrator, which is identical or substantially similar to an application, which has been denied by the Board of Adjustment within the previous three hundred sixty-five (365) days. This waiting period requirement may be waived in an individual case, for good cause shown, by the affirmative vote of a simple majority of the members of the Board of Adjustment.

3.7.6.4 Changes to Terms and Conditions of Approval

Any changes to the terms or conditions of approval of the minor special use shall require separate review and approval by the Board of Adjustment. Any application for approval of such a change shall be filed, processed, reviewed, and approved or denied in the manner set forth in this Section for an original application for special use approval.

Section 3.8 Certificate of Compliance

- A. No building or structure or lands shall be occupied prior to the completion of all required inspections, including compliance with the development permit and all conditions of approval;

- B. At the conclusion of all work done pursuant to an approved development permit, the Administrator shall make a final inspection, and if the completed work complies with all applicable laws and with the terms of the permit, the Administrator shall cause a Certificate of Compliance to be issued. Where a building permit has been issued by Moore County, the Building Inspector shall not issue a Certificate of Occupancy until the Administrator has issued a Certificate of Compliance for the structure.

- C. Notwithstanding the other provisions of this section, when climate conditions or other factors beyond the control of a development permit recipient (exclusive of financial hardship), it would be unreasonable to require the permit recipient to comply with all of the requirements of this ordinance and the conditions of the permit prior to being issued a certificate of compliance, the administrator may nevertheless issue a certificate of compliance if the permit recipient provides a surety bond, letter of credit, or other security satisfactory to the administrator to ensure that all of the requirements of this ordinance and the conditions of the permit will be fulfilled within a period, not to exceed three months. Once all conditions which prevented the issuance of a valid Certificate of Compliance have been corrected, the permit recipient shall notify the Administrator and request a final inspection.