

# 1. GENERAL PROVISIONS

## 1.1 TITLE

This section of zoning and subdivision regulations for the Town of Hillsborough shall be referred to as the *Hillsborough Unified Development Ordinance*.

## 1.2 AUTHORITY

### 1.2.1 AUTHORITY

This Ordinance consolidates the Town's zoning and subdivision regulatory authority and is adopted pursuant to the authority contained in Chapter 160A; Chapter 143, Article 21 (Part 6) and Article 33C; and Chapter 136, Article 3A; of the North Carolina General Statutes; and the Town of Hillsborough Charter, as amended.

### 1.2.2 REFERENCES TO NORTH CAROLINA GENERAL STATUTES

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

### 1.2.3 APPLICATION OF ORDINANCE TO STATE-OWNED PROPERTY

Pursuant to N.C. Gen. Stat. § 160A-392, the zoning regulations enacted here under authority of North Carolina General Statutes Chapter 160A, Article 19, Part 3, are applicable to the erection, construction, and use of buildings by the State of North Carolina and its political subdivisions; provided, however, that land owned by the State may not be included in an overlay district or conditional use district enacted under that part without approval of the Council of State.

## 1.3 GENERAL PURPOSE AND INTENT

### 1.3.1 GENERAL PURPOSE

The purpose of this Ordinance is to accomplish compatible development of the land and to guide and regulate the subdivision of land within the planning jurisdiction of the Town of Hillsborough in a manner which will best promote the public health, safety, and general welfare; to provide for sound use of land; to promote efficiency, energy conservation, and economy in development; to make adequate provisions for traffic; to secure safety from fire, flooding, panic, and other hazards; to provide for adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to promote desirable living conditions and the stability of neighborhoods; to protect property against blight and depreciation; to ensure accessibility for handicapped persons; to insure the

proper legal description and documentation of subdivided land; to regulate and restrict the height, number of stories, and size of buildings, the percentage of lots that may be occupied; the size of yards, courts and open spaces; and to encourage the proper management of Hillsborough's natural resources.

### **1.3.2 PROTECTION OF WATER RESOURCES**

It is the expressed purpose of this Ordinance to provide for, in addition to the above, the protection of water resources in Hillsborough, through the use, alone or in combinations, of buffer zones, varying lot sizes, slope restrictions, vegetation, or other equally effective techniques. Innovative techniques on the part of the developer are encouraged where these techniques can be shown to be as effective as the specific requirements of the Ordinance.

## **1.4 APPLICABILITY AND JURISDICTION**

### **1.4.1 GENERAL APPLICABILITY**

The provisions of this Ordinance shall apply to all portions of the Town of Hillsborough and its extraterritorial jurisdictions as defined in an Ordinance adopted and recorded in the Orange County Registry of Deeds.

### **1.4.2 REQUIRED CONFORMANCE TO PROVISIONS**

Except as otherwise specifically provided in this Ordinance, no land or structure shall hereafter be used or occupied, and no excavation, removal of soil, clearing of a site, or placing of fill shall take place on lands contemplated for development, no land shall be subdivided, and no structure, or part thereof, shall be constructed, erected, altered, renovated, or moved, except in compliance with all of the applicable provisions of this Ordinance.

## **1.5 RELATIONSHIP WITH OTHER LAWS**

### **1.5.1 PRIVATE PROPERTY RIGHTS**

Neither this Ordinance, nor any material included herein by reference nor material used for the administration of this Ordinance, are intended to, nor do they take any property, property right, nor property use, nor convert any of these to public use except by due process of law.

### **1.5.2 CONFLICTS WITH OTHER LAWS, ORDINANCES OR REGULATIONS**

**1.5.2.1** Wherever the provisions of this Ordinance are in conflict with the provisions of any other law, ordinance, or regulation, the standards of the more restrictive law, ordinance, or regulations shall govern.

**1.5.2.2** The adoption of this Ordinance shall have the following effect upon violations of the previous ordinance that existed on the effective date of this Ordinance:

- (a) If the circumstances that constituted the violation under the previous ordinance do not constitute a violation under this Ordinance, then no further punitive or corrective action shall be taken with respect to the previous violation.
- (b) If the situation that constituted the violation under the previous ordinance continues to constitute a violation under this Ordinance, then appropriate corrective or punitive action may be taken under this Ordinance.
- (c) If a non-conforming situation or condition was created under the previous ordinance and that non-conforming situation or condition resulted in a violation of that ordinance, and the violation consisted of the failure to correct or terminate the non-conforming situation when required to do so under the previous Ordinance, and under the new Ordinance the situation or condition is still not permissible, then passage of the new Ordinance shall not prevent appropriate enforcement action to require the termination of the non-conforming situation, even if termination of the non-conforming situation would not be required under this Ordinance.

## **1.6 OFFICIAL ZONING MAP**

### **1.6.1 GENERALLY**

The Official Zoning Map designates the location and boundaries of the various base zoning and overlay zoning districts established in this Ordinance. The Official Zoning Map shall be kept on file in the Planning Department and is available for public inspection during normal business hours. The original official version of the map shall be certified by the Planning Director. It may be kept in either hardcopy or digital form. It shall be the final authority as to the status of the current zoning district classification of land in the town, and shall only be amended in accordance with this Ordinance. In accordance with N.C. Gen. Stat. § 160A-22, the Town Clerk shall certify the Official Zoning Map for use as evidence in a court of law.

### **1.6.2 INCORPORATED BY REFERENCE**

The Official Zoning Map, and all the notations thereon, is incorporated herein by reference and made part of this Ordinance.

### **1.6.3 ZONING CLASSIFICATION OF LANDS ADDED TO JURISDICTION**

#### **1.6.3.1 Town Board Determination**

The Town Board shall determine the zoning designation of lands added to the town's jurisdiction through annexation or through extensions of the Town's extraterritorial jurisdiction at the time such lands are added based on the following factors: The land's designation on adopted plans addressing the town's growth and development;

- (a) The land's current land use;
- (b) The existence of a previously-approved site or subdivision plan;
- (c) The character of adjacent lands;

- (d) Current county zoning classifications;
- (e) Landowner requests; and
- (f) Other factors considered relevant at the time of the annexation.

#### **1.6.3.2 Relationship to Voluntary Annexation Requests**

Where an area is proposed to be added to the town's jurisdiction through a landowner's petition for voluntary annexation, the landowner may submit an application for a Zoning Map Amendment (See Section 3.7) requesting a specific zoning district classification along with the annexation petition. In such a case, the public hearing for the Zoning Map Amendment application may be held concurrently with any public hearing required for the annexation.

#### **1.6.3.3 Relationship to Involuntary Annexation**

Where an area is proposed to be added to the town's jurisdiction through the involuntary annexation process, a landowner may submit an application for a Zoning Map Amendment (See Section 3.7) requesting a specific zoning district classification.

### **1.6.4 INTERPRETATION OF OFFICIAL ZONING MAP BOUNDARIES**

#### **1.6.4.1** The Planning Director shall be responsible for interpretations of the Official Zoning Map in accordance with the following requirements:

- (a) Boundaries shown as approximately following a utility line or a street, alley, railroad, or other public access way shall be interpreted as following the centerline of the right-of-way or easement for the utility line or access way.
- (b) Boundaries shown as approximately following a property line shall be interpreted as following the property line as it existed when the boundary was established. If a subsequent minor adjustment (such as from settlement of a boundary dispute or overlap) results in the property line moving ten feet or less, the zoning boundary shall be interpreted as moving with the property line.
- (c) Boundaries shown as approximately following a river, stream, canal, lake, or other watercourse shall be interpreted as following the centerline of the watercourse as it actually exists, and as moving with that centerline to the extent the watercourse moves as a result of natural processes (flooding, erosion, sedimentation, etc.).
- (d) Boundaries shown as approximately following established municipal corporate limits or other political boundaries shall be interpreted as following the corporate limits or boundary as they existed when the boundary was established.
- (e) Boundaries shown parallel to or as extensions of features indicated in this subsection shall be interpreted as such.

#### **1.6.4.2** If the specific location of a depicted boundary cannot be determined from notations on the Official Zoning Map or application of the above standards, it shall be determined by

using the map's scale to determine the boundary's distance from other features shown on the map.

**1.6.4.3** Where the actual locations of existing physical or natural features vary from that shown on the Official Zoning Map, or in other circumstances not covered by this subsection, the Planning Director shall have the authority to interpret the district boundaries. Appeals of the Planning Director's decision shall be reviewed by the Board of Adjustment in accordance with Section 3.11, *Appeal*.

## **1.6.5 CHANGES TO OFFICIAL ZONING MAP**

Changes made in zoning district boundaries, including requests for a rezoning, or other matters portrayed on the Official Zoning Map shall be made in accordance with the provisions of Section 3.7 of this Ordinance. Changes shall be entered on the Official Zoning Map by the Planning Director promptly after the amendment is approved by the Town Board. Where the ordinance enacting a zoning district boundary change contains wording explaining or clarifying the location of the new boundary, the Planning Director may enter on the Official Zoning Map notations reflecting the ordinance wording. The Planning Director shall maintain copies of superseded versions of the Official Zoning Map for historical reference.

## **1.7 TRANSITIONAL PROVISIONS**

### **1.7.1 EFFECTIVE DATE**

This Ordinance shall become effective on March 1, 2011 and repeals and replaces the Hillsborough Zoning Ordinance and Subdivision Regulations, as originally adopted on February 17, 1986 and July 20, 1988, respectively, and subsequently amended.

### **1.7.2 VIOLATIONS CONTINUE**

Subject to the specific provisions of Section 1.5.2.2 above, any violation of the previous zoning regulations or subdivision regulations shall continue to be a violation under this Ordinance and any other applicable ordinances, laws, or statutes. Violations of this Ordinance shall be subject to the penalties set forth in Section 8, *Enforcement*, and any other applicable ordinances, laws, or statutes, unless the development complies with the express terms of this Ordinance or the other ordinances, laws, or statutes.

### **1.7.3 COMPLETE APPLICATIONS**

**1.7.3.1** Any development application submitted and accepted as complete before March 1, 2011, but still pending final action as of that date, shall be reviewed and decided in accordance with the regulations in effect when the application was accepted. No application shall be considered complete unless and until the entire application fee has been paid in accordance with the current fee schedule. To the extent such an application is approved and proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Section 7, *Nonconformities*.

**1.7.3.2** Completed applications shall be processed in good faith and shall comply with any time frames for review, approval, and completion as established in the regulations in effect at the time the application is accepted as complete. If a development is approved, but does not commence and continue within the required time frames, it shall expire and future development of the property shall be subject to the requirements of this Ordinance.

**1.7.3.3** An applicant with a pending complete application accepted before March 1, 2011 may opt to have the proposed development reviewed and decided under the standards of this Ordinance by withdrawing the pending application and submitting a new application in accordance with the standards of this Ordinance.

#### **1.7.4 APPROVED APPLICATIONS**

Any development approval granted before the effective date of this Ordinance shall remain valid until their expiration date. Developments with valid approvals or permits may be carried out in accordance with the terms and conditions of approval and the development standards in effect at the time of approval, provided the permit or approval is valid and has not expired. If the prior approval expires or is revoked (e.g., for failure to comply with the terms and conditions of approval), any subsequent development application for the site shall be subject to the procedures and standards of this Ordinance. To the extent a prior-approved application proposes development that does not comply with this Ordinance, the subsequent development, although permitted, shall be nonconforming and subject to the provisions of Section 7, *Nonconformities*.

#### **1.7.5 NONCONFORMITIES**

If any use, structure, lot, or sign legally existed on March 1, 2011, but does not fully comply with the standards of this Ordinance, then that use, structure, lot, or sign shall be considered nonconforming under this Ordinance and shall be controlled by the provisions of Section 7, *Nonconformities*.

## **1.8 VESTED RIGHTS**

#### **1.8.1 ESTABLISHMENT**

A vested right pursuant to N.C. Gen. Stat. § 160A-385.1 shall be deemed established with respect to real property subject to the Town of Hillsborough zoning jurisdiction upon approval by the permit-issuing authority of a site specific development plan or phased development plan following notice and public hearing as required by this Ordinance. The establishment of a vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable types or intensity of uses, or the application of ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific or phased

development plan development plan upon the expiration or termination of the vested right in accordance with this chapter.

## **1.8.2 SITE-SPECIFIC AND PHASED DEVELOPMENT PLANS**

### **1.8.2.1 Phased Development Plan**

“Phased Development Plan” means a plan of land development which has been submitted to the Town by a landowner for phased development describing with reasonable certainty the type and intensity of use for a specific parcel or parcels of land but with a lesser degree of certainty than any plan determined by the Town to be a Site Specific Development Plan. A “Master Plan” is a type of Phased Development Plan. Approval of a Master Plan pursuant to Section 3.7 of this Ordinance shall trigger a vested right. A Phased Development Plan shall be deemed approved upon the effective date of the permit issuing authority’s action.

### **1.8.2.2 Site Specific Development Plan**

“Site Specific Development Plan” means a plan of land development submitted to the town by a landowner that describes with reasonable certainty the type and intensity of use for a specific parcel or parcels of land. The following types of applications constitute a Site Specific Development Plan:

- (a) A Special Use Permit pursuant to Section 3.8 of this Ordinance
- (b) A Conditional Use Permit pursuant to Section 3.9 of this Ordinance; and

**1.8.2.2.b** To qualify as a Site Specific Development Plan, the plan submitted, shall include the following information: total acreage of the site; approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of all proposed buildings and other structures (including roads and parking facilities); maximum gross floor areas and impervious surface; and the infrastructure on the site, including water, sewer, roads, and pedestrian walkways.

**1.8.2.2.c** The permit-issuing authority may approve a Site Specific Development Plan upon such terms as may be reasonably necessary to protect the public health, safety, and welfare. The specific requirements of other sections of this Ordinance shall be the presumptive minimum standards which applicants must meet; however, the permit issuing authorities may waive or modify those minimum requirements upon (i) the applicant’s specific, written request for a waiver or modification and (ii) the presentation of satisfactory, competent evidence by the applicant demonstrating that the applicant’s proposal otherwise satisfies or meets the need the minimum standard to be waived or modified was intended to address.

## **1.8.3 VESTED RIGHT**

**1.8.3.1** "Vested right" means the right to undertake and complete the development and use of property under terms and conditions of an approved building permit, or an approved site specific or phased development plan, including any amendments thereto. Conditional approval of a site specific or phased development plan shall result in a

vested right, although failure to abide by such terms and conditions will result in forfeiture thereof.

- 1.8.3.2** A variance shall not constitute a site specific or phased development plan, and a site specific or phased development plan with a condition that a variance be obtained shall not confer a vested right unless the necessary variance is obtained. Neither a sketch plan nor any other document which fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property may constitute a site specific or phased development plan.

#### **1.8.4 DURATION AND TERMINATION OF STATUTORY VESTED RIGHTS**

- 1.8.4.1** An approved Site Specific Development Plan which has been vested as provided for in this section shall remain vested for a period of two (2) years from the date of approval. This vesting shall not be extended by any amendments or modifications to a Site Specific Development Plan unless the property owner (or authorized agent) requests an extension in writing, and the permit-issuing authority approves such extension.

- 1.8.4.2** An approved Phased Development Plan which has been vested as provided for in this section shall remain vested for a period of five (5) years. The developer or landowner must submit a site specific development plan for approval with respect to each phase in order to obtain final development approval for such phase. This vesting shall not be extended by any amendments or modifications to a Phased Development Plan unless the property owner (or authorized agent) requests an extension in writing, and permit-issuing authority approves such extension.

- 1.8.4.3** Following approval or conditional approval of a Site Specific or Phased Development Plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals by the Town to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are not inconsistent with said original approval. Nothing in this section shall prohibit the Town from revoking the original approval for failure to comply with applicable terms and conditions of approval or this Ordinance. Upon revocation, the vesting of rights provided for under this section shall be terminated.

- 1.8.4.4** A property owner who claims a common law vested right for a property may request the Planning Director to acknowledge in writing the existence of common law vested rights for the property.

#### **1.8.5 EXCEPTIONS**

Subject to Section 1.8.4 of this Ordinance, a vested right, once established as provided for in this section, precludes any zoning action by the town which would change, alter, prevent, diminish, or otherwise delay the development or use of the property as set forth in an approved site specific development or phased development plan, except:

- (a) With written consent of the affect landowner;



- (b) 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;
- (c) To the extent that the affected landowner receives compensation for all costs, expenses, and other losses incurred by the landowner. Compensation shall not include any diminution in the value of the property which is caused by such action;
- (d) Upon finding, by ordinance after notice and public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the town of the site specific or phased development plan; or
- (e) Upon enactment or promulgation of a state or federal law or regulation which precluded development as contemplated in the site specific development plan, in which case the Town may modify the affected provisions, upon finding that the change in the state or federal law has a fundamental effect on the plan, by ordinance after notice and a hearing.

## **1.9 SEVERABILITY**

### **1.9.1 INTENT**

It is the intent of the Town Board in enacting this Ordinance that, if any portion, clause, or sentence of this Ordinance shall be deemed invalid or unconstitutional, such declaration of invalidity shall not affect the remaining portions of this Ordinance.

It is the legislative intent of the Town Board in adopting this Ordinance that all provisions and sections thereof shall be literally construed to protect and preserve the peace, health, safety, and general welfare of the inhabitants of the Town of Hillsborough and, further, that should any provision, portion, section, or subsection of this Ordinance be held to be construed as affecting the validity of any of the remaining provisions, portions, sections, or subsections it is the intent of the Town Board that this Ordinance shall stand, notwithstanding the invalidity of any provision, or section, or part thereof.