

**ARTICLE 7. LEGISLATIVE PERMITS, ENFORCEMENT, AND APPEALS
(TEXT AMENDMENTS AND
REZONING)**

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7.1. DEVELOPMENT APPROVAL REQUIRED.

- 7.1.1. No person shall commence or proceed with development within the Town’s jurisdiction without first securing any development approvals from the Town. This article includes the regulations for amendments to the text of the Town’s Zoning Ordinance or an amendment to the Official Zoning Map required by a rezoning of property within the Town’s jurisdiction.
- 7.1.2. A development approval shall be in writing and shall contain a provision that the development work done shall comply with all applicable State and local laws.
- 7.1.3. The Town may issue development approvals in print or electronic form. Any development approval issued exclusively in electronic form shall be protected from further editing once issued.
- 7.1.4. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

Statutory Authority – NCGS Chapter 160D-403(a)

7.2. PROCEDURE FOR ORDINANCE TEXT AND ZONING MAP AMENDMENTS (REZONING).

7.2.1. *Purpose.* From time to time, both the text of the Zoning Ordinance and the Zoning Map will need to be updated to reflect new decisions by the elected Board. Both of these types of changes require action by the elected Board to approve. The procedure for securing a text amendment and a rezoning (zoning map amendment) is outlined below.

7.2.2. *Initiation.* The Town Board of Commissioners may change the text regulations and zoning district lines in response to requests initiated by:

- A. the owner(s), or their agent, of property within the area proposed to be changed;
- B. The Board of Commissioners;
- C. The Planning Board; or
- D. The Board of Adjustment.

(Ord. 05/31/1977; 154.100)

7.2.3. *Procedure.* The procedure for an amendment to the text of this Ordinance or to the Zoning Map shall include:

- A. Application. The application for any zoning district change or text amendment shall be filed with the Town Clerk at least twenty-five (25) days prior to the Planning Board meeting at which the application is to be considered. The application shall be on a form approved by the Board of Commissioners and shall contain items including a description of the proposed amendment, the names and contact information of property owners filing the request or affected by the proposed action, and the metes and bounds of the property in question.
- B. Payment of Fee. The Town Board of Commissioners shall set a fee payable to the Town of Fairmont, North Carolina, to cover the necessary administrative costs and advertising of each application for a change or amendment. The set fee shall be posted in the Town Clerk's Office.
- C. Planning Board Review and Recommendation.
 - 1) Upon receipt of a petition (application) for a zoning district change or text amendment, the Town Clerk shall forward the request to the Planning and Zoning Board for its consideration.

All proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to that board, the Board of Commissioners may proceed in its consideration of the amendment without the Planning Board report. The Board of Commissioners is not bound by the recommendations, if any, of the Planning Board.

(Ord. 05/31/1977; 154.102)

- 2) The Planning Board may, at its discretion, hold a separate public hearing from that held by the Board of Commissioners. Public hearings held by the Planning Board need not adhere to the hearing requirements outlined in *Article 7* for public hearings held by the Board of Commissioners.

- 3) The Planning Board shall advise and comment on whether the proposed amendment (text or map) is consistent with any comprehensive plan or land development/use plan that has been adopted, and any other officially adopted plan that is applicable. The Planning Board shall provide a written recommendation to the Board of Commissioners that addresses plan consistency and other matters as deemed appropriate by the Planning Board; however, a comment by the Planning Board that a proposed amendment is inconsistent with the comprehensive plan or land development/use plan shall not preclude consideration or approval of the proposed amendment by the Board of Commissioners.

In making their review and comment, the following policy guidelines shall be followed by the Planning Board concerning zoning amendments and no proposed zoning amendment will receive favorable recommendation unless:

- (i) The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories.
 - (ii) There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group.
 - (iii) There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change. (When a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which applicants state they intend to make of the property involved.)
 - (iv) There is convincing demonstration that the character of the neighborhood will not be materially and adversely affected by any use permitted in the proposed change.
 - (v) The proposed change is in accord with a comprehensive plan and sound planning principles.
- D. *Conflict of Interest.* In accordance with the requirements of NCGS 160D-109, members of Planning Board shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. An appointed board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship.

Statutory Reference - NCGS 160D-109(b)

E. Hearing for Text Amendments. Before adopting, amending, or repealing any ordinance or development regulation authorized by NCGS Chapter 160D, the Town Board of Commissioners shall hold a legislative hearing.

- 1) A notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

(Ord. 05/31/1977; 01/14/1997; 154.100)

- 2) The notice required or authorized by this Section shall:
 - (i) State the date, time, and place of the public hearing;
 - (ii) Summarize the nature and character of the proposed change;
 - (iii) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment; and
 - (iv) State that the full text of the amendment can be obtained from the Town Clerk.

Statutory Authority – NCGS Chapter 160D-601(a)

- 3) In addition to the newspaper notice, notice shall also be made by posting the property concerned with a poster indicating the proposed change and date of hearing when the application is for a change to a district boundary.
- 4) Notice to Military Bases. If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, the governing board of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance.

Statutory Authority – NCGS Chapter 160D-601(b)

F. Decision by Board of Commissioners.

- 1) Before taking such lawful action as it may deem advisable, the Town Board shall consider the planning board's recommendation on each proposed zoning amendment. If no recommendation is received from the planning board within

thirty (30) days after public hearing by the Town Board, the proposed amendment shall be deemed to have been approved by the planning board.

- 2) At the conclusion of a public hearing on the proposed amendment, the Board of Commissioners may proceed to vote on the proposed amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- 3) The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- 4) Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan, land development/use plan, or other officially adopted plan, and explaining why the Board considers the action taken to be reasonable and in the public interest. The statement is not subject to judicial review.
- 5) A majority vote, excluding vacant seats and disqualified members as indicated in subsection (2), shall be sufficient for the purpose of taking any official action excluding vacant seats and disqualified members.
- 6) Adoption by Ordinance Required. A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.

Statutory Authority – NCGS Chapter 160D-601(c)

- F. Hearing for Zoning Map Amendments (Rezoning). Before amending the Zoning Map as authorized by NCGS Chapter 160D, the Town Board of Commissioners shall hold a legislative hearing.

Statutory Authority – NCGS Chapter 160D-602(a)

- 1) Published Notice.
 - (i) Before amending the Zoning Map the governing board shall hold a legislative hearing. Notice of the hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date scheduled for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.
 - (ii) The notice required or authorized by this Section shall:
 - a) State the date, time, and place of the public hearing;
 - b) Summarize the nature and character of the proposed change;

- c) If the proposed amendment involves a change in zoning district classification, reasonably identify the property whose classification would be affected by the amendment; and
- d) State that the full text of the amendment can be obtained from the Town Clerk.

2) Mailed Notice.

- (i) The owner of affected parcels of land and the owners of all parcels of land abutting that parcel of land shall be mailed a notice of the hearing on a proposed zoning map amendment by first class mail at the last addresses listed for such owners on the Town tax abstracts.
- (ii) For the purpose of this section, properties are “abutting” even if separated by a street, railroad, or other transportation corridor.
- (iii) This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing.
- (iv) If the zoning map amendment is being proposed in conjunction with an expansion of municipal extraterritorial planning and development regulation jurisdiction under G.S. 160D-202, a single hearing on the zoning map amendment and the boundary amendment may be held. In this instance the initial notice of the zoning map amendment hearing may be combined with the boundary hearing notice and the combined hearing notice mailed at least 30 days prior to the hearing.

Statutory Authority – NCGS Chapter 160D-602(a)

- 2) Option to Mailed Notice for Large-Scale Zoning Map Amendments. The first class mail notice required shall not be required if the zoning map amendment proposes to change the zoning designation of more than 50 properties, owned by at least 50 different property owners, and the Town elects to use the expanded published notice provided for in this subsection. In this instance, the Town may elect to make the mailed notice or as an alternative, elect to publish notice of the hearing as required by G.S. 160D-6-1,302 provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper that publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent property tax listing for the affected property, shall be notified.

Statutory Authority – NCGS Chapter 160D-602(b)

- 3) Posted Notice. When a zoning map amendment is proposed, the Town shall prominently post a notice of the hearing on the site proposed for the amendment or on an adjacent public street or highway right-of-way.

- (i) The notice shall be posted within the same time period specified for mailed notices of the hearing.
- (ii) When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the Town shall post sufficient notices to provide reasonable notice to interested persons.

Statutory Authority – NCGS Chapter 160D-602(c)

- 4) *Notice to Military Bases.* If the adoption or modification would result in changes to the zoning map or would change or affect the permitted uses of land located five miles or less from the perimeter boundary of a military base, the local government shall provide written notice of the proposed changes by certified mail, return receipt requested, to the commander of the military base not less than 10 days nor more than 25 days before the date fixed for the hearing. If the commander of the military base provides comments or analysis regarding the compatibility of the proposed development regulation or amendment with military operations at the base, the governing board of the local government shall take the comments and analysis into consideration before making a final determination on the ordinance.

Statutory Authority – NCGS Chapter 160D-601(b)

- 5) *Optional Communication Requirements.* When a zoning map amendment is proposed, a zoning regulation may require communication by the person proposing the map amendment to neighboring property owners and residents and may require the person proposing the zoning map amendment to report on any communication with neighboring property owners and residents.

Statutory Authority – NCGS Chapter 160D-602(e)

G. *Decision by Board of Commissioners.*

- 1) At the conclusion of a public hearing on the proposed amendment, the Board of Commissioners may proceed to vote on the proposed amendment, refer it to a committee for further study, or take any other action consistent with its usual rules of procedure.
- 2) The Board of Commissioners is not required to take final action on a proposed amendment within any specific period of time, but it should proceed as expeditiously as practicable on petitions for amendments since inordinate delays can result in the petitioner incurring unnecessary costs.
- 3) Prior to adopting or rejecting any zoning amendment, the Board of Commissioners shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan, land development/use plan, or other officially adopted plan, and explaining why the Board considers the action taken to be reasonable and in the public interest. The statement is not subject to judicial review.

- 4) A majority vote, excluding vacant seats and disqualified members as indicated in subsection (2), shall be sufficient for the purpose of taking any official action excluding vacant seats and disqualified members.
- 5) Conflict of Interest. In accordance with the requirements of NCGS Chapter 160D-109(a) and Section 4-2 of this Ordinance, a member of the Board of Commissioners shall not vote on any legislative decision regarding a development regulation adopted pursuant to this Ordinance where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member. A governing board member shall not vote on any zoning amendment if the landowner of the property subject to a rezoning petition or the applicant for a text amendment is a person with whom the member has a close familial, business, or other associational relationship. This shall include any zoning map or text amendment.

Statutory Authority – NCGS Chapter 160D-109(a)
Cross Reference – Conflict of Interest, Section 4-2.

- 6) Adoption by Ordinance Required. A development regulation adopted pursuant to this Chapter shall be adopted by ordinance.

Statutory Authority – NCGS Chapter 160D-601(c)

- 7.2.4. Withdrawal. The petitioner shall have the right to withdraw, in writing, a zoning amendment petition at any time prior to a final decision by the Board of Commissioners. However, petitions that have been withdrawn shall be reconsidered only as a new petition.

7.3. LEGISLATIVE DECISIONS: CITIZEN COMMENTS.

- 7.3.1. Subject to the limitations of this article, zoning regulations may from time to time be amended, supplemented, changed, modified, or repealed. If any resident or property owner in the local government submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment that has been properly initiated as provided in G.S. 160D-601, to the clerk to the board at least two business days prior to the proposed vote on such change, the clerk to the board shall deliver such written statement to the governing board. If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160D-705 or any other statute, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

Statutory Reference – NCGS 160D-603

7.4. LEGISLATIVE DECISIONS: PLANNING BOARD REVIEW AND COMMENTS.

- 7.4.1. Initial Zoning. In order to exercise zoning powers conferred by NCGS Chapter 160D for the first time, the Town shall create or designate a planning board under the provisions of this Article or of a special act of the General Assembly.

- A. The planning board shall prepare or shall review and comment upon a proposed zoning regulation, including the full text of such regulation and maps showing proposed district boundaries. The planning board may hold public meetings and legislative hearings in the course of preparing the regulation.
- B. Upon completion, the planning board shall make a written recommendation regarding adoption of the regulation to the Town Board. The Town Board shall not hold its required hearing or take action until it has received a recommendation regarding the regulation from the planning board.
- C. Following its required hearing, the Town Board may refer the regulation back to the planning board for any further recommendations that the board may wish to make prior to final action by the governing board in adopting, modifying and adopting, or rejecting the regulation.

Statutory Authority – NCGS Chapter 160D-604(a)

7.4.2. *Zoning Amendments.* After the initial adoption of a proposed amendment to a zoning regulation, all proposed amendments to the zoning regulation or zoning map shall be submitted to the planning board for review and comment. If no written report is received from the planning board within 30 days of referral of the amendment to that board, the governing board may act on the amendment without the planning board report. The governing board is not bound by the recommendations, if any, of the planning board.

Statutory Authority – NCGS Chapter 160D-604(b)

- A. Every proposed amendment, supplement, change, modification or repeal of this Ordinance shall be referred to the Planning Board for its written comments, recommendation, and report. The Planning Board shall consider and make written comments and recommendations to the Board of Commissioners concerning each proposed zoning amendment.
- B. The Planning Board shall follow policy guidelines for all zoning amendments. A proposed zoning amendment will not receive favorable recommendation unless:
 - 1) The proposal will place all property similarly situated in the area in the same category, or in appropriate complementary categories.
 - 2) There is convincing demonstration that all uses permitted under the proposed district classification would be in the general public interest and not merely in the interest of an individual or small group.
 - 3) There is convincing demonstration that all uses permitted under the proposed district classification would be appropriate in the area included in the proposed change. (When a new district designation is assigned, any use permitted in the district is allowable, so long as it meets district requirements, and not merely uses which applicants state that they intend to make of the property involved.)
 - 4) There is convincing demonstration that the character of the neighborhood will not be materially or adversely affected by any use permitted in the proposed change.

5) The proposed change is in accord and consistent with the Land Use Plan, any other officially adopted plan that is applicable, and sound planning principles.

C. The Planning Board shall render its decision on any properly filed petition within thirty (30) days after the introduction of such petition and shall transmit its written comments, recommendation, and report, including the reasons for its determinations, to the Board of Town Commissioners. A comment by the Planning Board that a proposed amendment is inconsistent with the Land Use Plan shall not preclude consideration or approval of the proposed amendment by the Board of Town Commissioners.

7.4.3. Review of Other Ordinances and Actions. Any development regulation other than a zoning regulation that is proposed to be adopted pursuant to NCGS Chapter 160D may be referred to the planning board for review and comment.

A. Any development regulation other than a zoning regulation may provide that future proposed amendments of that ordinance be submitted to the planning board for review and comment.

B. Any other action proposed to be taken pursuant to NCGS Chapter 160D may be referred to the planning board for review and comment.

Statutory Authority – NCGS Chapter 160D-604(c)

7.4.4. Plan Consistency. When conducting a review of proposed zoning text or map amendments pursuant to this section, the planning board shall advise and comment on whether the proposed action is consistent with any Comprehensive Plan that has been adopted and any other officially adopted plan that is applicable.

A. The planning board shall provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board.

B. If a zoning map amendment qualifies as a “large-scale rezoning” under G.S. 160D-6-2(b), the planning board statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

Statutory Authority – NCGS Chapter 160D-604(d)

7.4.5. Separate Board Required. Notwithstanding the authority to assign duties of the planning board to the governing board as provided by this Chapter, the review and comment required by this section shall not be assigned to the governing board and must be performed by a separate board.

Statutory Authority – NCGS Chapter 160D-604(e)

7.5. LEGISLATIVE DECISIONS: GOVERNING BOARD STATEMENT.

7.5.1. Plan Consistency. When adopting or rejecting any zoning text or map amendment, the Town Board shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted Comprehensive Plan.

- A. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the Town Board that at the time of action on the amendment the Town Board was aware of and considered the planning board's recommendations and any relevant portions of an adopted comprehensive plan.
- B. If the amendment is adopted and the action was deemed inconsistent with the adopted plan, the zoning amendment shall have the effect of also amending any future land use map in the approved plan and no additional request or application for a plan amendment shall be required.
- C. A plan amendment and a zoning amendment may be considered concurrently.
- D. The plan consistency statement is not subject to judicial review.
- E. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement describing plan consistency may address the overall rezoning and describe how the analysis and polices in the relevant adopted plans were considered in the action taken.

Statutory Authority – NCGS Chapter 160D-605(a)

7.5.2. Statement of Reasonableness. When adopting or rejecting any petition for a zoning text or map amendment, a brief statement explaining the reasonableness of the proposed rezoning shall be approved by the Board of Commissioners. The statement of reasonableness may consider, among other factors:

- A. The size, physical conditions, and other attributes of any area proposed to be rezoned.
- B. The benefits and detriments to the landowners, the neighbors, and the surrounding community.
- C. The relationship between the current actual and permissible development and the development permissible under the proposed amendment.
- D. Why the action taken is in the public interest.
- E. Any changed conditions warranting the amendment.
- F. If a zoning map amendment qualifies as a "large-scale rezoning" under G.S. 160D-6-2(b), the governing board statement on reasonableness may address the overall rezoning.

Statutory Authority – NCGS Chapter 160D-605(b)

7.5.3. Single Statement Permissible. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.

Statutory Authority – NCGS Chapter 160D-605(c)

7.6. LEGISLATIVE DECISIONS: DURATION.

7.6.1. Duration of Development Approval. Unless a different period is specified by this Ordinance or other specific applicable law, including for a development agreement, a development approval issued pursuant to this Ordinance expires one year after the date of issuance if the work authorized by the development approval has not been substantially commenced. Local development regulations may provide for development approvals of shorter duration for temporary land uses, special events, temporary signs, and similar development. Local development regulations may also provide for development approvals of longer duration for specified types of development approvals. Nothing in this subsection limits any vested rights secured under G.S. 160D-108 or G.S. 160D-108.1.

If after commencement the work or activity is discontinued for a period of 12 months after commencement, the development approval shall immediately expire. The time periods set out in this subsection shall be tolled during the pendency of any appeal. No work or activity authorized by any development approval that has expired shall thereafter be performed until a new development approval has been secured. Nothing in this subsection shall be deemed to limit any vested rights secured under G.S. 160D-108.

Statutory Authority – NCGS Chapter 160D-403(c)

7.7. LEGISLATIVE DECISIONS: REVOCATION.

7.7.1. Revocation. In addition to initiation of enforcement actions under G.S. 160D-404, development approvals may be revoked by the local government issuing the development approval by notifying the holder in writing stating the reason for the revocation. The revocation of a development approval by a staff member may be appealed pursuant to G.S. 160D-405. The conduct of any activity or the use, operation, construction, maintenance or removal of any facility in violation of any of the conditions of a variance shall be grounds for revocation of said variance. The Zoning Officer shall set a date for public hearing before the Board of Adjustment and at such time said Board may revoke the variance, citing the reasons therefor. Notice of such hearing shall be made in the same manner as required for a variance application. The local government shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval. Development approvals shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of any applicable local development regulation or any State law delegated to the local government for enforcement purposes in lieu of the State; or for false statements or misrepresentations made in securing the approval. Any development approval mistakenly issued in violation of an applicable State or local law may also be revoked. Unless otherwise specified by the Board of Adjustment, all activities or facilities permitted by the variance shall cease and/or be removed not later than sixty calendar days following the date of determination to revoke the variance. The determination of the Board of Adjustment shall be deemed final and may not be appealed to the Board of Commissioners.

Statutory Authority – NCGS Chapter 160D-403(f)

7.8. LEGISLATIVE DECISIONS: STATUTE OF LIMITATIONS.

7.8.1. Zoning Map Adoption or Amendments. A cause of action as to the validity of any regulation adopting or amending a zoning map adopted under this Chapter or other applicable law or a development agreement adopted under Article 10 of this Chapter accrues upon adoption of the ordinance and shall be brought within 60 days as provided in G.S. 1-54.1.

Statutory Authority – NCGS Chapter 160D-1405(a)

7.8.2. Text Adoption or Amendment. Except as otherwise provided in subsection (a) of this section, an action challenging the validity of a development regulation adopted under this Chapter or other applicable law shall be brought within one year of the accrual of such action. Such an action accrues when the party bringing such action first has standing to challenge the ordinance. A challenge to an ordinance on the basis of an alleged defect in the adoption process shall be brought within three years after the adoption of the ordinance.

Statutory Authority – NCGS Chapter 160D-1405(b)

7.8.3. Enforcement Defense. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 bars a party in an action involving the enforcement of a development regulation 1403.1 or in an action under G.S. 160D-from raising as a claim or defense in the proceedings the enforceability or the invalidity of the ordinance. Nothing in this section or in G.S. 1-54(10) or G.S. 1-54.1 bars a party who files a timely appeal from an order, requirement, decision, or determination made by an administrative official contending that the party is in violation of a development regulation from raising in the judicial appeal the invalidity of the ordinance as a defense to the order, requirement, decision, or determination. A party in an enforcement action or appeal may not assert the invalidity of the ordinance on the basis of an alleged defect in the adoption process unless the defense is formally raised within three years of the adoption of the challenged ordinance.

Statutory Authority – NCGS Chapter 160D-1405(c)

7.8.4. Termination of Grandfathered Status. When a use constituting a violation of a zoning or unified development ordinance is in existence prior to adoption of the zoning or unified development ordinance creating the violation, and that use is grandfathered and subsequently terminated for any reason, a local government shall bring an enforcement action within 10 years of the date of the termination of the grandfathered status, unless the violation poses an imminent hazard to health or public safety.

Statutory Authority – NCGS Chapter 160D-1405(a)

7.8.5. Quasi-Judicial Decisions. Unless specifically provided otherwise, a petition for review of a quasi-judicial decision shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with G.S. 160D-406(j). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Statutory Authority – NCGS Chapter 160D-1405(e)

7.8.6. Others. Except as provided by this section, the statutes of limitations shall be as provided in Subchapter II of Chapter 1 of the General Statutes.

Statutory Authority – NCGS Chapter 160D-1405(f)

7.9. LEGISLATIVE DECISIONS: JUDICIAL REVIEW AND APPEAL.

7.9.1. *Declaratory Judgments.* Challenges of legislative decisions of Town of Fairmont, including the validity and constitutionality of development regulations adopted pursuant to this, Ordinance, and actions authorized by G.S. 160D-108(h) or (i) and G.S. 160D-1403.1, may be brought pursuant to Article 26 of Chapter 1 of the General Statutes. The governmental unit making the challenged decision shall be named a party to the action.

Statutory Authority – NCGS Chapter 160D-1401

7.10. LEGISLATIVE DECISIONS: DOWN-ZONING.

7.10.1. *Down-Zoning.* No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the local government. For purposes of this section, "down-zoning" means a zoning ordinance that affects an area of land in one of the following ways:

- A. By decreasing the development density of the land to be less dense than was allowed under its previous usage.
- B. By reducing the permitted uses of the land that are specified in a zoning ordinance or land development regulation to fewer uses than were allowed under its previous usage.

Statutory Authority – NCGS Chapter 160D-601(d)

7.11. RECONSIDERATION: ONE-YEAR LIMITATION

Whenever an application requesting an amendment has been acted on and denied by the Planning Board and the Town Board, such application, or one substantially similar, shall not be reconsidered sooner than one year after the previous denial.