

ARTICLE 7 SUBDIVISION

7.1 GENERAL PROVISIONS

7.1.1 Authority and Exemptions

A) **Authority**

This article is adopted under the authority of Chapter 160A, Article 19, Part 2 of the N.C.G.S.

B) **Exemptions**

The following shall be exempt from the regulations established herein:

- 1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations.
- 2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.
- 3) The public acquisition by purchase or condemnation of strips of land for the widening or opening of streets and for public transportation system corridors.
- 4) The division of a parcel of land by a new boundary line coterminous with a public street right-of-way line in circumstances where the street prevents the use of the parcel as one lot, so long as the boundaries of the parcel that are not on or within the street right-of-way are not changed.
- 5) The division of a tract in single ownership, the entire area of which 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 the municipality.
- 6) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.
- 7) Only a plat for recordation for the division of a tract or parcel of land in single ownership is required if all of the following criteria are met:
 - a) The tract or parcel to be divided is not otherwise exempted by Sec. 7.1.1.B.
 - b) No part of the tract or parcel to be divided has been divided under Sec. 7.1.1.B.7 in the 10 years prior to division.
 - c) The entire area of the tract or parcel to be divided is greater than five (5) acres).
 - d) After division, no more than three (3) lots result from the division.
 - e) After division, all resultant lots comply with all of the following:

- (i) Any lot dimension size requirements of this Ordinance.
- (ii) The use of the lots is in conformity with the applicable zoning requirements.
- (iii) A permanent means of ingress and egress is recorded for each lot.

7.1.2 Jurisdiction

The regulations contained herein, as provided in Section 160A-360, N.C.G.S., shall govern each subdivision of land within the corporate limits of the Town as now or hereafter established, and each subdivision of land situated within the extraterritorial jurisdiction of the Town as established by an ordinance and map adopted by the Town Council in accordance with Section 160A-360, N.C.G.S., which are on file in the office of the register of deeds of Wake County and as established by a mutual agreement with the Town of Cary executed on August 6, 1968.

7.1.3 Registration of Article and Plats

In accordance with Section 160A-364, N.C.G.S., the Town shall file a copy of this article with the register of deeds of Wake County upon adoption. The register of deeds shall not file or record a plat of a subdivision of land located within the Town or its extraterritorial jurisdiction that has not been approved in accordance with these provisions, nor shall the clerk of the Superior Court order or direct the recording of a plat if the recording would be repugnant to the provisions or intent of this article. The owner of land shown on a subdivision plat submitted for recording, or the owner's authorized agent, shall sign a statement on the plat stating whether any land shown is within the subdivision regulation jurisdiction of any municipality, and if so, which municipality.

7.1.4 Conformance with Article Prerequisite to Acceptance of Streets, Extension of Services

No street shall be maintained by the Town, nor street dedication accepted for ownership and maintenance, nor building permits issued, nor shall water, sewer, electric or other public facilities or services be extended to or connected with, any subdivision for which a plat is required to be approved unless and until the requirements set forth in this article have been complied with.

7.1.5 Conformance with Official Plans

All subdivisions shall comply with the principles, goals and/or objectives of the 2045 Land Use Map and all other officially adopted plans and policies of the Town. Where a proposed subdivision includes any part of a thoroughfare which has been designated as such upon the officially adopted thoroughfare plan of the Town as provided for by NCGS 136-66.2, 160A-361 and 160A-363, such part of such thoroughfare shall be platted and dedicated by the subdivider in the location shown on the plan and at the width specified in this Article. Similarly, where a proposed subdivision includes any part of a greenway as officially adopted by the Town, such part of such greenway shall be dedicated and platted by the subdivider in the location shown on the plan. Such dedication shall be in accordance with Article 14: *Parks, Recreation, Greenways, and Open Space*. Proposed subdivisions must comply with all requirements of this Ordinance.

7.1.6 Condominium and Townhouse Developments

A) Requirements for Condominium Developments

- 1) Before a declaration establishing a condominium development may be recorded in the office of the Wake County Register of Deeds, as prescribed in the North Carolina Unit Ownership Act, the Site Plan or Master Subdivision Plan shall be approved as provided in this Ordinance. Such declaration and Site Plan or Master Subdivision Plan shall conform to applicable subdivision requirements as set forth in this Article and to the zoning requirements of this Ordinance.
- 2) In addition, the following requirements shall be complied with:
 - a) The declaration shall be a complete legal document prepared strictly in accordance with the North Carolina Unit Ownership Act.
 - b) The plans of the buildings to be attached to the above declaration and recorded shall be prepared in accordance with the North Carolina Unit Ownership Act.
 - c) If any streets or utility easements are to be dedicated for public use and maintenance, a separate plat shall be submitted and recorded in accordance with requirements of this Ordinance.
 - d) The declaration shall contain a statement that common expenses include ad valorem taxes, public assessments, or governmental liens levied on common areas, if any.

B) Requirements for Townhouse Developments

A Site Plan shall show the location of the buildings, streets, alleys, walks, parking areas, recreation areas and facilities, numbered and dimensional residential or office sites. When developments are to have common areas, the Site Plan shall also show the common areas to be conveyed to a nonprofit corporate homeowners' association, the members of which shall be all of the owners of the residential sites within the development. Townhouse and related developments shall comply with the applicable density, setback, and buffer standards of this Ordinance and, in addition, the following requirements shall be complied with:

- 1) *Common areas.* All areas that are shown on the site plan other than public streets and unit sites, shall be shown and designated as common areas, the fee-simple title to which shall be conveyed by the developer to the homeowners association. Such common areas shall not be subsequently subdivided or conveyed by the homeowners' association.
- 2) *Covenants and restrictions.* The developer shall file with the application for the preliminary approval a declaration of covenants and restrictions governing the common areas, if any, as required by this Ordinance, the homeowners' association, and townhouse lots. The restrictions shall contain (but not be limited to) provisions for the following:
 - a) If the plan of development includes common areas or a common maintenance of townhouse lots, a homeowners' association shall be mandatory and shall be organized and in legal existence prior to the sale of any townhouse lots in the development.

Sec. 7.1.7 / Substitution of Fees in Lieu of Public Improvements

- b) If a homeowners' association is organized, membership in the homeowners' association shall be mandatory for each original purchaser and each successive purchaser of a townhouse lot.
- c) The homeowners' association shall be responsible for the payment of premiums for liability insurance, local taxes on common areas, maintenance of recreational and other facilities located on the common areas, and payment of assessments for public and private capital improvements made to or for the benefit of the common areas.
- d) The homeowners' association shall be empowered to levy assessments against the owners of the townhouse lots within the development for the payment of expenditures made by the homeowners' association for the items set forth in subparagraph c) above and any such assessments not paid by the owner against whom such are assessed shall constitute a lien on the townhouse lot of that owner.
- e) Easements over the common areas, if any, for access, ingress from and to public streets and walkways, and easements for enjoyment of the common areas, as well as for parking, shall be granted to each owner of a townhouse lot.
- f) All walls between individual townhouse lots shall conform to the requirements of the North Carolina State Building Ordinance and provision for the maintenance thereof and restoration in the event of destruction or damage shall be established.
- g) A perpetual access easement over the adjoining lot must be recorded for any townhouse lot located closer than five (5) feet from a lot line.

7.1.7 Substitution of Fees in Lieu of Public Improvements

- A) Where, because of topographical features or other conditions peculiar to the site, strict adherence to the provisions of this Article requiring public improvements would cause an unnecessary hardship or provide an unwarranted or unrealistic result, the Town Council may authorize that the reasonable cost of such improvement if made be paid into the Town treasury in lieu of the improvement so long as same can be done without materially altering the intent of this Article; provided, however, the amount of such fee paid in substitution of the public improvement shall reasonably relate to the applicant's fair share of the cost of such public improvements as determined by the Public Works and Transportation Director and the Water Resources Director or some other professional engineer approved by the Town; and provided, further, that the Town Council may in its discretion, use said fee to construct some other public improvement calculated to be of significant benefit to the said property of the applicant either directly or indirectly. Any such substitution authorized as aforesaid shall be recorded in the minutes of the Town Council with a statement of the reasoning justifying the substitution.
- B) In the case of required parks, recreation, and open space facilities, the Parks, Recreation, and Cultural Resources (PRCR) Advisory Committee shall

recommend whether dedication of land is feasible in a given plat and consistent with the Town's development plan, or rather, if fees in lieu should be paid, or if some dedication/fee combination is appropriate. See Article 14: *Parks, Recreation, Greenways, and Open Space*.

- C) The Town shall be authorized to collect from the applicant a reasonable sum representing reimbursement for its administration costs involved in maintenance and administration of the funds created by the substitution.
- D) If making a public improvement otherwise required by this article would require the relocation of all or a portion of a graveyard established prior to August 1, 1995, then a variance, without a fee in-lieu, may be granted (1) to the extent necessary to avoid the relocation of the graveyard or portion thereof, and (2) to the extent that, because of the graveyard, requiring the public improvements would cause an unnecessary hardship or provide an unwarranted or unrealistic result.

7.1.8 Penalties and Remedies for Violation of Article

Any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of the Town, hereafter subdivides such person's land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this article and recorded in the office of the Wake County register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town, through its attorney or other official designated by the Town Council, may enjoin illegal subdivision, transfer or sale of land by action for injunction. Further, violators of this article shall be subject, upon conviction, to fine or imprisonment as provided by Chapter 11 of the Code of Ordinances, Town of Apex, North Carolina.

7.1.9 Inspection Fees as Prescribed

Fees for the inspection of streets, utilities, and related improvements shall be charged according to a schedule adopted and amended from time to time by the Town Council and posted in Development Services. At least one half of the fees must be paid prior to Construction Plan approval. The balance must be paid before Master Subdivision Final Plat for subdivision approval of the first phase.