A. **Agreement and Security Required:** Prior to the filing of an application for final plat approval, the developer shall have installed all of the improvements as shown on the approved preliminary plat; except that, the Town may enter into an agreement whereby the developer shall agree to complete all required improvements, including, but not limited to, the pavement surface course, sidewalks, handicap ramps, curb and gutter, and ~~shade trees~~ and all landscaping as specified on the approved preliminary plat, for that portion of the development to be shown on the final plat, within a reasonable time to be determined in said agreement. Once said agreement is signed by both parties and security herein is provided, and all other improvements have been installed and approved, the final plat may be approved as provided herein.

To secure this agreement, the developer shall provide, subject to the approval of the Town Council (following a review by the Town's consulting engineer) either one or a combination of the following guarantees not exceeding ~~1.5~~ 1.25 times the entire cost of the unfinished work, as well as costs for the repair of previously bonded infrastructure in earlier phases of the development, and including costs for surveying, construction materials testing, and engineering services required to assist the Town in completing the project as provided herein:

1. **Surety Performance Bond(s):** The developer shall obtain a performance bond(s) from a surety bonding company authorized to do business in North Carolina. The bond(s) shall be made payable to the Town of Fletcher and shall be in an amount 1.25 times the entire cost as estimated by the Administrator of installing all required improvements as specified on the approved preliminary plat for that portion of the subdivision to be shown on the final plat. The duration of the bond(s) shall be until such time as the improvements are approved by the Town Council. The Town Council shall not give said approval until it has been satisfied that all required improvements have been installed.

2. **Cash or Equivalent Security:** The developer shall deposit cash or other instrument readily convertible into cash at face value, either with the Town or in escrow with a financial institution designated as an officially depository of the Town. The amount of deposit shall be equal to 1.25 times the cost, as estimated by the Administrator, of installing all required improvements as specified by the preliminary plat for that portion of the subdivision to be shown on the final plat.

   If cash or other instrument is deposited in escrow with a financial institution as provided above, then the developer shall file with the Town Council an arrangement between the financial institution and himself guaranteeing the following that:

   a. Said escrow shall be held in trust until released by the Town Council and may not be used or pledged by the developer in any other matter during the term of the escrow; and,

   b. In the case of a failure on the part of the developer to complete said improvements, the financial institution shall, upon notification by the Town Council and submission by the Town Council to the financial institution of the Administrator's estimate the amount needed to complete the improvements, either pay to the Town the funds estimated

as needed to complete the improvements immediately up to the full balance of the escrow account, or deliver to the Town any other instruments fully endorsed or otherwise made payable in full to the Town.

3. **Letter of Credit:** A satisfactory, irrevocable letter of credit as approved by the Town Attorney and Town Council and deposited with the Town Clerk shall be submitted. When a letter of credit is submitted, the following information shall be contained in said letter:

   a. Shall be entitled "Irrevocable Letter of Credit"

   b. Shall indicate the Town of Fletcher as the sole beneficiary

   c. The amount of the letter of credit (1.25 times the estimated cost) as approved by the Town

   d. Account number and/or credit number that drafts may be drawn on

   e. List of improvements that shall be built that the letter is guaranteeing

   f. Terms in which the Town of Fletcher may make drafts on the account

   g. Expiration date of the letter

B. **Default:** Upon default, meaning failure on the part of the developer to complete the required improvements in a timely manner as spelled out in the agreement in Section 12.8.A, then the surety, or the financial institution holding the escrow account shall, if requested by the Town Council, pay all or any portion of the bond or escrow fund to the Town of Fletcher up to the amount needed to complete the improvements based on the Administrator's estimate. Upon payment, the Town Council in its discretion, may expend such portion of said funds as it deems necessary to complete all or any portion of the required improvements. The Town shall return the surety or escrow account any funds not spent in completing the improvements. **The developer shall also be responsible for any associated legal or attorney fees incurred by the Town**

C. **Release of Guarantee Security:** The Town Council may release a portion of any security posted as the improvements are completed and recommended for approval by the Administrator. Before recommending such release, the Administrator shall consult with the Public Works Director and/or the Town's consulting engineer in order to confirm that all design and construction standards have been met. One or more site inspections shall be conducted by the Town's consulting engineer to verify compliance, and/or the engineer may request documentation of construction materials testing. The developer shall be responsible for the cost of review by the Town-contracted engineer. At such time as the Town Council approves all improvements placed in the subdivision as recommended by the Administrator, all security posted shall be immediately released.

12.10 Acceptance of Infrastructure

A. Upon request by the developer, the Town Council may, by resolution, accept all or part of the completed public streets, public rights-of-way, sidewalks, curbs and gutters, street lights, open space and landscaping.

The request shall include the following:

- Written request from the developer;
- As-Built plans showing all infrastructure to be dedicated;
- Engineer's certification that all infrastructure has been installed in accordance with all applicable Codes and Standards;
- Final Plat showing the rights-of-way and/or easements to be dedicated.

The request shall be reviewed by the Administrator, who shall consult with the Public Works Director and/or the Town's consulting engineer in order to confirm that all design and construction standards have been met. One or more site inspections shall be conducted by the Town's consulting engineer to verify compliance, and/or the engineer may request documentation of construction materials testing. The developer shall be responsible for the cost of review by the Town-contracted engineer.

B. If requested by the developer and at the option of the Town Council, infrastructure may be accepted by the Town for ownership and maintenance in stages as planned by the developer.

C. In accordance with G.S. 160D-806, approval of a final plat shall not be deemed to constitute or effect the acceptance by the Town or public of the dedication of any street or other ground, public utility line, or other public facility shown on the plat.

D. In those instances where a private street is proposed and approved, a written maintenance agreement with acceptable provisions for on-going street maintenance and repair shall be included with the Final Plat for approval.

12.11 Nonconforming Infrastructure

A. If there is a change of use or an expansion to the heated square footage, or to the parking area or loading areas which increase the total area more than 40 percent, of an existing non-residential or multi-family use, the lot shall fully comply with all street improvement requirements of this Chapter along the fronting public streets including, but not limited to turning and traffic storage lanes, sidewalks, bike lanes, and curb and gutter.

B. New developments shall be required to comply with all street improvement requirements of this Chapter along the fronting public streets for the length of their frontage including, but not limited to turning and storage lanes, access management, sidewalks, bikeways, and curb and gutter.

d. To change the use of or expand certain nonconformities.

2. **Membership and Terms of Office**

e. The Zoning Board of Adjustment shall consist of a total of eight (8) members with four (4) members appointed by Council District, one (1) member appointed at-large, and one (1) member residing in the ETJ. In accordance with G.S. 160D-302, the total membership of the Zoning Board of Adjustment shall be proportional to the population of residents of the Town and residents in the ETJ area. Two (2) of the ZBA members shall be designated as alternates that will participate only as needed in instances where a quorum, is not reached by the other six members.

f. Representatives from within the corporate limits shall be appointed by the Fletcher Town Council. Representatives from the ETJ area shall be appointed by the Henderson County Board of Commissioners.

g. The term of office shall be three years, although initial appointments shall be made for one, two and three years so the terms may be staggered. Vacancies occurring for reasons other than expiration of terms shall be filled as they occur for the period of the unexpired term.

h. The Zoning Board of Adjustment shall elect the chair and vice-chair from among its members. They shall each serve a one-year term.

C. Technical Review Committee

The Technical Review Committee (TRC) is an informal committee that shall meet as needed to determine technical compliance with the provisions of this Code. Membership shall be comprised of the Planning Director or designee, the Zoning Administrator or designee, and ~~one volunteer resident, preferably with an engineering, architectural, or similar land use background.~~the Town's consulting engineer. The TRC will consult with the Public Works, Police, or other departments as necessary. TRC review will be primarily oriented toward review of projects where the potential for Town takeover of public streets and infrastructure, as well as in ~~C-1 and~~ "Heart of Fletcher" Overlay/CBD zoning district. This review shall not negate other applicable reviews or approvals required within this code.

14.2 Meetings and General Procedures

All Boards and Commission meeting and hearings shall be open to the public and shall be conducted in accordance with the procedures set forth in these regulations and rules of procedures adopted by the Planning Board and Zoning Board of Adjustments. Such rules of procedure may be approved by the Town Council.

14.3 Staff

15.5 Major Subdivisions

A. **Applicability:** A Major Subdivision, as defined per Article 18, shall be reviewed and approved (or denied) by the Administrator upon review and approval by the Planning Board.

B. **Procedure:**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Sketch Plan (16.2)	Administrator/TRC	Review for Completeness & Code Compliance	n/a
Preliminary Plat (16.3)	Planning Board	Review for Completeness & Code Compliance *(with notification to affected and abutting property owners)*	n/a
Preliminary Plat (16.3)	Planning Board	Approved Preliminary Plat **-or-** Denial and Request for Resubmission	n/a
Final Plat (16.4)	Administrator/TRC	Approved Final Plat	n /a

No grading or infrastructure construction work may commence prior to approval of a Preliminary Plat.

Following approval of the Preliminary Plat, a pre-construction meeting with the Administrator (or designee) and the Town's Consulting Engineer is required prior to the start of construction.

15.6 Additional Procedures for Minor & Major Subdivisions & Planned Residential Developments (PRD's)

A. Preliminary Plats

1. **Notice to Proceed with Construction Activity:** Only after receiving Preliminary Plat approval for a Minor or Major Subdivision or Planned Residential Development (PRD) as prescribed by this Article and other written approval and necessary permits from the appropriate regulating agencies, shall the developer begin grading, soil erosion, and infrastructure construction for the development. For major subdivisions, following approval of the Preliminary Plat, a pre-construction meeting with the Administrator (or designee) and the Town's Consulting Engineer is required prior to the start of construction.

2. **Approval Duration:** Approved Preliminary Plats are valid for one (1) year from the date of approval by the Town of Fletcher. Reasonable and necessary extensions may be granted at the Administrator's sole discretion if a written request by the developer is made to the Administrator forty-five (45) days prior to the one (1) year anniversary of Preliminary Plat approval. Upon expiration of approval prior to final plat approval and recordation, a new application for subdivision will be required in accordance with the process before development can recommence.

3. **Multiple Phases Not Approved:** Approval of a preliminary plat constituting an individual phase of a multi-phase project, which has not been entirely approved, does not constitute approval by the Town of any remaining phases. For approved Preliminary Plats consisting of multiple phases, only the phase that is to be developed for sale immediately shall be submitted for Final Plat approval.

4. **Infrastructure Required within One Year:** All required infrastructure improvements for the preliminary plat shall be in place within 1 year of approval of the preliminary plat unless the improvement has been guaranteed in accordance with Section 12.8. If circumstances beyond the control of the developer do not allow for the commencement of the required work within the 1 year period or the size of the phase is such that one (1) year is insufficient time to commence all required work, then the developer may file a written request for an extension with Administrator no later than forty-five (45) days prior to the one (1) year anniversary of zoning permit approval by the Town as provided above. If infrastructure work is not commenced within one (1) year and/or no extension request is filed with Administrator and approved, zoning permit approval becomes null and void on the day of the one (1) year anniversary and a new application will be required.

B. Final Plats

1. **Review Period:** The developer shall initiate the final subdivision plat approval process by submitting the Final Plat and copies of any required surety or improvement guarantees (as specified in Section 12.8) to the Administrator or other departments as required. The Administrator or designee will then have forty-five (45) calendar days to approve or deny the Final Plat. During the review period, the Administrator will confirm the accuracy of the Final Plat. If

15.8 Conditional Zoning

A. **Purpose:** The purpose of the Conditional Zoning is to provide a procedure for the rezoning of property based upon the recognition that certain types of zoning districts would be inappropriate at particular locations in the absence of special conditions. The Conditional Zoning process allows certain uses to be established in accordance with specific standards, assuring the compatibility of the use with the surrounding properties and the area in general, for each proposed conditionally zoned property. This process affords a degree of certainty in land use decisions not possible when rezoning to a general category allowing many different uses.

B. **General Requirements**

1. Conditional Zoning classification shall only be considered upon the request of the owners and/or their representatives of all the property to be included. A Conditional Zoning may not be initiated by the Town Council, the Planning Board, or Town staff.

2. All standards and requirements of the corresponding zoning district shall be met, except to the extent that the conditions imposed are more restrictive than those standards. The Town Council may impose additional reasonable and appropriate conditions or safeguards to serve the purpose and intent of this Section, and to preserve public welfare, and justice. The Master Plan, a site specific Conditional Zoning Plan, is itself a condition of the Conditional Zoning.

3. Within an approved Conditional Zoning, no use shall be permitted except pursuant to the conditions imposed on the plan submitted for approval.

C. **Procedures**

APPLICATION	REVIEWING AUTHORITY	ACTION TO BE TAKEN	APPEAL PROCESS
Conditional Zoning Application with Sketch Plan (16.2)	Administrator (& TRC for projects involving potential public infrastructure)	Review submittal procedures and requirements Review for completeness & code compliance. Issue Staff Report	n/a
	Planning Board	Review and recommendation of Conditional Zoning application *(with notification to affected and abutting property owners)*	n/a
	Town Council	Public hearing	n/a
	Town Council	Grant Conditional Zoning – or - Denial and Request for Rehearing	Superior Court
Site Plan/Preliminary Plat (16.3)	Administrator (& TRC for projects involving potential public infrastructure)	Review for Completeness & Code Compliance	n/a

1. The processing of a Conditional Zoning shall follow the procedures described in Section 15.7 concerning Rezonings.

2. In addition to the Master Plan, the applicant shall provide the exact land use classifications proposed for the Conditional Zoning. Such use classifications may be selected from any of the uses, whether permitted, by right or conditional, allowed in the general zoning district upon which the Conditional Zoning is based. Uses not otherwise permitted within the general zoning district shall not be permitted within the Conditional Zoning.

3. The Planning Board may recommend and the Town Council may attach reasonable and appropriate conditions including but not limited to the location, nature, hours of operation and extent of the proposed use. The applicant will have a reasonable opportunity to consider and respond to any additional requirements proposed by either the Planning Board or the Town Council prior to final action. The Planning Board recommendation shall include comment on whether the proposed change is consistent with the Land Use Plan.

4. Decisions by the Town Council shall be by majority vote. The Town Council decision shall include comment on whether the proposed change is consistent with the Land Use Plan.

5. An Applicant shall submit a Conditional Zoning Application and a Sketch Plan containing all details as outlined in Section 16.2.

   Upon approval by the Town Council, the applicant will then submit a Site Plan/Preliminary Plat containing all details as outlined in Section 16.3 for review and final approval by the administrator prior to commencement of any grading or infrastructure work. The applicant/land owner must submit written consent to conditions related to a conditional zoning approval to ensure enforceability. A pre-construction meeting with the Administrator (or designee) and the Town's Consulting Engineer shall be required prior to the start of construction

D. **Substantial Changes:** Any substantial change to a Site Specific Plan shall be reviewed by the Planning Board and approved or denied by the Town Council as an amended Conditional Zoning.

E. **Rescission of Conditional Zoning**

1. The applicant must secure a valid building or construction permit(s) within a twelve (12) month period from date of approval of the Conditional Zoning unless otherwise specified.

2. If such project is not complete and a valid building or construction permit is not in place at the end of the twelve (12) month period, the Administrator shall notify the applicant of either such finding. Within sixty (60) days of notification, the Administrator shall make a recommendation concerning the rescission of the conditional district to the Town Council. The Town Council may then rescind the Conditional Zoning, or extend the life of the Conditional Zoning for a specified period of time.