

**COUNTY OF SWAIN  
STATE OF NORTH CAROLINA**

**SUBDIVISION AND LAND DEVELOPMENT ORDINANCE  
OF SWAIN COUNTY, NORTH CAROLINA**

ARTICLE ONE. AUTHORITY, PURPOSE, AND JURISDICTION.

A. Title. This Ordinance shall be known and cited as the Subdivision and Land Development Ordinance of Swain County, North Carolina and may be referred to as the “Subdivision Ordinance”.

B. Authority and Enactment Clause. The Swain County Board of Commissioners ordains and enacts this Ordinance into law pursuant to authority granted in N.C.G.S. Chapter 153A, Article 18.

C. Jurisdiction. This Ordinance shall apply to all real property in Swain County which is located outside the jurisdiction of a municipality established pursuant to N.C.G.S. §160A-360. Municipalities within Swain County may elect to allow this ordinance to be effective within their corporate limits or their extraterritorial jurisdictions.

D. Purpose. The purpose of this Ordinance is:

1. To establish standards and procedures for the subdivision, resubdivision and development of land within the territorial jurisdiction of Swain County.
2. To guide and regulate the development and construction of road systems to provide a safe, convenient, and functional road system for vehicular circulation by property owners, other users of the road systems, and public service personnel.

ARTICLE TWO. DEFINITIONS AND INTERPRETATIONS.

A. Subdivision defined (as defined in N.C.G.S. §153A-335).

1. A subdivision means all divisions of a tract or parcel of land into two or more lots, building sites or other divisions when any one or more of those divisions are created for the purpose of sale or building development (whether immediate or future) and includes all division of land involving the dedication of a new street or a change in existing streets; however, the following is not included within this definition and is not subject to any regulations enacted pursuant to this Ordinance:

- (a) The combination or recombination of portions of previously subdivided and recorded lots if the total number of lots is not increased and the resultant lots are equal to or exceed the standards of Swain County as set out in this Ordinance, if any such standards are created with this Ordinance or any amendments thereto.
- (b) The division of land into parcels greater than 10 acres if no street right-of-way dedication is involved.
- (c) The public acquisition by purchase of strips of land for widening or operating streets or for public transportation system corridors.
- (d) The division of a tract in single ownership the entire area of which is not greater than two acres into not more than three lots, if no street right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of Swain County as set out in this Ordinance.

**B. Other Definitions and meanings.**

Word Interpretations. For the purpose of this ordinance, certain words shall be interpreted as follows:

“County” shall mean Swain County, North Carolina

“County Commissioners” shall mean the Board of Commissioners of Swain County, North Carolina

Definitions. For the purpose of this ordinance, certain words or terms used herein shall be defined as follows:

All-weather surface road. A roadbed that supports routine vehicular traffic and has a minimum thickness of four inches (4”) of compacted crushed rock or stone, including dust.

Cul-de-sac. A road having but one end open to traffic with the other end being permanently terminated and a vehicular turn-around provided.

Cut-Slope. The up-hill side or slope of a road or driveway.

Develop. To convert land to a new purpose so as to use its resources, or to use the land for residential, commercial or industrial purposes.

Developer (Subdivider). Any person, firm, corporation, or duly authorized agent who is engaged in the subdivision and/or development of land.

Easement (Right-of-way). A grant by the property owner of a strip of land for a specified purpose and use by the public, a corporation or persons.

Final Plat. A plat which conforms to the provisions of this Ordinance, the - mapping requirements set forth in G.S. 47-30 and The Manual of Practice for Land Surveying in North Carolina. The final plat shall be prepared in accord with this Ordinance and in such a fashion as to be suitable for recording by the Swain County Register of Deeds.

Fill-Slope. The down-hill side or slope of a road or driveway.

Land Development Proposal. Any plan indicating an owner or applicant's intentions toward the development of a tract of land, i.e., master plan, preliminary plan, research concept.

Lot. A portion of a subdivision or other parcel of land, intended as a unit for transfer of ownership or for development or both and includes the words "plot", "parcel", "tract", or "site"

Lot of record. A lot which has not been recombined or merged that is a part of a subdivision, a plat of which has been recorded in the Office of the Resister of Deeds of Swain County prior to the adoption of this Ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this Ordinance unless the lot has been recombined or merged thereafter.

Plat. A map or plan of a parcel of land which is to be, or has been subdivided and is intended to be a recordable document.

Preliminary Plat. A proposed development plan and subdivision plat prepared for review and consideration prior to preparation of subdivision as set out in this Ordinance.

Road(s) or roadway(s). A road serving as a means of ingress and egress for any and all lots or parcels of land in Swain County that are not otherwise State maintained or public roadways and includes the words "roadway", "street", or "private road"

Right of way. See above definition for Easement.

Subdivider. See above definition for Developer.

Subdivision Administrator. The staff person, Board or Committee that is designated by the Swain County Board of Commissioners to review and make final decisions on preliminary plats and final plats and subdivision plans and for enforcement of this Ordinance.

Subdivision Review Committee. The Subdivision Review Committee which shall comprise of a designee of the Soil and Erosion Control Board, the Swain County Planning Board Chairperson, and a member of the Swain County Board of Commissioners as appointed by the Board of Commissioners.

Wastewater Disposal Systems.

- a. Community Wastewater Disposal System: Any privately owned sewer system serving more than one residence.
- b. Individual Wastewater Disposal System: Any septic tank or ground absorption system serving a single source or connection and approved by the Swain County Health Department.

ARTICLE THREE. PENALTIES.

A. After the effective date of this Ordinance, any person who is the owner and/or agent of the owner of any lands, or if a corporation the person having control of the corporation, subject to the jurisdiction of this Ordinance, who creates a subdivision of land in violation of this Ordinance or transfers or sells land by reference to, exhibition of, or any other use of a survey, plat, drawing or other depiction of the subdivision of lands before a plat has been properly approved under the terms of this Ordinance and recorded in the Office of the Swain County Register of Deeds, shall be guilty of a misdemeanor. Violators of this Ordinance shall be subject, upon conviction, to fine(s) and/or imprisonment as provided by N.C.G.S. §14-4.

NOTE: The description by metes and bounds in the instrument of transfer shall not exempt the transactions from this penalty. Contracting for the sale of land is not subject to this penalty so long as such contract requires compliance with this Ordinance prior to the transfer of title to the land and such requirement is a condition to enforceability of such contract.

B. The violation of any provision of this Ordinance shall subject the offender to a civil penalty in the amount of One Hundred Dollars (\$100.00) to be recovered by the County. Violators shall be issued a written citation which must be paid within ten (10) days.

C. Each day's continuing violation of this Ordinance shall be a separate and distinct offense.

D. Swain County, through its attorney or other official designated by the Board of County Commissioners, may bring suit to enjoin any illegal subdivision, transfer, conveyance or sale of land.

E. In addition to other remedies available to Swain County for violations of this Ordinance, Swain County may institute any appropriate action or proceedings to

prevent the unlawful subdivision of land, to restrain, correct or abate the violation, or to prevent any illegal act or conduct.

F. No building permit or certificate of occupancy shall be issued unless the provisions of this Ordinance are satisfied.

G. For the purpose of this Ordinance, a Deed of Trust shall not be considered a transfer of conveyance of real property.

**ARTICLE FOUR. PROCEDURES FOR PREPARATION, REVIEW AND APPROVAL OF SUBDIVISION PLATS.**

A. Approval of Subdivision Plats Required. Pursuant to the North Carolina General Statute 153A-330, plats shall be prepared and approved pursuant to the provisions of this Ordinance whenever any subdivision of land takes place. A final plat shall be prepared, approved and recorded pursuant to the provisions of this Ordinance whenever any subdivision of land takes place.

B. Approval Prerequisite to Plat Recordation. No land disturbing or construction activity carried out in conjunction with the development shall be commenced until the preliminary plat or plan is approved by the Subdivision Administrator. Further, after the effective date of this Ordinance, no plat of a subdivision of land within Swain County's jurisdiction shall be filed or recorded until it has been submitted to and approved by the Swain County Subdivision Administrator and until this approval is entered in writing on the face of the plat by the Subdivision Administrator.

The Register of Deeds shall not file or record a plat creating a subdivision of land located within Swain County's jurisdiction that has not been approved in accordance with these provisions, nor shall the Clerk of Court order or direct the recording of a plat if the records would be in conflict with this Ordinance.

C. Preliminary Plat Expiration. Approval of a preliminary plat by the Subdivision Administrator is effective for a period not to exceed one (1) year from the date of approval and will thereafter expire and be considered void. A six (6) month extension may be granted by the Subdivision Administrator when reasonable cause is shown and a written request for the extension is made before the original one-year period expires.

D. Plat Approval Procedures. To secure plat approval as required herein, the subdivider shall follow the procedures established in this Article as applicable.

1. Preliminary Plat Submission and Review. The procedure for obtaining preliminary plat approval is as follows:

- (a) The subdivider shall submit to the Swain County Subdivision Administrator two (2) copies of a preliminary plat containing the information required in Section D.3 of this Article Four.
- (b) The Subdivision Administrator may give the following agencies an opportunity to make recommendations concerning an individual subdivision plat before the Subdivision Administrator approves the subdivision plat: Swain County Health Department, NC Department of Transportation as may relate to proposed State streets, State highways, and related drainage systems, Swain County Soil and Erosion Control staff, and other county, state, or federal officials or agencies as necessary.
- (c) The Subdivision Administrator shall review the preliminary plat and subdivision plan for general compliance with the requirements of this Ordinance and any other applicable county, state, or federal regulations, and shall discuss with the subdivider or his agent any changes required and/or deemed advisable in the proposed subdivision of land, or any additional information necessary for approval of the site plan.
- (d) Only after receiving approval of the preliminary plat by the Subdivision Administrator and by required authorities, may the subdivider proceed to construct the proposed road(s) and other improvements in accordance with the requirements of this Ordinance and as shown on the approved preliminary plat.
- (e) Fees. The subdivider shall pay an inspection fee of an amount specified from time-to-time by the Swain County Board of Commissioners and as posted in the Swain County Subdivision Administrator's office. One-half of the fee shall be paid at the time of submission of the preliminary plat. The remainder paid at the time the subdivider submits the final plat for review and approval.
- (f) The Review Office shall approve, approve conditionally, or disapprove the preliminary plat and shall notify the subdivider of such decision within ten (10) working days after the preliminary plat is submitted for review by subdivider.
- (g) The specifications and requirements for the preliminary plat are as set out hereinbelow in Section D.3 of this Article.

2. Final Plan Submission and Review. Upon approval of the preliminary plat by the Subdivision Administrator, the subdivider may proceed with the preparation of the final plan and the installation of, or arrangement for, required improvements such as roads, utilities, septic location and permitting in accordance with the approved preliminary plat and the requirements of this Ordinance. Before approval of the final plat, the subdivider shall have

installed the improvements specified in this Ordinance or guaranteed their installation as provided herein.

(a) The subdivider shall submit five (5) copies of the final plat to the Review Office, with one copy going to the Swain County Health Department (Environmental Health Section) and another going to Swain County Building Inspections Department.

(b) The Subdivision Administrator shall approve or disapprove the final plat and shall notify the subdivider of its decision regarding final approval within fifteen (15) working days after the plat is submitted for review.

(c) The final plat shall be prepared by a professional land surveyor currently licensed in the State of North Carolina by the North Carolina Board of Examiners for Engineers and Surveyors. The final plat must conform to the provisions for plats, subdivisions, and mapping requirements set forth in N.C.G.S. §47-30 as amended, and as set forth in the Standards of Practice for Land Surveying in North Carolina, and as stated herein.

3. Specifications for Preliminary and Final Plats. The preliminary and final plats shall depict or contain the following information. An “\*” indicates that the information is required for final plat approval only. Where “proposed/actual” is noted, the proposed information shall be shown on the preliminary plat and the actual information shall be shown on the final plat. Preliminary and final plats shall be clearly and legibly drawn at a scale of not less than two hundred feet (200’) to one inch (1”).

(a). Title Block

- name and address of owner of record
- name of development
- location (township, county, state)
- date(s) of plan(s)
- graphic scale and written scale
- parcel identification number and/or deed book and page

(b). Roads

- existing and platted roads on abutting properties and in the proposed subdivision
- rights-of-way, location and dimensions (proposed/actual)
- road name(s)

(c). Utilities

- utility and other easements of record on, and abutting to, the development
- transmission lines

- approximate location of natural gas lines
- individual or community wastewater disposal systems on individual lots to be created (proposed/actual)
- water lines, location and size, if community systems are proposed (proposed/actual)
- storm sewer(s), culvert(s), detention pond(s), and other drainage facilities, if any (proposed/actual)
- community well(s) (2 or more connections) location showing 100' radius on the property or recorded easement for encroachment on adjacent property
- private water sources for individual lots to be created (proposed/actual)

(d). Site Calculations

- acreage in total tract to be subdivided
- acreage in phase if different from total acreage
- acreage of each subdivided lot or parcel (\*)

(e). Other Details

- sketch vicinity map showing the relationship between the proposed development and surrounding area
- north arrow
- the location and name of all water courses
- any natural features affecting the site
- the location of the special flood hazard area (floodway and 100-year flood boundaries), if applicable
- the location of any cemetery
- existing buildings or structures, railroads, and bridges on the land to be developed
- approximate lot lines and distances, and unit or lot numbers
- names of adjacent property owners with the recorded deed and plat references
- proposed parks, open spaces, and common areas
- the accurate location and description of all monuments, reference markers and property and lot corners
- variance information as may be required by the variance provisions of this Ordinance (\*)

(f). A written statement from the North Carolina Department of Environment and Natural Resources approving and permitting plans for the community sanitary wastewater disposal system, if applicable (\*).

(g). A copy of the erosion control plan and a written statement from the Swain County Erosion Control Office stating that an erosion

control plan has been submitted and approved for the project, if applicable (\*).

(h). For subdivisions which are not served by municipal sewer, the Subdivision Administrator shall request reports from the Swain County Health Department. These reports must indicate that each and every subdivided lot and structure can be served by a ground absorption wastewater disposal system, or other state approved wastewater disposal system as appropriate to serve the proposed use, and has a potential potable water supply therefore. If a dwelling with an existing septic system is present on any proposed lot then a record of the system must be validated which indicates the system complies with the rules that were in force at the time the system was installed. All existing systems shall have 100% repair (reserve) area. Any non-compliant system must be evaluated by the Health Department and the appropriate permit issued prior to final plat approval being granted.

(i). A written statement from the District Engineer of the Division of Highways of North Carolina Department of Transportation certifying approval of any proposed public road and highway plans, if applicable.

(j). Any other information considered by the Subdivision Administrator to be pertinent to the review of the plan (\*).

(k). A certificate for approval, to read as follows:  
“I hereby certify that this plan was reviewed and approved by the Swain County Subdivision Administrator for recording in the Register of Deeds Office of Swain County.

\_\_\_\_\_

Swain County Subdivision Administrator

\_\_\_\_\_

Date”

4. Phased Development. If a subdivider proposes and/or intends that a subdivision or development will be constructed in phases, the following procedure shall apply:

(a) A written master plan showing the entire proposed subdivision or development and the phases of development, proposed density, proposed type and location of utilities, and proposed development timetable shall be submitted to the Subdivision Administrator for approval.

(b) Each phase of development shall be preceded by submission and approval of a preliminary plat and master plan described in the preceding paragraph. The master plan may be submitted prior to, or

simultaneously with, submission of the preliminary plat for the first phase of development.

(c) As each phase is completed, a final plat must be submitted and approved for that phase.

(d) Approval of the master plan need not be renewed unless significant design changes or density increases are proposed.

G. Resubdivision Procedures. For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed in this Article Three.

## ARTICLE FIVE. STANDARDS FOR SUBDIVISION OF LAND.

### A. General Requirements.

1. Conformity to Existing Maps or Plans. The plat of a subdivision of land shall conform to any official map or plan adopted by the Board of County Commissioners, if and which official map or plan is existing on the date of enactment of this Ordinance, or thereafter adopted.
2. Continuation of Adjoining Road Systems. The proposed road or road layout providing access to and located upon land being subdivided shall be coordinated with the existing road system of the surrounding area. Where possible and feasible, proposed roads shall be the extension of existing roads.
3. Road Names. Proposed roads which are obviously in alignment with existing roads should be given the same name. In assigning new names, duplication shall be avoided and in no case shall the proposed name be phonetically similar to existing names irrespective of the use of a suffix such as road, drive, place, court, etc. All proposed road names and signs shall be approved by the Swain County Addressing Coordinator.
4. Private Roads or Roads. Private roads or roads shall be platted for any subdivision of land and shall conform to the standards set forth in this Ordinance.
5. Lots. Lot size shall be regulated only to the extent required by the Swain County Health Department related to the location and placement of septic systems, repair areas, and potable water.
6. Flood Damage. All subdivision plans shall be consistent with the need to minimize flood damage to improvements and roadways upon the land and shall have public utilities and facilities such as sewer, gas, electrical, and

water systems located and constructed to minimize damage to the utilities from flooding.

7. Subdivision/Development Name. The subdivision or development name, if any, shall be approved by the Subdivision Administrator. There shall be no duplication or direct conflict with an existing subdivision/development name.

8. Lots to Have Access to Road. All lots in a new subdivision of land shall abut on a public or private road.

9. Individual or Community Wastewater Disposal Systems. Before or at the time of Final Plat approval, subdivider must present to the Subdivision Administrator an Improvement Permit for either an individual or community wastewater disposal system issued by the Swain County Health Department for use by each lot being subdivided.

B. Road Development and Construction Standards Pertaining to Subdivisions of Land. Private roads shall meet the following minimum road design standards:

1. Road Right-of-Way Width. All roads providing access from a state or public roadway to and located upon land being subdivided shall have a minimum right-of-way width of forty-five (45) feet.

2. Road Grades. Road grades shall not exceed twenty percent (20%), except as to grade through a switchback as set out below.

(a) Up to 25% Grade Variance. In extreme cases, a variance may be granted by the Subdivision Administrator for those portions of road where the terrain prohibits a lesser grade to attain access to a nearby area. A maximum grade of twenty-five percent (25%) may be allowed by variance if all the following items are submitted to and accepted by the Subdivision Administrator:

(1) A report by a professional engineer, with civil engineering qualifications, or professional land surveyor currently licensed in the State of North Carolina by the North Carolina Board of Examiners for Engineers and Surveyors, stating that there are no reasonable alternative routes to access the nearby area which do not exceed twenty percent (20%) grade.

(2) The design and certification by a professional engineer, currently licensed in the State of North Carolina by the North Carolina Board of Examiners for Engineers and Surveyors, that the roadway with the grade from 20.01% to 25% is stable according to applicable standards, specifications and regulations.

(b) Paving Requirement. Any road regulated by this Ordinance that exceeds a fifteen percent (15%) grade shall meet North Carolina Department of Transportation's minimum construction and paving (bituminous) specifications for the length of road exceeding a fifteen percent (15%) grade, plus an additional one hundred feet (100') on each end of the length exceeding fifteen percent (15%) grade. A professional engineer, with civil engineering qualifications, or registered land surveyor currently licensed in the State of North Carolina by the North Carolina Board of Examiners for Engineers and Surveyors shall identify on the plan(s) the road(s) which have grades exceeding fifteen percent (15%), the point(s) where the fifteen percent (15%) grade begins and terminates, and the additional one hundred foot (100') segments to be paved on each side. Should it be necessary to go beyond property lines to reach a distance of one hundred feet (100'), only that portion of the road within the subject property is required to be paved.

(c) The road grade through a switchback shall not exceed ten percent (10%) from the onset or lower end of the switchback through 100 feet above the switchback. For this purpose, a switchback is defined as a turn in the road exceeding a 90 degree angle by which the road changes its direction of traverse across a slope.

### 3. Minimum All-Weather Surface Road Widths.

(a) Any road providing access to one (1), two (2), or three (3) lots of subdivided land shall be, at least, a twelve (12) feet wide all-weather surface road.

(b) Any road providing access to four (4) through twelve (12) lots of subdivided land shall be, at least, a fourteen (14) feet wide all-weather surface road.

(c) Any road providing access to thirteen (13) or more lots of subdivided land shall be, at least, an eighteen (18) feet wide all-weather surface road.

(d) If any of the roads addressed in (a), (b), or (c) above are one-way roads or driveways, as opposed to two-way, then in the discretion of the Subdivision Administrator, a variance may be granted regarding road width.

### 4. Minimum Road Shoulder and Ditchline Widths.

(a) Any road providing access to one (1), two (2), or three (3) lots of subdivided land shall, in addition to the all-weather surface road width

set out above, be constructed with a shoulder width, including ditchline, of at least two (2) feet on each side of the road.

(b) Any road providing access to four (4) through twelve (12) lots of subdivided land shall, in addition to the all-weather surface road width set out above, be constructed with a shoulder width, including ditchline, of at least three (3) feet on the cut side and at least two (2) feet on the fill side.

(c) Any road providing access to thirteen (13) or more lots of subdivided land shall, in addition to the all-weather surface road width set out above, be constructed with a shoulder width, including ditchline, of at least four (4) feet on the cut side and at least two (2) feet on the fill side.

5. Minimum Curve Radius. Curves in roads shall have a centerline radius of not less than thirty five (35) feet.

6. Minimum Cul-De-Sac Radius. The required turnaround on a cul-de-sac road shall have an unobstructed improved roadway radius not less than 35 feet. Alternatively, a “Y” or a “T” turnaround may be provided, which will allow a vehicle with a wheel base of at least 25 feet to complete a turnaround with a maximum of one backing movement.

7. Pull-Out Zones. For roads constructed to widths of less than eighteen (18) feet, pull-out zones shall be required in intervals of 300 feet to 600 feet depending on the sight distance throughout the entire year and safety reasons as determined by the Subdivision Administrator. Each pull-out zone shall extend from the all-weather surface road described in Section B.3 of this Article Five to make such zone and road a combined minimum width of 18 feet. Each pull-out zone shall be at least forty (40) feet long.

8. Connections with State Road System. If the newly improved road serves lots being subdivided and such road connects to the state road system, a driveway permit authorizing access will be required from the District Engineer, North Carolina Department of Transportation before beginning construction.

9. Will Not Meet NC DOT Requirements. Private roads that meet, but do not exceed, the minimum standards of this Ordinance will not meet North Carolina Department of Transportation minimum subdivision road requirements. As a result, the North Carolina Department of Transportation will not accept these roads without additional improvement(s).

C. Previously Platted and Existing Road Right-of Way Width. Where a right-of-way of less than forty-five feet (45') was recorded or platted before the adoption

of this Ordinance, and a forty-five foot (45') right-of-way is not now obtainable after reasonable efforts are made to obtain such 45' road right of way for the purpose of accessing the land to be subdivided, the following minimum information shall be submitted to the Subdivision Administrator by the subdivider or his assignee:

1. The subdivider or his assignee shall submit a copy of the recorded plat or deed describing and identifying the previously platted and/or existing right-of-way and provide a statement explaining the details of the current efforts made to obtain a 45' right of way; and
2. Evidence that the actual improved all-weather surface road, shoulder, and ditchline widths in the right of way area comply or will comply with the requirements of this Ordinance.

#### ARTICLE SIX. VARIANCES.

A. Variance Standards. The Subdivision Administrator may authorize a variance from these regulations when, in his opinion, after input and recommendations from other agencies concerning a particular issue that the Subdivision Administrator may deem appropriate or advisable and upon the information provided by subdivider, undue hardship may result from strict compliance of the provisions of this Ordinance, if the variance can be made without destroying the intent of this Ordinance. In granting any variance, the Subdivision Administrator shall take into account the following matters:

1. The nature of the proposed subdivision of land;
2. The existing use of land in the vicinity;
3. The existing environmental conditions of the land;
4. The number of persons who will reside upon or use the proposed subdivided land;
5. The probable effect of the proposed subdivision of land upon traffic conditions in the vicinity, safety concerns for the individuals living on or owning land effected, and emergency services workers who may have to enter the subdivided land to provide emergency services;
6. Whether the request for variance is in harmony with the general purpose and intent of this Ordinance and preserves its spirit;
7. Public health, safety and welfare have been reasonably assured;

8. Whether the actions of the subdivider or his agents caused the need for the variance;

9. Whether the conditions and circumstances giving rise to the need for the variance are peculiar to the parcel and not generally characteristic of other lands and parcels in the jurisdiction of this Ordinance;

10. The granting of the variance will not be detrimental or injurious to other property in the territory in which the property is located; and

11. Any other matter that the Subdivision Administrator determines is prudent and necessary to determine whether substantial injustice would result if the variance was granted.

B. Request for Variance. Any request for variance must be made in writing and must state with specificity the factors relating to the request for the variance.

C. Variance Decision. Upon receipt of the request for variance, the Subdivision Administrator shall have twenty (20) calendar days to review the written request and any other materials or documents submitted by the subdivider requesting the variance and render a written decision. In addition to reviewing the materials submitted by the subdivider, the Subdivision Administrator may request input and recommendations from following agencies: Swain County Health Department, North Carolina Department of Transportation as may relate to proposed State streets, State highways, and related drainage systems, Swain County Soil and Erosion Control staff, and other county, state, or federal officials or agencies as deemed necessary.

Any variance authorized by this Ordinance shall be entered in writing by the Subdivision Administrator setting forth the reasons and factors which justify granting the variance and shall mail the writing by first class mail to the subdivider at the address listed on the written request for variance.

D. Variance Information on Final Plat. The reasons of the Subdivision Administrator as set out in his written decision referenced in the preceding paragraph shall be recorded on the final plat in the Swain County Register of Deeds.

E. Variance Not Available for Certain Matters. A variance is not available as a means to a determination that this Ordinance does not apply to a subdivision of property.

ARTICLE SEVEN. APPEALS.

A. Appeal Procedure. Appeals from a decision of the Subdivision Administrator related to either a preliminary or final plat decision and/or variance requests, may be made by the subdivider within fifteen (15) calendar days from the date of the Subdivision Administrator's decisions. To appeal, the subdivider must submit written notice of appeal to the Swain County Manager's Office. The appeal shall be reviewed *de novo* by the Subdivision Review Committee. The notice of appeal must state the specific grounds for the appeal and must provide a mailing address of the subdivider/appellant.

B. Hearing. The County Manager's office shall schedule a hearing for a date no more than fifteen (15) calendar days from the date the notice of appeal is received by the County Manager. The County Manager shall give written notice to the subdivider/appellant of the date, time and location of the hearing by delivering to the appellant the notice by first class mail at the address provided by the appellant on the Notice of Appeal.

C. Conduct of Hearing. The appealing party (appellant) must appear in person at the hearing and may represent themselves or be represented by an attorney. The order of business for each hearing shall be as follows:

1. The chairman, as chosen by the Subdivision Review Committee, or another person as he shall direct, shall give a preliminary statement of the case based upon the information given in the appellant's notice of appeal.
2. At the discretion of the chairman, witnesses may be sworn in.
3. The appellant shall present the arguments and support of his case. appellant's witnesses may be called to testify and factual evidence submitted.
4. The Subdivision Administrator and other witnesses supporting the decision being appealed may be called to testify and factual evidence submitted.
5. All witnesses and parties may be questioned by the Subdivision Review Committee members.
6. The Subdivision Review Committee members may, at its discretion, view the premises and obtain additional facts of matter before making a decision.
7. The Subdivision Review Committee members shall discuss the appeal, develop its conclusions, and render a decision based upon a vote of the majority of the Subdivision Review Committee members.
8. The Subdivision Review Committee shall render a written decision signed by the chairperson of the Subdivision Review Committee affirming, reversing, or modifying the decision of the Subdivision Administrator within thirty (30)

calendar days from the date of the hearing. The decision shall be given to the County Manager and filed in the Swain County public records.

(a) The written decision and the reasons for the decision shall be given to the appellant or appellant's counsel by the County Manager within three (3) calendar days of receipt from the Subdivision Review Committee by first class mail delivery to the address on the initial Notice of Appeal or other address given the Subdivision Review Committee at the hearing.

D. Appeal of Subdivision Review Committee Decision. A decision of the Subdivision Review Committee may be appealed to the Swain County Superior Court by an aggrieved party and must be filed within thirty (30) calendar days from the date a written copy of the Subdivision Review Committee's is mailed by first class mail to the subdivider/appellant at the address provided by the party on their initial Notice of Appeal of the Subdivision Administrator's decision.

#### ARTICLE EIGHT. MISCELLANEOUS.

A. Amendments. The Board of County Commissioners may from time to time amend the terms of this Ordinance, but no amendment shall become effective unless the Board has held a public hearing on the amendment. Notice of hearing shall be published in a newspaper of general circulation in Swain County at least once per week for two (2) successive calendar weeks prior to the hearing in accordance with N.C.G.S. §153A-323.

B. Time Computation. Any time a deadline date referenced within this Ordinance is on a weekend or a legal holiday that is observed by Swain County, the deadline date shall be extended to 5:00 PM on the next business day following the weekend or legal holiday.

C. Validity. Should any section or provision of this Ordinance be decided by a court of competent jurisdiction to be unconstitutional or invalid, that such decision shall not affect the validity of this Ordinance as a whole or any part thereof other than the part declared to be unconstitutional or invalid.

D. Abrogation. It is not intended that this Ordinance repeal, abrogate, annul, impair, or interfere with any existing easements, covenants, deed restrictions, agreements, rules, regulations or permits previously adopted or issued pursuant to law, However, where this Ordinance imposes greater restrictions, the provisions of this Ordinance shall govern.

This Ordinance is effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2008.

Passed and adopted by the Swain County Board of Commissioners on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

SWAIN COUNTY BOARD OF COMMISSIONERS

\_\_\_\_\_  
\_\_\_\_\_, Chairman

CLERK TO THE BOARD:

\_\_\_\_\_  
\_\_\_\_\_