

CHAPTER 152A: SUBDIVISION AND PRE-DEVELOPMENT

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GENERAL PROVISIONS**§ 152A.01 TITLE.**

This chapter shall be known and cited as the Pre-Development and Subdivision Control Ordinance of Haywood County, North Carolina, and may be referred to as the Subdivision Regulations.

§ 152A.02 AUTHORITY AND ENACTMENT.

Pursuant to the authority and provision conferred by the General Statutes of the State of North Carolina, Chapter §153A Article 18, and Chapter 970, 1986 Session Laws as amended by Chapter 282 of the 1993 Session Laws, the Board of County Commissioners of the County of Haywood hereby ordain and enact into law this chapter.

§ 152A.03 JURISDICTION.

This chapter shall apply to every subdivision or development in Haywood County which is located outside the corporate limits and planning and zoning jurisdiction of all municipalities as they exist from time to time.

§ 152A.04 PURPOSE.

The purpose of this chapter shall be:

(A) To guide and regulate the subdivision and development of land in such a manner as to meet the following requirements for orderly and harmonious growth:

(1) Land to be subdivided shall be of such character that it can be used safely without danger to health or peril from fire, flood, erosion, air and/or water pollution, or other menace.

(2) Proper provisions shall be made for drainage, water supply, sewerage, water quality, sedimentation control and other appropriate utilities.

(3) The proposed roads shall provide a safe, convenient and functional system for vehicular circulation and shall be of such width, grade, and location as to accommodate prospective traffic. Roads shall be so arranged as to afford adequate access for emergency vehicles and services.

(4) Land shall be subdivided and developed with due regard to topography so that the natural beauty of the land and vegetation shall be protected.

(B) To provide the County Commissioners, Planning Board, Planning Department, Tax Assessor, Land Records Office, and other local government agencies and officials with information regarding land development taking place in Haywood County. This information will assist county officials in projecting the need for various public programs and facilities, in estimating population growth, and in projecting revenues and expenditures.

§ 152A.05 SUBDIVISION DEFINED.

(A) A subdivision means all divisions of a tract or parcel of land into two or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future) and includes all divisions of land involving the dedication of a new road or a change in existing roads, and includes any unified residential development; however, the following are not included within this definition and are not subject to any regulations enacted pursuant to this chapter:

(1) 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 the county as shown in its subdivision regulations;

(2) The division of land into parcels each of which is greater than 10 acres if no road right-of-way dedication is involved;

(3) The public acquisition by purchase of strips of land for widening or opening roads or highways;

(4) The division of a tract in single ownership the entire area of which is no greater than two acres into not more than three lots, if no road right-of-way dedication is involved and if the resultant lots are equal to or exceed the standards of the county as shown by its subdivision regulations;

(5) The division of land for the purpose of conveying a single lot or parcel to each tenant in common, all of who jointly inherited the land by intestacy or by will;

(6) The division of land into two or more parcels for the purpose of conveying all the resulting parcels or lots, with the exception of parcels retained by the grantor, to a grantee or grantees who are in any degree of lineal kinship or to a grantee or grantees within three degrees of collateral kinship to the grantor, such division to be known as a *FAMILY SUBDIVISION*;

(7) The division of land pursuant to an order of a court of the General Court of Justice;

(8) The division of land for cemetery lots or burial plots;

(9) The division of land into no more than two parcels for the purpose of combining one of the parcels with an adjacent tract of land if the adjacent tract of land is in compliance with all the provisions of the county ordinance adopted pursuant to this act and the combining of the parcel and adjacent tract results in a newly created single 'parcel' for land records purposes; and

(10) The division of a tract in common ownership the entire area which is less than five acres.

§ 152A.06 OTHER DEFINITIONS.

For the purpose of this Ordinance, certain words or terms used herein are defined as follows:

ALL-WEATHER SURFACE ROAD. A roadbed that supports routine vehicular traffic and has a minimum thickness of six inches (6") of compacted crushed rock or stone, including dust.

COMMUNITY SANITARY SEWER SYSTEM. A sanitary sewer system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

COMMUNITY WATER SYSTEM. A water system subject to the rules and regulations of the NC Department of Environment and Natural Resources.

COMMON WELL. A well that is connected to two or more buildings, residences, structures, or lots.

CUL-DE-SAC. Local roads with one (1) end open for vehicular access and the other end terminating in a vehicular turnaround. The length of the cul-de-sac road shall be measured along the center line from its intersection with the center line of the road from which it runs to the center of the cul-de-sac turnaround.

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. Any person, firm, corporation, or duly authorized agent who is engaged in the subdivision and/or development of real estate.

DEVELOPMENT. The improvement of a tract of land involving land-disturbing activity or the improvement of a tract of land for any purposes other than agriculture, forestry, or mining. However, development on land owned or managed by the federal government or the state or its political subdivisions is not included within this definition and is not subject to the provisions of this chapter.

DRIVEWAY. A roadway that begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way, and leads to a building, use, or structure on that lot. A **DRIVEWAY** only serves a single building, residence, use, or structure.

DWELLING UNIT. A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

EASEMENT. A grant by the property owner for the use by the public, a corporation, or person(s) of a strip of land for specified reasons.

FAMILY SUBDIVISION. The division of land into two or more parcels for the purpose of conveying all the resulting parcels or lots, with the exception of parcels retained by the grantor, to a grantee or grantees who are in any degree of lineal kinship or to a grantee or grantees within three degrees of collateral kinship to the grantor, both as described under G.S. §104A-1. By way of example, such degrees of kinship would include children, grandchildren, great-grandchildren, parents, grandparents, brothers and sisters, uncles and aunts, and nieces and nephews.

FINAL PLAT. A complete and exact plan of a development or subdivision prepared for final official review which, if approved, will be submitted to the Haywood County Land Records/GIS Office for approval and then to the Haywood County Register of Deeds for recording.

FLOODWAY. The channel of a river or other watercourse and the adjacent land areas which must be reserved in order to discharge the base flood (100-year flood) without cumulatively increasing the water surface elevation.

IMPROVEMENTS. Streets, roads and utilities.

LAND-DISTURBING ACTIVITY. Any activity as defined in G.S. Section §113A-52(6) that is undertaken on a tract comprising more than one (1) acre, if more than one-half (1/2) aggregated acre is uncovered; however, those land-disturbing activities for which the NC Sedimentation Control Commission is authorized to exercise exclusive regulatory jurisdiction pursuant to G.S. Section §113A-56(a) are not included within this definition and are not subject to any regulations enacted pursuant to this act.

LOT. A portion of a subdivision or any other parcel of land intended as a unit for transfer of ownership or for development, or both. The word "lot" includes "plot", "parcel" or "tract."

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 Register of Deeds of Haywood County prior to adoption of this chapter (152A), or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this chapter (152A) unless the lot has been recombined or merged thereafter.

MAJOR SUBDIVISION. A proposed subdivision where eleven (11) or more lots will result after the subdivision is complete regardless of change in ownership.

MINOR SUBDIVISION. A proposed subdivision of land where four (4) to ten (10) lots will result after the subdivision is complete. One phase of planned development cannot be considered a minor subdivision unless the entire development does not exceed ten (10) lots regardless of change in ownership.

PLAT. Includes the term map, plan, or replat; a map or plan of a parcel of land which is to be or which has been developed or subdivided.

PRELIMINARY PLAT. A proposed development plan or subdivision plat prepared for review and consideration prior to preparation of a final plat or plan.

PRIVATE STREET OR ROAD. An undedicated private right-of-way which affords access to three (3) or more buildings, residences, uses, or structures and requires a subdivision streets disclosure statement in accordance with G.S. §136-102.6.

PUBLIC STREET OR ROAD. A subdivision street or road dedicated to the public to provide ingress and egress to lots or parcels which have been laid out for the purpose of providing home sites, or other purposes, and such street or road shall be constructed according to the minimum construction standards of the Division of Highways, with the intent of requesting that it be added to the state maintained system.

SHARED DRIVEWAY. A roadway that begins at the property line of a lot abutting a public road, private road, easement, or private right-of-way and leads to two buildings, residences, uses, or structures. A **SHARED DRIVEWAY** shall serve no more than two buildings, residences, uses, or structures.

SITE PLAN. A development layout showing the location of all improvements and land disturbing activities proposed as part of the development, which is subject to review prior to initiation of any development activity.

SPECIAL SUBDIVISION. A proposed subdivision of ten (10) acres or less where three (3) or fewer lots on a new or existing private road will result after the subdivision is complete regardless of change of ownership.

SUBDIVIDER. Any person, firm, or corporation who subdivides or develops any land deemed to be a subdivision.

TECHNICAL REVIEW COMMITTEE. A review committee consisting of the County Planner, environmental health specialist supervisor, erosion control specialist, and other appointees.

APPROVAL OF SUBDIVISION PLATS

§ 152A.20 APPROVAL OF SUBDIVISION PLATS AND PLANS REQUIRED.

- (A) Plats shall be prepared and approved pursuant to the provisions of this chapter whenever land is subdivided or otherwise developed. A final plat must be prepared, approved, and recorded pursuant to this chapter whenever a subdivision of land occurs or a plan prepared and approved whenever the development of land takes place.
- (B) No land disturbing or construction activity carried out in conjunction with development shall be commenced until the preliminary plat or plan is approved by the Planning Board of Haywood County or the Haywood County Planning Department. A building permit for work done in conjunction with a development of a lot in a subdivision shall not be issued until the final plat or plan is approved by the Planning Board of Haywood County or the Haywood County Planning Department. The Register of Deeds shall not file or record a plat of a subdivision or development subject to this chapter that has not been approved in accordance with these provisions and approved by the Haywood County Land Records/GIS Office.

- (C) A deed for a subdivision lot may not be recorded in the Register of Deeds until final plat approval. However, contracts to sell or lease lots in subdivisions for which a preliminary plat has been approved are permitted where the Buyer has been delivered a copy of the preliminary plat at the time of such contract; the Buyer has been clearly notified that the final plat has not been approved, that approval is not guaranteed, and that the contract may be terminated if the final plat is materially different from the preliminary plat; and a copy of the final plat is delivered to Buyer prior to closing

§ 152A.21 PROCEDURE FOR REVIEW OF SITE PLANS.

(A) Preliminary Plan Submission and Review. The procedure for obtaining preliminary plan approval is as follows:

(1) The developer shall submit to the Haywood County Planning Department two (2) copies of a preliminary plan containing the requested information required in Section §152A.22 of this chapter.

(2) The Planning Department may request reports from the Haywood County Health Department, the Haywood County Inspections Department, the Haywood County Soil and Water Conservation District, and other county, state, or federal officials or agencies as deemed necessary.

(3) The Planning Department shall review the preliminary plan for general compliance with the requirements of this chapter and any other applicable county, state, or federal regulations, and shall discuss with the developer or his agent any changes deemed advisable in the proposed development, or any additional information necessary for approval of the site plan.

(4) The Planning Department shall approve, approve conditionally, or disapprove the preliminary plan and shall notify the developer of its decision regarding approval within fifteen (15) working days after the preliminary plat is submitted for review.

(B) Final Plan Submission and Review. Upon approval of the preliminary plan by the Planning Department, the developer may proceed with the preparation of the final plan and the installation of or arrangement for required improvements such as roads and utilities in accordance with the approved preliminary plan and the requirements of this chapter. Prior to approval of the final plan, the developer shall have installed the improvements specified in this chapter or guaranteed their installation as provided herein.

(1) The developer shall submit four (4) copies of the final plan to the Planning Department. The three (3) copies shall be prints. A final copy will be presented to the Haywood County Health Department (Environmental Health Section) and the Haywood County Addressing Office.

(2) The Planning Department shall approve or disapprove the final plan and shall notify the developer of its decision regarding final approval within fifteen (15) working days after the plan is submitted for review.

(3) The final plan can be prepared by a registered land surveyor, landscape architect or can be hand drawn by the developer.

(C) At the Planning Director's discretion a preliminary or final plan may be submitted to the Haywood County Planning Board for its review and recommendation.

§ 152A.22 SPECIFICATIONS FOR PRELIMINARY AND FINAL SITE PLANS.

The preliminary and final plans shall depict or contain the following information. An "*" indicates that the information is required for preliminary plan approval only. Where "proposed/actual" is noted, the proposed information shall be shown on the preliminary plan and the actual information shall be shown on the final plan. Preliminary and final plans 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
- sanitary sewers, location and size if community systems are proposed (proposed/actual)
- water lines, location and size, if community systems are proposed (proposed/actual)

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- storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual)
- common well (2 or more connections) location showing 100' radius on the property or recorded easement for encroachment on adjacent property

(D) Site Calculations

- acreage in total tract to be developed
- acreage in phase if different from total acreage

(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, as identified on U.S.G.S. 7.5 minute series (topographic) maps
- any natural features affecting the site
- the location of the special flood hazard area (floodway and 100-year flood boundaries), if applicable
- note all lots or building sites with an elevation of 3,000 feet above sea level or greater
- 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 numbers (*)
- names of adjacent property owners
- the existing uses of the land within the proposed development
- proposed parks or open spaces
- the accurate location and description of all monuments, reference markers and property and lot corners

(F) A written statement from the NC Department of Environment and Natural Resources permitting plans for the community sanitary sewer system, if applicable (*).

(G) A copy of the erosion control plan and a written statement from the Haywood County Erosion Control Office stating that an erosion control plan has been submitted and approved for the project, if applicable (*).

(H) A written statement from the NC Department of Environment and Natural Resources approving and permitting plans for a community water system, if applicable (*).

(I) For developments, which are not served by municipal sewer, the Planning Department shall request reports from the Haywood County Health Department. These reports must indicate that each structure can be served by a ground absorption sewage disposal system, or other state approved sewage disposal system, and has a potential potable water supply. 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 is in compliance 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.

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

(K) Any other information considered by the developer, the Planning Board, and/or Planning Director to be pertinent to the review of the plan (*).

(L) A certificate for approval, to read as follows:

“I hereby certify that this plan was reviewed and approved by the Haywood County Planner for recording in the Register of Deeds Office of Haywood County.

Haywood County Planner

Date”

OR

“I certify that the plan shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Administrator for recording in the Register of Deeds office.

Watershed Administrator

Date

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.”

§ 152A.23 PROCEDURE FOR REVIEW OF SPECIAL, MINOR AND MAJOR SUBDIVISIONS.

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

(1) The subdivider shall submit to the Haywood County Planning Department two (2) copies of a preliminary plat containing the requested information required in Section §152A.25 of this chapter.

(2) The Planning Department may request reports from the Haywood County Health Department, the Haywood County Inspections Department, the Haywood County Soil and Water Conservation District, and other county, state, or federal officials or agencies as deemed necessary.

(3) The Planning Department shall review the preliminary plat for general compliance with the requirements of this chapter and any other applicable county, state, or federal regulations, and shall discuss with the developer or his agent any changes deemed advisable in the proposed development, or any additional information necessary for approval of the special, minor or major subdivision.

(4) The Planning Department shall approve, approve conditionally, or disapprove the preliminary plat and shall notify the developer of its decision regarding approval within fifteen (15) working days after the preliminary plat is submitted for review.

(B) Final Plat Submission and Review. Upon approval of the preliminary plat by the Planning Department, the developer may proceed with the preparation of the final plat and the installation of or arrangement for required improvements such as roads and utilities in accordance with the approved preliminary plat and the requirements of §152A.40 through §152A.41 of this chapter. Prior to approval of the final plat, the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided herein.

(1) The developer shall submit four (4) copies of the final plat to the Planning Department. One (1) copy of the final plat shall be on reproducible permanent material, which will be returned to the developer with the stamp of approval affixed to the said plat, and three (3) copies shall be prints. A final copy will be presented to the Haywood County Health Department (Environmental Health Section) and the Haywood County Addressing Office.

(2) The Planning Department shall approve or disapprove the final plat and shall notify the developer of its decision regarding final approval within fifteen working days after the plat is submitted for review.

(3) The final plat shall be prepared by a professional land surveyor currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors. The final plat shall conform to the provisions for plats, subdivisions, and mapping requirements set forth in G.S. §47-30 as amended, and as set forth in the Standards of Practice for Land Surveying in North Carolina, and in Section §152A.25 of this chapter.

(C) At the Planning Director's discretion a preliminary or final plat may be submitted to the Haywood County Planning Board for its review and consideration.

§ 152A.24 CERTIFICATES FOR SPECIAL, MINOR, AND MAJOR SUBDIVISIONS.

The following signed certificates shall be shown on the original tracing and all copies of the final plat:

(A) Certificate of Ownership and Dedication

I (we) hereby certify that I am (we are) the owner(s) of the property located within the subdivision-regulation jurisdiction of Haywood County as shown and described hereon, and that I (we) hereby adopt this plan of subdivision with my (our) free consent, and dedicate all roads and other sites and easements to public or private use as noted in the Disclosure of Private Roadways, where applicable.

DATE

OWNER(s)

(B) Certification of Private Roads (if applicable)

The roads in this subdivision are private. The property owners are responsible for maintaining and repairing the roads as well as paying the costs thereof.

(C) Certificate of Survey and Accuracy

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

I, _____ certify that this plat was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) (deed description recorded in Book _____, Page _____); that the precision of the survey before adjusting was one (1) part in _____ as calculated by latitudes and departures, and that this map was prepared in accordance with G.S. §47-30, as amended.

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Witness my original signature, license number, and seal this _____ day of _____, 20____.

Official Seal _____
Professional Land Surveyor License Number

(D) Certification of Road Grades and Suitability (not required for Special Subdivision)

STATE OF NORTH CAROLINA
COUNTY OF HAYWOOD

I _____, certify that the newly constructed or proposed road grades and slopes were (calculated by me) (calculated under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) and do not exceed twenty-five percent (25%).

Witness my original signature, license number, and seal this _____ day of _____, 20____.

Official Seal _____
Professional Land Surveyor or License Number
Professional Engineer

(E) Certificate of Approvals

“I hereby certify that this plat was reviewed and approved by the Haywood County Planner for recording in the Register of Deeds Office of Haywood County.

Haywood County Planner Date

“I certify that the plat shown hereon complies with the Watershed Protection Ordinance and is approved by the Watershed Administrator for recording in the Register of Deeds office.

Watershed Administrator Date

NOTICE: This property is located within a Public Water Supply Watershed – development restrictions may apply.”

(F) Review Officer Certificate

STATE OF NORTH CAROLINA
 COUNTY OF HAYWOOD

I, _____, Review Officer of Haywood County, certify that the map or plat to which this certification is affixed meets all statutory requirements for recording for which the review officer has responsibility as provided by law.

 Review Officer

 Date

(G) Such approval shall be **VOID** unless the final plat is offered for filing and recording in the Office of the Register of Deeds of Haywood County within ninety (90) days from the date of approval. If the void plat is resubmitted to the planning office, all applicable fees and guidelines shall apply.

(H) If the Planning Department fails to act on the final plat, in writing, within fifteen (15) working days the subdivider may seek approval of the final plat at the next regularly scheduled meeting of the Planning Board.

§ 152A.25 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 preliminary plat approval only. Preliminary plat approval will not be in writing unless specifically requested by owner or agent. 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") and shall be drawn on a sheet size of Mylar acceptable to the Register of Deeds of Haywood County.

(A) Title Block

- name and address of owner of record
- name of subdivision
- location (township, county, state)
- date(s) of survey(s)
- graphic scale and written scale
- name, address, license number, and seal of professional land surveyor
- 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)
- all minor and major subdivision roads shall be completed and field verified for compliance with this Ordinance and the Haywood County Slope Ordinance prior to the approval of the final plat

(C) Utilities

- utility and other easements of record in and abutting to the subdivision
- transmission lines
- approximate location of natural gas lines
- sanitary sewers, location and size if community systems are proposed (proposed/actual)
- water lines, location and size, if community systems are proposed (proposed/actual)
- storm sewers, culverts, detention ponds, and other drainage facilities, if any (proposed/actual)
- common well (2 or more connections) location showing 100' radius on the property or recorded easement for encroachment on adjacent property

(D) Site Calculations

- acreage in total tract to be subdivided
- total number of lots
- linear feet in roads
- area of each lot in acres

(E) Other Details

- sketch vicinity map showing the relationship between the proposed subdivision and surrounding area
- exact boundaries of the tract, shown with bearings and distances as required by G.S. §47-30, as amended (proposed/actual)
- north arrow
- the location and name of all water courses, as identified on U.S.G.S. 7.5 minute series (topographic) maps
- any natural features affecting the site
- the location of the special flood hazard area (floodway and 100-year flood boundaries), if applicable
- note all lots or building sites with an elevation of 3,000 feet above sea level or greater
- the location of any cemetery
- existing buildings or structures, railroads, and bridges on the land to be subdivided

- approximate lot lines and distances, and lot numbers (*)
- lot lines with bearings and distances and lot numbers
- names of adjacent property owners
- the existing uses of the land within the proposed subdivision
- proposed parks or open spaces
- location of control corners
- the accurate location and description of all monuments, reference markers and property and lot corners

(F) A written statement from the NC Department of Environment and Natural Resources permitting plans for the community sanitary sewer system, if applicable (*).

(G) A written statement from the NC Department of Environment and Natural Resources approving and permitting plans for a community water system, if applicable (*).

(H) A copy of the erosion control plan and a written statement from the Haywood County Erosion Control Office stating that an erosion control plan has been submitted and approved for the project, if applicable (*).

(I) For subdivisions, which are not served by municipal sewer, the Planning Department shall request reports from the Haywood County Health Department. These reports must indicate that each lot can be served by a ground absorption sewage disposal system, or other state approved sewage disposal system, and has a potential potable water supply. (Final Plat Only)

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 is in compliance 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.

(J) A subdivision roads disclosure statement prepared in accordance with G.S. §136-102.6(f) shall be presented with both the preliminary and final plat.

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

(L) Any other information considered by the subdivider, the Planning Board, and/or Planning Director to be pertinent to the review of the plat (*).

(M) All certifications required in Section §152A.24 of this chapter.

§ 152A.26 PHASED DEVELOPMENT.

If a developer proposes that a subdivision or development will be constructed in phases, the following procedure shall apply:

(A) A 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 Planning Department for approval.

(B) Each phase of development shall be preceded by submission and approval of a preliminary plat or plan. The master plan may be submitted prior to or simultaneously with submission of the preliminary plat or plan for the first phase of development.

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

(D) The Haywood County Subdivision Administrator may require revisions to the master plan if proposed road locations change or proposed density changes.

§ 152A.27 RESUBDIVISION PROCEDURES.

For any replatting or resubdivision of land, the same procedures, rules, and regulations shall apply as prescribed in Section §152A.23 (A).

DEVELOPMENT STANDARDS**§ 152A.40 GENERAL REQUIREMENTS.**

(A) Conformity to Existing Maps or Plans. The plat of a subdivision shall conform to any official map or plan adopted by the Board of County Commissioners, existing on the date of enactment of this chapter, or thereafter adopted.

(B) Continuation of Adjoining Road Systems. The proposed road or road layout shall be coordinated with the existing road system of the surrounding area. Where possible, proposed roads shall be the extension of existing roads.

(C) 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 Haywood County Addressing Coordinator.

(D) Private Roads. Private roads may be platted in any subdivision and shall conform to the standards set forth in this chapter. Private roads shall be set out in protective covenants, deeds, or on plats or any combination of those methods, and shall clearly state that the State and/or County will not be obligated to take over or maintain the road.

(E) Lots. Lot size shall be regulated only to the extent required by the Haywood County Health Department.

(F) Flood Damage. All subdivision proposals shall be consistent with the need to minimize flood damage as provided for in the Haywood County Flood Damage Prevention Ordinance. All subdivision proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems shall be located and constructed so as to minimize damage to utilities from flooding.

(G) Subdivision Name. The subdivision name shall be approved by the Planning Department. There shall be no duplication or direct conflict with an existing subdivision name.

§ 152A.41 ROAD AND DESIGN STANDARDS FOR MINOR AND MAJOR SUBDIVISIONS.

The Subdivision Roads Minimum Construction Standards are as set forth in this chapter and as shown in Schedule I.

NOTE: Special Subdivisions as defined in this chapter shall not be required to comply with §152A.41 (Road and Design Standards)

NOTE: The combination or recombination of portions of previously subdivided and recorded lots shall not be required to comply with §152A.41 (Road and Design Standards)

NOTE: Private roads constructed to the minimum standards of this chapter WILL NOT meet NC Department of Transportation minimum subdivision road requirements. As a result, the NC Department of Transportation MAY NOT accept these roads without additional improvement(s).

(A) Road Standards. Subdivision roads may be designated public or private.

(1) Public subdivision roads shall be built to minimum construction standards of the NC Department of Transportation as required by G.S. §136-102.6. The public subdivision road standards are contained in NC Division of Highways Subdivision Roads Minimum Construction Standards.

(2) All minor and major subdivision roads intersecting a state maintained road shall have a stop sign that conforms with NC Department of Transportation specifications, installed by the developer and maintained by the developer or homeowners association. After the North Carolina Department of Transportation accepts the subdivision road(s), the developer or homeowners association shall not be responsible for the maintenance of road name and stop signs.

(3) Private minor and major subdivision roads shall be built to minimum construction standards set forth in Schedule I of this chapter.

(4) No road in an area subject to flooding shall be approved if it is more than two feet (2') below the elevation of a 100-year flood. The Haywood County Planner and/or Planning Board may require, where necessary, profiles and elevations of roads for areas subject to flooding. Fill may be used for roads provided such fill does not increase flood heights. Drainage openings for roads in areas subject to flooding shall be provided and shall be so designed as to not restrict the flow of water and increase flood heights.

(5) Every road shall be designed to accommodate a ten (10) year storm water run-off by natural or artificial means.

(B) Road Design. Private subdivision roads shall meet the following minimum road design standards:

(1) New Road Right-of-Way Width. All subdivision roads shall have a minimum right-of-way of forty-five feet (45') unless the road is completed prior to filing the final plat for approval, then a thirty foot (30') right-of-way along the centerline shall be permitted. **NOTE: NC Department of Transportation requires a fifty foot (50') minimum right-of-way for a dead-end road more than 2,500 feet in length or a loop road more than one (1) mile in length.**

(2) Previously Platted Road Right-of-Way Width. Where a right-of-way less than forty-five feet (45') was recorded or platted prior to the adoption of this chapter and a forty-five foot (45') right-of-way is not now obtainable for the purpose of accessing the subdivision of land for either a minor or major subdivision, the following minimum standards shall be met by the developer:

(a) The developer or his assignee shall submit a copy of the recorded plat or deed describing and identifying the right-of-way.

(b) The access road shall be a minimum twelve foot (12') all-weather surface road for a minor subdivision or an eighteen foot (18') all-weather surface road for a major subdivision unless the recorded right-of-way, terrain, topography or combinations of terrain and topography, or surface waters will not allow these minimum standards.

(c) A disclosure statement shall be placed on the final plat stating "This subdivision is accessed by a road which does not have a forty-five foot (45') minimum right-of-way and/or does not have the minimum recommended roadbed width. Access to homes within the subdivision may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."

(3) Cul-de-sacs. The required turnaround on a dead-end road in a minor subdivision shall have an unobstructed roadway radius of not less than thirty feet (30'), and the required turnaround on a dead-end road in a major subdivision shall have an unobstructed roadway radius of not less than thirty-five feet (35'). No portion of a Cul-de-sac shall exceed 8% grade.

(a) If the road length does not exceed fifteen hundred feet (1,500') and if construction difficulties will not permit a cul-de-sac, the use of a modified "Y" or a "T" with one (1) extension extending at least twenty-five feet (25') from the edge of roadbed and the other extending a minimum of fifty feet (50') and a maximum of one hundred feet (100') which will allow a vehicle with a wheel base of at least twenty-five feet (25') to complete a turning movement with a maximum of one (1) backing movement, shall be permitted. All "Y" or "T" type turnarounds shall have the required roadbed (12 or 18) width plus a two (2) foot shoulder on each side.

(4) Road Grades. Maximum road grades shall be twenty percent (20%). In extreme cases, where the terrain prohibits a lesser grade to attain access to a nearby area, a maximum grade of twenty-five percent (25%) is permissible if a professional engineer, currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors, designs and certifies grade and slope stability of the portion from 20.01% to 25%. For any road containing grade(s) exceeding twenty percent (20%), the following minimum standards shall be met by the developer:

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

(b) Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section. The least distance shall be enforced. A professional engineer, with civil engineering qualifications, or registered land surveyor currently licensed in the State of North Carolina by the NC 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 three hundred foot (300') segments to be paved on each side. Should it be necessary to go beyond property lines to reach a distance of three hundred feet (300') or for the purpose of measuring or determining the existence of an average grade of eight percent (8%) over a fifty foot (50') section of road, only that portion of the road within the subject property is required to be paved.

(c) A disclosure statement shall be placed on the final plat stating "This subdivision contains roads which exceed fifteen percent (15%) grade(s). Access to homes within the subdivision may be limited. The NC Department of Transportation is unlikely to accept and maintain roads within the subdivision as public road(s)."

(C) Connections with State Road System. If a new subdivision road to be dedicated as public or private will connect to a state system road, a permit authorizing construction on state right-of-way shall be required from the Division of Highways before beginning construction. Applications shall be made to the Division Engineer of the NC Department of Transportation having jurisdiction in this area.

(D) Intersections. When a new subdivision road connects to a state maintained road, the design standards of the NC Department of Transportation for intersections shall be required.

(E) Shared Driveways. A **SHARED DRIVEWAY** shall serve no more than two buildings, residence, uses, or structures.

SCHEDULE I

DESIGN CRITERIA FOR PRIVATE ROADS

Minimum Road Right of Way Width	30'
 Recommended Road Right of Way Width	45'
Minimum Road-Bed Width for Eleven (11) Lots or More Shoulder Section	18'
Minimum Road-Bed Width for Ten (10) Lots or less	12'
Maximum Grade	
(NC DOT Classification-Hill Terrain)	20%
(Designed and certified by Professional Engineer)	25%
Minimum Shoulder Width on each side of roadbed (not including ditch line). Shoulder Section	2'
Minimum Cul-de-Sac Radius	
Right-of-Way Shoulder Section	50'
Minimum Cul-de-Sac Radius for Roadbed plus Shoulder Section	
Minor Subdivision	30'
Major Subdivision	35'

***Any road exceeding fifteen percent (15%) grade shall meet NC Department of Transportation minimum construction and paving (bituminous) specifications for the length exceeding fifteen percent (15%) grade plus an additional three hundred feet (300') on each side of the length exceeding fifteen percent (15%) grade or until the road grade reaches eight percent (8%) over a fifty foot (50') section.**

INSTALLATION OF IMPROVEMENTS**§ 152A.50 PERMANENT REFERENCE POINTS.**

Prior to the approval of the final plat, permanent reference points shall have been placed in accordance with G.S. sections 39-32.1, 39-32.2, 39-32.3, and 39-32.4, as amended.

(A) Monuments. With each block of a subdivision at least two (2) monuments designated as control corners shall be installed. The surveyor shall install additional monuments as required. All monuments shall be constructed of concrete and shall be four inches (4") in diameter or square at the top and six inches (6") at the bottom and not less than three feet (3') in length. Each monument shall have imbedded in its top, or attached by suitable means, a non-corroding metal plate which is marked plainly with the point, the surveyor's registration number, the month and year it was installed and the word "monument" or "control corner." A monument shall be set at least thirty inches (30") in the ground with at least six inches (6") exposed above the ground unless this requirement is impractical.

(B) Property Markers. A steel or wrought iron pipe or the equivalent, not less than three-fourths inch (3/4") in diameter and at least thirty inches (30") in length, shall be set at all corners where practical or where the ground will allow, except those located by monuments or natural corners.

§ 152A.51 IMPROVEMENTS.

Approval of the final plat shall be subject to the subdivider having guaranteed, to the satisfaction of Haywood County through the Haywood County Subdivision Administrator, the installation of said improvements. Haywood County through the Haywood County Subdivision Administrator reserves the right to inspect, reject, stop, or otherwise cease the construction of all service facilities or improvements in the event the same are not being constructed in accordance with the plans, specification standards, policies, or other requirements of this chapter.

(A) Grading. All roads shall be graded to their full roadbed width of eighteen feet (18') for major subdivisions, or twelve feet (12') for minor subdivisions, and an additional two feet (2') on each side of the roadbed for a shoulder (not including ditch line). Spur roads in a major subdivision may have a twelve foot roadbed width with two foot shoulders (not including ditch line) on each side if road serves ten (10) or less lots. Finished grade, cross section, and profiles shall be certified by a professional land surveyor or professional engineer, with civil engineering qualifications, currently licensed in the State of North Carolina by the NC Board of Examiners for Engineers and Surveyors and the certifications shall be field verified. The Haywood County Subdivision Administrator shall have authority to accept, deny, or request additional information regarding the finished grade, cross section, and profile certifications. All major and minor subdivision roadbeds and shoulders shall be free of obstructions including but not limited to gates, landscaping, guardrails, street lights and utility pedestals.

(1) Preparation. Before grading is started, the required roadbed width area shall be first cleared of all stumps, roots, brush and other objectionable materials.

(2) Cuts. All tree stumps, boulders, and other obstructions within the proposed roadbed width shall be removed to a depth of one foot (1') below the subgrade.

(3) Fill. All suitable material from roadbed cuts may be used in the construction of fills, approaches, or at other places as needed. The fill shall be installed and shall be compacted by methods developed by the Haywood County Engineering Review Board as established under Chapter 158, Haywood County Slope Ordinance.

(B) Installation of Utilities. All public water and sewerage systems shall be installed and shall meet the requirements of the Haywood County Health Department or other governmental authorities having jurisdiction thereof. All private community water and sewerage systems (2 or more connections) shall be installed and shall meet the requirements of the Haywood County Health Department or other governmental authorities having jurisdiction thereof.

(C) Roadbed Base. After preparation of the subgrade, the roadbed shall be surfaced with material of no lower classification than crushed rock, stone, or gravel. The size of the crushed rock or stone shall be from one and one-half inches (1 1/2") down, including dust. Spreading of the stone shall be done uniformly over the area to be covered by means of appropriate spreading devices and shall not be dumped in piles. The stone shall be rolled until thoroughly compacted. The compacted thickness of the stone roadbed shall be no less than six inches (6"). Finished roadbed base shall be certified by a professional land surveyor or professional engineer.

§ 152A.52 STORM WATER DRAINAGE.

The subdivider shall provide disposal of surface water by natural or artificial means subject to the following standards of the NC Department of Transportation, as reflected in Handbook for the Design of Highway Surface Drainage Structures, (1973) subject to review by the Planning Board:

- (A) No surface water shall be channeled or directed into a sanitary sewer.
- (B) Where feasible, the subdivider shall connect to an existing storm drainage system.
- (C) Where an existing storm drainage system cannot feasibly be provided for the subdivision, a surface drainage system shall be provided to protect the development from water damage.
- (D) Anyone constructing a dam or impoundment within the subdivision must comply with the NC Dam Safety Law of 1967 and the NC Administrative Code Title 15, Subchapter 2K.
- (E) In all areas of special flood hazards, all subdivision proposals shall have adequate drainage provided to reduce exposure to flood damage.

§ 152A.53 GUARANTEE OF IMPROVEMENTS.

Where the required asphalt improvements have not been completed prior to the submission of the final plat for approval, the approval of said plat shall be subject to the subdivider guaranteeing the installation of the improvements within a period of time specified by the Planning Director after consulting with the developer or his engineer(s). All minor and major subdivision roads shall be completed and field verified prior to the approval of final plat. Either of the methods described below may be used to guarantee improvements:

(A) Filing a performance or surety bond or an irrevocable standby letter of credit in the amount of one hundred twenty-five percent (125%) of the cost to complete the work as determined by a professional engineer with civil engineering qualifications currently licensed in the State of North Carolina or a North Carolina State licensed grading contractor, at the developer's expense.

(B) Depositing or placing in escrow, a certified check or cash in an amount equal to one hundred twenty-five percent (125%) of the amount in Section §152A.53 (A). Portions of the deposit may be released as work progresses as specified by the Planning Director after consulting with the developer and his engineer.

LEGAL PROVISIONS**§ 152A.60 GENERAL PROCEDURE FOR PLAT APPROVAL.**

(A) After the effective date of this chapter, no plat of a subdivision of land or plan of a development within Haywood County's jurisdiction shall be filed or recorded until it has been submitted to and approved by the Haywood County Planning Board and/or the Planning Director, and until this approval is entered in writing on the face of the plat by the Chairman of the Planning Board or the Planning Director.

(B) The Register of Deeds shall not file or record a plat of a subdivision of land located within the planning jurisdiction of the county that has not been approved in accordance with these provisions and approved by the Haywood County Land Records/GIS Office.

(C) Approval of a special, minor or major preliminary subdivision plat by either the Planning Department or the Planning Board shall be effective for a period not to exceed one (1) year and thereafter expire and be considered null and void. A six (6) month extension may be granted by the Planning Department or Planning Board when reasonable cause is shown.

§ 152A.61 ADMINISTRATOR.

The Haywood County Planning Department by and through the Haywood County Planning Director is hereby designated a planning agency pursuant to G.S. §153A-321 and is appointed to serve as the Haywood County Subdivision Administrator.

§ 152A.62 ADMINISTRATION FEE.

A fee for reviewing and approving subdivisions and major subdivisions may be established and/or amended by the Haywood County Board of Commissioners and posted in the Planning Department.

§ 152A.63 VARIANCES.

Where, because of severe topographical or other conditions peculiar to the site, strict adherence to the provisions of this chapter would cause an unnecessary hardship, the Planning Board may authorize a variance, if such variance can be made without destroying the intent of this chapter. Any variance thus authorized is required to be entered in writing in the minutes of the meeting of the Planning Board and the reasoning on which the departure was justified set forth.

(A) No hearing shall be held by the Board unless written notice thereof is filed within thirty (30) days after the interested party or parties receive the decision or by the Subdivision and Pre-Development Ordinance Administrator or the aggrieved party or parties receive constructive notice to the decision. Applications shall be filed with the Subdivision and Pre-Development Ordinance Administrator, who shall act as Clerk for the Board in receiving this notice; it shall be the duty of the Administrator to notify all the Board members as soon as possible of the application. All applications for a variance shall be made on the form entitled "Application for a Variance from the Haywood County Code of Ordinances, Chapter 152A: Subdivision and Pre-Development", as set forth in Appendix A. All information required on the form shall be complete before an application shall be considered as having been filed.

(B) After receipt from the Subdivision and Pre-Development Ordinance Administrator of the completed Application for a Variance, the Chairman shall schedule the time for the hearing, which shall be at the next regularly scheduled meeting. The application must be filed a minimum of fourteen (14) days prior to the next regularly scheduled meeting in order to be placed on that agenda.

The Clerk shall give notice of the hearing by mailing notices of the hearing to adjoining property owners and other parties to the action at least five (5) days prior to the hearing.

(1) Conduct of Hearing: Parties or their attorney shall appear in person at the hearing. The order of business for each hearing shall be as follows:

(a) The Chairman, or such person as he shall direct, shall give a preliminary statement of the case.

(b) At the discretion of the Chairman, witnesses will be sworn in.

(c) The applicant shall present the arguments and support of his case or application. Witnesses in favor of the applicant's request may be called and factual evidence submitted.

(d) Applicants and proponents may be questioned by the Board.

(e) Persons opposed to granting the application shall present their argument. Witnesses may be called and actual evidence submitted in opposition.

(f) Opponents may be questioned by the Board.

(g) Opponents may be allowed to cross examine all witnesses.

(h) The applicant may be allowed to inspect all evidence offered against him/her.

(i) Both sides will be permitted to present rebuttals to opposing testimony.

(j) The Board may, at its discretion, view the premises and obtain additional facts of matter before arriving at a determination of the case.

(k) The Board shall discuss the application and develop their conclusions.

(l) Motion.

(2) Decisions:

(a) Vote: The concurring vote of four-fifths of the attending membership of the Board shall be necessary to effect any variation from terms of the Ordinance.

No board member may be excused from voting except when immediate personal or financial interests preclude impartial consideration of issues involved. A failure to vote by such a member who is present at a meeting place or who has withdrawn without being excused by a majority vote of the remaining members present shall be counted as an affirmative vote. An affirmative vote is a vote in favor of the applicant.

(b) Before the Planning Board may grant a variance, it shall make the following three findings, which shall be recorded in the permanent record of the case, and shall include the factual reasons on which they are based:

1. There are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the Ordinance. In order to determine that there are practical difficulties or unnecessary hardships, the Board must find that the five following conditions exist:

a. If he/she complies with the provisions of the Ordinance, the applicant can secure no reasonable return from, nor make reasonable use of, his property. Merely proving that the variance would permit a greater profit to be made from the property will not be considered adequate to justify the Board in granting a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the Ordinance that will make possible the reasonable use of his property.

b. The hardship results from the application of the Ordinance to the property rather than from other factors such as deed restrictions or other hardship.

c. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.

d. The hardship is not the result of the actions of an applicant who knowingly or unknowingly violates the Ordinance and then comes to the Board for relief.

e. The hardship is peculiar to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a special privilege denied to others, and would not promote equal justice.

2. The variance is in harmony with the general purpose and intent of the Ordinance and preserves its spirit.

3. In the granting of the variance, the public safety and welfare have been assured and substantial justice has been done. The Board shall not grant a variance if it finds that doing so would in any respect impair the public health, safety, or general welfare.

(c) In granting the variance, the Board may attach thereto such conditions regarding the location, character, and other features of the proposed building, structure, or use as it may deem advisable in furtherance of the purpose of this Haywood County Code of Ordinances Chapter 152A: Subdivision and Pre-Development.

(d) The Haywood County Planning Board shall refuse to hear an appeal or an application for a variance previously denied if it finds that there have been no substantial changes in conditions or circumstances bearing on the appeal or application.

1. Time: Decisions by the Board shall be made not more than thirty-six (36) days following the date of the hearing.

2. Form: Written notice of the decision and the reasons therefore in a case shall be given to the applicant by the Clerk as soon as practicable after the case has been decided. The final decision of the Planning Board shall be shown in the record of the case as entered in the Minutes of the Board, and signed by the Chairman and the Clerk upon approval of the Minutes of the Board. The Minutes shall record the reason for the decision, the summary of the evidence introduced, and the findings of fact and conclusions of the law made by the Board.

(3) Public Record of Decisions: The decisions of the Board, as filed in its Minutes, shall be a public record, available for inspection at all reasonable times. Minutes shall be kept by the Clerk who shall make them available to the public. Every decision of the Haywood County Planning Board shall be filed in the office of the Subdivision and Pre-Development Ordinance Administrator and a written copy thereof shall be delivered to the applicant and adjacent property owners by personal service or registered mail.

(4) Decisions and Appeals: Every decision by the Planning Board regarding a variance from Haywood County Code of Ordinances Chapter 152A: Subdivision and Pre-Development shall be subject to the review by the Haywood County Board of Commissioners. All appeals shall be taken to the Haywood County Board of Commissioners within thirty (30) days after the decision of the Planning Board is filed in the Office of the Subdivision and Pre-Development Administrator or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later. Any person aggrieved by the decision of the Haywood County Board of Commissioners or any taxpayer may appeal the decision to the Superior Court. All appeals shall be taken to the Superior Court within thirty (30) days after the decision of the Haywood County Board of Commissioners is filed in the Office of the Clerk or after a written copy thereof is delivered to the appellant by personal service or registered mail or certified mail, return receipt requested, whichever is later.

(C) Amendments: These rules may, within the limits allowed by law, be amended at any time by an affirmative vote of not less than four-fifths of the Planning Board, provided that such amendment may be presented in writing at a meeting of the Board preceding the meeting at which the vote is taken.

§ 152A.64 PENALTIES FOR VIOLATION.

After the effective date of this chapter, any person who, being the owner or agent of the owner of any land located within the planning jurisdiction of Haywood County, subdivides or develops land in violation of this chapter or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of land before the plat has been properly approved under the terms of this chapter and recorded in the Office of the Haywood County Register of Deeds, shall be guilty of a misdemeanor. 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 as provided in Section 152A.20 (C) of this Ordinance. Haywood County through its attorney or other official designated by the Board of County Commissioners may bring suit to enjoin any illegal subdivision, transfer, or sale of land. Further, violators of this chapter shall be subject, upon conviction, to fine and/or imprisonment as provided by G.S. §14-4. Each day that a plat or property is not in compliance with this chapter shall constitute a separate and distinct offense.

§ 152A.65 AMENDMENTS.

(A) The Board of County Commissioners may from time to time amend the terms of this chapter, but no amendment shall become effective unless it shall have been proposed by or shall have been submitted to the Planning Board for review and recommendation. The Planning Board shall have thirty (30) working days from the time the proposed amendment is submitted to it within which to submit its recommendation to the County Commissioners. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment.

(B) No amendment shall be adopted by the Board of County Commissioners until they have held a public hearing on the amendment. Notice of the hearing shall be published in a newspaper of general circulation in Haywood County at least once a week for two (2) successive calendar weeks prior to the hearing in accordance with G.S. §153A-323.

§ 152A.66 VALIDITY.

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

§ 152A.67 ABROGATION.

It is not intended that this chapter 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 chapter imposes greater restrictions, the provisions of this chapter shall govern.

§ 152A.68 REPEAL OF EXISTING PRE-DEVELOPMENT ORDINANCE.

This chapter in part carries forth by re-enactment some of the provisions of the Pre-Development Ordinance of Haywood County, previously adopted, and it is not the intention to repeal but rather re-enact and continue in force such existing provisions so that all rights and liabilities that have accrued thereunder are preserved and may be enforced. All provisions of the Pre-Development Ordinance, which are not re-enacted herein, are hereby repealed. All suits at law or in equity and/or all prosecutions resulting from the violation of the Pre-Development Ordinance heretofore in effect, which are now pending in any courts of the State of North Carolina or United States of America, shall not be abated or abandoned by reason of the adoption of this chapter, but shall be prosecuted to their finality the same as if this chapter had not been adopted; and all violations of the existing chapter, prosecutions for which have not been instituted, may be hereafter construed as to abandon, abate, or dismiss any litigation or prosecution now pending and/or which may heretofore have been instituted or prosecuted.

Passed and adopted by the Haywood County Commissioners this 7th day of October 2002.
Amended the 8th day of September, 2008.

APPENDIX A

Application for a Variance from the Haywood County Code of Ordinances, Chapter 152A: Subdivision and Pre-Development

Date _____ Application No. _____

Applicant's Name: _____ Phone: _____

Address: _____

PIN: _____

Directions to the property from Waynesville: _____

Applications shall contain the following:

- 1. A complete and detailed description of the proposed variance, (see the rest of this form), together with any other pertinent information which the applicant feels would be helpful to the Haywood County Planning Board in considering the application.

TO THE HAYWOOD COUNTY PLANNING BOARD:

I, _____ (Owner/Agent), hereby petition the Haywood County Planning Board for a variance from the literal provisions of Chapter 152A: (Subdivision and Pre-Development) Haywood County Code of Ordinances because I am prohibited from using the parcel of land described in this form in a manner demonstrated within this application. I request a variance from the following provisions of the Ordinance (cite sections):

FACTORS RELEVANT TO THE ISSUANCE OF A VARIANCE:

The Haywood County Planning Board shall reach three conclusions as a prerequisite to the issuance of a variance:

(a) that there are practical difficulties or unnecessary hardships in the way of carrying out the strict letter of the ordinance,

(b) that the variance is in harmony with the general purposes and intent of the ordinance and preserves its spirit, and

(c) that in granting the variance the public safety and welfare have been assured and substantial justice has been done.

In the space provided below, indicate the facts that you intent to show and the arguments that you intend to make to convince the Planning Board that it can properly reach these three required conclusions:

(1) THERE ARE PRACTICAL DIFFICULTIES OR UNNECESSARY HARDSHIPS IN THE WAY OF CARRYING OUT THE STRICT LETTER OF THE ORDINANCE. The courts have developed three rules to determine whether in a particular situation “practical difficulties or unnecessary hardships” exist. State facts and arguments in support of each of the following:

(a) If he/she complies with the provisions of the ordinance, the property owner can secure no reasonable return from or make no reasonable use of his property. (It is not sufficient that failure to grant the variance simply makes the property less valuable.)

(b) The hardship of which the applicant complains results from unique circumstances related to the applicants land. (Note: hardships suffered by the applicant in common with his neighbors do not justify a variance. Also, unique personal family hardships are not relevant since a variance, if granted, runs with the land.)

(c) The hardship is not the result of the applicant's own actions.

(2) THE VARIANCE IS IN HARMONY WITH THE GENERAL PURPOSE AND INTENT OF THE ORDINANCE AND PRESERVES THE SPIRIT. (State facts and arguments to show that the variance requested represents the least possible deviation from the letter of the ordinance that will allow a reasonable use of the land and that the use of the property, if the variance is granted, will not substantially detract from the character of the neighborhood.)

(3) THE GRANTING OF THE VARIANCE SECURES THE PUBLIC SAFETY AND WELFARE AND DOES SUBSTANTIAL JUSTICE. (State facts and arguments to show that, on balance, if the variance is denied, the benefit to the public will be substantially outweighed by the harm suffered by the applicant.)

I certify that all of the information presented by me in this application is accurate to the best of my knowledge, information and belief.

Signature

Date: _____

Transmitted by

Date: _____

Received by (Clerk to the Board)

Date: _____

IN THE EVENT THAT ANY DISCREPANCIES EXIST BETWEEN THE CRITERIA OUTLINED ON THIS FORM AND CHAPTER 152A (SUBDIVISION AND PRE-DEVELOPMENT) OF THE HAYWOOD COUNTY CODE OF ORDINANCES, CHAPTER 152A SHALL PREVAIL.