

CARY, NORTH CAROLINA

Supp. No. 60 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2023-LDO-03, passed June 22, 2023. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 60.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2023-LDO-02, passed March 23, 2023. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 59.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2023-LDO-01, passed February 9, 2023. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 58.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2022-LDO-03, passed October 27, 2022. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 56.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 55 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2022-LDO-02, passed April 28, 2022, with the addition of ordinance material passed February 24, 2022. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 55.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2022-LDO-02, passed April 28, 2022. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 54.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 53 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2022-LDO-01, passed January 13, 2022. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 53.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2021-LDO-01, passed June 24, 2021. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 52.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 51 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2020-LDO-01, passed May 7, 2020. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 51.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2019-LDO-04, passed December 12, 2019. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 50.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 49 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2019-LDO-01, passed September 26, 2019. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 49.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 48 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-LDO-04, passed December 13, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 48.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 47 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-LDO-03, passed November 15, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 47.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-LDO-02, passed August 9, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 46.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2018-LDO-01, passed May 3, 2018. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 45.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 44 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-ACT-02, passed December 14, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 44.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 43 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-ACT-01, passed October 26, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 43.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 42 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-LDO-02, passed March 30, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 42.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 41 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2017-LDO-01, passed January 24, 2017. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 41.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 40 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2016-LDO-02, passed December 8, 2016. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 40.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 39 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2016-LDO-01, passed July 25, 2016. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 39.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 38 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-LDO-006, passed December 10, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 38.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 37 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-LDO-005, passed November 19, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 37.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-LDO-004, passed August 27, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 36.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-LDO-003, passed July 23, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 35.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 34 – Instruction Sheet

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2015-LDO-002, passed June 25, 2015. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 34.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 32 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-LDO-05, passed December 11, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 32.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 31 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-LDO-04, passed August 28, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 31.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 30 – Instruction Sheet

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-LDO-03, passed August 14, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 30.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 29 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-LDO-02, passed June 26, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 29.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 28 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2014-LDO-01, passed January 9, 2014. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 28.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-LDO-07, passed December 19, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 27.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-LDO-06, passed November 21, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 26.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-LDO-05, passed October 10, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 25.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 24 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-LDO-03, passed June 13, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 24.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 23 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2013-LDO-01, passed February 13, 2013. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 23.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 22 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-LDO-08, passed October 11, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 22.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 21 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-LDO-07, passed August 23, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 21.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-LDO-06, passed August 9, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 20.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-LDO-05, passed June 14, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 19.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-LDO-04, passed May 24, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 18.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 17 – Instruction Sheet

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-LDO-03, passed May 10, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 17.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2012-LDO-02, passed March 7, 2012. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 16.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 15 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-LDO-05, passed December 15, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 15.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-LDO-04, passed November 17, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 14.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 13 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-LDO-03, passed July 14, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 13.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-LDO-02, passed April 14, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 12.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 11 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2011-LDO-01, passed January 11, 2011. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 11.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-LDO-05, passed December 16, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 10.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-LDO-04, passed September 30, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 9.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-LDO-03, passed February 25, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 8.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2010-LDO-02, passed January 28, 2010. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 7.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 6 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-LDO-06, passed August 13, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 6.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 5 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-LDO-05, passed July 23, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 5.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 4 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-LDO-03, passed May 14, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 4.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-LDO-02, passed March 26, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 3.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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Supp. No. 2 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2009-LDO-01, passed February 12, 2009. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 2.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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CARY, NORTH CAROLINA

Supp. No. 1 – Instruction Sheet

APPENDIX A LAND DEVELOPMENT ORDINANCE

Enclosed with this instruction sheet are new and replacement pages for your loose-leaf copy of the Code, bringing the Code current through Ord. No. 2008-LDO-01, passed September 25, 2008. In order to keep your copy of the Code up to date, you must remove the following indicated obsolete pages from your Code and replace them with the indicated revised pages. The current supplement number appearing on the lower left corner of each page revised in this package is “Supp. No. 1.” If you have any questions, please contact American Legal Publishing at 1-800-445-5588.

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APPENDIX A

LAND DEVELOPMENT ORDINANCE*

Current through local ordinance 2023-LDO-03, passed 6-22-23 and effective 6-22-23

***Editor's note**—Printed herein is the Land Development Ordinance, Ord. No. 03-007, adopted May 22, 2003, effective July 1, 2003. This Ordinance completely replaces the Unified Development Ordinance. For the ordinance history of the UDO, see the Land Development Ordinance Disposition Table—1976 Code.

This publication has been altered as little as possible from the original Land Development Ordinance. Obvious misspellings and punctuation errors have been corrected, and where necessary, material added for clarification has been placed in brackets. Amendments to the LDO are indicated by parenthetical history notes following amended provisions. The absence of a history note indicates that the provision remains unchanged from the original ordinance.

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**(This checklist will be updated with the
printing of each Supplement)**

From our experience in publishing Looseleaf Supplements on a page-for-page substitution basis, it has become evident that through usage and supplementation many pages can be inserted and removed in error.

The following listing is included in this Code as a ready guide for the user to determine whether the Code volume properly reflects the latest printing of each page.

In the first column all page numbers are listed in sequence. The second column reflects the latest printing of the pages as they should appear in an up-to-date volume. The letters "OC" indicate the pages have not been reprinted in the Supplement Service and appear as published for the original Code. When a page has been reprinted or printed in the Supplement Service, this column reflects the identification number or Supplement Number printed on the bottom of the page.

In addition to assisting existing holders of the Code, this list may be used in compiling an up-to-date copy from the original Code and subsequent Supplements.

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CARY LAND DEVELOPMENT ORDINANCE

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CHAPTER 1: GENERAL PROVISIONS**1.1 TITLE; EFFECTIVE DATE**

This Ordinance shall be officially known as the "Land Development Ordinance of the Town of Cary, North Carolina." It also may be called the "LDO" or the "Zoning Ordinance," and is referred to throughout this document as "this Ordinance." This Ordinance shall become effective on July 1, 2003.

1.2 AUTHORITY

This Ordinance is adopted pursuant to authority granted to the Town of Cary by the General Assembly of the State of North Carolina, and especially the Town Charter; North Carolina General Statutes (N.C.G.S. or NCGS or G.S.) Chapter 160D (Local Planning and Development Regulation); G.S. Chapter 113A, Article 4 (Sedimentation Pollution Control); G.S. Chapter 143, Article 21, Part 6 (Floodway Regulation); G.S. Chapter 63, Article 4 (Airport Zoning); G.S. Chapter 136 (Roads and Highways); G.S. Chapter 157 (Housing); G.S. 143, Article 21, Part 1 (Water Supply Watershed Protection); and any special legislation enacted for the Town of Cary as amended.

(Ord. No. 04-001, 1-8-04; Ord. No. 2021-LDO-01, 6-24-21)

1.3 GENERAL PURPOSES

The provisions of this Ordinance are enacted to promote and protect the public health, safety, and general welfare, and to implement the policies of the Cary Comprehensive Plan. The regulations are specifically intended to:

1.3.1 Preserve the character and quality of residential neighborhoods;

1.3.2 Foster convenient, compatible, and efficient relationships among land uses;

1.3.3 Lessen congestion in the streets;

1.3.4 Ensure the provision of adequate open space for light, air, and fire safety;

1.3.5 Prevent the overcrowding of land and avoid undue concentrations of population;

1.3.6 Facilitate the efficient, adequate, and safe provision of transportation, water, wastewater treatment, schools, parks, and other public facilities and requirements;

1.3.7 Ensure that service demands of new development will not exceed the capabilities of existing streets, utilities, or other public facilities and services;

1.3.8 Maintain and enhance the character of various districts within the Town, in light of their peculiar suitability for particular uses;

1.3.9 Maintain and protect high quality aesthetic standards for development;

1.3.10 Conserve the value of buildings and land and encourage the most appropriate use of land;

1.3.11 Conserve the natural resources and environmental quality of the Town and its environs; and

1.3.12 Protect development in and residents of the community from flooding and other hazards.

(Ord. No. 2021-LDO-01, 6-24-21)

1.4 COMPREHENSIVE PLAN AND OTHER PLANS AND MANUALS

1.4.1 Purpose and Role

The Comprehensive Plan for the Town of Cary shall serve as the basic policy guide for the administration of this Ordinance. The Comprehensive Plan serves as the statement of goals, recommendations, and policies guiding the development of the physical environment of the Town, its extraterritorial jurisdiction, and any other geographic areas specifically addressed by the Comprehensive Plan. The goals, vision, recommendations, and policies of the Comprehensive Plan may be amended from time to time to meet the changing requirements of the Town and any other geographic areas addressed by the Comprehensive Plan. Any reference to the Comprehensive Plan in effect prior to January 24, 2017 shall be interpreted as referring to the Cary Community Plan adopted on January 24, 2017 and associated documents, as amended. Procedures for amending the Comprehensive Plan are set forth in Section 3.2. The Comprehensive Plan serves as the plan required by G.S. 160D-501.

1.4.2 Legal Effect

All development and redevelopment within the Town and its extraterritorial jurisdiction should be in accordance with the policy direction provided by all of the applicable elements or volumes of the Comprehensive Plan, as adopted or amended by the Town Council. Amendments to the text of this Ordinance (see Section 3.3) and/or rezoning of property (see Section 3.4) may be required in order to ensure compliance with this section.

1.4.3 Components of the Comprehensive Plan

The Comprehensive Plan consists of the following documents:

(A) Cary Community Plan

The Cary Community Plan is a long-range policy document that expresses the Town's official long-term vision, values, and policies related to a wide range of topics including housing and neighborhoods; economic growth and resilience; economic development; land development and urban form; public transportation facilities and services; and a wide range of municipal public services, including utilities, public safety, environmental protection, solid waste, and others. As such, the Cary Community Plan provides guidance to the Town's current and future decision-makers regarding land development, capital improvements, public facilities and services, and public programs. It directs growth by providing a policy framework to guide the evaluation and consideration of zoning map and text amendments, annexations, and development plans. The plan is also used to direct provision of public infrastructure, programs, and services, and aid and inform decisions for private sector investment.

While the Cary Community Plan is primarily a policy-based plan, it also provides overarching guidance for the geographic arrangement of future development. This is provided via a "Future Growth Framework," expressed in Chapter 6, "Shape". The Future Growth Framework includes a Future Growth Framework Map that geographically organizes the Town's physical layout, structure and character into various development categories for residential and commercial uses, mixed use areas, business and employment areas, and open spaces. The plan also provides specialized policy guidance for a number of "Special Planning Areas," which are geographic subareas of the overall planning area. For each Special Planning Area, the plan provides a unique vision, policies, and a more highly detailed future growth framework and maps.

The Town's Comprehensive Transportation Plan consists of Chapter 7, "Move," and its associated appendices from the Cary Community Plan, together with the 2012 Greenways Master Plan Map and Chapter 6, "Greenways & Trails," from the 2012 Parks, Recreation and Cultural Resources Master Plan and any associated appendices and updates.

(B) Appendices of the Cary Community Plan

The following plans are expressly incorporated into the Cary Community Plan and are contained in its Appendix. All of the documents in the Appendix are considered part of the Cary Community Plan and the Comprehensive Plan.

(1) *Chatham/Cary Joint Land Use Plan*

The Chatham-Cary Joint Land Use Plan covers over eighteen thousand (18,000) acres located east of Jordan Lake in Chatham County. The area is bordered by White Oak Creek to the south, Wake County to the east, Durham County to the north and Jordan Lake to the west. The Plan is an official policy document adopted by the Chatham County Board of Commissioners and Cary Town Council meant to guide future land use regulations, public infrastructure improvements and development. By guiding and limiting future development and infrastructure improvements, the Plan aims to maintain the rural form and character of most of the area, while still accommodating a limited amount of suburban growth in the area closest to Research Triangle Park and the Western Wake Freeway. The plan also seeks to protect water quality in Jordan Lake.

(2) *Historic Preservation Master Plan*

The Historic Preservation Master Plan provides a framework for the development of the Town's formal preservation program, and will serve as a guide for proactive preservation decision-making. The Plan synthesizes the Town's existing preservation efforts with the desires expressed by the community during the planning process, and recommends actions for integrating historic preservation into Town policies and regulatory activities. The scope of this Plan includes the Town's entire planning area, which includes Cary's extraterritorial jurisdiction.

(3) *Parks, Recreation, and Cultural Resources Master Plan*

The Parks, Recreation, and Cultural Resources Master Plan charts a course for providing a balanced system of cultural arts, active recreation, passive recreation, and conservation facilities to all residents. It recognizes current needs within the Town and allows for the flexibility to incorporate future facilities that will address trends and the needs of residents as the Town grows.

(4) *Public Art Master Plan*

The Public Art Master Plan suggests venues, art types, and themes for public art based on public input and an urban design analysis of existing and desired conditions, and identifies numerous educational and outreach programs for implementation.

(5) Consolidated Housing Plan

The Consolidated Housing and Community development plan provides a framework for the Town to assess its affordable housing and community development needs, and to make data-driven, place-based investment decisions in response to them. The consolidated planning process also serves as the mechanism for community dialogue to identify housing and community development priorities that inform and focus funding from the federal Community Development Block Grant (CDBG) Program and from the Town's general fund.

1.4.4 Other Plans, Ordinances and Manuals

In addition to the Comprehensive Plan, other plans and manuals contain additional recommendations, policies, and standards regarding development within the Town. It is the intent of the Town to administer this Ordinance in accordance with these supplemental plans and manuals, including subsequent amendments. Amendments to these supplemental plans and manuals shall not be required to follow the procedures for amending the Comprehensive Plan set forth in Section 3.2.

Plans, manuals and ordinances containing recommendations, policies, and standards regarding development within the Town include, but are not limited to, the following:

- (1) Town of Cary Code of Ordinances
- (2) Standard Specifications and Details Manual
- (3) Community Appearance Manual
- (4) Site Design Standards
- (5) Downtown Streetscape Master Plan
- (6) Swift Creek Land Management Plan
- (7) Long Range Water Resources Plan
- (8) Reclaimed Water Master Plan
- (9) Wastewater Collection System Plan
- (10) Water Distribution System Plan

(Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2023-LDO-03, 6-22-23)

1.5 ZONING MAP**1.5.1 Incorporation Into This Ordinance**

The Official Zoning District Map, which is referred to throughout this Ordinance as the "Zoning Map," or the "Official Zoning Map," and which consists of the Town of Cary Official Base Zoning Map (Map 1 of 2) and the Town of Cary Official Zoning Overlay Map (Map 2 of 2), along with all

notations, references, and other information shown thereon, such as zoning districts and extraterritorial jurisdiction, is hereby incorporated into and made part of this Ordinance. As part of this Ordinance, the Zoning Map shall be amended only in accordance with the procedures set forth in Section 3.4 of this Ordinance. The Planning and Development Services Department will keep and maintain the Zoning Map.

1.5.2 Interpretation of District Boundaries

Where uncertainty exists with respect to the boundaries of the zoning districts shown on the Zoning Map, the Planning Director shall use the rules set forth below to interpret the Zoning Map. Appeals shall be made to the Zoning Board of Adjustment pursuant to Section 3.21.

- (A) Where the Zoning Map shows a zoning district boundary line located within or following a street or alley right-of-way, railroad or utility line right-of-way, easement, or waterway, the district boundary shall be considered to be in the center of the right-of-way, easement, or waterway. If the actual location of such right-of-way, easement, or waterway, as indicated in a recorded legal description of such, varies slightly from the location shown on the Zoning Map, then the actual location shall control.
- (B) Where the Zoning Map shows a boundary line as being located a specific distance from a street line or other physical feature, this distance shall control.
- (C) Where the Zoning Map shows a district boundary to coincide with a property line or municipal border, the legal property line or municipal border shall be considered to be the district boundary, unless otherwise indicated on the Map.
- (D) Where the Zoning Map shows a district boundary to not coincide or approximately coincide with any street, alley, railroad, waterway, or property line, and no dimensions are shown, the location of the boundary shall be determined by use of the scale appearing on the Zoning Map.
- (E) Where the Zoning Map shows a district boundary dividing a lot, each part of the lot shall be used in conformity with the standards established by this Ordinance for the zoning district in which that part is located.
- (F) Where the case record conflicts with the Zoning Map, the case record shall control. For example, if the Zoning Map shows a property to be zoned GC, yet the case record shows that the property was actually zoned O&I, the case record would control and the map would be changed to reflect the case record.

1.5.3 Transition to New Zoning Districts

Upon adoption of this Ordinance, land that is presently zoned within an existing zoning classification shall be classified within one of the zoning classifications set forth in Chapter 4, *Zoning Districts* and as shown in this table. The following table summarizes the transition from old Unified Development Ordinance districts to new districts set forth in this Land Development Ordinance.

TABLE 1.5-1: NEW VERSUS OLD ZONING DISTRICTS	
Old Zoning Districts	New Zoning Districts
Resource Conservation (RC)	Resource/Recreation (RR)
	Residential 80 (R-80)
Residential 40 (R-40)	Residential 40 (R-40)
Residential 30 (R-30)	
	Residential 20 (R-20)
Residential 40 Conforming (R-40 C)	
Residential 30 Conforming (R-30 C)	
Residential 12 (R-12)	Residential 12 (R-12)
Residential 10 (R-10)	
Residential 8 (R-8)	Residential 8 (R-8)
Residential Mixed (RM)	Transitional Resident (TR)
Downtown Residential (DR)	
Residential Multi-Family 12 (RMF-12)	Residential Multi-Family (RMF)
Residential Multi-Family 8 (RMF-8)	Residential Multi-Family (RMF)
Mobile Home (MH)	
	Corridor Transition (CT)
Office & Institutional (O&I)	Office & Institutional (O&I)
Commercial District (B-2)	General Commercial (GC)
Business District (B-1)	
Planned Employment Center (PEC)	Office, Research & Development (ORD)
Light Industrial (I-1)	Industrial (I)
Heavy Industrial (I-2)	Industrial (I)
	Town Center (TC)
Planned Unit Development Overlay	Planned Development District Major (PDD)
Planned Unit Development Overlay	Planned Development District Minor (PDD)
Airport Overlay	Airport Overlay
Thoroughfare Corridor Overlay	Thoroughfare Corridor Overlay
Downtown Overlays	
Reservoir Watershed Protection Overlay	Watershed Protection Overlay
	Mixed Use Overlay District

1.5.4 Transition to Conditional Zoning

Upon adoption of this Ordinance, any land that was subject to a Conditional Use Permit that was approved prior to the effective date of this Ordinance shall continue to be governed by the conditions of the approved Conditional Use Permit as recorded with the Wake County Register of Deeds or Chatham County Register of Deeds, regardless of the property's designation on the Official Zoning Map as a Conditional Use District, Conditional District, or General Use District.

All provisions of this Ordinance shall apply to all properties that are the subject of Conditional Use Permits approved prior to the effective date of this Ordinance; however, all conditions contained in such Conditional Use Permits shall remain valid until amended, unless such conditions are in conflict with this Ordinance, any federal or state laws, or other existing Town ordinance. In such situations, the more restrictive condition or law shall govern.

(Ord. No. 06-009, 4-27-06; Ord. No. 2021-Code-01, 6-24-21; Ord. No. 2023-LDO-03, 6-22-23)

1.6 JURISDICTION AND APPLICABILITY

1.6.1 General

- (A) The provisions of this Ordinance shall apply to all land, buildings, structures, and uses thereof located within the corporate limits of the Town of Cary and within the Town's extraterritorial jurisdiction, as identified on the Zoning Map, including land owned by local agencies.
- (B) If a parcel of land lies within the planning and development regulation jurisdiction of Cary and one or more other local governments, the local governments may, by mutual agreement pursuant to Article 20 of Chapter 160A of the General Statutes and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to any one of those local governments, following the procedure provided in G.S. 160D-203.

1.6.2 Applicability to County and Federal Property

To the extent allowed by law, the provisions of this Ordinance shall apply to all land, buildings, structures, and uses owned or used by county or federal agencies within the corporate limits of the Town of Cary. Where the provisions of this Ordinance do not apply to such structures and land, such agencies are encouraged to meet the provisions of this Ordinance.

1.6.3 Applicability to State Property

The provisions of this Ordinance are applicable to the erection, construction, and use of buildings owned by the State of North Carolina under G.S. 160D-913; however, no land owned by the State may be included within an overlay district or a special use or conditional use district without approval of the Council of State. To the extent allowed by law, the provisions of this Ordinance shall apply to all land, structures, and uses owned or used by the State of North Carolina. Where the provisions of this Ordinance do not apply to such land, structures, and uses, the State is encouraged to meet the provisions of this Ordinance.

1.6.4 Applicability to Public Utilities

To the extent allowed by law, the provisions of this Ordinance shall apply to all land, buildings, structures, and uses owned or used by Public Utilities (as such term is defined by G.S. § 62-3). Where the provisions of this Ordinance do not apply to such structures and land, such Public Utilities are encouraged to meet the provisions of this Ordinance.

1.6.5 Applicability to Bona Fide Farms

Property that is located in the Town's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from the provisions of this Ordinance to the same extent bona fide farming activities are exempt from county zoning pursuant to G.S. 160D-903. Property that is located in the Town's extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to the provisions of this Ordinance. As used in this section, "bona fide farm purposes" is as described in G.S. 160D-903. As used in this section, "property" means a single tract of property or an identifiable portion of a single tract. For purposes of complying with State or federal law, property that is exempt from zoning pursuant to G.S. 160D-903 is subject to the county's floodplain regulation or all floodplain regulation provisions of the county's unified development ordinance.

(Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2021-LDO-01, 6-24-21)

1.7 LDO COMPLIANCE REQUIRED

No building or structure shall be erected, converted, enlarged, reconstructed, or altered for use, nor shall any land, building, or structure be used or changed, except in accordance with all of the applicable regulations established by this Ordinance, including the district regulations of Chapter 4, the use regulations of Chapter 5, the dimensional standards of Chapter 6, and the development and design standards of Chapter 7. No lot of record that did not exist on the effective date of this Ordinance shall be created, by subdivision or otherwise, that does not conform to the applicable requirements of this Ordinance.

1.8 CONFLICTING PROVISIONS

1.8.1 Conflict with Other Public Laws, Ordinances, Regulations, or Permits

This Ordinance is not intended to revoke or repeal any other public law, ordinance, regulation, or permit. However, where conditions, standards, or requirements imposed by any provision of this Ordinance are either more restrictive or less restrictive than comparable standards imposed by any other public law, ordinance, or regulation, the provisions that are more restrictive or that impose higher standards or requirements shall govern. Wherever the provisions of this Ordinance require a greater width or size of yards or courts, a lower height of building, a lesser number of stories, or a greater percentage of lot to be left unoccupied, or impose other standards which are higher than those set forth in another statute, ordinance, or regulation, then the provisions of this Ordinance shall govern. Wherever the provisions of any other statute, ordinance, or regulation require a greater width or size of yard or courts, a lower height of building, a lesser number of stories, or a greater percentage of lot to be left unoccupied, or impose other standards which are higher than those set forth in this Ordinance, then the provisions of such statute, ordinance, or regulation shall govern.

1.8.2 Conflict with Private Agreements

This Ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this Ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this Ordinance shall govern. Nothing in this Ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not excuse any failure to comply with this Ordinance. In no case shall the Town be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

1.9 SEVERABILITY

If any court of competent jurisdiction invalidates any section, subsection, sentence, clause, phrase, word or portion ('portion') of this Ordinance, then such judgment shall not affect the validity and continued enforcement of any other portion of this Ordinance and all remaining portions shall remain in full force and effect. If any court of competent jurisdiction invalidates the application of any portion of this Ordinance, then such judgment shall not affect the application of that portion to any other building, structure, or use not specifically included in that judgment. If any court of competent jurisdiction judges invalid any condition attached to the approval of an application for development approval or the approval of a request for rezoning to a conditional use district, then such judgment shall not affect any other conditions or requirements attached to the same approval which are not specifically included in that judgment. Severability is expressly intended throughout and within the provisions of Chapter 9 even if such severability would result in a situation where there would be less speech, such as by subjecting previously exempt signs to that chapter. Without diminishing or limiting in any way the declaration of severability set forth above, if any section, subsection, sentence, clause, phrase, word or portion of this Ordinance is declared or held to be unconstitutional or invalid by any court of competent jurisdiction, such declaration or holding shall not affect any other section, subsection, sentence, clause, phrase, word or portion of this Ordinance that pertains to prohibited signs, including specifically the prohibition on off-site signs and those signs and sign-types prohibited and not allowed under Section 9.4 of this Ordinance.

(Ord. No. 2010-LDO-01, 1-14-10)

1.10 TRANSITIONAL RULES

1.10.1 Violations Continue

Any violation of the previous Unified Development Ordinance shall continue to be a violation under this Ordinance and be subject to penalties and enforcement under Chapter 11, unless the use, development, construction, or other activity complies with the provisions of this Ordinance. Payment shall be required for any civil penalty assessed under the previous Unified Development Ordinance, even if the original violation is no longer considered a violation under this Ordinance.

1.10.2 Approved Projects

- (A) Special use permits, development plan approvals, grading permits, building permits, sign permits, and variances, any of which are valid on July 1, 2003, shall remain valid until their expiration date. Projects with valid approvals or permits may be carried out with the development standards in effect at the time of approval, provided that the permit or approval is valid and has not lapsed.
- (B) No provision of this Ordinance shall require any change in the plans, construction, or designated use of any structure for which a building permit has been issued prior to July 1, 2003.
- (C) Any re-application for an expired project approval shall meet the standards in effect at the time of re-application.

1.10.3 Pending Applications

All pending projects for which a complete application was submitted and accepted by the Town prior to the effective date of this Ordinance shall be exempt from complying with all provisions of this Ordinance, but shall be required to comply with the previous Unified Development Ordinance. Development plan applications and rezonings received prior to the effective date of this Ordinance that are inactive shall be deemed denied.

1.10.4 Nonconformities Under Prior Ordinance

Any nonconformity under the previous Unified Development Ordinance will also be a nonconformity under this Ordinance, as long as the situation that resulted in the nonconforming status under the previous Ordinance continues to exist. If a nonconformity under the previous Ordinance becomes conforming because of the adoption of this Ordinance, then the situation will no longer be a nonconformity.

1.10.5 Uses and Structures Rendered Nonconforming

- (A) When a lot is used for a purpose that was a lawful use before the effective date of this Ordinance, and this Ordinance no longer classifies such use as either a permitted use or special use in the zoning district in which it is located, such use shall be considered nonconforming and shall be controlled by the provisions of Chapter 10 of this Ordinance.
- (B) Where any building, structure, or lot that legally existed on the effective date of this Ordinance does not meet all standards set forth in this Ordinance, such building, structure, or lot shall be considered nonconforming and shall be controlled by the provisions of Chapter 10 of this Ordinance.

(Ord. No. 2021-LDO-01, 6-24-21)

1.11 NAME OF DEPARTMENT

Any reference to the Planning Department in this Ordinance shall be a reference to the Planning and Development Services Department or any successor department, regardless of name. Any reference to the Planning Director shall be a reference to the Director of the Planning and Development Services Department or any successor department, regardless of name.

(Ord. No. 2019-LDO-03, 10-10-19)

1.12 MAPS

Provisions of this Ordinance may reference or incorporate by reference flood insurance rate maps, watershed boundary maps, USGS quad maps, or other maps officially adopted or promulgated by State and federal agencies. Any reference to such maps is a reference to the most recent officially adopted version of such maps unless otherwise explicitly stated. When zoning district boundaries are based on these maps, zoning district boundaries are automatically amended to remain consistent with changes in the officially promulgated State or federal maps. A copy of the currently effective version of any incorporated map shall be maintained for public inspection by the Planning and Development Services Department.

(Ord. No. 2021-LDO-01, 6-24-21)

CHAPTER 2: REVIEW AND DECISION-MAKING BODIES

2.1 SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES

- 2.1.1 Ordinance Administration and review bodies
- 2.1.2 Summary Table of Administration and Review Roles
- 2.1.3 Review by Others
- 2.1.4 Membership and Procedures

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- 2.2.1 Review and Decision-Making Responsibilities

2.3 PLANNING AND ZONING BOARD

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2.5 HISTORIC PRESERVATION COMMISSION

- 2.5.1 Review and Decision-Making Responsibilities
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2.6 PARKS, RECREATION, AND CULTURAL RESOURCES ADVISORY BOARD

- 2.6.1 Review and Decision-Making Responsibilities
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2.7 PUBLIC ART ADVISORY BOARD

- 2.7.1 Review and Decision-Making Responsibilities
- 2.7.2 Other Powers and Duties

2.8 STAFF DEPARTMENTS

- 2.8.1 Review and Decision-Making Responsibilities
- 2.8.2 Development Review Committee
- 2.8.3 Conflicts of Interest

Chapter 2: REVIEW AND DECISION-MAKING BODIES**2.1 SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES****2.1.1 Ordinance Administration and Review Bodies**

The following entities shall have roles in administering the provisions of this Ordinance:

- (A) Town Council;
- (B) Planning and Zoning Board;
- (C) Zoning Board of Adjustment;
- (D) Historic Preservation Commission;
- (E) Parks, Recreation, and Cultural Resources Advisory Board;
- (F) Public Art Advisory Board; and
- (G) Staff departments.

Information regarding membership and operating procedures for each of these entities may be obtained from the Town Code of Ordinances.

2.1.2 Summary Table of Administration and Review Roles

Table 2.1-1 summarizes the review and decision-making responsibilities of the entities that have specific roles in the administration of the procedures set forth in Chapter 3 and Chapter 4. The notes referenced in the last column are set forth at the end of the table. Other duties and responsibilities of the entities are set forth in the following sections.

2.1.3 Review by Others

Even though not referenced in Table 2.1-1, other boards, commissions, and/or committees may be asked to review some applications, including, but not limited to rezonings and development plans.

TABLE 2.1-1: SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES								
<i>NOTE: This table summarizes the general review and decision-making responsibilities for the procedures contained in Chapter 3.</i>								
Exceptions to these general rules may apply; see Chapter 3 for complete details on each procedure.								
Review = Responsible for Review and/or Recommendation Hearing = Public or Quasi-Judicial Hearing Required								
Decision = Responsible for Final Decision to Approve or Deny Appeal = Authority to Hear and Decide Appeals								
Procedure	Section	Town Council	Planning and Zoning Board	Zoning Board of Adjustment	PRCR Advisory Board	HPC	Staff Departments	Notes
Amendment to the Comprehensive Plan (Cosmetic)	3.2.1	Decision	-	-	-	-	Review/ Decision	[1]
Initial Adoption of or Amendment to the Comprehensive Plan (Substantive)	3.2.2	Hearing/ Decision	Review	-	Review	-	Review	[1]
Amendment to LDO Text	3.3	Hearing/ Decision	Review	-	-	-	Review	
Rezoning	3.4	Hearing/ Decision	Review	-	Review	-	Review	[5][10]
Accessory Use Permit	3.5	-	-	Appeal	-	-	Review/ Decision	
Permitted Use	3.6	-	-	-	-	-	Review	
Temporary Use	3.7	-	-	Appeal	-	-	Review/ Decision	
Special Use	3.8	-	-	Hearing/ Decision	-	-	Review	
Subdivision Plat	3.9	-	-	-	-	-	Review/ Decision	
Development Plan	3.9	-	-	Decision/ Appeal (some)	-	-	Review/ Decision (some)	[2][3][4][5][6]
Designation of Historic Landmark	3.27	Hearing/ Decision	-	-	-	Hearing/ Review	Review	
Designation of Historic District	3.27	Hearing/ Decision	Review	-	-	Review	Review	
Certificate of Appropriateness - Minor Works	3.27	-	-	Appeal	-	-	Review/ Decision	[13]
Certificate of Appropriateness - Major Works	3.27	-	-	Appeal	-	Hearing/ Decision	Review	[13] [14]

TABLE 2.1-1: SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES								
<i>NOTE: This table summarizes the general review and decision-making responsibilities for the procedures contained in Chapter 3.</i>								
Exceptions to these general rules may apply; see Chapter 3 for complete details on each procedure.								
Review = Responsible for Review and/or Recommendation Hearing = Public or Quasi-Judicial Hearing Required								
Decision = Responsible for Final Decision to Approve or Deny Appeal = Authority to Hear and Decide Appeals								
Procedure	Section	Town Council	Planning and Zoning Board	Zoning Board of Adjustment	PRCR Advisory Board	HPC	Staff Departments	Notes
Certificate of Appropriateness - Demolition of Historic Structures	3.27	-	-	Appeal	-	Hearing/ Decision	Review	[13] [14]
Development in Flood Hazard Area	3.12	-	-	Appeal	-	-	Review/ Decision	
Grading Permit	3.13	-	-	Appeal	-	-	Review/ Decision	
Building Permit	3.14	-	-	-	-	-	Review/ Decision	[9]
Certificate of Occupancy	3.15	-	-	Appeal	-	-	Review/ Decision	
Sign Permit	3.16	-	-	Appeal	-	-	Review/ Decision	
Site-Specific Vesting Plan	3.17	Hearing/ Decision	-	-	-	-	Review	
Reimbursement Agreement	3.24	-	-	-	-	-	Review/ Decision	
Development Agreement	3.24	Hearing/ Decision	-	-	-	-	Review	
Minor Modification	3.19	-	-	Hearing/ Decision (some) Appeal	-	-	Review/ Decision (some)	
Variance	3.20	-	-	Hearing/ Decision	-	-	Review	[13]
Appeals from decisions of an administrative official, including fines and penalties	3.21	-	-	Hearing/ Decision	-	-	Review	[11] [13]
Reasonable Accommodation	3.25	-	-	Hearing/ Decision	-	-	Review	[13]
Zoning Compliance Permit	3.26	-	-	Appeal	-	-	Review/ Decision	[13]
Tree Clearing Certificate	3.22	-	-	Appeal	-	-	Review/ Decision	

TABLE 2.1-1: SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES								
<i>NOTE: This table summarizes the general review and decision-making responsibilities for the procedures contained in Chapter 3.</i>								
Exceptions to these general rules may apply; see Chapter 3 for complete details on each procedure.								
Review = Responsible for Review and/or Recommendation Hearing = Public or Quasi-Judicial Hearing Required								
Decision = Responsible for Final Decision to Approve or Deny Appeal = Authority to Hear and Decide Appeals								
Procedure	Section	Town Council	Planning and Zoning Board	Zoning Board of Adjustment	PRCR Advisory Board	HPC	Staff Departments	Notes
Transportation Development Fees	7.11	-	-	Hearing/ Decision; Appeal	-	-	-	[7]
Mixed Use Center Sketch Plan	4.4.2	Decision	Review	-	-	-	Review/ Decision	[12]

NOTES to Table 2.1-1:

[1]	The Parks, Recreation, and Cultural Resources Advisory Board reviews only those proposed amendments that involve the parks/recreation element of the Comprehensive Plan.
[2]	The Zoning Board of Adjustment and the Planning Director have final decision-making authority on development plans; see Section 3.9.
[3]	The Zoning Board of Adjustment hears appeals of decisions of the Planning Director regarding development plans that are administratively approved by staff; see Section 3.9.
[4]	The Zoning Board of Adjustment hears appeals of decisions of the Planning Director regarding applications for changes to approved development plans; see Section 3.9.
[5]	The Parks, Recreation, and Cultural Resources Advisory Board's review of development plans is limited to proposed dedications of land or fees-in-lieu of dedication.
[6]	The Zoning Board of Adjustment hears appeals of decisions of the Planning Director regarding initial development plan applications that are approved by staff, and also requests for changes to approved development plans; see Section 3.9.
[7]	The Zoning Board of Adjustment makes the final decision on requests for individual assessments and hears appeals of assessments.
[8]	[Reserved]
[9]	Appeal of Building Permit related issues goes to the North Carolina Building Code Council.
[10]	The Parks, Recreation, and Cultural Resources Advisory Board reviews the recreation land dedication proposals associated with PDD rezonings.
[11]	The Zoning Board of Adjustment hears appeals related to development within the Flood Hazard Area and Grading Permits.
[12]	Mixed Use Center sketch plans may be reviewed by staff as defined in section 4.4.2.
[13]	Superior Court hears appeals of Zoning Board of Adjustment decisions.
[14]	Zoning Board of Adjustment review is in the nature of certiorari.

2.1.4 Membership and Procedures

Detailed information on membership criteria and review body procedures for each of the review bodies is located within Chapter 2 of the Town Code of Ordinances.

(Ord. No. 04-007, 7-15-04; Ord. No. 04-011, 9-9-04; Ord. No. 06-009, 4-27-06; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2018-LDO-02, 8-9-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2021-LDO-01, 6-24-21)

2.2 TOWN COUNCIL

2.2.1 Review and Decision-Making Responsibilities

Without limiting any authority granted to the Town Council by State law or by other ordinances of the Town, the Town Council shall, with respect to this Ordinance, have the powers and duties set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

2.3 PLANNING AND ZONING BOARD

2.3.1 Review Responsibilities

The Planning and Zoning Board shall have the review responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

2.3.2 Other Powers and Duties

In addition, the Planning and Zoning Board shall have the following powers and duties, to be carried out at the direction of the Town Council:

To formulate and recommend to the Town Council the adoption or amendment of a Comprehensive Plan and other plans for the Town and its environs as deemed appropriate, and conduct ongoing related research, data collection, mapping, and analysis;

To review the terms of this Ordinance from time to time, as it deems appropriate, and to recommend to the Town Council any changes that the Board considers necessary to carry out plans in a coordinated and efficient manner;

To advise the Town Council concerning the implementation of plans, including, but not limited to, review and comment on all zoning text and map amendments;

Such additional powers and duties as may be set forth for the Planning and Zoning Board elsewhere in this Ordinance and other ordinances of the Town or as may be recited by the Town Council.

(Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

2.4 ZONING BOARD OF ADJUSTMENT

2.4.1 Review and Decision-Making Responsibilities

The Zoning Board of Adjustment shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

2.4.2 Other Powers and Duties

The Zoning Board of Adjustment shall have the following additional powers and duties, to be carried out in accordance with the terms of this Ordinance:

- (A) To subpoena witnesses and compel production of evidence pursuant to the provisions of G.S. 160D-406(g); and
 - (B) Such additional powers and duties as may be set forth for the Zoning Board of Adjustment elsewhere in this Ordinance and other ordinances of the Town.
- (Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2021-LDO-01, 6-24-21)

2.5 HISTORIC PRESERVATION COMMISSION**2.5.1 Review and Decision-Making Responsibilities**

The Historic Preservation Commission shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance, G.S. Chapter 160D, Article 9, Part 4, and the authority granted in Session Law 2007-66, House Bill 827 ratified June 7, 2007 by the General Assembly of the State of North Carolina.

2.5.2 Other Powers and Duties

The Historic Preservation Commission shall have the following additional powers and duties within the town's zoning jurisdiction, to be carried out in accordance with the terms of this Ordinance and G.S. Chapter 160D, Article 9, Part 4:

- (A) To undertake an inventory of properties of historical, pre-historical, architectural, and/or cultural significance.
- (B) To recommend to the Town Council, individual buildings, structures, sites, areas, or objects to be designated by ordinance as "historic landmarks," and areas to be designated by ordinance as "historic districts."
- (C) To recommend to the Town Council that designation of any area as a historic district or part thereof, or designation of any building, structure, site, area, or object as a historic landmark, be revoked or removed for cause.
- (D) To review and act upon proposals for alteration or demolition of designated landmarks; for alteration, demolition, or new construction within historic districts.
- (E) To cooperate with state, federal and other local governments in pursuing the purposes of this Section 2.5. The Town Council, or the Historic Preservation Commission when authorized by the Town Council, may contract with the State, or the United States of America, or any agency of either, or with any other organization, provided the terms are not inconsistent with state or federal law.
- (F) To review National Register nominations for properties in the Town's zoning jurisdiction and provide a reasonable opportunity for public comment; and then submit to the State Historic Preservation Officer comments as to whether or not, in the commission's opinion, the property or district meets the National Register of Historic Places criteria.

- (G) To prepare and recommend the official adoption of a historic preservation element as part of the town's comprehensive plan at the request of the Town Council.
- (H) To enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member, employee or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof.
- (I) To conduct educational programs with respect to historic properties and districts.
- (J) To negotiate at any time with the owner of a building, structure, site, area or object regarding its preservation when such action is reasonably necessary and appropriate.
- (K) To prepare and adopt principles and guidelines for altering, restoring, moving, or demolishing properties, not inconsistent with G.S. Chapter 160D, Article 9, Part 4, designated as landmarks or within historic districts.

(Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2021-LDO-01, 6-24-21)

2.6 PARKS, RECREATION, AND CULTURAL RESOURCES ADVISORY BOARD

2.6.1 Review and Decision-Making Responsibilities

The Parks, Recreation, and Cultural Resources Advisory Board shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance.

2.6.2 Other Powers and Duties

The Parks, Recreation, and Cultural Resources Advisory Board shall have the following additional powers and duties, to be carried out in accordance with the terms of this Ordinance:

- (A) To develop and implement the Parks, Recreation and Cultural Resources Master Plan and other park-related, plans, policies, and programs;
- (B) Upon request of the Town Council or a staff department, to review proposed amendments to this Ordinance, proposed rezonings of property under this Ordinance, and proposed development plans, and to make recommendations to the Town Council for final action thereon;
- (C) To report to the Town Council the recommendations of its various committees as they relate to Land Use and Development; additional powers and duties as may be set forth for the Board elsewhere in this Ordinance and other ordinances of the Town.

(Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

2.7 PUBLIC ART ADVISORY BOARD

2.7.1 Review and Decision-Making Responsibilities

The Public Art Advisory Board shall advise the Town Council on all matters related to public art, including the acquisition and placement of works of art as well as the maintenance, removal, relocation, or alteration of existing works of art in the Town's possession and perform all duties with respect to implementing a public art program in Cary, North Carolina.

2.7.2 Other Powers and Duties

The Public Art Advisory Board shall have the following additional powers and duties, to be carried out in accordance with the terms of this Ordinance:

- (A) Review and make recommendations regarding proposed gifts of public art to the Town of Cary, as well as loans and long term exhibitions of public art on Town-owned property;
- (B) Based on recommendations brought forward by the Program Staff, periodically review and recommend changes to the Public Art Ordinance, guidelines, policies, and procedures.

2.8 STAFF DEPARTMENTS**2.8.1 Review and Decision-Making Responsibilities**

Town staff departments shall have the review and decision-making responsibilities set forth in Table 2.1-1, to be carried out in accordance with the terms of this Ordinance. The departments and agencies also shall have such additional powers and duties as may be set forth elsewhere in this Ordinance and other ordinances of the Town.

2.8.2 Development Review Committee

The Development Review Committee is composed of multiple Town staff departments working together to render decisions on applications as a single decision-making body. The Town staff departments with review and decision-making responsibilities under this Ordinance include, but are not necessarily limited to, the: Planning, Administration, Transportation and Facilities, Inspections and Permits, Fire, Parks Recreation and Cultural Resources, Public Works, and Utilities Departments.

2.8.3 Conflicts of Interest

Pursuant to G.S.160D-109, no staff member shall make a final decision on an administrative decision required by this Ordinance if the outcome of that decision would have a direct, substantial, and readily identifiable financial impact on the staff member or if the applicant or other person subject to that decision is a person with whom the staff member has a close familial, business, or other associational relationship. If a staff member has a conflict of interest, the decision shall be assigned to the supervisor of the staff person or such other staff person as may be designated by the development regulation or other ordinance.

No staff member shall be financially interested or employed by a business that is financially interested in a development subject to regulation under this Ordinance unless the staff member is the owner of the land or building involved. No staff member or other individual or an employee of a company contracting with the Town to provide staff support shall engage in any work that is inconsistent with his or her duties or with the interest of the Town, as determined by the Town.

Pursuant to G.S. 160D-1108, no member of the inspection department shall be financially interested or employed by a business that is financially interested in the furnishing of labor, material, or appliances for the construction, alteration, or maintenance of any building or any part or system thereof, or in the making of plans or specifications therefor, unless the staff member is the owner of the building. No member of the inspection department shall engage in any work that is inconsistent with their duties or with the interest of the Town. Specific examples of conflicts of interest are detailed in G.S. 160D-1108.

(Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

CHAPTER 3: REVIEW AND APPROVAL PROCEDURES

3.1 COMMON REVIEW AND APPROVAL PROCEDURES

- 3.1.1 Authority to File Applications
- 3.1.2 Form of Application
- 3.1.3 Processing Fees
- 3.1.4 Application Completeness
- 3.1.5 Pre-Application Conferences
 - (A) Applicability
 - (B) Initiation of Pre-Application Conference
 - (C) Pre-Application Conference Content
- 3.1.6 Notice Requirements
 - (A) Content of Notices
 - (B) Published Notice
 - (C) Written (Mailed) Notice
 - (D) Posted Notice
 - (E) Constructive Notice
 - (F) Type of Notice
 - (G) [Reserved]
 - (H) Expanded Published Notice Authorized
- 3.1.7 Hearing Procedures
- 3.1.8 Conditions of Approval
- 3.1.9 Simultaneous Processing of Development Applications
- 3.1.10 Owner-Initiated Annexation Petitions
- 3.1.11 Processing Cycles
- 3.1.12 Inaction by Review and Decision-Making Bodies
- 3.1.13 Lapse of Approval
- 3.1.14 Discontinuance of Application Review; Permit Expiration
- 3.1.15 Development Approval
- 3.1.16 Revocation of Development Approval

3.2 AMENDMENTS TO THE COMPREHENSIVE PLAN

- 3.2.1 Cosmetic Amendments to the Comprehensive Plan
- 3.2.2 Regular Review of the Comprehensive Plan
- 3.2.3 Initiation of Comprehensive Plan Amendment
- 3.2.4 Substantive Amendments to the Comprehensive Plan
 - (A) Procedure
 - (B) Standards of Review

3.3 AMENDMENTS TO THE TEXT OF THE LAND DEVELOPMENT ORDINANCE

- 3.3.1 Purpose and Scope
- 3.3.2 Procedure
 - (A) Initiation of Amendments and Filing of Applications
 - (B) Public Hearing; Public Notice
 - (C) Planning Director Review, Report, and Recommendation
 - (D) Review by Planning and Zoning Board
 - (E) Town Council Action
- 3.3.3 Approval Criteria For Text Amendments

3.3.4 Effect of Decision on Successive Applications

- (A) Effect of Denial
- (B) Effect of Approval

3.4 REZONINGS

3.4.1 Rezonings Generally

- (A) Purpose and Scope
- (B) Conditional Use and Flexible Use District Rezonings Distinguished
- (C) Relationship to the Comprehensive Plan
- (D) Procedure
- (E) Rezoning Considerations
- (F) [Reserved]
- (G) Waiting Period for Subsequent Applications
- (H) [Reserved]
- (I) Repair of Zoning Map Errors

3.4.2 Rezonings to Conditional Use Districts

- (A) Purpose of Conditional Use Districts
- (B) Process Required
- (C) Conditions
- (D) Changes to Conditions of Approved Conditional Use District

3.4.3 Rezonings to Planned Development Districts

- (A) Applicability and Scope
- (B) Rezoning Procedures Apply
- (C) Coordination with Review of Development Plans
- (D) Procedure
- (E) Considerations
- (F) Effect of Approval
- (G) Submission of Conditions
- (H) Changes to Conditions of Approved Planned Development District

3.4.4 Rezonings in the Town Center (TC) District and Walnut Street Corridor Transition (CT) District

3.4.5 Rezonings to Mixed Use District (MXD)

- (A) Applicability
- (B) Application
- (C) Review and Approval Process
- (D) Effect of Approval
- (E) Changes to Approved MXD Districts
- (F) Eligibility for Zoning Amendments
- (G) Waiting Period for Subsequent Applications

3.5 ACCESSORY USE PERMITS

3.5.1 Purpose

3.5.2 Applicability

3.5.3 Procedures

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CHAPTER 3: REVIEW AND APPROVAL PROCEDURES

3.1 COMMON REVIEW AND APPROVAL PROCEDURES

3.1.1 Authority to File Applications

- (A) Unless otherwise specified in this chapter, applications for review and approval may be initiated by:
- (1) the owner of the property that is the subject of the application; (2) a lessee or person holding an option or contract to purchase or lease land; (3) the owner's authorized agents; or (4) any review or decision-making body as specified in Chapter 2 of this Ordinance. An easement holder may also apply for development approval for such development as is authorized by the easement.
- (B) When an authorized agent files an application under this chapter on behalf of a property owner, the agent shall provide the Town with written documentation that the owner of the property has authorized the filing of the application.
- (C) When a review or decision-making body initiates action under this Ordinance, it does so without prejudice toward the outcome.

3.1.2 Form of Application

Applications required under this chapter shall be submitted in a form and in such number as required by the responsible staff department.

3.1.3 Processing Fees

Applications shall be accompanied by the fee amount that has been established by the Town Council. The fees for permits and approvals are periodically determined and changed by the Town Council through adoption of the annual operating budget ordinance and are not part of the text of this Ordinance. The fees are listed in a fee schedule that is available through the various staff departments.

3.1.4 Application Completeness

An application will be considered complete if it is in the required form, includes all mandatory information, including all supporting materials specified by this Ordinance and by the official responsible for accepting the application, and is accompanied by the applicable fee. The Planning Director shall make a determination of application completeness. Until an application is determined to be complete, an application has not been submitted. If an application is determined to be incomplete, the Director shall provide notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected in a future re-submittal. An application that is determined to be incomplete may or may not retain its same processing cycle.

3.1.5 Pre-Application Conferences

The purpose of a pre-application conference is to familiarize the applicant and the Town staff with the applicable provisions of this Ordinance that are required to permit the proposed development. This conference should be held prior to the initial creation of a development plan, if applicable, to ensure that the plan will address all applicable requirements of this Ordinance.

(A) Applicability

- (1) A pre-application conference generally is required prior to submittal of the following types of applications:
 - (a) Substantive Amendments to the Comprehensive Plan (Section 3.2.2)
 - (b) Rezoning (Section 3.4);
 - (c) Special uses (Section 3.8);
 - (d) Development Plans (Section 3.9);
 - (e) Variances (Section 3.20).
- (2) Pre-application conferences are not required for changes to already-approved development plans if the following conditions are met:
 - (a) For non-residential development, the proposed increase in building square footage is less than fifty (50) percent of the existing building square footage.
 - (b) For residential development, the proposed increase in the number of units or lots is not more than fifty (50) percent of the existing number of units or lots.
- (3) A pre-application conference is optional prior to submission of any other application under this Ordinance.

(B) Initiation of Pre-Application Conference

Any potential applicant may request a pre-application conference, in the manner prescribed in other Town manuals or documents, with the Planning Director. Prior to the pre-application conference, the applicant shall provide to the Director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, and the type of development permit sought.

(C) Pre-Application Conference Content

The Director shall schedule a pre-application conference after receipt of a request. At the conference, the applicant, the Planning Director, and any other persons the Director deems appropriate to attend shall discuss the proposed development. Rezoning requests to planned development districts shall be reviewed by the Development Review Committee. Based upon the information provided by the applicant and the provisions of this Ordinance, the parties should discuss in general the proposed development and the applicable requirements and standards of this Ordinance.

3.1.6 Notice Requirements**(A) Content of Notices**

All notices required under this Ordinance shall comply with notice requirements set forth in the North Carolina General Statutes. Generally, all published and written notices of legislative public hearings or quasi-judicial evidentiary hearings should, unless otherwise specified in this

Ordinance: (1) identify the date, time, and place of the hearing, (2) if applicable, describe the property involved in the application by street address or by Property Identification Number (PIN) and nearest cross street; (3) describe the nature of the proposed action and in the case of zoning map amendments, that the proposed change may be made to the entire area described or any part or parts of each area to the classification designated or to any more restrictive classification; (4) indicate in the case of legislative public hearings that interested parties may appear at the hearing and speak on the matter, and in the case of quasi-judicial evidentiary hearings, that witnesses under oath may present competent, material, and substantial evidence that is not repetitive; and (5) indicate where additional information on the matter may be obtained.

(B) Published Notice

When the provisions of this Ordinance or law require that notice be published, the Planning Director shall cause a notice to be published on the Town's website pursuant to the procedures of Section 2-2 of the Town of Cary Code of Ordinances. The notice shall be published once a week for two (2) successive calendar weeks, and shall be published for the first time at least ten (10) days and not more than twenty-five (25) days before the scheduled hearing date. In computing such period, the day of publication shall not be counted, but the day of the hearing shall be counted.

(C) Written (Mailed) Notice

(1) Application or Procedure for Not Requiring a Quasi-Judicial Hearing

When the provisions of this Ordinance or law require that written or mailed notice be provided for any application or procedure that does not require a quasi-judicial hearing, the Planning Director shall cause to be prepared a list of all owners of the subject property, all abutting properties, and all properties located within one hundred (100) feet of the subject property and their current addresses, compiled from the current tax abstracts of the applicable county. The Director shall deliver a notice of the hearing to those property owners by first class mail, with such notices being deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. The Town staff person who mails such notices shall keep a record of the notices mailed, and the date of mailing.

(2) Application or Procedure Requiring a Quasi-Judicial Evidentiary Hearing

When the provisions of this Ordinance or law require that written or mailed notice be provided for any application or procedure that requires a quasi-judicial evidentiary hearing, notice of such hearing shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels or land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The Director shall deliver a notice of the hearing to those property owners by first class mail, with such notices being deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. The Town staff

person who mails such notices shall keep a record of the notices mailed, and the date of mailing.

For the purpose of this Section 3.1.6(C), properties are "abutting" even if separated by a street, railroad, or other transportation corridor.

(D) Posted Notice

When the provisions of this Ordinance or law require that notice be posted, the Planning Director shall cause a notice to be posted on the property. Such notice should be posted at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall provide a phone number for interested parties to utilize in order to obtain information regarding the proposed application. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but sufficient notices shall be posted to provide reasonable notice to interested persons.

(E) Constructive Notice

All notices not required by the North Carolina General Statutes are for the convenience of the public and any defective notice shall not invalidate the proceeding.

(F) Type of Notice

The following table summarizes the type of hearing and notice requirements for all procedures in this chapter:

TABLE 3.1-1: HEARING TYPE AND NOTICE REQUIREMENTS					
Type of Application or Procedure	LDO Section	Hearing Type	Notice Required		
			Published See 3.1.6(B)	Mailed See 3.1.6(C)	Posted 3.1.6(D)
Owner-Initiated Annexation Petition	3.1.10	L	Yes	N/A	N/A
Cosmetic Amendments to the Comprehensive Plan	3.2	N/A	N/A	N/A	N/A
Initial Adoption of or Substantive Text or Map Amendments to the Comprehensive Plan	3.2	L	Yes	N/A	N/A
Amendments to the text of the LDO	3.3	L	Yes	N/A	N/A
Zoning Map Amendments	3.4	L	Yes	Yes	Yes
Repair of Zoning Map Errors	3.4	L*	Yes	N/A	N/A
Accessory Use Permit	3.5	N/A	N/A	N/A	N/A
Permitted Uses	3.6	N/A	N/A	N/A	N/A

TABLE 3.1-1: NOTICE REQUIREMENTS (Cont'd)					
Type of Application or Procedure	LDO Section	Hearing Type	Notice Required		
			Published See 3.1.6(B)	Mailed See 3.1.6(C)	Posted 3.1.6(D)
Temporary Uses	3.7	N/A	N/A	N/A	N/A
Special Uses	3.8	E	No	Yes	Yes
Development Plans Reviewed by Planning Director	3.9.2(G)	N/A	N/A	N/A	N/A
Development Plans Reviewed by Town Council or Zoning Board of Adjustment	3.9.2(H)	E	No	Yes	Yes
Development in Flood Hazard Area	3.12	N/A	N/A	N/A	N/A
Grading Permits	3.13	N/A	N/A	N/A	N/A
Building Permits	3.14	N/A	N/A	N/A	N/A
Certificates of Occupancy	3.15	N/A	N/A	N/A	N/A
Sign Permits	3.16	N/A	N/A	N/A	N/A
Vested Rights Certificate	3.17	L	Yes	Yes	Yes
Minor Modifications Reviewed by Planning Director	3.19	N/A	N/A	N/A	N/A
Minor Modifications Reviewed by Zoning Board of Adjustment	3.19	E	No	Yes	Yes
Variances	3.20	E	No	Yes	Yes
Appeals of Administrative Decisions	3.21	E	No	Yes	Yes
Tree Clearing Certificate	3.22	N/A	N/A	N/A	N/A
Reimbursement Agreements	3.24.1	N/A	N/A	N/A	N/A
Development Agreements	3.24.2	L	Yes	Yes	Yes
Reasonable Accommodation	3.25	E	No	Yes	Yes
Zoning Compliance Permit	3.26	N/A	N/A	N/A	N/A
Designation of Historic District	3.27	L	Yes	Yes	No
Designation of Historic Landmark	3.27	L	Yes	Yes	Yes
Certificate of Appropriateness - Minor Works	3.27	N/A	N/A	N/A	N/A
Certificate of Appropriateness - Major Works	3.27	E	Yes	Yes	Yes
Certificate of Appropriateness - Demolition of Historic Structures	3.27	E	Yes	Yes	Yes
Hearing Types A = Administrative L = Legislative L* = Legislative, if hearing required by Town Council (see applicable LDO section) E = Evidentiary					

(G) [Reserved]

(H) Expanded Published Notice Authorized

If a zoning map amendment proposes to change the zoning designation of more than fifty (50) properties, owned by at least fifty (50) different property owners, expanded published notice may be given in lieu of written (mailed) notice as provided in G.S. 160D-602(b).

3.1.7 Hearing Procedures

The procedures and requirements set forth in this section shall apply to all hearings required by this Ordinance, both legislative public hearings and quasi-judicial evidentiary hearings at which evidence is submitted and testimony given under oath, unless a contrary intent is indicated.

- (A)** When the Town has determined that an application is complete and that a hearing is required by this Ordinance, the Director shall schedule a date, time, and place for the required hearing, and shall ensure that all notices are provided pursuant to Section 3.1.6 above.
- (B)** If any resident or property owner submits a written statement regarding a proposed amendment, modification, or repeal to a zoning regulation, including a text or map amendment, to the Town Clerk at least two business days prior to the proposed vote on such change, the Clerk shall deliver such written statement to the Town Council. If the proposed change is the subject of a quasi-judicial proceeding, the Clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to the decision-making body shall not disqualify any member of the body from voting.
- (C)** Any person may appear and speak at a legislative public hearing. Legislative public hearing comments should be directed toward the substance of the proposed action. In quasi-judicial evidentiary hearings, the applicant, Town staff, and any person who would have standing to appeal the decision under G.S. 160D-1402(c) may participate as a party. Other witnesses may present competent, material, and substantial evidence that is not repetitive.
- (D)** Each person who appears at a hearing shall identify himself or herself and his or her address and, if appearing on behalf of an organization, shall state the name and mailing address of the organization, and shall observe any rules related to the conduct of the hearing adopted by Council or the appropriate board.
- (E)** All testimony and evidence given in a quasi-judicial evidentiary hearing in front of the Zoning Board of Adjustment, the Historic Preservation Commission, or the Town Council shall be given under oath or by affirmation to the body conducting the hearing.
- (F)** In a quasi-judicial evidentiary hearing, any party participating in the hearing or their legal representative may, upon receiving proper recognition from the chairperson of the body conducting the hearing, question or cross-examine other persons appearing as witnesses who present adverse evidence or testimony.
- (G)** In a quasi-judicial evidentiary hearing, the chairperson of the body conducting the hearing may exclude any testimony, evidence, or questioning that the chairperson finds to be incompetent, irrelevant, immaterial, or unduly repetitious.

- (H) In a quasi-judicial evidentiary hearing, at any time upon reasonable request, any person may examine the application and materials submitted in support of or in opposition to an application. The Town shall ensure that copies of such materials are made available.

3.1.8 Conditions of Approval

Some procedures set forth in this chapter authorize the decision-making body to impose such conditions upon the premises benefited by the approval as may be necessary to reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the Comprehensive Plan and this Ordinance. In such cases, any conditions attached to approvals shall be directly related to the impacts of the proposed use or development and shall be reasonable and appropriate. In no case shall a condition of approval be less restrictive than the requirements of this Ordinance.

3.1.9 Simultaneous Processing of Development Applications

Where possible without creating an undue administrative burden on the Town's decision-making bodies and staff, this Ordinance intends to accommodate the simultaneous processing of applications for different permits and approvals that may be required for the same development project in order to expedite the overall review process. Review and decision-making bodies considering applications submitted simultaneously shall render separate recommendations and decisions on each application based on the specific standards applicable to each approval.

- (A) Examples of concurrent filing and processing of applications include, but are not limited to:
- (1) A development plan along with a special use;
 - (2) A development plan and a proposed amendment to a planned development master plan; and
 - (3) A variance along with a special use or development plan.
- (B) No rezoning application shall be accepted or processed while an application for any of the permits or approvals listed in this chapter is pending for the same property, and vice versa. This general rule has the following exceptions:
- (1) A rezoning application may be submitted along with an owner-initiated annexation petition (see Section 3.1.10 below).
 - (2) A rezoning application may be submitted along with a development plan provided that the plan complies with the zoning already in place at the time the plan is submitted.
 - (3) A rezoning application to a conditional use district may be submitted along with a development plan even if the plan does not conform to current zoning, provided the development plan will be a condition of the conditional use zoning.
 - (4) A rezoning application to a flexible use district may be submitted along with a development plan.

- (C) Some forms of approval depend on the applicant having previously received another form of approval, or require the applicant to take particular action within some time period following the approval in order to avoid having the approval lapse. Therefore, even though this Ordinance intends to accommodate simultaneous processing, applicants should note that each of the permits and approvals set forth in this chapter has its own timing and review sequence.

3.1.10 Owner-Initiated Annexation Petitions

- (A) Where the owner or developer of a property wishes the Town to annex the property into the Town's corporate boundaries as well as to approve proposed development on the property, then an owner-initiated annexation petition must be processed and considered by the Town Council. The petition shall be accompanied either by a rezoning application consistent with Sections 3.4 and 4.1.3 of this Ordinance or a development plan for the property.
 - (1) All owner-initiated annexation petitions shall be submitted and reviewed in accordance with the Town's policy statements on owner-initiated annexation petitions and annexation policy, as may be amended from time to time by the Town Council. The Town Council has discretion as to whether it annexes the property. The owner-initiated annexation petition shall include all the property that is subject to the rezoning or development plan.
 - (2) For properties located within the Town's extraterritorial jurisdiction, if a rezoning application is submitted with the annexation petition, the rezoning and annexation shall be processed and approved simultaneously. For properties located outside the Town's extraterritorial jurisdiction, the annexation petition must be approved prior to the rezoning application.
 - (3) If a development plan is submitted with the annexation petition, the decision-making body responsible for approving the development plan may not approve the plan until the annexation has been approved.
- (B) All proposals to connect to the Town's water and/or sanitary sewer system shall be required to submit a petition for annexation into the Town's corporate boundaries at the time an application for rezoning or development plan approval is filed with the Town.
- (C) Any development plan seeking to create a use that is considered to be urban development, and is inside the Town's extraterritorial jurisdiction, shall be required to submit an annexation petition regardless of whether or not connection to Town's water and/or sanitary sewer system is necessary.

3.1.11 Processing Cycles

The Planning Director shall issue timetables for reviewing each type of development application or procedure under this chapter. Processing timetables will be advisory, and failure to meet processing goals will not result in deemed approvals. Failure by an applicant to meet processing goals may result in a delayed review process. Timetables may be revised from time to time and may include:

- (A) Dates of regular meetings of review bodies and decision-makers;

- (B) Deadlines for receipt of a complete application for consideration of such application at a particular meeting; and
- (C) Schedule and routing of staff and agency reviews.

3.1.12 Inaction by Review and Decision-Making Bodies

When a review or decision-making body fails to take action on an application within the time required (which varies by type of application), such inaction shall be deemed a denial of the application, unless the decision-making body agrees to an extension of the time frame.

3.1.13 Lapse of Approval

The lapse of approval time frames established by the procedures of this chapter may be extended only when all of the following conditions exist:

- (A) The provisions of this chapter must expressly allow the extension;
- (B) An extension request must be filed prior to the applicable lapse-of-approval deadline;
- (C) The extension request must be in writing and include justification; and
- (D) Unless otherwise noted, authority to grant extensions of time shall rest with the decision-making body that granted the original approval (the one being extended).

3.1.14 Discontinuance of Application Review; Permit Expiration

Development application review shall be discontinued, and development permits shall expire, pursuant to G.S. 143-755 and G.S. 160D-108. For purposes of this section, "development permit" has the meaning set out in G.S. 143-755.

3.1.15 Development Approval

A development approval shall be in writing and may be provided in print or electronic form; if electronic form is used, then it must be protected from further editing. Unless provided otherwise by law, all rights, privileges, benefits, burdens, and obligations created by development approvals made pursuant to this chapter attach to and run with the land.

3.1.16 Revocation of Development Approval

If any development approval is revoked pursuant to this Ordinance, the review and approval of the revocation shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing. The revocation of a development approval may be appealed pursuant to G.S. 160D-405 and section 3.21 of this Ordinance.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21)

3.2 AMENDMENTS TO THE COMPREHENSIVE PLAN

3.2.1 Cosmetic Amendments to the Comprehensive Plan

The Director of any Town department may make cosmetic amendments to the Comprehensive Plan at any time. The Director may submit a proposed cosmetic amendment to the Town Council for their approval if the Director desires advice and consent from the Council. Cosmetic changes submitted to the Town Council for review do not require a public hearing, public notification, or action by the Planning and Zoning Board.

3.2.2 Regular Review of the Comprehensive Plan

The Planning Director shall initiate a regular review of the Comprehensive Plan, assisted as necessary by the directors of other Town departments and advisory boards. Such Review shall include an overall assessment of the adequacy and effectiveness of the existing Plan, including identification of new issues not adequately addressed by the Plan, issues which require further study and investigation, suggested improvements, and specific revisions to Plan maps and policies requested by citizens. As a result of a review, the Planning Director may pursue one or more of the following major planning processes:

- (1) Preparation of a new comprehensive plan;
- (2) An update to the existing plan such that a new or expanded vision is introduced.

The major planning processes above shall include opportunities for citizen engagement in plan preparation. Any changes proposed to the Comprehensive Plan as a result of these processes shall follow the review and adoption process for substantive amendments set forth in Section 3.2.4.

3.2.3 Initiation of Comprehensive Plan Amendment

The Town Council may at any time direct the Planning Director to conduct a review and assessment of the Comprehensive Plan, or evaluate a substantive amendment proposal for consideration in accordance with the provisions of Section 3.2.4. Additionally, the Planning Director may at any time initiate a substantive amendment proposal for consideration in accordance with the provisions of Section 3.2.4, and where a proposed rezoning appears to be inconsistent with the Comprehensive Plan, the Planning Director or the applicant may initiate a substantive plan amendment. In accordance with the Chatham-Cary Joint Plan resolution, a citizen may initiate an amendment to the Chatham-Cary Joint Land Use Plan by filing an application with the Planning Department.

3.2.4 Substantive Amendments to the Comprehensive Plan

(A) Procedure

(1) *Concurrent Review*

A plan amendment and a zoning map amendment may be considered concurrently; if considered concurrently, only one application and application fee shall be required and the procedure shall follow the process for rezonings in accordance with Section 3.4.

(2) Public Hearings and Public Notice

A public hearing shall be held before the Town Council on each proposed substantive amendment to the comprehensive plan. Notice of the hearing shall be provided, and such hearing shall be conducted in accordance with the general provisions of Sections 3.1.6 and 3.1.7.

(3) Staff Report to Town Council

The Planning Director, and other staff as appropriate, shall review each proposed substantive amendment in light of the standards of review set forth in paragraph (B). The Director shall provide a report to the Town Council at the public hearing. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the proposed amendment.

(4) Planning and Zoning Board Recommendation

The Planning and Zoning Board shall review the proposed amendment and make a recommendation to the Town Council, based on the standards of review set forth in paragraph (B). If no recommendation is made within ninety (90) days of the first meeting at which the proposed amendment is presented to them for review, then the Town Council may act on the proposed amendment without a recommendation from the Planning and Zoning Board.

(5) Town Council Action

- (a)** After reviewing the reports and recommendations of the Planning Director and Planning and Zoning Board if applicable, the Town Council may call for a second public hearing or take action based on the standards of review set forth in paragraph (B). Such action may include the following:
 - 1. Approve the amendment by motion, either as submitted or with modifications suggested by staff or by the Council or Planning and Zoning Board;
 - 2. Reject the proposed amendment; or
 - 3. Refer the proposed amendment back to the Planning and Zoning Board for further consideration.
- (b)** Failure of the Town Council to take any action within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation at a Council meeting shall be deemed a denial of the amendment request.

Where a proposed rezoning appears to be inconsistent with the Comprehensive Plan, the Planning Director or the applicant may initiate a substantive plan amendment as provided in Section 3.2. A plan amendment and a zoning amendment may be considered concurrently.

(6) Automatic Amendment of the Future Land Use Plan Map

In accordance with G.S. 160D-605, if Town Council approves a rezoning that is deemed inconsistent with the Comprehensive Plan, the rezoning shall have the effect of also amending the Future Growth Framework Map in the Comprehensive Plan, and no additional request or application for a plan amendment shall be required. If a plan amendment was initiated as described in Section 3.4.1(C) and ran concurrently with the rezoning, the Future Growth Framework Map shall be amended in accordance with the plan amendment. If a plan amendment was not initiated as described in Section 3.4.1(C), staff shall amend the Future Growth Framework Map as appropriate.

(B) Standards of Review

Proposals to amend the Comprehensive Plan shall be evaluated based upon whether the amendment is necessary in order to address conditions including, but not limited to, the following:

- (1) A change in projections or assumptions from those on which the Comprehensive Plan is based;
- (2) Identification of new issues, needs, or opportunities that are not adequately addressed in the Comprehensive Plan;
- (3) A change in the visions, values, policies, or objectives on which the plan is based, or standards governing the physical development of the Town or any other geographic areas addressed by the Comprehensive Plan; or
- (4) Identification of errors or omissions in the Comprehensive Plan.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 2007-04, 3-22-07; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

3.3 AMENDMENTS TO THE TEXT OF THE LAND DEVELOPMENT ORDINANCE**3.3.1 Purpose and Scope**

The Town Council may amend the text of this Ordinance in accordance with the procedures set forth in this section. The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments to Ordinance text that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the Town.

3.3.2 Procedure**(A) Initiation of Amendments and Filing of Applications**

An amendment to the text of this Ordinance may be initiated by any review or decision-making body. Any owner of a legal or equitable interest in land located in the Town or its extraterritorial jurisdiction, or any resident of the Town or its extraterritorial jurisdiction may submit a request for an LDO text amendment to the Planning Director, who may then choose to forward the request on to the Town Council for its consideration.

(B) Public Hearing; Public Notice

The Town Council shall hold at least one (1) public hearing on each LDO text amendment application. Notice of the public hearing shall be provided and the public hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.

(C) Planning Director Review, Report, and Recommendation

The Planning Director shall review each LDO text amendment application based on the approval criteria of Section 3.3.3, and shall distribute the application to other reviewers as deemed necessary. Based on the results of those reviews, the Director shall provide a report to the Town Council at the public hearing on the proposed amendment. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the proposed amendment, and a recommendation regarding whether to approve or deny the proposed amendment.

(D) Review by Planning and Zoning Board

After the public hearing, the Planning and Zoning Board shall review the proposed amendment and submit a written recommendation to the Town Council that addresses whether the proposed amendment is consistent with the Comprehensive Plan and any other officially adopted applicable plans, and addresses other matters deemed appropriate by one or more Board members. The Planning and Zoning Board shall determine their recommendation within ninety (90) days of the first meeting at which the proposed amendment is presented to them for review. The Planning and Zoning Board may request an extension of time from the Town Council. If no recommendation is determined and no extension is granted within ninety (90) days, the Town Council may act on the proposed amendment without a recommendation from the Planning and Zoning Board.

(E) Town Council Action

After reviewing the reports and recommendations of the Planning Director and the Planning and Zoning Board, the Town Council may take action, based on the approval criteria of Section 3.3.3. Such action may include the following:

- (1) Adopt the proposed amendment by ordinance;
- (2) Adopt the proposed amendment with modifications by ordinance;
- (3) Reject the proposed amendment;
- (4) Refer the proposed amendment back to the Planning and Zoning Board.

Pursuant to G.S. 160D-605, when approving or rejecting an LDO text amendment, Town Council shall approve a brief statement describing whether its action is consistent or inconsistent with the Comprehensive Plan.



3.3.3 Approval Criteria For Text Amendments

In reviewing applications to amend the text of this Ordinance, Council should consider the following criteria:

- (A) Whether the proposed amendment corrects an ambiguity or error or meets the challenge of some changing condition, trend, or fact;
- (B) Whether the proposed amendment is consistent with the Comprehensive Plan and the stated purposes of Section 1.3 of this Ordinance;
- (C) Whether the proposed amendment will protect the health, safety, morals, or general welfare of the public, and
- (D) Whether the proposed amendment will result in significant adverse impacts on the natural environment, including air, water, noise, stormwater management, wildlife, and vegetation.

3.3.4 Effect of Decision on Successive Applications

(A) Effect of Denial

No new application for the same or substantially the same amendment shall be accepted within one (1) year of the date of denial of a LDO text amendment application. The waiting period required by this section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the members of the Town Council.

(B) Effect of Approval

No request to modify an approved LDO text amendment shall be considered by the Town Council within one (1) year of the date of approval, except by the initiation of the Town.

(Ord. No. 06-009, 4-27-06; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2021-LDO-01, 6-24-21)

3.4 REZONINGS

3.4.1 Rezoning Generally

(A) Purpose and Scope

The Town Council may rezone property (i.e., amend the classifications of property appearing on the Zoning Map). The purpose is not to relieve particular hardships, nor to confer special privileges or rights on any person, but only to make adjustments to the Zoning Map that are necessary in light of changed conditions or changes in public policy, or that are necessary to advance the general welfare of the Town.

(B) Conditional Use and Flexible Use District Rezoning Distinguished

- (1) Applications for the rezoning of property to a conditional use district are governed by the procedures set forth both in this Section 3.4.1 and also in Section 3.4.2. For purposes of this Ordinance, conditional use district zoning means “conditional zoning” as defined by G.S. 160D-102(7), and conditional use district means “conditional district” as permitted by G.S. 160D-703.

- (2) An application for rezoning to a general use district shall not be converted into an application for rezoning to a conditional use district at any point in the application review process, nor shall an application for rezoning to a conditional use district be converted into an application for rezoning to a general use district. If such a conversion is desired, the applicant must submit a new application for rezoning to the other type of district in accordance with the requirements of this Section 3.4.
- (3) Applications for the rezoning of property to the MXD Flexible Use District are governed by the procedures set forth in Section 3.4.5.

(C) Relationship to the Comprehensive Plan

Where a proposed rezoning appears to be inconsistent with the Comprehensive Plan, the Planning Director or the applicant may initiate a substantive plan amendment as provided in Section 3.2. A plan amendment and a zoning amendment may be considered concurrently.

(D) Procedure

(1) *Initiation of Amendments and Filing of Applications*

A rezoning may be initiated by any review or decision-making body; by application from any owner (or owner's agent) of land for which the rezoning is requested; or by any owner or resident of land within five hundred (500) feet of the land for which the rezoning is requested, but only as long as the rezoning is not a "down-zoning" as defined in G.S. 160D-601. When the owner of land is not an individual, then the rezoning application shall include a disclosure statement that indicates the type of entity involved, and the name and address of each person who holds ten (10) percent or more of the business entity. When the owner of land is publicly-owned business entity, then the rezoning application shall include a disclosure statement that indicates the name and address of each person who holds twenty-five (25) percent or more of the business entity. An application requesting the rezoning shall be filed with the Planning Department.

(2) *Pre-Application Conference*

Before filing an application, a private-party applicant may request a pre-application conference with the Planning Director. See Section 3.1.5.

(3) *Traffic Impact Analysis (TIA)*

A Traffic Impact Analysis (TIA) or Traffic Analysis Report (TAR) is required if the proposed new zoning district could result in a use or mix of uses that can be expected to generate one hundred (100) or more total peak hour trips. Total peak hour trips represent gross trips expected to be generated by the proposed new zoning district prior to applying any reduction for internal trips.

(a) *Preparing the TIA*

The Town shall prepare or have prepared (using Town staff or a retained consultant) the written TIA.

(b) Study Area Boundaries

The extent of the study area for the TIA depends upon the location and size of the rezoning and the prevailing conditions of the surrounding area. The study area is defined in the following table. Controlled access roadways are not included in the study area or analysis; the controlled access ramp intersections with non-controlled access roadways are subject to analysis. The distances described below are to be measured from the property boundaries and include those intersections within the identified area.

TABLE 3.23-1: STUDY AREA BOUNDARIES		
	Trip Generation	Study Area
Base Zone	One hundred (100) - One hundred fifty (150) peak hour trips	One-half (1/2) mile plus any intersection on which at least seven (7) percent of any traffic movement approach volume is generated by the proposed project.
Base Zone	More than One hundred fifty (150) peak hour trips	One (1) mile plus any intersection on which at least seven (7) percent of any traffic movement approach volume is generated by the proposed project.
Central Zone	More than one hundred (100) peak hour trips within the Central Transportation Zone	One-quarter (1/4) mile plus any intersections on which at least seven (7) percent of any traffic movement approach volume are generated by or as a result of the proposed project.

(c) Trip Generation Standards

Trip generation data for each project shall be based upon the Institute of Traffic Engineers' Trip Generation Manual or, at the discretion of the Town, other sources of trip generation data (e.g., local data) if this source data is deemed more representative of the proposed development use. The following other standards also apply to projects:

1. Defining Peak Hour Trips

Peak hour trips are those occurring on peak travel demand days on the adjacent roadway (e.g., daily trips on a Sunday may not be applicable). It is not the intent of this section to require a TIA for a use that generates trips that meet or exceed the threshold but do not occur during the adjacent roadway system's peak hour. For example, facilities designed for sporting events, concerts or other similar uses may not require a traffic analysis because the events occur during a non-peak hour or non-peak day. If a traffic study is required for a use, then the analysis shall be based upon the normal trip generation for the proposed use and not that associated with special event(s).

2. *Credit for Mixed Use, Pass-By Trips*

The determination of the number of trips generated shall also take into account pass-by trips, internal trip capture for integrated mixed use projects (e.g., roadway and/or pedestrian connectivity) and any proposed transportation demand management system, provided that adequate guarantees can be provided to the Town to ensure that such demand management system will function as claimed for the life of the project. In addition, if the proposed development is designed and integrated with an adjacent mixed use project (e.g., roadways), then a credit for trips may be permitted.

3. *Estimated Trips for Rezonings/PDDs*

In evaluating the impact of a proposed rezoning or planned development where the specific uses or exact number of dwelling units have not been specified, estimates shall be based upon the highest level of density or intensity of use that would be authorized by the requested approvals. However, if the highest level of intensity of use is a use that generates trips that meet or exceed the threshold but do not occur during the adjacent roadway system's peak hour, such as athletic fields, outdoor amphitheaters, or other similar uses, then the analysis shall be based upon the normal trip generation for the proposed use and not that associated with special event(s).

(d) *Submission Requirements*

At the time of the initial submission, the applicant is required to submit the following information:

1. Traffic analysis base information, site location map, site layout, if applicable;
2. Data on the existing/proposed land use;
3. Description of the project.
4. Additional information as may be requested by staff.
5. *Study Fee*

After preliminary review of the data submitted under item (d) above, the Town shall prepare an estimate of consulting fees for the analysis of traffic impact for the project. Upon receipt of payment of fees from the applicant in the amount of ninety percent (90%) of the projected cost estimate, the Town shall release the work to a consultant for analysis. After completion of the analysis, the Town shall evaluate the actual costs incurred for the study and will reimburse to the applicant any remaining balance of the fee paid.

(e) *Required Factors to Include in Study*

The TIA shall evaluate the projected impact of the proposed rezoning on the public facilities in question at the time of projected build-out, which will be assumed to be five (5) years from the date the rezoning application was submitted. This analysis will take into account not only the status of existing facilities and the impact of the proposed development, but also the projected impact of the following on the capacity of those facilities:

1. Future capital improvements that will increase the capacity of the facilities in question should be considered if construction of the improvements has received all necessary governmental approvals and funding is in place, or that such approvals and funding appear reasonably certain.
2. All residential dwelling lots (excluding those for multi-family uses) that have received final plat approval but that do not contain a completed dwelling.
3. All development plans that have been approved, so long as such approvals have not expired.
4. For any developments for which the notice to proceed has been granted for a traffic study, even if the traffic study is not complete at the time of scoping the background traffic for a subsequent study to be conducted. If there is no additional action with regards to the project within six (6) months after the completion to the traffic study (such as a rezoning application submitted or approved), the traffic from the completed study will no longer be included in the background traffic for the subsequent study.
5. No traffic from a previously approved planned development should be included as background traffic for the same planned development, if no development plan approval has been granted.
6. Typical background traffic increases that are not directly related to known previously approved development.

(f) *Tracking of Required Factors*

The staff shall develop a system of keeping track of the factors described in subsection (e) above.

(g) *Level of Service*

The TIA shall measure and report the Level of Service (LOS) at peak hours for each intersection within the required study area, with LOS as defined by the most current edition of the Highway Capacity Manual. If the projected LOS for any intersection in the central zone, as defined in Section 7.11.16 of the LDO, is LOS "F", the TIA shall list potential transportation system improvements that would ensure there is no increase in average delay for the intersection (measured in its entirety). If the projected LOS in the base zone, as defined in Section 7.11.6 of the LDO, falls below LOS "D" based upon the standard ITE average peak hour, the TIA shall list potential transportation system improvements that would

ensure there is no increase in average delay for the intersection (measured in its entirety). However, no transportation system improvements shall be listed for intersections for which the existing intersection configuration already meets the requirements of the Comprehensive Transportation Plan.

All forms of transportation system improvements should be considered at non-signalized intersections, including separate left and right turn lanes, geometric modifications, alternative access management strategies, and signalization. Signalization should not be considered the primary solution. Installation of new signals at existing or new intersections should only be considered when the intersection meets required warrants for a signal; the signal does not cause an undesirable delay in the surrounding road system; and other transportation improvements do not result in acceptable levels-of-service.

(h) *Expiration of TIA*

The TIA shall expire after five (5) years.

- (i)** No application for a rezoning shall be accepted by the Town of Cary until the draft findings of the TIA have been received unless the Development Review Committee agrees in advance that the draft findings may be submitted within a week after the date of the rezoning application.

(4) *Neighborhood Meeting*

(a) *Applicability*

This section 3.4.1(D)(4) shall apply to all rezoning applications filed and accepted as complete.

(b) *Procedure*

Neighborhood meetings for complete rezoning applications shall be held at a date, time and location established and scheduled by staff. At the neighborhood meeting, each applicant shall conduct a meeting with any attendee interested in that proposed rezoning. The applicant shall record meeting minutes and provide the Town a digital copy of the written meeting minutes. The purpose of this neighborhood meeting is to ensure that nearby property owners are aware of the request and have an opportunity to inform the applicant of issues and concerns prior to the public hearing.

A general orientation meeting shall be conducted by staff for all applications at the beginning of each neighborhood meeting.

(c) *Alternative Outreach for Certain Rezoning Cases*

An alternative means of conducting public outreach, such as one (1) or more open houses, may be utilized in lieu of the neighborhood meeting for widespread zoning changes initiated for the general purpose of implementing the goals and policies of the Comprehensive Plan. Examples of such changes include the establishment and application of new types of zoning districts or widespread changes to the applicability of or location of existing zoning districts or overlay

districts. The Town shall provide outreach and input opportunities as needed to ensure that citizens have an opportunity to ask questions and understand the proposed rezoning prior to the public hearing. Notification shall include posting on the Town's web site, and, based on the nature of the change and the number of parcels affected, either mailing of a notice to individual property owners affected, or publication of a half (½) page ad in a local newspaper.

The standard neighborhood meeting shall be required for all citizen-initiated rezoning requests and all town-initiated rezoning requests for Town-owned property.

(5) *Public Notice*

Published, written, and posted notice of public hearings shall be provided in accordance with Section 3.1.6.

(6) *Public Hearings*

At least one (1) public hearing shall be held before Town Council in accordance with Section 3.1.7, provided, however, that only the first public hearing shall require written (mailed) notice.

The Planning Director shall review each proposed rezoning in light of the approval criteria of paragraph (E) and distribute the application to the Development Review Committee and, as deemed necessary, to other reviewers. Based on the results of those reviews, the Director shall provide a report to the Town Council at the initial public hearing on the proposed rezoning. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the proposed amendment.

(7) *Planning and Zoning Board Recommendation on Rezoning*

Following the initial public hearing before the Town Council, the Planning and Zoning Board shall consider the proposed rezoning and shall submit a written recommendation to the Town Council that addresses whether the proposed amendment is consistent with the Comprehensive Plan and other officially adopted applicable plans and addresses other matters deemed appropriate by one (1) or more Board members. The Planning and Zoning Board shall determine their recommendation within ninety (90) days of the first meeting at which the proposed rezoning is presented to them for review. The Planning and Zoning Board may request an extension of time from the Town Council. If no recommendation is determined and no extension is granted within ninety (90) days, then the Town Council may act on the proposed rezoning without a recommendation from the Planning and Zoning Board.

(8) *Town Council Action*

(a) After reviewing the reports of the Planning Director and recommendation of the Planning and Zoning Board, the Town Council may call for a second public hearing or take one of the following actions based on the rezoning considerations of paragraph (E):

1. Approve the rezoning by ordinance;

2. Reject the proposed rezoning;
3. Refer the proposed rezoning back to the Planning and Zoning Board for further consideration;
4. Table the proposed rezoning; or
5. Rezone the property by ordinance to any zoning district that is classified higher than the district requested in the application for rezoning, but only with the consent of the applicant. See Section 4.1.1(B) for an explanation of "higher" districts versus "lower" districts.

Pursuant to G.S. 160D-605, when approving or rejecting a rezoning, Town Council shall approve 1) a brief statement describing whether its action is consistent or inconsistent with the Comprehensive Plan, and 2) a statement analyzing the reasonableness of the proposed rezoning. The statement of reasonableness and the plan consistency statement may be approved as a single statement. If Town Council approves a rezoning and finds the rezoning to be inconsistent with the Comprehensive Plan, the rezoning shall have the effect of also amending the Future Growth Framework Map in the Comprehensive Plan, and no additional request or application for a plan amendment shall be required. If a plan amendment was initiated as described in Section 3.4.1(C) and ran concurrently with the rezoning, the Future Growth Framework Map shall be amended in accordance with the plan amendment.

- (b) Failure of the Town Council to take one (1) of the actions listed above within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation at a Council meeting shall be deemed a denial of the rezoning request.

(9) *Withdrawal of Application*

A rezoning application not initiated by a Town review or decision-making body may be withdrawn by the applicant at any time prior to final Town Council action on the application. If an applicant fails to pursue a rezoning application for a period of six (6) months, the application shall be deemed withdrawn.

(E) *Rezoning Considerations*

Without limiting Council's broad discretion, in reviewing proposed rezonings, Council may, among other things, consider whether:

- (1) The proposed rezoning corrects an error or meets the challenge of some changing condition, trend, or fact;
- (2) The proposed rezoning furthers the purposes and policies set forth in this Ordinance, including those set forth in Section 1.3 of this Ordinance; or
- (3) The proposed zoning classification is suitable for the subject property.

(F) *[Reserved]*

(G) Waiting Period for Subsequent Applications

- (1) When a rezoning application has been approved or denied by the Town Council, or has been withdrawn by the applicant after notice has been given of the public hearing on the application, no rezoning application covering the same property shall be accepted or considered within twelve (12) months after the date of the approval, denial, or withdrawal. This restriction shall apply regardless of whether the new application is for a different zoning classification than the original application.
- (2) The inclusion of an additional lot or lots in the new application shall not be permitted when it is evident that the inclusion of the new lot or lots is for the express purpose of avoiding these restrictions.
- (3) The waiting period required by this section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the members of the Town Council.

(H) [Reserved]**(I) Repair of Zoning Map Errors**

Where errors are found on the Official Zoning Map, the repair of these errors is not considered to be a rezoning as described in Section 3.4 of this Ordinance. As a result, Zoning Map errors may be corrected upon adoption by the Town Council of a resolution noting and approving the correction. Though not required, Council may, in its discretion, call for a public hearing on the matter as part of its consideration. The matter shall not be considered by the Planning and Zoning Board and action by the Council may be taken following the hearing.

3.4.2 Rezoning to Conditional Use Districts**(A) Purpose of Conditional Use Districts**

If the regulations and restrictions of a general use zoning district are inadequate to ensure the compatibility of the proposed development with the immediately surrounding neighborhood in accordance with the principles of the Comprehensive Plan and this Ordinance, the property owner may apply for rezoning to a conditional use district that bears the same designation as a general use zoning district but is a conditional use zoning district subject to additional conditions in which limited uses are permitted and that are contained in the ordinance approving the conditional use district.

(B) Process Required

A person petitioning for rezoning of a tract of land may elect to request a conditional use district for that tract. The conditional use district application must specify the intended use or uses and the proposed conditions for the property specified in the petition. The intended use or uses must be permitted in the corresponding general use district. The Town Council is to approve or disapprove the application on the basis of the specific use or uses and conditions proposed. Development in a conditional use district requires approval of a single application similar to a general use district rezoning application, which shall be reviewed by the Town Council through a legislative process.

(1) Conditional Use Rezoning Process

Rezoning to a conditional use district shall require submission and approval of an application for a rezoning in accordance with the general procedures set forth in Section 3.4.1, as modified by this Section 3.4.2. A rezoning to a conditional use district may be initiated only by an application signed by all of the owners of the property or by an agent authorized by all of the owners to file such application, which application shall include the affidavit required by Section 3.4.2(C)(4) and (5). If the application is approved, the Town Council shall adopt an ordinance authorizing the requested use with such reasonable conditions as mutually approved by the applicant and Town Council and determined to be desirable in promoting public health, safety and general welfare.

(C) Conditions

- (1)** The conditional use rezoning application shall specify the use or uses that are intended for the property or any use or uses that are prohibited, as well as any additional conditions on the use of the property that the applicant may propose be conditions of the rezoning. The applicant may propose conditions regarding building design elements as defined in G.S. 160D-702 and other development considerations. Conditions are limited to:
 - (a)** Those that address conformance of the development and use of the site to Town ordinances or officially adopted plans; or
 - (b)** Those that address the impacts reasonably expected to be generated by the development or use of the site.
- (2)** An applicant may include a concept plan as a zoning condition in addition to written zoning conditions. A concept plan is a conceptual, illustrative plan that may not be used to eliminate or reduce any LDO or other requirement unless such elimination or reduction is designated as such and specifically provided for in this Ordinance. A concept plan shall show the overall site layout for the proposed development or a portion thereof including, but not limited to, development features such as:
 - (a)** Land uses;
 - (b)** Maximum number of residential units or non-residential square footage;
 - (c)** Any building setbacks and/or buffers that exceed minimum requirements of the LDO;
 - (d)** Natural open space areas to remain undisturbed;
 - (e)** Improved open space areas, including stormwater management devices; and
 - (f)** Vehicular and pedestrian access and circulation.
- (3)** No condition shall be less restrictive than the standards of the parallel general use district or the standards of any overlay district that applies to the property.

- (4) No condition shall be made part of the application, or shall be attached to approval of the conditional use district, which specifies the ownership status, race, religion, or character of the occupants of housing units, the minimum value of improvements, or any other exclusionary device; which states that the use of the property will not be subject to regulations or restrictions set forth in this Ordinance which would apply to the property in any event, such as the regulations for an overlay district which covers the property; or which sets a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings.
- (5) The applicant shall make no changes to proposed zoning conditions within fifteen (15) business days of a meeting at which the rezoning case is scheduled for consideration. Changes to proposed zoning conditions received after publication of the notice of the initial public hearing must be more restrictive than the conditions initially advertised. A revised affidavit meeting the requirements of Section 3.4.2(C)(6) which includes the revised conditions must be received by the Planning Department prior to the meeting at which the rezoning request is to be presented.
- (6) The conditional use rezoning application shall include an affidavit listing all proposed zoning conditions and provisions and attaching any proposed concept plan. A revised affidavit shall be submitted each time the applicant proposes new zoning conditions or a new concept plan. The initial and revised affidavit shall state that:
 - (a) All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
 - (b) The property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions, provisions or concept plans; and
 - (c) The property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions, provisions and concept plans; and
 - (d) The property owner/applicant intends for all future owners of the property to be bound by the zoning conditions, provisions and concept plans, should the Town Council adopt them as part of the rezoning; and
 - (e) The property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions, provisions and concept plans.

(D) Changes to Conditions of Approved Conditional Use District

(1) *Written Zoning Conditions*

Any change to written conditions attached to an approved conditional use rezoning shall be considered a change to the conditional use district, and shall be processed as a new conditional use application in accordance with the procedures set forth in this Section 3.4.2.

(2) Concept Plan

Staff may only approve changes to approved concept plans if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Proposed changes that do not fall within the criteria allowed for approval in Section 3.19 shall proceed in the same manner as the original rezoning.

(3) Eligibility for Zoning Amendments

If multiple parcels of land are subject to a conditional use district, the owners of individual parcels may apply for modification of the conditions applicable to their property so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved shall only be applicable to those properties whose owners petition for the modification.

3.4.3 Rezoning to Planned Development Districts**(A) Applicability and Scope**

A planned development district (PDD) is a type of conditional zoning. No approval for construction of any on-site or off-site improvements in a PDD shall be granted until a master plan for the planned development is approved in accordance with the procedures and requirements of this section.

(B) Rezoning Procedures Apply

Applications requesting a rezoning to a PDD classification shall be submitted in accordance with the general rezoning procedures set forth in Section 3.4.1, as modified by the specific procedures set forth in this Section 3.4.3.

(C) Coordination with Review of Development Plans

An application for PDD master plan approval and any required application for development plan approval (Section 3.9) may be filed simultaneously. The review and processing of these applications shall be coordinated and consolidated as much as possible. The Development Review Committee, the Planning and Zoning Board, and the Town Council, however, shall render separate reports, recommendations, and decisions on each application based on the specific standards applicable to each approval.

(D) Procedure**(1) Pre-Application Conference**

Before filing an application for PDD master plan approval, the applicant may request a pre-application conference with the Development Review Committee. See Section 3.1.5. The applicant shall provide the Development Review Committee with the following information at the pre-application conference:

- (a)** Size and location of the parcel proposed for development as a planned development;

- (b) Proposed gross density and/or the amount of non-residential square footage for the proposed planned development and net density of individual parcels within the PDD;
- (c) A concept plan showing general land uses proposed for the planned development including location, acreage, park, open space areas and school sites, if applicable;
- (d) Number of acres and location of land within the parcel proposed for development as a planned development within a Watershed Protection Overlay district; and
- (e) A schematic description of utility and circulation improvements for the planned development.

(2) *Application Filing*

An application for a PDD rezoning approval shall be filed and processed in accordance with the rezoning procedures set forth in Section 3.4.1. In addition, the application shall be accompanied by a master plan and supporting plans and documents as specified by the Planning Department. The application shall also include an affidavit, and a revised affidavit shall be submitted each time the applicant proposes revisions to the master plan, stating that:

- (a) All zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- (b) The property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- (c) The property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- (d) The property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- (e) The property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

(3) *Review by Town*

The Development Review Committee, the Planning and Zoning Board, and the Town Council shall review the application and the proposed master land use plan for compliance with the requirements of Section 3.4.1 and also this Section 3.4.3.

(4) *Review by Other Bodies*

The Development Review Committee may transmit the proposed master plan to the Parks, Recreation, and Cultural Resources Advisory Board, and/or any other board or commission, including the Wake County Board of Education, deemed appropriate by the Town Council for review and comment.

(E) Considerations

In addition to the general approval considerations for rezonings set forth in Section 3.4.1(E), and without limiting council's broad discretion, council may, when reviewing a proposed PDD rezoning request, consider whether the PDD designation is necessary to address a unique situation or represents a substantial benefit to the Town, compared to what could have been accomplished through strict application of otherwise applicable zoning district standards.

(F) Effect of Approval

- (1) The approval of a PDD application and a master plan shall not become effective until the applicant has submitted to the Planning Department a copy of the master plan incorporating all changes, if any, that were required as conditions to Town Council approval, and such additional information as the Town Council may have required as a condition of PDD or master plan approval.
- (2) Upon receipt of all required submittals, the Planning Director shall mark and sign the master plan as approved, and return a marked and signed copy of the master plan to the applicant. A copy marked "ORIGINAL" shall be retained for the records of the Planning Department.
- (3) Actual development of the property comprising the approved PDD shall be subject to all applicable state requirements, development plan approvals, and other permits and approvals otherwise required by this Ordinance. Such development shall comply with all requirements of this Ordinance unless the approved PDD documents specifically state otherwise.

(G) Submission of Conditions

Conditions proposed by the applicant in the master plan are limited to those that address conformance of the development and use of the site to Town ordinances or officially adopted plans, or those that address the impacts reasonably expected to be generated by the development and use of the site. The applicant may propose conditions regarding building design elements as defined in G.S. 160D-702 and other development considerations. After the town has published the initial notice of public hearing for the application, the applicant shall make no changes to the conditions that are less restrictive than those stated in the application, including, but not limited to, smaller setbacks; more dwelling or rooming units; greater height; more access points; new uses; and fewer improvements. However, more restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least fifteen (15) business days before the date scheduled for consideration by the Town Council or the Planning and Zoning Board.

(H) Changes to Conditions of Approved Planned Development District**(1) Written Conditions**

Any change to written conditions in the master plan shall be considered a change to the planned development district, and shall be processed as a new application in accordance with the procedures set forth in this Section 3.4.3.

(2) Master Plan

Staff may only approve changes to approved master plans if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Proposed changes that do not fall within the criteria allowed for approval in Section 3.19 shall proceed in the same manner as the original rezoning.

(3) Eligibility for Zoning Amendments

If multiple parcels of land are subject to a planned development district, the owners of individual parcels may apply for modification of the conditions applicable to their property so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved shall only be applicable to those properties whose owners petition for the modification.

3.4.4 Rezoning in the Town Center (TC) District and Walnut Street Corridor Transition (CT) District

Rezoning of sub-districts in the TC and CT districts are processed the same as a general or conditional use district.

3.4.5 Rezoning to Mixed Use District (MXD)**(A) Applicability**

An MXD district is a type of conditional zoning. The MXD district is designed to be used in conjunction with the Mixed Use Overlay District (MUOD) as follows:

- (1)** Property which is within a Mixed Use Overlay District and within the Destination Center, Commercial Center Mixed Use, or Mixed Use Employment Center development category in the Shape chapter of the Cary Community Plan may be rezoned only to Mixed Use District consistent with the Comprehensive Plan.
- (2)** Property which is within a Mixed Use Overlay District and within the Commercial Center development category in the Shape chapter of the Cary Community Plan may be rezoned to Mixed Use District or any other general use or conditional use zoning district consistent with the Comprehensive Plan.
- (3)** Property which is within a Mixed Use Overlay District and is not within the Destination Center, Commercial Center Mixed Use, Mixed use Employment Center or Commercial Center development category in the Shape chapter of the Cary Community Plan may not be rezoned to Mixed Use District but may be rezoned to any other district consistent with the Comprehensive Plan.
- (4)** Property which is not within a Mixed Use Overlay District may not be rezoned to the Mixed Use District but may be rezoned to any other district consistent with the Comprehensive Plan.

(B) Application**(1) *Pre-Application Conference***

The applicant shall schedule and attend a Pre-Application Conference (see Section 3.1.5) in accordance with the calendar maintained by the Planning Department.

(2) *Application Materials*

Applications for rezoning to MXD shall be submitted in a form and in such number as specified by the Planning Director and available from the Planning Department. Applications shall include all of the following:

(a) *Preliminary development plan or development plan, and table of uses*

The applicant shall provide a preliminary development plan or, at the applicant's option, a detailed development plan (both hereinafter referred to as "preliminary development plan" or "PDP"). The preliminary development plan shall illustrate the proposed type and mix of uses, density or intensity of development, site design features, public spaces and the like which shall become a requirement of the rezoning if approved. The preliminary development plan shall only cover the area within the boundaries of the property proposed to be rezoned and shall be in sufficient detail to determine consistency with the Comprehensive Plan, LDO requirements, Community Appearance Manual and Site Design Standards. A detailed table of uses that specifies the allowed uses, square footages of nonresidential development, and the numbers and types of residential units shall be attached to and incorporated into the preliminary development plan. Detailed development requirements, including but not limited to, minimum lot size, lot width, building height, building setbacks, landscape buffer types and widths shall be specified on the plan or in a separate document which is attached to and incorporated into the preliminary development plan. Results of a tree survey for champion trees shall be shown on the plan, and an arborist report to verify size, species and health of each champion tree shall be provided in a separate document. Drawings shall be submitted in a form and in such number as specified by the Planning Director.

(b) *Supporting Materials*

The application shall also be accompanied by information as specified by the Planning Director, including but not limited to:

1. a statement regarding compliance with the Comprehensive Plan;
2. a statement analyzing the reasonableness of the proposed rezoning as required by G.S. 160D-605;
3. a statement about how the rezoning meets the considerations in Sec. 3.4.1(E) and 4.5.2(E); and
4. an affidavit. A revised affidavit shall be submitted each time the applicant proposes new zoning conditions or a new PDP. The initial and revised affidavit shall state that:

- i. all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- ii. the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- iii. the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- iv. the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- v. the property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

(C) Review and Approval Process

(1) *Neighborhood Meeting*

A neighborhood meeting shall be conducted in conformance with LDO Section 3.4.1(D)(4).

(2) *Initial Public Hearing*

(a) *Process*

The first public hearing on the proposed MXD rezoning shall be conducted by the Town Council. A rezoning to MXD will not be scheduled for an initial public hearing unless the application is found by planning staff to be complete and ready for consideration. Such hearing shall be noticed as required in Section 3.1.6 of this Ordinance, and notification should also be provided to all persons on the mailing list submitted pursuant to Section 3.4.5(B)(3)(d). At the public hearing:

1. The applicant shall present the merits of the rezoning and shall specifically address the considerations contained in Sections 3.4.1(E) and 4.5.2(E);
2. The staff shall provide a report which evaluates the proposed rezoning, taking into consideration, among other factors, the Comprehensive Plan and the Land Development Ordinance; and
3. The public may also provide comments on the considerations contained in Sections 3.4.1(E) and 4.5.2(E).

(b) *Action by Town Council*

Following the initial public hearing, the Town Council shall refer the proposed rezoning to the Planning and Zoning Board for a recommendation.

(3) *Changes Made After the Public Hearing*

The applicant shall make no changes to proposed zoning conditions within fifteen (15) business days of a meeting of the Planning and Zoning Board at which the rezoning case is scheduled for consideration.

(4) *Planning and Zoning Board Recommendation*

The Planning and Zoning Board shall consider the proposed rezoning in accordance with Section 3.4.1(D)(7).

(5) *Changes After Consideration by the Planning and Zoning Board*

After the Planning and Zoning Board has considered the application, the applicant shall make no changes to the conditions that are less restrictive than those stated in the application, including, but not limited to, smaller setbacks; more dwelling or rooming units; greater height; more access points; new uses; and fewer improvements. However, more restrictive conditions or additional conditions may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least fifteen (15) business days before the date scheduled for consideration by the Town Council.

(6) *Town Council Action*

Town Council shall take action on the rezoning request in accordance with Section 3.4.1.(D)(6) of the LDO.

(D) *Effect of Approval*

Following rezoning to the MXD district, all subsequent development plans submitted within the boundaries of the mixed use district shall be consistent with the terms of the approved district and shall be reviewed and approved pursuant to Section 3.9. Actual development of the property comprising the approved mixed use district shall be subject to all applicable state requirements, development plan approvals, and other permits and approvals otherwise required by this Ordinance. Such development shall comply with all requirements of this Ordinance unless the approved MXD District states otherwise.

(E) *Changes to Approved MXD Districts*

Staff may only approve changes to approved MXD districts if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Proposed changes that do not fall within the criteria allowed for approval in Section 3.19 shall proceed in the same manner as the original rezoning.

(F) Eligibility for Zoning Amendments

If multiple parcels of land are subject to a MXD district, the owners of individual parcels may apply for modification of the conditions applicable to their property so long as the modification would not result in other properties failing to meet the terms of the conditions. Any modifications approved shall only be applicable to those properties whose owners petition for the modification.

(G) Waiting Period for Subsequent Applications

The waiting period for subsequent rezoning applications on the same property after action by the Town Council or withdrawal of the request by the applicant shall be as provided in Section 3.4.1(G) of this Ordinance.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 04-011, 9-9-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 13-LDO-01, 2-13-13; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-05, 12-11-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-004, 8-27-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-LDO-02, 3-30-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-04, 11-17-22; Ord. No. 2023-LDO-03, 6-22-23)

3.5 ACCESSORY USE PERMITS**3.5.1 Purpose**

An accessory use permit is required to ensure that certain accessory uses, which could have a negative effect on residential neighborhoods due to congestion, noise, or other impacts, comply with all applicable zoning standards in this Ordinance.

3.5.2 Applicability

An accessory use permit shall be required prior to commencement of the activity for which the permit is required.

3.5.3 Procedures

(A) An application for an accessory use permit shall be filed with the Planning Department. Within fifteen (15) days after the application is determined complete, the Planning Director shall review the application and determine whether to approve, approve with modifications, or deny the application based on compliance with the standards set forth in Section 5.3 of this Ordinance.

(B) If the Planning Director denies the application, the applicant shall have thirty (30) days to submit a corrected application without paying a separate application fee. If a corrected application is not resubmitted within thirty (30) days, the application shall be considered withdrawn and a new application fee shall be required for future re-submittals.

(Ord. No. 2014-LDO-03, 8-14-14)

3.6 PERMITTED USES

3.6.1 Those uses designated as "permitted uses" in Chapters 4 and 5 of this Ordinance require no special treatment under this Chapter 3 different from the provisions generally applying to the zoning district in which the use is located and any use-specific regulations listed in Chapter 5. However, depending on the nature and location of the use, development plan approval (Section 3.9), approval for development in the Flood Hazard Area (Section 3.12), and/or a grading permit (Section 3.13) may be required before the permitted use may be established.

3.6.2 No permitted use shall be established until the person proposing the use applies for and receives all building permits and certificates of occupancy required under Sections 3.14 and 3.15.
(Ord. No. 2021-LDO-01, 6-24-21)

3.7 TEMPORARY USES

3.7.1 Temporary Use Permit Required

No use that is classified as a temporary use in the zoning district in which it is to be located shall be placed or established on the property without first receiving a temporary use permit. No temporary use permit is required for events taking place on county-owned park property.

3.7.2 Filing and Contents of Application

- (A)** An application for a temporary use permit may be filed only by the owner of the property, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
- (B)** An application for a temporary use permit shall be filed with the Planning Department. Where appropriate, each application shall be accompanied by a sketch plan showing the boundaries of the property, the use of adjacent properties, the location of the temporary use or structure on the property, and other information sufficient to show that the temporary use or structure complies with the standards set forth in Section 5.4 of this Ordinance.

3.7.3 Filing Deadline

All applications for temporary use permits shall be filed at least two (2) weeks prior to the date the temporary use will commence, or at least four (4) weeks prior to the date the temporary use will commence if public safety support is requested from the Town. The Planning Director may waive this filing deadline requirement in an individual case, for good cause shown.

3.7.4 Approval Criteria

The Planning Director shall issue a temporary use permit if the proposed temporary use satisfies the requirements set forth in Section 5.4.

3.7.5 Duration of Permit

A temporary use permit shall be valid only for the time period stated on the permit, unless otherwise authorized in this Ordinance.

3.7.6 Temporary Structure Permit Required

No tent, trailer, or other temporary structure governed by the State Building Code shall be occupied or used in conjunction with a temporary use until and unless the applicant has received a tent permit or a building permit from the Inspections and Permits Department pursuant to the State Building Code.

(Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2022-LDO-02, 4-28-22)

3.8 SPECIAL USES**3.8.1 General Provisions****(A) Purpose and Applicability**

Special uses are generally compatible with other land uses permitted in a zoning district yet, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Town as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may require the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location. Any use designated in Chapter 5 of this Ordinance as a "special use" shall not be established without the approval of the Zoning Board of Adjustment in accordance with the procedures and requirements set forth in this section.

(B) Relationship to Development Plan Requirements**(1) *Coordination with Review of Development Plans***

If a development plan is necessary for the proposed special use pursuant to Section 3.9, then the review and approval of both the development plan and the special use shall be coordinated. The two (2) applications shall be filed together and review of each application shall proceed simultaneously. However, the Zoning Board of Adjustment shall render separate decisions on each application, recognizing that the applications are distinct and subject to different standards for approval.

(2) *Lapse of Special Use Approval*

Approvals of special uses shall be automatically conditioned on the subsequent approval of a development plan required under Section 3.9. Accordingly, the approval of any special use shall lapse, and become null and void, upon the expiration of the approved development plan.

(C) Special Uses in Nonconforming Structures or Lots

If a proposed special use involves one (1) or more non-conforming structures or lots, the application for special use approval shall be accompanied by any applications necessary for enlargement, expansion, alteration, or major repair of a nonconforming structure or lot in accordance with Chapter 10. This application shall be processed concurrently with the special use application and in accordance with Chapter 10 of this Ordinance. However, approval of the alteration of a nonconforming structure and/or lot request shall be a prerequisite to approval of the special use.

3.8.2 Procedures**(A) Pre-Application Conference**

Before filing the application, an applicant for a special use shall request a pre-application conference with the Planning Department (see Section 3.1.5).

(B) Filing of Application and Content Requirements

- (1) An application for approval of a special use may be filed only by the owner of the lot on which the use is to be located, an agent, lessee, or contract purchaser specifically authorized by the owner to file such application, or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.
- (2) An application for approval of a special use shall be filed with the Planning Department.
- (3) After determining that the application is complete, the Planning Department shall transmit all applications, plans, and other records pertaining to the proposed special use to the decision-making body. If a development plan is required under Section 3.9, the Planning Department shall complete review of the development plan in accordance with the requirements of Section 3.9, and transmit other records pertaining to the proposed special use to the decision-making body.

(C) Notice and Conduct of Quasi-Judicial Evidentiary Hearings

Notice and conduct of quasi-judicial evidentiary hearings required under this section shall be provided pursuant to the general provisions of Sections 3.1.6 and 3.1.7.

(D) Planning Director Review and Report

The Planning Director shall review the proposed special use based on the approval criteria of Section 3.8.3 and distribute the application to the Development Review Committee and, as deemed necessary, to other reviewers. Based on the results of those reviews, the Director shall provide a report to the Zoning Board of Adjustment at a quasi-judicial evidentiary hearing on the special use. This report shall include a discussion of all plans and policies that have been adopted by the Town that are relevant to the proposed application.

(E) Review and Decision

- (1) The Zoning Board of Adjustment shall hold at least one (1) quasi-judicial evidentiary hearing on the proposed special use and, based on the staff report, the evidence presented at the hearing, the approval criteria of Section 3.8.3, and any applicable use-specific standards of Section 5.2 or 5.3, approve, approve with modifications, or deny the proposed special use. The Zoning Board of Adjustment may approve, or approve with modifications, any special use by a majority vote.
- (2) If the special use also requires a development plan, then the Zoning Board of Adjustment shall also review the development plan in accordance with Section 3.9. Final action to approve the development plan shall not occur until after approval of the special use.

- (3) The Zoning Board of Adjustment shall determine contested facts and make its decision within a reasonable time. The decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and shall be approved by the Board and signed by the Chair of the Zoning Board of Adjustment, or his designee. The decision is effective upon filing with the Planning Department.
- (4) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.8.3 Approval Criteria

The Zoning Board of Adjustment shall not approve a proposed special use and any accompanying development plan unless and until it determines that the proposed use meets all the criteria set forth below, based on the evidence and testimony received at the quasi-judicial evidentiary hearing or otherwise appearing in the record of the case:

- (A) The proposed use or development of the land will generally conform with the Comprehensive Plan, other official plans and manuals or documents adopted by the Town;
- (B) The proposed use or development of the land will not materially endanger the public health or safety;
- (C) The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;
- (D) The proposed use or development of the land will not substantially injure the value of adjoining or abutting property;
- (E) The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
- (F) The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and
- (G) The proposed use will not cause undue traffic congestion or create a traffic hazard or unsafe pedestrian pathway.

3.8.4 Effect of Approval or Denial

(A) Conditions

In approving a special use, the Zoning Board of Adjustment may attach reasonable and appropriate conditions and safeguards. Where appropriate, such conditions may include requirements that street and utility rights-of-way be dedicated to the public and that provision be made for recreational space and facilities. Conditions and safeguards imposed under this subsection shall not include requirements for which the Town does not have authority under statute to regulate nor requirements for which the courts have held to be unenforceable if imposed directly by a local government, including, without limitation, taxes, impact fees,

building design elements within the scope of G.S. 160D-702(b), driveway-related improvements in excess of those allowed in G.S. 136-18(29) and G.S. 160A-307, or other unauthorized limitations on the development or use of land.

(B) Subsequent Permits and Approvals

Approval of an application to establish a special use authorizes the applicant to obtain building permits, certificates of occupancy, development plan approval, and other permits or approvals that the Town may require for the proposed development. If the special use included a development plan that must be approved by the Zoning Board of Adjustment, then approval of the special use is contingent on approval of the development plan. The Planning Department shall review applications for these permits for compliance with the terms of the special use approval. A permit, certificate, or other approval shall be issued or valid only for work that complies with the terms of the special use approval.

(C) Transferability of Approval

A special use approval is not transferable from one (1) property to another, but may be transferred to a successor-in-interest to the property.

(D) Resubmission of Denied Applications

No application for approval of a special use shall be filed with or accepted by the Planning Department that is identical or substantially similar to an application that has been denied by the Zoning Board of Adjustment within the previous year. This waiting period requirement may be waived in an individual case, for good cause shown, by the affirmative vote of four-fifths (4/5) of the members of the Zoning Board of Adjustment.

(E) Recording of Approved Special Uses

Upon expiration of the appeal period, a copy of the signed resolution approving a special use should be recorded with the applicable county's Register of Deeds.

3.8.5 Changes to Terms and Conditions of Approval

Any changes to the terms or conditions of approval of the special use shall require separate review and approval by the Zoning Board of Adjustment. Any application for approval of such a change shall be filed, processed, reviewed, and approved or denied in the manner set forth in this section for an original application for special use approval. This section shall not apply, however, to modifications to the approved development plan for the special use, which are governed by Section 3.9 of this Ordinance.

3.8.6 Appeal

Every decision on a request for a special use permit shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of Superior Court by the later of thirty (30) days after the decision is effective, or after a written copy thereof is given in accordance with Section 3.8.2(E)(4). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

(Ord. No. 2007-21, 12-13-07; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

3.9 SUBDIVISIONS PLATS AND DEVELOPMENT PLANS

3.9.1 Purpose and Structure of This Section; Applicability

- (A) This section sets forth the procedures for review and approval of both subdivision plats and development plans.
- (B) A development plan is required for all residential and non-residential development, as defined in Section 12.4, with the exception of the following:
 - (1) One detached dwelling or one duplex dwelling, in both cases including all associated accessory structures and accessory uses, on an existing lot of record.
 - (2) Plats as specified in Section 3.9.3(B) of this Ordinance.

3.9.2 Common Procedures for Review and Approval of Development Plans

(A) Pre-Application Conference Required

A pre-application conference is required prior to submission of most new development plan applications and for some modifications to already-approved plans; see Section 3.1.5 for instances in which a conference is not required. Generally, minor modifications to approved plans do not need a pre-application conference.

(B) Application Materials

All development plan applications shall include a set of application materials prepared pursuant to this section. Approval of these materials shall be a prerequisite to the review and approval procedures set forth in this section.

(1) *General Application Requirements*

Applications shall be filed with the Planning Department and shall consist of maps or plans that show the proposed development layout and related information and drawings, as specified by the Planning Director and prepared to the specifications of the Planning Director. All proposed or existing rights of way, easements, restrictive covenants or other matters of record that are known or should reasonably be known by the property owner(s) and that may affect the property shall be disclosed. Data provided shall be accurate. Submission of an application containing inaccurate, misleading, or false information, including but not limited to incorrect measurement or mathematical results, or submission of an application that omits required information, shall be grounds for rejection or refusal to act on the application and shall constitute a violation of this Ordinance and be subject to appropriate penalties and remedies set forth in Chapter 11.

- (a) The application shall provide a statement identifying any and all modifications from the design standards or improvement requirements set forth in Chapters 7 and 8 that the applicant will be requesting, including requests for Minor Modifications (see Section 3.19) or Variances (see Section 3.20).
- (b) The application shall also be accompanied by other applications, if appropriate, such as a Special Use application (Section 3.8) and/or an owner-initiated annexation petition.

- (c) Any applicant desiring to make a payment of money in lieu of land dedication pursuant to Section 8.2.2. of this Ordinance shall attach a letter to the plan application requesting approval to make payment in lieu of dedication of land.
- (d) A Traffic Management Plan as further described in Section 8.1.1 shall be submitted with an application for any proposed school planned to have an enrollment of two hundred (200) or more students and for any proposed religious or other assembly use (i.e., club, lodge, or hall; or special event center) planned to have a capacity of two hundred (200) or more persons. The Plan shall be in a format as specified by the Transportation and Facilities Department Director.
- (e) During review of the application, the Planning Department, the Development Review Committee, and/or the Town Council may require such additional information as may be necessary to review the submission, if applicable.

(2) *Prohibiting Phasing to Avoid Requirements*

It is the Town's intent to ensure that larger developments are not phased or subdivided in piecemeal fashion in order to comply with numerical requirements of this Ordinance. Two (2) or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development when they are determined to be part of a unified plan of development and are physically proximate to one another. The following factors will be considered to determine whether there is a unified plan of development:

- (a) There is unified ownership, indicated by the fact that:
 - 1. The same person has retained or shared control of the developments;
 - 2. The same person has ownership or a significant legal or equitable interest in the developments; or
 - 3. There is common management of the developments controlling the form of physical development or disposition of parcels of the development.
- (b) There is a reasonable closeness in time between the completion of eighty (80) percent or less of one (1) development and the submission to the Town of a master plan or series of plans or drawings for the other development that is indicative of a common development effort.
- (c) The voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments.
- (d) There is a common advertising scheme or promotional plan in effect for the developments.
- (e) Any information provided by the applicant that the project is not being phased or subdivided to avoid requirements of this Ordinance.

(3) *Two Types of Plans*

The applicant has the option to submit either a "full plan" application or a "sketch plan" application:

(a) *Full Plan Application*

A full plan application shall include information and supporting materials required as specified by the Planning Director. Once the application is complete, the Planning Department shall transmit the application to the Development Review Committee. If the Committee determines that the materials comply with all applicable requirements of this Ordinance and Town specifications, then the Planning Director shall mark the plans as approved. If the Committee determines that the materials do not comply with all applicable requirements, or that meeting the applicable requirements would require a change to the plan that could not be approved by the Planning Director using the Minor Modification process (see Section 3.19), then the Development Review Committee shall submit the plans to the Zoning Board of Adjustment for review, modification, and approval or denial.

Development plans shall meet the required improvements listed in Section 8.1.3(A) unless plans meet the criteria of Section 8.1.3(B), Exceptions to General Requirements.

(b) *Sketch Plan Application*

At the option of the applicant, a "sketch plan" instead of a full plan may be submitted. The information and supporting materials required shall be as specified by the Planning Director. This option is intended to give an applicant a preliminary review of their proposed development without having to prepare complete construction plans, which are required for a full plan application. This option is a two (2)-step process, with the applicant first submitting for approval of a sketch plan, followed by submittal of the construction plans (incorporating the sketch plan approval) in order to receive complete "full plan" approval to move forward to construct the proposed development.

1. *Approval of Sketch Plan Conditional on Approval of Construction Drawings*

If the application is submitted under the sketch plan submission option, approval of the sketch plan shall automatically be conditioned on the Development Review Committee's subsequent approval of construction drawings for all improvements required in the plan.

2. *One Year Deadline to Submit Construction Drawings*

Construction drawings shall be submitted to the Planning Department no more than one (1) year after the date the sketch plan is approved. Failure to submit the construction drawings within this one (1) year period shall result in the lapse of approval of the sketch plan. The Planning Director may grant a single, one (1) year extension of this time limit for good cause shown, upon receiving a request from the applicant.

3. *Review by Development Review Committee of Construction Drawings Following Approval of a Sketch Plan*

- a.** If the Committee determines that the materials comply with all requirements of this Ordinance and applicable Town specifications,

then the Planning Director shall mark the construction drawings as approved.

- b. If the Development Review Committee determines that the materials do not comply with all applicable requirements, or that meeting the applicable requirements would require a change to the plan that could not be approved by the Planning Director using the Minor Modification process, then the Development Review Committee shall submit the construction drawings to the Town Council for review, modification, and approval or denial.

(C) Owner-Initiated Annexation Petition Required

If the property within the proposed plan boundaries requires annexation into the Town limits, then official approval of the plan connecting to Town utilities is contingent on annexation into the Town. See Section 3.1.10.

(D) Coordination of Plan Review with Special Use and/or Subdivision Plat Review

- (1) The review and approval of development plans should be coordinated with the review and approval of Special Uses (see Section 3.8) to the maximum extent possible. An application for approval of a development plan may be submitted at the same time as an application for approval of a special use for the same development. However, the Development Review Committee shall render separate recommendations and the decision-making body (if subject to its approval) shall render a separate decision on each application, recognizing the applications as distinct and subject to different standards for approval. However, the decision-making body may choose to approve both applications with one (1) vote.
- (2) Application for a subdivision plat may only be submitted following development plan approval, unless a development plan is not required (see Section 3.9.3(B)).

(E) Plans in Nonconforming Structures or Lots

If a proposed plan involves one (1) or more structures or lots that do not conform to the regulations of the district in which the plan is located, then, this plan may be reviewed as a Re-use/Redevelopment Plan provided that the proposal is consistent with the requirements in Section 3.11.2. If the proposal is not consistent with Section 3.11.2, or includes an expansion of the nonconforming use, structure, or site, beyond that allowed by Section 3.11.3 then such proposal shall be required to obtain special use approval (see Section 3.8) unless the applicant has previously obtained the necessary variances from the Zoning Board of Adjustment. In cases where a variance has been granted, such plans would follow the normal development plan process.

(F) Approval Authority

(1) *Approval by Zoning Board of Adjustment*

The Zoning Board of Adjustment shall have final decision-making authority on the following types of development plans, which shall be reviewed using the procedure set forth in this Section:

- (a) Plans for uses that require approval of a Special Use; and
- (b) Plans that propose one hundred (100) residential units or more, or that would construct one hundred thousand (100,000) square feet of nonresidential floor area or more, or that would construct a new drive-through facility or expand an existing drive-through facility; excepting plans meeting the following criteria, which plans shall be reviewed by the Planning Director:
 - 1. A rezoning for the property was approved within the two (2) calendar years prior to the date of application for the development plan and the plan is not otherwise subject to review by the Zoning Board of Adjustment pursuant to Section 3.9.2(F)(1)(a); or
 - 2. Plans for property (a) subject to a development agreement approved by the Town pursuant to G.S. Chapter 158, Article 1; Chapter 160D, Article 10; or 160D-1315; and (b) for which no zoning condition requires approval of the plan by the Town Council.

(2) *Approval by Town Council*

The Town Council shall have final decision-making authority on the following types of development plans, which shall be reviewed using the procedure set forth in this Section.

- (a) Plans for property within an approved Mixed Use District where conditions of the associated preliminary development plan require action by Town Council.

(3) *Approval by Planning Director*

The Planning Director shall have final decision-making authority on all development plans not subject to review by the Town Council or Zoning Board of Adjustment. Such plans shall be reviewed for compliance with all requirements of this Ordinance and applicable Town specifications.

(G) *Planning Director Review and Approval Process*

- (1) Within ninety (90) days from the submittal or any re-submittal of the application, the Planning Director shall review the plan and the comments and recommendations of the Development Review Committee. The Director shall either approve or deny the plan within this time period unless the applicant has caused additional delay or failed to provide necessary or accurate information.
- (2) If the Planning Director denies the plan, then the reasons for the denial shall be stated in the record of action on the plan.
- (3) In the event the Planning Director denies a plan, an appeal may be filed with the Zoning Board of Adjustment pursuant to Section 3.21 of this Ordinance.

(H) *Town Council and Zoning Board of Adjustment Review and Approval Process*

(1) *Action by Town Council or Zoning Board of Adjustment*

The application, recommendations, and comments of the Development Review Committee and other appropriate review bodies shall be forwarded to the Town

Council or Zoning Board of Adjustment, as appropriate, for action. The Town Council or Zoning Board of Adjustment shall review this information, hold a quasi-judicial evidentiary hearing, and approve, conditionally approve, or reject the plan. Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7. The decision-making body may approve, or conditionally approve, any plan by a majority vote. The decision shall be reduced to writing and reflect the decision-making body's determination of contested facts and their application to the applicable standards. The written decision shall be approved by Town Council and signed by the Mayor or his designee, or approved by the Zoning Board of Adjustment and signed by the Chair of the Zoning Board of Adjustment or his designee. The decision of either decision-making body is effective upon filing with the Planning Department. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.



Development Plan Review Process

(I) Approval Criteria

A development plan may be approved by the Town Council or Zoning Board of Adjustment only if it meets the criteria set forth below:

- (1) The plan complies with all applicable requirements of this Ordinance, including all applicable Town specifications and official plans and manuals or documents adopted by the Town. (Note: Plans within Planned Developments may be subject to different requirements based on the approval).
- (2) The plan adequately protects other property, or residential uses located on the same property, from the potential adverse effects of the proposed development;
- (3) The plan provides harmony and unity with the development of nearby properties;
- (4) The plan provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways;
- (5) The plan provides safe ingress and egress for emergency services to the site; and
- (6) The plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.

(J) Recording of Instrument for Required Dedications

- (1) Approval of a development plan shall automatically be conditioned upon the applicant dedicating any and all lands, interests in land, and rights-of-way required to be dedicated as part of the approved plan through an instrument in a form approved by the Town and recorded with the Wake County Register of Deeds.
- (2) For development plans not requiring a subdivision plat, such instruments shall be recorded prior to the issuance of a building permit. In addition, the applicant shall cause the Wake County Register of Deeds to mail a copy of the original recorded instruments to the Transportation and Facilities Department.
- (3) For development plans requiring a subdivision plat, such instruments must be recorded prior to, or in conjunction with the recording a subdivision plat for the development unless otherwise allowed within this Ordinance. Failure to satisfy this requirement shall render approval of the plan null and void.

(K) Effect of the Plan Approval

- (1) Approval of a plan shall authorize the applicant to proceed with any applications for environmental permits, building permits, and other permits and approvals required in order to develop the property in conformity with the approved plan. A permit, certificate, or other approval may be issued by the Town only if it conforms to the approved plan, and the applicant has made all dedications and improvements required by this Ordinance, except where the non-compliance is the subject of a modification to the plan approved pursuant to Section 3.19, *Minor Modifications* or is otherwise permitted by this Ordinance.

(L) Effect of Decision on Successive Applications

- (1) When a plan application has been denied by the Town Council or the Planning Director, no plan application covering the same property with similar land use shall be accepted or considered within twelve (12) months after the date of the denial.
- (2) The waiting period required by this Section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the members of the Town Council.

(M) Changes to Approved Plans

Changes to approved development plans may be requested by the applicant and may be approved by the Planning Director under the procedure and criteria set forth in Section 3.19, *Minor Modifications*.

3.9.3 Subdivisions of Land**(A) Purpose**

This Section sets forth specific provisions applicable to the review and approval of applications for subdivisions of land. These specific provisions supplement the common procedures set forth in Section 3.9.2.

(B) Applicability

A development plan and subdivision plat are required for all developments that meet the "subdivision" definition (see Chapter 12), except that only plat recordation is required for the division of a tract or parcel of land in single ownership if all the following criteria are met:

- (1) The tract or parcel to be divided is not exempted under subdivision (2) of the definition of Subdivision in Section 12.4.
- (2) No part of the tract or parcel to be divided has been divided under this subsection in the ten (10) years prior to division.
- (3) The entire area of the tract or parcel to be divided is greater than five (5) acres.
- (4) After division, no more than three (3) lots result from the division.
- (5) After division, all resultant lots comply with all of the following:
 - (a) All lot dimension size requirements of the applicable land-use regulations, if any.
 - (b) The use of the lots is in conformity with the applicable zoning requirements, if any.
 - (c) A permanent means of ingress and egress is recorded for each lot.

(C) Prerequisites for Other Approvals

- (1) No building permit or certificate of occupancy may be issued for any building, structure, or improvement located within a subdivision, and no plat for a subdivision may be recorded with the applicable Register of Deeds, until a development plan has been approved, all required dedications of land have been made, and all required improvements have been installed in accordance with the procedures and requirements of this section.
- (2) The Town shall not accept or maintain any street, and shall not extend or connect any street lighting, water service, or sanitary sewer service to any subdivision of land, until and unless a plat for the subdivision has been approved and recorded in accordance with the requirements set forth in this Section.

(D) [Reserved]**(E) Review and Approval of Final Plats****(1) *Required Dedications, Improvements, Payments, and Guarantees***

Prior to approval of the plat, all dedications and improvements, or payments and guarantees in lieu thereof that are required by Chapter 8 of this Ordinance shall be installed on and/or finalized for the property.

(2) *Application Requirements*

An application for plat approval under this Section may be filed only by all of the owners of the property or by an agent, lessee, or contract purchaser specifically authorized by all of the owners to file such application. Where an agent, lessee, or contract purchaser files the application, the agent, lessee, or contract purchaser shall provide the Town with written documentation that all of the owners of the property have authorized the filing of the application.

(3) *Application Filing*

Preliminary copies and required fees for plat approval shall be submitted to the Planning Director.

(4) *Planning Director Review and Approval of Plat***(a) *Approval Criteria for Plats***

The Planning Director shall approve the plat if it is in substantial conformity to the approved development plan and the applicant has carried out the improvements shown on the development plan and made all dedications and improvements, or payments and guarantees in lieu thereof, as associated with the approved plan and as required by Chapter 8. The district highway engineer shall be given an opportunity to make recommendations concerning a subdivision plat if the plat contains proposed State streets, State highways, or related drainage systems.

(b) Processing of Approved Plat

If all conditions and requirements for approval of the plat have been met, the Planning Director or designee shall sign all copies of the plat for recording. The Planning Department shall return the approved and signed copies to the applicant, one (1) of which the applicant shall file with the applicable Register of Deeds within thirty (30) days after approval.

(5) Effect of Approval of a Plat

The recording of the approved plat with the Register of Deeds shall authorize the subdivider, owner, or any subsequent developer of the property, to proceed with such applications for permits as this Ordinance may require for development on the property. No building permit may be issued until an approved subdivision plat has been recorded.

(6) Appeal of Denial

In the event the Planning Director denies a plat, an appeal may be made pursuant to G.S. 160D-1403(b).

(F) Actions by Register of Deeds

The Town shall file a copy of this Ordinance with the applicable county's Register of Deeds. After that filing, the Register of Deeds shall not file or record a plat of subdivision located within the corporate limits or extraterritorial jurisdiction of the Town without the approval of the Town. The landowner shown on a plat submitted for recording, or his or her authorized agent, shall sign a statement on the plat stating whether or not any land shown on the plat is within the corporate limits or extraterritorial jurisdiction of the Town. The filing or recording of a plat without the approval of the Town as required by this Section shall be null and void. The Clerk of the Superior Court of the applicable county shall not order or direct the recording of a plat where such recording would conflict with this Section.

(G) Restriction on Sale or Transfer of Subdivided Land without Approved Plat

Any person who transfers or sells any land located within the corporate limits or extraterritorial jurisdiction of the Town by reference to a plat that has not been approved by the Town and recorded with the applicable county's Register of Deeds shall be guilty of a misdemeanor with the exception of presale contracts as authorized in G.S. 160D-807. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties. The Town also may enjoin such transfer or sale by filing an action for an injunction.

3.9.4 [Reserved]

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 13-LDO-01, 2-13-13; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-04, 8-28-14; Ord. No. 2015-LDO-004, 8-27-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-02, 8-9-18; Ord. No. 2018-LDO-03, 11-15-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2019-LDO-04, 12-12-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

3.10 [RESERVED]**3.11 RE-USE/REDEVELOPMENT PLANS**

The re-use or redevelopment of a vacant nonconforming structure or vacant conforming structure on a nonconforming site shall not be required to undergo the typical development plan review procedure if the eligibility requirements of Section 3.11.3 below are met. Owners of such properties may submit a re-use/redevelopment plan in lieu of a full development plan (see Section 3.9). For purposes of this Section 3.11, a nonconforming site is a site that was lawful at the time it was established and was part of an approved development plan at the time it was established, but which fails to comply with one (1) or more of the applicable regulations or standards of this Ordinance, including development plan requirements.

3.11.1 Intent

The intent of the re-use/redevelopment plan process is to encourage the utilization of existing nonconforming buildings and sites as opposed to their remaining vacant while at the same time reducing such nonconformities to the extent practical. The process allows owners to make improvements to an existing structure or site without having to go through a lengthy review process, produce a detailed development plan, reach compliance with all provisions of this Ordinance, or make roadway improvements.

3.11.2 Changes Allowed for Nonconformities

Notwithstanding the provisions of this Section, development proposals for vacant nonconforming structures or conforming structures on nonconforming sites may utilize the provisions of Section 8.1.3(B) to make minor or inconsequential changes provided that there is no net increase in the amount of building square footage or improved floor area.

3.11.3 Eligibility Requirements

To qualify for submission of a re-use/redevelopment plan, the following conditions must exist:

- (1) The proposed use is permitted within the underlying zoning district, and provided that the new or expanded use does not generate twenty percent (20%) more traffic compared to the amount of traffic generated by the existing and/or previous use as determined by the ITE Trip Generation Manual.
- (2) The previous use was part of an approved development plan (whether approved by the Town of Cary or other jurisdiction such as Wake County).
- (3) The redeveloped use will occupy an existing building(s) on the site, with no expansions or additions proposed.
- (4) If the site is in the Watershed Protection Overlay district, the requirements of Section 7.3 Stormwater Management must be addressed; or if the site is outside of the Watershed Protection Overlay district, no more than twelve thousand (12,000) square feet of additional area is disturbed as a part of the proposal.
- (5) The proposed new use does not expand existing encroachments into required buffers or streetscapes.
- (6) The site will be in compliance with the provisions of Chapter 9, Signs.

- (7) The structure or site has been abandoned for a period of one hundred eighty (180) calendar days or more.

3.11.4 Limitations

Proposed uses only allowable through an overlay district designation may not utilize the re-use/redevelopment plan process. Proposals which do not meet the eligibility requirements of Section 3.11.3 are required to undergo the normal development plan review process and/or the special use process (see Sections 3.8 and 10.1.8) in cases of expansion or major alteration.

Proposals involving a change in use that, although may be permitted within the underlying zoning district, will increase the intensity of the use(s) originally approved, will be required to demonstrate compliance with the current Ordinance requirements applicable to the proposed change prior to the issuance of a Building Permit and/or Certificate of Occupancy. Demonstrating compliance can be accomplished either through the development plan or re-use/redevelopment plan process, whichever is applicable.

Proposals for nonconforming sites or structures that have been vacant for less than one hundred eighty (180) calendar days and do not involve, either proposed or required, any changes to the site or exterior of the structure shall be reviewed during the Building Permit and/or Certificate of Occupancy process for compliance with the approved development plan or ordinance requirements in effect at the time it was established. If one (1) or more aspects of the site and/or structure fail to comply with the applicable plan approval or ordinance requirements, the deficiencies shall be corrected and the Planning Director must verify compliance prior to the issuance of a Certificate of Occupancy.

3.11.5 Dedication and Roadway Improvements

- (A) While such redevelopment projects are not typically required to make roadway or other off-site improvements, dedication of required right-of-way is required as part of the re-use/redevelopment plan approval process.
- (B) Full dedication of all lands designated by the Cary Transportation Plan is not required if such dedication would result in the removal of required parking spaces or other features needed for the development to operate. In such cases, a partial dedication of lands indicated as needed by the Transportation Plan, but not needed for site functionality may be required.
- (C) In some cases, if curb and gutter and/or sidewalk/trail installation may be required if it does not exist along the property's frontage, and can be properly located for the ultimate roadway section indicated in the Transportation Plan without disturbing existing functional site features or is needed to provide an important link with existing or future sidewalks/trails.
- (D) In some cases, grading to the future roadway widening may be required if needed to accommodate landscaping requirements. Postponing landscape requirements may be done if the future widening will ultimately remove the required plantings.
- (E) If the site is located along an existing two (2) lane roadway, the Transportation and Facilities Director may require roadway improvements to address the use's impact.

3.11.6 Required Improvements and Plan Submittal Requirements

A re-use/redevelopment plan shall include and address, at a minimum, the following elements:

- (1) Lighting (parking lot, building lighting, and street lights); and
- (2) Landscaping and/or fencing adequate to minimize impact on adjoining properties; and
- (3) Off-street parking/parking lot design (dimensional standards and standard specifications); and
- (4) Screening of dumpsters, storage, heating and air conditioning, and similar equipment; and
- (5) Building improvements (painting or other changes); and
- (6) Access roads and entrances or exit drives to ensure automotive and pedestrian safety and traffic flow; and
- (7) Depiction of all right-of-way and easement dedications to meet the Transportation Plan (if applicable).

3.11.7 Exceptions for Required Improvements

The Director of Planning and/or the Director of Transportation and Facilities and/or the Director of Water Resources may waive, in part or in full, certain required improvements if meeting them is deemed impractical or unreasonable given the constraints on the existing site. Consideration may also be given to the extent of the required improvements in relation to the specific nature and scope of the re-use/redevelopment proposal.

(Ord. No. 04-001, 1-8-04; Ord. No. 06-009, 4-27-06; Ord. No. 2009-LDO-04, 7-23-09; Ord. No. 2014-LDO-03, 8-14-14)

3.12 DEVELOPMENT IN FLOOD HAZARD AREA**3.12.1 Floodplain Administrator**

The Town shall appoint a Floodplain Administrator to administer and implement the provisions of Section 3.12. In instances where the Floodplain Administrator receives assistance from others to complete tasks to administer and implement this section, the Floodplain Administrator shall be responsible for the coordination and community's overall compliance with the National Flood Insurance Program and the provisions of this section. The Floodplain Administrator's duties shall include, but are not limited to, the following:

- (A) Review all floodplain development permit applications and other forms of development approval for compliance with the provisions in Section 14.7 ("Flood Damage Prevention") and issue permits for all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas;
- (B) Review all proposed development within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas to assure that all necessary local, state and federal permits have been received, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334;

- (C) Notify adjacent communities, the North Carolina Department of Public Safety, Division of Emergency Management, and the State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, that it has been demonstrated that the altered watercourse is maintained so that the flood carrying capacity of the watercourse is not diminished, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA);
- (D) Obtain actual elevation (in relation to NAVD 1988) of the reference level (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with the provisions of Section 14.7.3 of this ordinance;
- (E) Obtain actual elevation (in relation to NAVD 1988) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with the provisions of Section 14.7.3 of this ordinance;
- (F) Obtain actual elevation (in relation to NAVD 1988) of all public utilities in accordance with the provisions of Section 14.7.3 of this ordinance;
- (G) When floodproofing is utilized for a particular structure, obtain certification from a registered professional engineer or architect in accordance with the provisions of Section 14.7.3 of this ordinance;
- (H) Interpret the exact location of the boundaries of the Special Flood Hazard Area;
- (I) Obtain, review and reasonably utilize any base flood elevation data available from a federal, state or other source where base flood elevation data has not been provided in accordance with Section 14.7.2 in order to administer the provisions of Section 14.7, Flood Damage Prevention;
- (J) Provide the N.C. Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program maps delineating new corporate limits within six (6) months from the date of annexation or change in corporate limits;
- (K) Maintain all records pertaining to the provisions of this Section 3.12 and Section 14.7, and to hold them open for public inspection; and
- (L) Review all applications for development and all variances to the required standards and to maintain all of the records required by Section 14.7.

3.12.2 Permit and Approval Requirements

(A) Compliance Required

No development shall occur in the Flood Hazard Area, unless it complies with the procedures set forth in this section and the flood damage prevention standards set forth in Section 14.7 of this Ordinance. In general, no development is allowed in the Flood Hazard Area unless a special use is approved; the property/use is exempted from this requirement; or the development is for roads, greenways, pedestrian crossings, park-related equipment, or public utilities and facilities such as waste water, gas, electrical, and water systems that are located and constructed to minimize flood damage.

(B) Establishment of Floodplain Development Permit

A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas determined in accordance with Section 14.7 of this ordinance.

The person undertaking such development shall file an application for a floodplain development permit with the Floodplain Administrator. The application shall be filed on a form prescribed by the Floodplain Administrator. The Floodplain Administrator shall review the application and shall issue the permit only if the proposed development conforms to the flood damage prevention standards set forth in Section 14.7 of this Ordinance.

(C) Additional Requirement for Non-Residential Structures Located within the Flood Hazard Area

No non-residential structure or related impervious surface shall be built, expanded, or located within the Flood Hazard Area until and unless the Zoning Board of Adjustment has approved a special use permit for such structure or surface under Section 3.8. The Board shall approve such a structure as part of the development plan only upon finding that, without this ability, the owner cannot make a reasonable use of his or her property. In other words, this restriction causes undue hardship. The Board may attach to the approval of the development plan such reasonable conditions as it deems necessary to safeguard the public health, safety, and welfare against any flood hazards that the proposed non-residential structure may present.

3.12.3 Approval Procedure

- (A)** Upon receiving any application for development within the Flood Hazard Area, the Floodplain Administrator shall determine whether the proposed development meets the flood damage prevention standards set forth in Section 14.7.
- (B)** If the Floodplain Administrator determines that the proposed development does not meet these standards, then the Town shall issue no permit, certificate, or other form of approval for the proposed development.
- (C)** In those cases where this Ordinance requires some other form of approval for development in the Flood Hazard Area, the Floodplain Administrator shall report its determination to the body or agency responsible for the issuance of that other form of development approval, within a reasonable amount of time for that body to act accordingly in approving or denying the proposed development.
- (D)** In those cases where no other form of approval is required for the proposed development in an area of special flood hazard, the Floodplain Administrator shall notify the applicant of its determination within a reasonable amount of time.

3.12.4 Appeals

- (A)** All questions on the enforcement of this section shall first be addressed to the Floodplain Administrator. The decisions of the Floodplain Administrator may be appealed by following the procedure set forth in Section 3.21.

- (B) The Zoning Board of Adjustment may grant relief from a decision of the Floodplain Administrator only if the Board finds that the Floodplain Administrator acted incorrectly in interpreting or administering any of the duties or functions listed under Section 3.12.1; other provisions of this Section 3.12; or Section 14.7, *Flood Damage Prevention*.

(Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-03, 10-27-22)

3.13 GRADING PERMITS

3.13.1 Purpose and Scope

This section sets forth the procedures for obtaining a grading permit for development and land-disturbing activities within the Town and its extraterritorial jurisdiction. (The standards for control of sedimentation and soil erosion appear in Section 14.4.)

(A) Applicability

- (1) Except as provided in paragraphs (B) and (C) below, it shall be unlawful to conduct any land-disturbing activity without first obtaining a grading permit from the Town.
- (2) Except where an adopted Town policy allows the issuance of grading permits prior to final development plan approval, no application for a grading permit shall be filed or accepted until the project for which the permit is sought has received all other necessary approvals required under Chapter 3 of this Ordinance.

(B) Exemptions from All Grading Standards and Permit Requirements

The requirements of this section and Section 14.4 of this Ordinance shall apply to all land-disturbing activities undertaken by any person within the Town's corporate limits or extraterritorial jurisdiction, except for the following:

(1) *Agriculture*

Land-disturbing activities undertaken on agricultural land that is taxed at the present-use value standard;

(2) *Forestry*

Land-disturbing activities undertaken on forest land for the production and harvesting of timber and timber products and which are conducted in accordance with Forest Practice Guidelines Related to Water Quality (best management practices) as adopted by the N.C. Department of Environment and Natural Resources. Within the Watershed Protection Overlay, however, both a permit and a valid forestry management plan shall be required from the appropriate federal or state agencies.);

(3) *Mining*

Land-disturbing activities undertaken by persons, as defined in G.S. 113A-52(8), who are otherwise regulated by the provisions of the Mining Act of 1971, as amended (G.S. 74-46 through G.S. 74-68);

(4) Fire Fighting

Land-disturbing activities undertaken for the purpose of fighting fires; and

(5) Activities Regulated by Sedimentation Control Commission

The following land-disturbing activities that are regulated by the North Carolina Sedimentation Control Commission:

- (a)** Land-disturbing activities conducted by the State, the United States, a unit of local government, or persons or agencies having the power of eminent domain;
- (b)** Land-disturbing activities licensed by the State or the United States;
- (c)** Land-disturbing activities funded in whole or in part by the State or the United States.

(C) Exemptions from Grading Permit Requirements

The land-disturbing activities set forth below need not obtain a grading permit, yet shall nevertheless comply with the requirements set forth in this Ordinance, including the soil erosion and sedimentation control requirements of Section 14.4. These activities include:

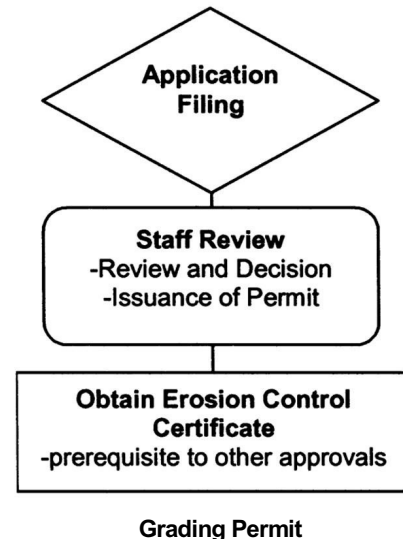
- (1)** Construction of a structure subject to regulation under the North Carolina Residential Code for One- and Two-family Dwellings on a single lot, except when the disturbed area exceeds one (1) acre;
- (2)** Land-disturbing activities that do not exceed twelve thousand (12,000) square feet in surface area, on contiguous lands under single or diverse ownership being developed as a unit; and
- (3)** The stockpiling of raw or processed sand, stone, or gravel in material processing plants and storage yards, provided that the exposed surface area of such materials does not exceed a contiguous area of twelve thousand (12,000) square feet.

3.13.2 Application Requirements

- (A)** An application for a grading permit shall be filed with the Town. An application for a grading permit may be filed only by the owner of the property on which the land-disturbing activity is to occur or a contractor, agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
- (B)** The application shall include an erosion control plan that has been designed and signed by a registered professional engineer or registered landscape architect who is qualified in hydrology.
- (C)** Before filing the application, the applicant is strongly encouraged to request a pre-application conference with the Planning Department. See Section 3.1.5.

3.13.3 Review and Approval

- (A) The Town shall review each application and shall act to approve, approve with modifications, approve with performance reservations, or deny the application, based on the criteria set forth in Section 3.13.4. The review shall be conducted in conjunction with any development plan approval that may be required for the proposed development.
- (B) Where the application must be revised in accordance with any modifications or performance reservations required by the Town, the applicant shall submit a revised application to the Town. The Stormwater Manager shall approve or deny the revised application.



- (C) Upon approval of the application, the Town shall issue a grading permit for the proposed land-disturbing activity. The applicant shall keep a copy of the grading permit and the approved erosion control plan on file at the job site.
- (D) In the event that the Town disapproves the application, the Town shall advise the applicant in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Town's decision to deny or modify the proposed application by following the appeals procedure set forth in Section 3.21. If the Zoning Board of Adjustment upholds the denial or modification of the application, then the applicant may appeal this decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(C) and N.C. Administrative Code Title 15, 4B.0018(b). Alternatively, the applicant may appeal the disapproval of the plan directly to the Commission, in accordance with G.S. 113A-61, without appeal to the Zoning Board of Adjustment.

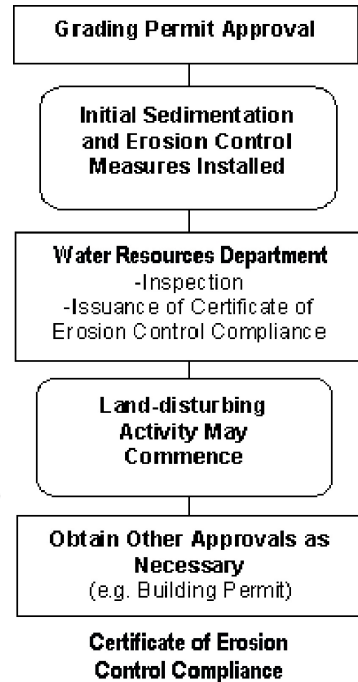
3.13.4 Approval Criteria

- (A) The Town shall approve only those applications that are shown to have the potential to control accelerated erosion and prevent off-site siltation at least the equivalent in effectiveness, safety, quality, and durability of that prescribed in the current edition of the "Erosion and Sedimentation Control Planning and Design Manual" published by the North Carolina Sedimentation Control Commission.
- (B) The Town may deny the application for any of the following reasons, if the applicant, or any parent or subsidiary corporation (if the applicant is a corporation) meets any of the criteria set forth below. For purposes of this subsection, an applicant's record may be considered for only the two (2) years prior to the application date.
- (1) The applicant has failed to substantially comply with state rules or local ordinances and regulation adopted pursuant to the Sedimentation Pollution Control Act;
 - (2) The applicant is conducting or has conducted land-disturbing activity without an approved permit, or has received notice of violation of a permit previously approved by the North Carolina Sedimentation Control Commission, the Town, or another local government, and has not complied with the notice within the time specified therein;

- (3) The applicant has failed to pay a civil penalty assessed pursuant to the Sedimentation Pollution Control Act or this Ordinance for failure to comply with the applicable sedimentation and erosion control requirements, where such payment is due and no appeal is pending regarding the penalty;
- (4) The applicant has been convicted of a misdemeanor pursuant to G.S. 113A-64(b), or any similar provision of this Ordinance, for failure to comply with the applicable sedimentation and erosion control requirements.

3.13.5 Effect of Approval; Certificate of Erosion Control Compliance

- (A) Following approval of the grading permit application, the applicant shall install the initial sedimentation and erosion control measures specified in the approved erosion control plan.
- (B) The land-disturbing activity shall not begin until the Stormwater Manager has inspected these initial measures and issued a certificate of erosion control compliance indicating that these initial measures conform to the approved application.
- (C) No building permit or certificate of occupancy shall be issued by the Inspections and Permits Department prior to the issuance of the certificate of erosion control compliance.
- (D) The grading permit shall be valid so long as the development plan to which it refers remains valid and in effect. When the approval of the development plan lapses, the grading permit is null and void.



3.13.6 Responsibility for Maintenance and Additional Erosion Control Measures

- (A) During development of a site, the person conducting the land-disturbing activity shall install and maintain all temporary and permanent erosion and sedimentation control measures as required by the approved application and any provision of, or order adopted pursuant to, this Ordinance or the Sedimentation Pollution Control Act (G.S. 113A-50 et seq., as amended).
- (B) After development of the site is complete, the landowner or person in possession or control of the land shall install and/or maintain all necessary permanent erosion and sedimentation control measures, except for those measures installed within a road or street right-of-way or easement that a government agency has accepted for maintenance.
- (C) Whenever the Town determines that significant sedimentation is occurring as a result of a land-disturbing activity, despite the application and maintenance of protective practices, the person conducting the land-disturbing activity or the person responsible for maintenance shall be required to take additional protective action as the Town deems necessary to control the sedimentation.

- (D) All uncovered areas that existed on the effective date of the State rules and resulted from land disturbing activity, exceed twelve thousand (12,000) square feet, are subject to continued accelerated erosion, and are causing off-site damage from sedimentation, shall be provided with a ground cover or other protective measures, structures, or devices sufficient to restrain accelerated erosion and control off-site sedimentation. The required ground cover shall be consistent with this Section 3.13 and Chapters 7 and 14 of this Ordinance.

3.13.7 Changes to Approved Erosion Control Plans

(A) Changes Initiated by Department

Following commencement of a land-disturbing activity pursuant to an approved grading permit, if the Town determines that the approved application is inadequate to meet the requirements of this Ordinance, then the Town may require such revisions to the plan as are necessary to comply with this Ordinance.

(B) Changes Initiated by Applicant

The applicant may apply at any time to amend a grading permit, in written and/or graphic form, under the same conditions and following the same procedure as the original application. Until such time as the Town approves such an amendment, the land-disturbing activity shall not proceed except in accordance with the application as originally approved.

(Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22)

3.14 BUILDING PERMITS

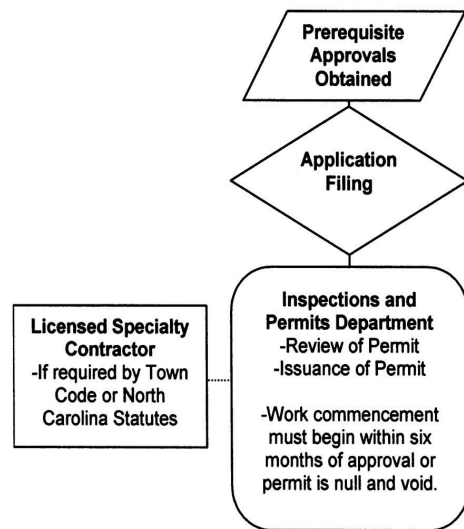
3.14.1 Building Permit Required

A building or structure that is governed by the State Building Code may be constructed, reconstructed, altered, repaired, moved, occupied, or demolished only after the Inspections and Permits Department has issued a building permit for such work. A building permit shall be issued only for work that conforms to the requirements and standards of this Ordinance and the terms and conditions of any other permits, approvals, or variances granted pursuant to this Ordinance.

3.14.2 Application Requirements

- (A) An application for a building permit shall be filed with the Inspections and Permits Department and may be filed only by the owner of the lot on which the building or structure is to be located or an agent, lessee, or contract purchaser specifically authorized by the owner to file such application.
- (B) Applications for new construction shall include evidence that a new water and/or sewer service connection has been approved for such construction, in accordance with the Cary Code of Ordinances.
- (C) A review of compliance with the requirements of this Ordinance will occur concurrently with the evaluation of a building permit application. This review shall include, but is not limited to: off-street parking, landscaping, buffers, or other developmental standard as listed in Chapters 5 through 8 of this Ordinance.

- (D) For all residential detached dwellings and related accessory buildings with a permanent foundation to be located within five (5) feet of a required setback line or easement, a sealed as-built foundation survey and a written statement from the surveyor, builder, owner or architect identifying the distance which sills, cornices, eaves or other architectural or ornamental features will extend beyond the exterior walls, must be submitted to the Inspections and Permits Department at the time of foundation inspection. For all buildings without a permanent foundation to be located within five (5) feet of a required setback line or easement, a sealed as-built foundation survey and a written statement from the surveyor, builder, owner or architect identifying the distance which sills, cornices, eaves or other architectural or ornamental features will extend beyond the exterior walls, must be submitted to the Inspections and Permits Department prior to the scheduling of the rough-in inspection. The survey shall be prepared by a registered land surveyor in the State of North Carolina and shall illustrate to location of all existing and proposed structures and improvements, as well as all property lines, building setback lines, buffers and easements. The requirements for a survey shall not apply to the following:



Building Permit

- (1) Any structures which do not require a building permit; or
- (2) Where there is an existing structure and an accurate survey already available such that the Permits and Inspections Department can determine the field location of existing and proposed structures without requiring a new survey.

3.14.3 Approval Procedure; Duration of Approval

- (A) When proper application for a building permit and the payment of all required fees and charges has been made, the Inspections and Permits Department shall issue the building permit upon finding that the application and the proposed work comply with the provisions of this Ordinance and all other applicable ordinances and construction codes of the Town.
- (B) Where any ordinance or construction code of the Town or any provision of the General Statutes of North Carolina requires that work be done by a licensed specialty contractor of any kind, no building permit for such work shall be issued unless it is to be performed by such licensed specialty contractor.
- (C) Approval and distribution of drawings and specifications required shall be coordinated by the Inspections and Permits Department and shall conform to the current edition of the North Carolina State Building Code.
- (D) The building permit issued by the Inspections and Permits Department shall be conspicuously posted by the applicant on the property for which it was obtained in the manner prescribed by the Inspections and Permits Department. The building permit shall

remain so posted until the applicant has obtained a permanent certificate of occupancy from the Inspections and Permits Department pursuant to Section 3.15.

- (E) A building permit shall become null and void unless the work approved by the permit is commenced within six (6) months after the date of issuance. No work shall be considered to have commenced for the purposes of this paragraph until an inspection has been made and recorded. If after commencement the work is discontinued for a period of twelve (12) months, the permit therefore shall immediately expire. No work authorized by any permit that has expired shall thereafter be performed until a permit has been reinstated, or until a new permit has been secured.

3.14.4 Notification and Approval Before Construction Begins

- (A) Before any work begins pursuant to the building permit, the applicant shall furnish the Inspections and Permits Department with the names of all contractors and subcontractors who will be performing the work.
- (B) The applicant, or his or her agent, foreman, or superintendent, shall provide twenty-four (24) hours advance notice to the Inspections and Permits Department at such time as the work is ready for inspection under the State Building Code. Upon receiving such notification, the Inspections and Permits Department shall inspect the work. No building or structure shall be occupied prior to the completion of all required inspections.

3.14.5 Changes to Approved Permits

- (A) After a building permit has been issued, no substantial changes or deviations from the terms of the permit or the application and accompanying plans and specifications shall be made without the specific written approval of such changes or deviations by the Inspections and Permits Department.
- (B) An amendment to a building permit that requires payment of an additional fee, either because of an increase in the size of the buildings, a change in the scope of work, or an increase in the estimated cost of the proposed work, shall not be approved until the applicant has paid the additional fees and the amendment has been properly reviewed and approved for conformance with the State Building Code.
- (C) Any change in tenancy, occupation, or use of an existing structure shall require review and approval of a Building Permit application consistent with the requirements of this Section.

3.14.6 Revocation of Building Permit

The Inspections and Permits Department may revoke and require the return of any building permit by notifying the permit holder in writing, stating the reason for such revocation. The Department shall revoke building permits for any of the following reasons:

- (A) Any material departure from the approved application, plans, or specifications;
- (B) Refusal or failure to comply with the requirements of this Ordinance or any other applicable State or local laws;
- (C) False statements or misrepresentations made in securing such permit.

The Inspections and Permits Department may also revoke any building permit issued in violation of this Ordinance or any other applicable State or local laws. Appeals of Building Permit requirements or revocations must be made to the North Carolina State Building Code Council. (Ord. No. 04-007, 7-15-04; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2021-LDO-01, 6-24-21)

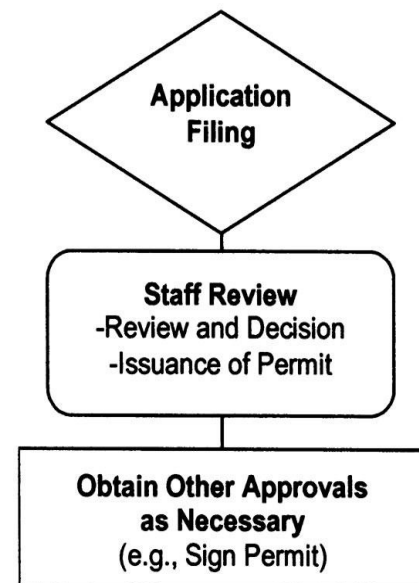
3.15 CERTIFICATES OF OCCUPANCY

3.15.1 Certificate of Occupancy Required

- (A) No new building or part thereof may be occupied, no addition or enlargement of any existing building may be occupied, no existing building that has been altered or moved may be occupied, and no change in the use or occupancy of any building may be made in any existing building or part thereof, until the Inspections and Permits Department has issued a certificate of occupancy or temporary certificate, stating that the building and/or the proposed use complies with the provisions of this Ordinance, including any applicable regulations applying to the proposed use and/or the zoning district in which the use is to be located.
- (B) A certificate of occupancy shall be required for the purpose of maintaining, renewing, changing, or extending a nonconforming use.

3.15.2 Approval Procedure

- (A) The Inspections and Permits Department shall issue a certificate of occupancy when, after examination of the building, structure, landscaping and/or other improvements or changes to the property, the Department finds that the building complies with the applicable provisions of this Ordinance and other applicable ordinances and construction codes of the Town.
- (B) The Inspections and Permits Department shall issue the certificate of occupancy within ten (10) days after the erection or structural alteration of the building or part thereof to be occupied has been completed in conformity with the applicable provisions of this Ordinance and other applicable ordinances and construction codes of the Town.
- (C) The Director may issue a temporary certificate of occupancy, which shall be valid only for the period of time stated in the certificate, for a specified portion or portions of a building that may safely be occupied prior to final completion of the entire building and/or site. Conditions that are attached to the temporary certificate of occupancy must be completed prior to the expiration of the certificate. When such conditions have not been completed prior to the expiration date of the temporary certificate, the certificate of occupancy shall immediately expire. Upon receipt of a written application to the Director stating satisfactory reasons for the failure to complete work within the given time period, the Director may renew the certificate for a specified period of time, not to exceed ninety (90) days.



(Ord. No. 2021-LDO-01, 6-24-21)

3.16 SIGN PERMITS

3.16.1 Permits Required for Sign

If a sign requiring a permit under this chapter is to be placed, constructed, erected or modified on a site, the owner of the lot shall secure a sign permit prior to the construction, placement, erection or modification of such a sign in accordance with the requirements of this chapter.

3.16.2 Permits To Be Consistent with This Chapter

With the exception of signs that comply with a Master Sign Plan within a Planned Development (provided such plan was approved prior to April 14, 2011), no sign permit of any kind shall be issued for an existing or proposed permanent sign unless such sign is consistent with:

- (A) Any Master Sign Plan approved and in effect for the property; and
- (B) The conditions of this chapter.

3.16.3 Application Requirements

- (A) An application for a sign permit may be filed only by the owner of the property on which the sign is to be erected, or by an agent, lessee, or contract purchaser specifically authorized by the owner to file such application. Where an agent, lessee, or contract purchaser files the application, the agent, lessee, or contract purchaser shall provide the Town with written documentation that the owner of the property has authorized the filing of the application.
- (B) An application for a sign permit shall be filed with the Planning Department on a form prescribed by the Department, along with the fee for such certificate as prescribed by the Town Council.
- (C) Each application for a sign permit shall contain the information required on the application form, and such other information regarding the proposed sign as the Planning Department may deem necessary in order to determine whether the proposed sign complies with the applicable requirements of this chapter and other applicable ordinances of the Town.
- (D) The Planning Department shall determine whether the application is complete. If the Department determines that the application is not complete, then it shall notify the applicant of any deficiencies and shall take no further steps to process the application until the applicant remedies the deficiencies.

3.16.4 Approval Procedure

Signs identified in Table 9.2-1, Table 9.2-2, or Table 9.2-3, whichever is applicable, as requiring a permit shall be erected, installed or created only in accordance with a duly issued and valid sign permit from the Planning Director. Such permit shall be issued only in accordance with the following requirements and procedures:

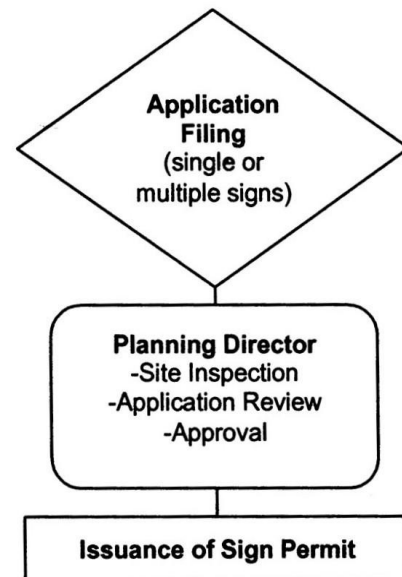
- (A) An application for construction, creation or installation of a new sign or for modification of an existing sign shall be accompanied by detailed drawing to show the dimensions, design, structure, and location of each particular sign, to the extent that such details are not contained in a Master Sign Plan then in effect for the site. One (1) application may include multiple signs on the same site.

(B) The Planning Director may cause an inspection of the site for which each permit for a new sign or modification of an existing sign is issued during the sixth month period after the issuance of such permit or at such earlier date as the owner may request. If the construction is substantially complete but not in full compliance with this chapter or other applicable codes, the Planning Director shall give the owner or applicant notice of the deficiencies and shall allow an additional thirty (30) days from the date of inspection for the deficiencies to be corrected. If the deficiencies are not corrected by such date, the permit shall lapse.

(C) Within five (5) working days of receiving an application for a sign permit or for a Master Sign Plan, the Planning Director shall review it for completeness. If it is incomplete, the Planning Director shall within such five (5)-day period, send to the applicant a notice of the specific ways in which the application is deficient, with appropriate references to the applicable sections of this chapter or Chapter 9.

(D) Within twenty (20) days of submission of a complete application for a sign permit, the Planning Director shall either:

- (1) Issue the sign permit, if the sign conforms in every respect with the requirements of this chapter or Chapter 9, and the applicable Master Sign Plan; or
- (2) Deny the sign permit if the sign fails in any respect to conform to the requirements of this chapter or Chapter 9, and the applicable Master Sign Plan. In case of a rejection, the Planning Director shall specify the sections of this chapter or Chapter 9 with which the sign is inconsistent.



Sign Permit Approval Procedure

3.16.5 Lapse of Sign Permit

A sign permit shall lapse automatically if the business is discontinued for a period of ninety (90) days or more.

3.16.6 Reserved

3.16.7 Removal of Signs Upon Discontinuation of Use

Whenever the use of a building or premises by a specified business or other establishment is discontinued by the owner or occupant for a period of ninety (90) days, the sign permits for all signs pertaining to that business or establishment that were installed by the occupant or owner shall be deemed to have lapsed, and the signs shall be removed, as well as all signs that do not conform to the standards of this chapter. The Master Sign Plan for the premises, if applicable, shall remain in effect provided it does not conflict with the requirements of this Chapter.

(Ord. No. 2007-04, 3-22-07; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-02, 12-8-16)

3.17 SITE-SPECIFIC VESTING PLANS; VESTED RIGHTS

3.17.1 Purpose

The purpose of this Section is to provide for the establishment of site-specific vesting plans pursuant to G.S. 160D-108.1 in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning in recognition that Town approval of land-use development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses. Vested rights may also be established pursuant to G.S. 160D-108 or by application of common law principles.

3.17.2 Establishment and Effect of Site-Specific Vesting Plan

A vested right shall be deemed established with respect to any property upon the approval of a site-specific vesting plan, pursuant to the provisions of this Section. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site-specific vesting plan. This right to carry out the development in accordance with the approved plan shall attach to and run with the land, rather than being personal to the recipient of plan approval.

3.17.3 Vested Rights Period

- (A) A vested right to develop under a site-specific vesting plan shall terminate two (2) years after the effective date of approval of the site specific vesting plan with respect to all buildings and uses for which the developer has not, by that time, filed a valid building permit application in accordance with Section 3.14 of this Ordinance.
- (B) In approving a site-specific vesting plan, the Town Council may extend the two (2)-year vested rights period to a period of up to five (5) years, where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, the level of investment, the need for the development, economic cycles, and market conditions or other considerations. This decision shall be in the sound discretion of the Town Council.

3.17.4 Procedure

In order to be entitled to the vested rights period set forth in Section 3.17.3 above, the owner or developer of the property must apply for a site-specific vesting plan with the Planning Department.

(A) Applicability; application

An applicant who wishes to obtain a site-specific vesting plan shall apply for such at the time of an initial development plan application. The site-specific vesting plan application shall include the approximate boundaries of the site; significant topographical and other natural features affecting development of the site; the approximate location on the site of the proposed buildings, structures, and other improvements; the approximate dimensions, including height, of the proposed buildings and other structures; and the approximate location of all existing and proposed infrastructure on the site, including water, sewer, stormwater, roads, and pedestrian walkways.

(1) *Planning Director Review, Report, and Recommendation*

The Planning Director shall review each proposed site-specific vesting plan and development plan and shall distribute the application to the Development Review Committee. The Development Review Committee shall determine if the development plan complies with this Ordinance. If the Development Review Committee finds the development plan complies with this Ordinance, the Director shall provide a report to the Town Council for consideration. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the application as well as the Development Review Committee's recommendation.

(2) *Town Council Action*

If the development plan requires review by the Zoning Board of Adjustment pursuant to Section 3.9.2, the development plan must first be considered and approved by the Zoning Board of Adjustment. If the development plan does not require Zoning Board of Adjustment review and approval, or if the Zoning Board of Adjustment has approved the development plan, then the site-specific vesting plan will be transmitted to the Town Council. The Town Council, after holding a legislative public hearing, may approve, conditionally approve, or deny the application for the site-specific vesting plan. The Town Council may approve a site-specific vesting plan upon any terms and conditions that may reasonably be necessary to protect the public health, safety, and welfare.

(B) *Notice and Conduct of Public Hearings*

Public hearings on site-specific vesting plans shall be legislative public hearings and shall be published and posted in accordance with the general notice requirements of Section 3.1.6, and shall be conducted in accordance with the general provisions of Section 3.1.7.

(C) *Effect of Denial or Withdrawal of Application*

No application for a site-specific vesting plan covering the same property will be considered until after a lapse of twelve (12) months from the date of denial or withdrawal of the application. This twelve (12)-month provision may be waived for good cause shown by a four-fifths (4/5) vote of the Town Council.

3.17.5 *Exceptions*

The provisions of Section 3.17.2 shall not apply in the following instances:

- (A)** Where the property owner consents, in writing, to making the development conform to the requirements of this Ordinance, or any amendment thereto, which would make the development nonconforming;
- (B)** Where the Town Council finds, after notice and a quasi-judicial evidentiary hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site-specific vesting plan;
- (C)** Where the Town Council finds, after notice and a quasi-judicial evidentiary hearing, that the property owner or his or her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the Town's approval of the site-specific vesting plan;

- (D) Where the state or federal government has enacted or promulgated a law or regulation which precludes developing the property as contemplated in the approved site-specific vesting plan, in which case the Town Council may, by ordinance, modify the affected provisions of the approved plan upon finding, after notice and a quasi-judicial evidentiary hearing, that the change in state or federal law has a fundamental effect on the approved site-specific vesting plan;
- (E) Where the Town has compensated the property owner for all costs, expenses, and other losses incurred by the property owner after approval of the vested rights certificate, including but not limited to all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consulting fees, together with interest as provided under G.S. 160D-106, not including any diminution in the value of the property.

3.17.6 Amendments to Approved Plan

This Ordinance provides for situations in which the property owner or developer may obtain Town approval for particular changes to a site-specific vesting plan that the Town has already approved. The effect of such changes is as follows:

(A) Amendments approved by Planning Director

Where the change is an amendment to a development plan that may be approved by the Planning Director under the terms of this Ordinance then approval of the change shall have no effect on the vested rights period and site specific vesting plan. The Director's approval of the proposed change shall not be deemed to extend or renew the vested rights period.

(B) Changes Requiring Approval of the Zoning Board of Adjustment

Where the change is an amendment to a development plan that requires the approval of the Zoning Board of Adjustment under the terms of this Ordinance, then the property owner or developer must submit an application for a new site specific vesting plan along with the application for approval of the development plan change in order to extend or renew the vested rights period. In no case shall the total period of vesting for any piece of property be longer than five (5) years, no matter how many major changes are made to the property. The new site specific vesting plan may be approved only in accordance with the requirements of Section 3.17.4 above.

(C) Changes Requiring a Variance

Where the change is one that requires a variance from the Zoning Board of Adjustment, then the vested rights period set forth in Section 3.17.3 shall terminate immediately upon the Zoning Board of Adjustment's approval of the variance.

3.17.7 Provisions to Which Vesting Does Not Apply

The establishment of a vested right for a site specific vesting plan shall not preclude the Town from applying overlay zoning or other development regulations which impose additional requirements but that do not affect the allowable type or intensity of use, regulations governing nonconformities that appear in Chapter 10 of this Ordinance, or regulations that are general in nature and apply to all property subject to development regulation by the Town, including but not limited to building, fire, plumbing, electrical, and mechanical codes. All other regulations shall become effective with respect to the property upon the expiration or termination of the vested rights period set forth in Section 3.17.3.

3.17.8 Statutory and Common Law Vested Rights; Owner-Initiated Annexation

- (A) A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Planning Director, who shall make an initial determination as to the existence of the vested right. The decision of the Planning Director may be appealed as provided in Section 3.21. On appeal, the existence of the vested right shall be reviewed de novo. In lieu of seeking a determination or pursuing an appeal, a person claiming a vested right may bring an original civil action as provided by G.S. 160D-1403.1.
- (B) A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160D-108 or 160D-108.1. A statement that declares that no zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

(Ord. No. 04-001, 1-8-04; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2021-LDO-01, 6-24-21)

3.18 ADEQUATE PUBLIC SCHOOL FACILITIES (REPEALED 9/9/04)

The repeal of this section (Adequate Public School Facilities) shall be effective upon adoption and such repeal shall apply to applications for approval of development plans that are submitted for approval by the Town after the effective date of repeal unless the property for which development plan approval is sought is subject to a zoning condition or a developer agreement that requires compliance with this (the Adequate Public School Facilities) ordinance. These properties/planned developments include Cary Park (Rezoning Case # 00-REZ-04), Glenkirk (02-REZ-15), Cameron Pond (02-REZ-27), Amberly (02-REZ-05), Stonewater (02-REZ-08), Village at the Park (02-REZ-06), Huggins Glen - currently known as The Battery (02-REZ-26), and Riggsbee Farm - currently known as Stonecreek Village (02-REZ-23). If the property is subject to a developer agreement or zoning condition or other approval requiring or contemplating compliance, then such property shall be subject to the requirements of the developer agreement or zoning approval which shall be interpreted in terms of this ordinance as it exists immediately before repeal, unless such requirement is modified or removed after review on a case by case basis.

(Ord. No. 04-011, 9-9-04; Ord. No. 2021-LDO-01, 6-24-21)

3.19 MINOR MODIFICATIONS**3.19.1 Minor Modifications to Development and Zoning District Standards****(A) Applicability**

- (1) As part of the review and approval of any procedure set forth in this Chapter 3, an applicant may request a minor modification of any of the development or zoning district standards that are listed in the following table pursuant to the procedures described below. Specifics on allowable modifications may be found in the associated text listed in the table. For properties owned by the Town, the Planning Director shall review all requests for minor modifications listed in the table.
- (2) Review of a minor modification is limited to review of that modification only. Consideration of a requested minor modification does not change the applicable approval authority for the development plan as a whole.

- (3) Development plans seeking to deviate beyond the scope of the Minor Modification process are required to undergo the typical rezoning and/or development plan review process or may request a variance, if applicable, pursuant to Section 3.20. The Minor Modification process is not available for use in situations when there is an existing nonconforming site or structure.

TABLE 3.19-1: MINOR MODIFICATIONS ALLOWED		
Standard That May be Modified	Decision-Making Body	Modification Allowed (%)
Highway Corridor Buffer width [Section 7.2.15]	Zoning Board of Adjustment *	Up to 70
Impervious surface limitations within the Swift Creek portion of the Watershed Protection Overlay [Section 4.4.6(l)]	Zoning Board of Adjustment *	See Section 4.4.6(l)
Building setback requirements (Sections 6.1 and 6.2); building height (Section 6.4)	Planning Director	15
Building setback requirements (Sections 6.1 and 6.2)	Zoning Board of Adjustment *	More than 15
Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 and modifications to parking standards are addressed in Section 7.8.2)	Planning Director	15
Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 and modifications to parking standards are addressed in Section 7.8.2)	Zoning Board of Adjustment *	30
Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO sections: 7.2.8(A), 7.7.3(C), 7.8.2(G), 7.10.3, and 7.10.4.	Planning Director	(not applicable)
Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO section: 7.2.5	Zoning Board of Adjustment *	(not applicable)
Subdivision design standards, numerical, excluding Standard Specifications and Details and Section 8.1.4(A)(10) (Chapter 8)	Planning Director	15
Subdivision design standards, numerical, excluding Standard Specifications and Details and Section 8.1.4(A)(10) (Chapter 8)	Zoning Board of Adjustment *	30
Required right-of-way dedication, Section 8.1.4(A)(10)	Transportation and Facilities Director	5% of their half of the required street standard width
Required right-of-way dedication, Section 8.1.4(A)(10)	Zoning Board of Adjustment	More than 5% of their half of the required street standard width
* For properties owned by the Town, the Planning Director shall review all requests for minor modifications that would otherwise be reviewed by the Zoning Board of Adjustment.		

(B) Exceptions to Authority to Grant Minor Modifications

In no circumstance shall any decision-making body approve a minor modification that results in:

- (1) An increase in overall project density;
- (2) A change in permitted uses or mix of uses;
- (3) [reserved];
- (4) A deviation from the Use-Specific Standards, set forth in Section 5.2; or
- (5) A change in zoning conditions.

(C) Procedure**(1) *Minor Modifications Approved by Planning Director or Transportation and Facilities Director***

- (a) The Planning Director or Transportation and Facilities Director may approve a minor modification allowed under this section at any time prior to submittal of the staff report on an application to another decision-making body, if a report is required, or prior to final decision, if no report is required.
- (b) Such modification shall be reviewed pursuant to criteria found in the applicable Ordinance section for each modification. If no approval criteria are present, the modification shall be approved if:
 1. it otherwise meets all requirements of this Ordinance and applicable Town specifications; and,
 2. the applicant establishes that compliance with the provision sought to be modified is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure; and,
 3. the applicant establishes that the modification requested represents the least deviation required to make compliance practicable.
- (c) The Planning Director's decision on a request for minor modification may be appealed to the Zoning Board of Adjustment.

(2) *Minor Modifications Approved by Zoning Board of Adjustment*

The Zoning Board of Adjustment may initiate or approve a minor modification allowed under this section at any time before the applicable approval authority takes action on a development application. The Zoning Board of Adjustment may approve the minor modification only if it finds, after conducting a quasi-judicial evidentiary hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or

relieves practical difficulties in developing a site. In determining if "practical difficulty" exists, the factors set forth in Section 3.20.5, "Approval Criteria" (for Variances) shall be considered. In granting a minor modification allowed under this section, the Zoning Board of Adjustment may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering. Requests for modifications that exceed the percentages in Table 3.19-1 shall be treated as requests for a variance.

(3) *Noted on Pending Application*

Staff shall specify any approved minor modifications and the justifications for such modifications on the pending development application for which the modifications were sought.

3.19.2 Minor Modifications to Approved Development Plans, Plats, and PDD, MXD, and Conditional Use Zoning Districts

(A) Approved Development Plans or Plats

- (1)** The Planning Director may approve the following minor modifications to plans or plats approved either through an administrative or quasi-judicial process, provided that those changes meet the requirements of this Ordinance:

(a) *Approved Development Plans*

Changes to an approved development plan to allow:

1. The addition of mechanical or other incidental equipment outside of an existing structure provided that this addition does not exceed one percent (1%) of the existing building square footage or improved floor area;
2. Alteration to building elevations;
3. Changes to the amount or layout of parking; or
4. Minor field alterations to accommodate physical site conditions, including the relocation of buildings and the relocation or substitution of landscape material.

(b) *Approved Subdivision Plats*

Changes to an approved subdivision plat to allow:

1. Combination or recombination of existing platted lots so that the total number of lots is not increased and the amended plat represents the same general lot relationships as shown in the plat prior to amendment;
2. Changes to a plat that are the result of minor field alterations to accommodate physical site conditions involving interior features of the site design, including relocation of easements, utilities and infrastructure, which represents the same general lot and easement relationships, topography, landscaping, and minimum utility standards; or

3. Modification of any of the design standards or improvement requirements set forth in Section 8.1 where necessary to make the approved subdivision plat conform to any Mixed-Use Preliminary Development Plan, Planned Development District master land use plan, or concept plan submitted as part of a conditional zoning that the Town Council has approved for a property.

(2) Exceptions

Any other proposed change to an approved plan or plat not listed above shall be accomplished in the same manner as the original approval. In no circumstance shall a modification be granted under this section that results in:

- (a) A change in overall project density by more than five (5) percent;
- (b) A change in permitted uses or mix of uses;
- (c) An increase in building height beyond twenty (20) percent of the structure's original height; or
- (d) A change in a zoning condition.

(3) Approval Criteria; Procedure

The Planning Director may approve a minor modification under this section if all of the relevant criteria below have been met. If approved, the Planning Director shall note the terms of the approved modification directly on the amended plan and affix his or her signature and the date of approval.

- (a) All changes shall conform to the minimum required standards for the zoning district in which the property is located;
- (b) All additions, alterations, and expansions shall be compatible with existing or approved lots, easements, infrastructure, existing or approved structures, and parking areas;
- (c) Any additional required landscaping shall be comparable to the approved plan and shall follow Town specifications and guidelines;
- (d) The effect of the landscaping, buffers, or screening on the site, or on the approved development plan shall not be diminished;
- (e) The number of access points to public streets shall not be increased or substantially relocated;
- (f) The circulation pattern shall continue to provide for the safe, controlled, and orderly flow of pedestrians and vehicles;
- (g) The change will result in better or equal performance of the overall objectives of the approved development plan and specific zoning district classification;

- (h) The change does not otherwise violate any provision of this Ordinance, the Town Code, or other applicable laws; and
- (i) The use and development of the property is otherwise in full compliance with the requirements of this Ordinance.

(B) Approved PDD, MXD, or Conditional Use Zoning Districts

(1) *Applicability*

- (a) The Planning Director may approve the following changes to PDD master plans and conditions, MXD preliminary development plans and conditions, or conditional use district concept plans or conditions using the approval criteria of Section 3.19.2(A)(3):

1. Relocation of a road or intersection;
2. Minor field alterations to accommodate physical site conditions involving interior features of the site design, including relocation of the buildings or uses shown on an approved master plan, PDP, or concept plan, which represents the same general building relationships, topography, landscaping, and minimum utility standards; and
3. A reduction of intensity of use necessary to meet minimum development standards of the LDO.

- (b) In some cases, the ability to implement or strictly follow zoning conditions can be problematic (i.e. conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In such cases, the Planning Director shall implement the condition in a way that most closely meets its original intent. These situations include, but are not limited to:

1. Undisturbed buffers/streetscapes which may be beyond the applicant's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;
2. Specimen or champion trees required to be preserved, but which have been removed due to natural consequences or infrastructure relocation.

The Director may decide to permit re-vegetation when such conditions exist depending upon the extent of the disturbance, the size and quality of the existing vegetation remaining, and the long term viability/benefit of retaining the existing vegetation versus re-forestation.

- (2) Any other proposed change not listed above shall be accomplished in the same manner as the original zoning approval. In no circumstance shall a modification be granted under this section that results in:

- (a) A change in overall project density;
- (b) A change in permitted uses or mix of uses;

- (c) An increase in building height beyond twenty (20) percent of the structure's original height;
- (d) A reduction in buffer width or buffer standards adjacent to residential development;
- (e) A change to the overall concept of the plan; or
- (f) A change in any other zoning condition.

3.19.3 Minor Building Encroachments into Required Setbacks

The Planning Director may approve encroachments of a principal building or accessory structure into any required setback up to a maximum of fifteen percent (15%) of the applicable required setback, provided that:

- (A) The request involves encroachment into two (2) or fewer required setbacks per lot; and
- (B) The encroachment is a result of a construction error by the property owner or a person acting on his or her behalf whether discovered during the construction process or afterwards, or special circumstances or conditions exist (e.g., narrowness, exceptional topographic conditions, or the shape of the property) that are not common to other properties that are similarly situated.
- (C) The encroachment, if approved, will not pose substantial danger to public health and safety.

In addition, the Director may grant additional encroachments for structures that were constructed prior to May 13, 1999 (Implementation Date of Required Foundation Surveys) which do not meet the setback and other requirements of this Ordinance provided that Item (B) is met above and building permits were obtained and approved for the structure.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-07, 12-19-13; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2019-LDO-04, 12-12-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

3.20 VARIANCES

3.20.1 Purpose and Scope

The variance process is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create an unnecessary hardship. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general. Rather, it is intended to provide relief where a hardship results from conditions peculiar to the property itself. State and/or federal laws or requirements may not be varied by the Town.

3.20.2 Provisions From Which Variances Are Allowed

The following standards of this Ordinance are eligible for a variance:

- (A) Any of the development or zoning district standards listed in Table 3.19-1 or any building encroachment into a required setback, but only when the Minor Modification procedures in Section 3.19 are unable to address the hardship; and,
- (B) Any other provision of this Ordinance, so long as the Ordinance does not provide a mechanism for modification or waiver of the provision, and the requested variance would not constitute a use variance as further described in Section 3.20.4(E).

3.20.3 Application Requirements; Determination of Completeness

(A) Persons Authorized to File Applications

An application for a variance may be filed only by the owner of the land affected by the variance; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

(B) Pre-Application Conference

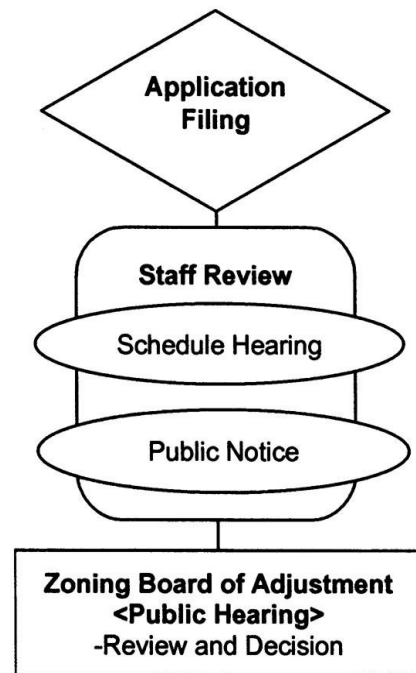
Before filing a variance application, the applicant shall request a pre-application conference with the Planning Department. See Section 3.1.5.

(C) Application Filing

An application for a variance shall be filed with the Planning Department. Once the application is complete, the Planning Department shall schedule the application for consideration at a hearing before the Zoning Board of Adjustment, and shall transmit to the Zoning Board of Adjustment all applications and other records pertaining to such variance prior to the hearing on the application.

3.20.4 Action by the Zoning Board of Adjustment

- (A) Upon receiving the application materials from the Planning Department, the Zoning Board of Adjustment shall hold a quasi-judicial evidentiary hearing on the proposed variance. Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.
- (B) In considering the application, the Zoning Board of Adjustment shall review the application materials, the approval criteria of Section 3.20.5, and all testimony and evidence received at the hearing.
- (C) After conducting the hearing, the Zoning Board of Adjustment may: deny the application; conduct an additional hearing on the application; or grant the requested variance.



Variations

- (D) In granting any variance, the Zoning Board of Adjustment may attach such conditions to the approval as it deems necessary and appropriate to satisfy the criteria set forth in Section 3.20.5, to reduce or minimize any injurious effect of such variance upon other property in the neighborhood, and to ensure compliance with other terms of this Ordinance provided such conditions are reasonably related to the variance.
- (E) Under no circumstances shall the Zoning Board of Adjustment grant a variance to allow a use not permitted, or a use expressly or by implication prohibited under the terms of this Ordinance for the zone district containing the property for which the variance is sought.
- (F) Under no circumstances shall the Board of Adjustment grant a variance from any written conditions attached to approval of a Special Use (Section 3.8). Development standards for development plans (Section 3.9) that were approved by Town Council or through a quasi-judicial process but could, by current standards, be approved administratively may be eligible for a variance.
- (G) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the approval criteria of Section 3.20.5. The written decision shall be approved by the Board and signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Planning Department.
- (H) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.20.5 Approval Criteria

The Zoning Board of Adjustment may approve the variance only if it finds that all of the criteria below have been met:

- (A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- (B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- (D) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

3.20.6 Effect of Approval or Denial

- (A) After the Zoning Board of Adjustment approves a variance, the applicant shall follow the procedures set forth in this Chapter 3 for the approval of all permits, certificates, and other approvals required in order to proceed with development of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance granted by the Zoning Board of Adjustment.
- (B) The Zoning Board of Adjustment shall refuse to hear a variance request that has been previously denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

3.20.7 [Reserved]**3.20.8 Appeal**

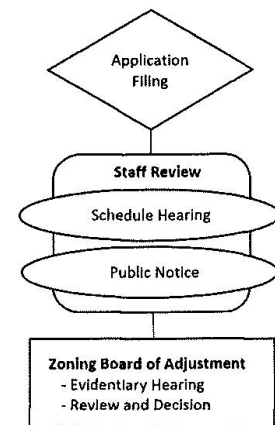
Every decision on a request for a variance shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160D-1402. A petition for review shall be filed with the clerk of Superior Court by the later of thirty (30) days after the decision is effective or after the date a written copy of the decision is given in accordance with Section 3.20.4(H). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition. (Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21)

3.21 APPEALS OF ADMINISTRATIVE DECISIONS**3.21.1 Purpose and Scope**

The Zoning Board of Adjustment shall hear appeals as provided below, and the duties of the Town Council in connection with this Ordinance shall not include the hearing or passing upon disputed questions that may arise in connection with the enforcement thereof, unless otherwise specifically required by this Ordinance.

3.21.2 Decisions That May Be Appealed

An appeal may be brought by the Town or any person who has standing under G.S. 160D-1402(c) from any decision made by an administrative official charged with implementation, administration, or enforcement of the Land Development Ordinance. The official making an administrative decision under this Ordinance shall give written notice of the determination made to the owner of the property who is the subject of the determination and to the party who sought the determination, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application or request for a determination if the party seeking the determination is different from the owner. As used in this section, "determination" includes any written, final, and binding order, requirement, or determination regarding an administrative decision. An appeal may also be taken by any aggrieved party from the Historic Preservation Commission's action in granting or denying any Certificate of Appropriateness. Appeal shall be made to the Zoning Board of Adjustment, unless this Ordinance requires that the appeal be made to the Town Council.



Appeals of Administrative Decisions

3.21.3 Filing of Appeal; Effect of Filing

- (A) An application for an appeal shall be filed with the Planning Director. The notice of appeal shall state the grounds for the appeal. Once the application is complete, the Planning Department shall schedule the appeal for consideration at a hearing before the Zoning Board of Adjustment.
- (B) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.
- (C) The owner or other party shall have thirty (30) days from receipt of the written notice of the decision within which to file an appeal. Any other person with standing to appeal shall have thirty (30) days from receipt of any source or actual or constructive notice of the decision within which to file appeal. In the absence of evidence to the contrary, notice given by first-class mail is deemed received on the third business day following deposit of the notice for mailing with the United States Postal Service. Appeals must be received before 5:00 p.m. EST on the due date to be timely.
- (D) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign, no greater than five (5) square feet in area, containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six (6) inches high and identifying the means to contact the Planning Department for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least ten (10) days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant, although the Town may elect to post such sign after any decision is made. If the landowner or applicant posts such sign, verification of the posting in the form of a certification under oath made by the applicant or landowner shall be provided to the official who made the decision.
- (E) The official who made the decision or the person currently occupying that position, if the decision maker is no longer employed by the local government, shall be present at the evidentiary hearing as a witness and shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.
- (F) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from and accrual of any fines assessed during the pendency of the appeal to the board of adjustment and any subsequent appeal in accordance with G.S. 160D-1402 or during the pendency of any civil proceeding authorized by law or appeals therefrom unless the official who made the decision certifies to the Board after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not

stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issued being appealed.

- (G) The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

3.21.4 Action by the Zoning Board of Adjustment

- (A) The Zoning Board of Adjustment shall hold a quasi-judicial evidentiary hearing on the appeal and shall decide the appeal upon a majority vote of the members within a reasonable time, subject to the provisions of Section 3.21.3(F). Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7. The official who made the decision, or the person currently occupying that position if the decision-maker is no longer employed by the Town, shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.
- (B) Either at the hearing or a subsequent meeting, the Zoning Board of Adjustment shall adopt a written resolution reversing or affirming, wholly or partly, or modifying the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. In reversing, affirming, or modifying the decision, the Zoning Board of Adjustment shall have all relevant powers of the administrative officer from whom the appeal is taken.
- (C) The Zoning Board of Adjustment shall not reverse or modify the decision unless it finds that the administrative officer erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the Town.
- (D) When hearing an appeal pursuant to G.S. 160D-947(e) (certificate of appropriateness, historic district) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160D-1402(j).
- (E) When hearing an appeal regarding a civil penalty amount, in determining the penalty or fine, the Zoning Board of Adjustment shall consider the following:
 - (1) The gravity of the violation;
 - (2) Any action taken by the violator to correct the violation;
 - (3) The cost of the action to correct the violation; and
 - (4) Any previous violation committed by the violator, on the same or different site.
- (F) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be approved by the Board and signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Planning Department.

- (G) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.21.5 Effect of Reversal or Modification

In the event that the Zoning Board of Adjustment reverses or modifies the decision, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Zoning Board of Adjustment.

3.21.6 Appeal from Zoning Board of Adjustment

Any appeal from a decision of the Zoning Board of Adjustment shall be to the Superior Court for the applicable county by petition for a writ of certiorari. Any such petition to the Superior Court shall be filed with the Court Clerk by the later of thirty (30) days after the date the decision of the Zoning Board of Adjustment is effective, or after a written copy of the decision is given in accordance with Section 3.21.5(G). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

(Ord. No. 04-007, 7-15-04; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

3.22 RESERVED

[Text continues on p. LDO 3-89.]

CARY LAND DEVELOPMENT ORDINANCE

3.23 RESERVED**3.24 REIMBURSEMENT AND REDEVELOPMENT AGREEMENTS****3.24.1 Reimbursement Agreements****(A) Authority**

This Ordinance sets forth the authority for and procedures and terms under which the Town Manager may negotiate and approve reimbursement agreements and intersection and roadway improvement agreements. Additional authority for such agreements and fee credits may exist elsewhere, and this is meant to be supplementary to such authority. This Ordinance is authorized by Charter, App. 2.11, G.S. 160A-309, G.S. 160A-320 and G.S. 160A-499. Town approval authority for agreements under this section shall be governed by general Town contracting authorizations and delegations.

(B) Municipal Infrastructure Reimbursement Agreements

The Town Manager may approve municipal infrastructure reimbursement agreements with private developers and property owners for the design and construction of municipal infrastructure that is included on the Town's capital improvement plan and serves the developer or property owner. For the purpose of this Ordinance, municipal infrastructure includes, without limitation, water mains, sanitary sewer lines, lift stations, stormwater lines, streets, curb and gutter, sidewalks, traffic control devices, and other associated facilities. The Town Manager, or designee, is authorized to negotiate municipal infrastructure reimbursement agreements with private developers and property owners in accordance with this Ordinance and applicable policies and procedures. In negotiating such agreements, the Town Manager, or designee, shall determine that the private developer or property owner shall comply with the requirements of G.S. 143-129 and G.S. 143-128.2 relating to public advertising and bid opening requirements which would be applicable if the construction contract had been awarded by the Town. Reimbursements may be paid from any lawful source. [Authority App. 2.11 and G.S. 160A-499]

(C) Public Enterprise Reimbursement Agreements

The Town Manager may approve public enterprise reimbursement agreements with a developer or property owner or a private party under contract with such developer or property owner, for the design and construction of public enterprise improvements that are in addition to those required by the Town's land development regulations and are adjacent or ancillary to a private land development project. The Town Manager, or designee, is authorized to negotiate public enterprise reimbursement agreements with a developer or property owner in accordance with this Ordinance and applicable policies and procedures. In negotiating such agreements, the Town Manager, or designee, shall determine that (a) the public cost will not exceed the estimated cost of providing for such improvements through either eligible force account qualified labor or through a public contract let pursuant to G.S. Chapter 143, Article 8 and (b) the coordination of separately constructed improvements would be impracticable. Such intersection and roadway improvement agreements shall not be subject to G.S. Chapter 143, Article 8, if the public cost will not exceed two hundred fifty thousand dollars (\$250,000). [Such improvements may be constructed on property owned by the developer or property owner or by the Town.] [Authority G.S. 160A-320]

(D) Intersection and Roadway Improvement Agreements

The Town Manager may approve intersection and roadway improvement agreements with a developer or property owner, or with a private party who is under contract with the developer or property owner, for public intersection or roadway improvements that are adjacent or ancillary to a private land development project. The Town Manager, or designee, is authorized to negotiate intersection and roadway improvement agreements with a developer or property owner (or private party under contract with the developer or property owner) in accordance with this Ordinance and applicable policies and procedures. In negotiating such agreements, the Town Manager, or designee, shall determine that (a) the public cost will not exceed the estimated cost of providing for such improvements through either eligible force account qualified labor or through a public contract let pursuant to G.S. Chapter 143, Article 8, and (b) the coordination of separately constructed public intersection or roadway improvements would be impracticable. Such intersection and roadway improvement agreements shall not be subject to G.S. Chapter 143, Article 8, if the public cost will not exceed two hundred fifty thousand dollars (\$250,000). [Authority G.S. 160A-309].

3.24.2 Development Agreements

The Town may enter into development agreements authorized by G.S. 160D, Article 10. Such agreements are subject to review and approval by the Town Council. A public hearing shall be conducted on any proposed development agreement. Published, written, and posted notice of the public hearing shall be provided in accordance with Section 3.1.6 and applicable state law.

(Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

3.25 REASONABLE ACCOMMODATION**3.25.1 Authority and Purpose**

The Zoning Board of Adjustment is authorized to grant reasonable accommodations under the Federal Fair Housing Act for the circumstances set forth in this section.

3.25.2 Application Requirements; Determination of Completeness**(A) Persons Authorized to File Applications**

An application for a reasonable accommodation may be filed only by the owner of the land affected by the reasonable accommodation; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

(B) Pre-Application Conference

Before filing an application for a reasonable accommodation, the applicant may request a pre-application conference with the Planning Department. See Section 3.1.5.

(C) Application Filing

An application for a reasonable accommodation shall be filed with the Planning Department. No filing fee is required for such application. Once the application is complete, the Planning Department shall schedule the application for consideration at a hearing before the Zoning

Board of Adjustment, and shall transmit to the Zoning Board of Adjustment all applications and other records pertaining to such reasonable accommodation prior to the hearing on the application.

3.25.3 Action by the Zoning Board of Adjustment

- (A) Upon receiving the application materials from the Planning Department, the Zoning Board of Adjustment shall hold a quasi-judicial evidentiary hearing on the proposed reasonable accommodation and shall decide the request upon a majority vote of the members within a reasonable time. Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.
- (B) In considering the application, the Zoning Board of Adjustment shall review the application materials, the approval criteria of Section 3.25.4, and all testimony and evidence received at the hearing.
- (C) After conducting the hearing, the Zoning Board of Adjustment may: deny the application; conduct an additional hearing on the application; or grant the requested reasonable accommodation.
- (D) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be approved by the Board and signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Planning Department.
- (E) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.25.4 Approval Criteria

The Board of Adjustment shall grant a reasonable accommodation to any provision of this ordinance if the Board finds by a greater weight of the evidence that the proposed reasonable accommodation is determined to be both reasonable and necessary, in accordance with the following:

(A) "Reasonable"

An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial or fundamental alteration of the Town's ordinance provisions; and

(B) "Necessary"

An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the affects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the Town.

3.25.5 Effect of Approval or Denial

- (A) After the Zoning Board of Adjustment approves a reasonable accommodation, the applicant shall follow the procedures set forth in this Chapter 3 for the approval of any permits, certificates, and other approvals required in order to proceed with development or use of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the reasonable accommodation granted by the Zoning Board of Adjustment.
- (B) The Zoning Board of Adjustment shall refuse to hear a reasonable accommodation request that has been previously denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

3.25.6 [Reserved]**3.25.7 Appeal**

Any appeal from the decision of the Zoning Board of Adjustment shall be to the Superior Court for the applicable county by petition for a writ of certiorari. Any such petition to the Superior Court shall be filed with the court clerk by the later of thirty (30) days after the date the decision of the Zoning Board of Adjustment is effective, or after the date a written copy of the decision is given in accordance with Section 3.25.3(E). When first-class mail is used to deliver notice, three (3) days shall be added to the time to file the petition.

(Ord. No. 12-LDO-01, passed 2-23-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

3.26 ZONING COMPLIANCE PERMIT**3.26.1 Applicability**

A Zoning Compliance Permit shall be required prior to operation of certain permitted principal or accessory uses as set forth in Tables 5.1-1, 5.1-2 or 5.1-3. These uses may be subject to use-specific standards which require approval procedures, research, monitoring, or other review to ensure compliance with such standards, including separation between the proposed use and another use. It shall be unlawful to operate these uses until the Planning Director has issued a zoning compliance permit.

3.26.2 Approval Procedures**(A) Submittal**

Applications for a zoning compliance permit shall be submitted to the Planning Director. The Planning Director shall prescribe the form(s) on which such applications are made, and shall prescribe any material that may reasonably be required to determine compliance with this Ordinance. No application shall be accepted by the Planning Director unless it complies with such submittal requirements. Applications that are not complete shall be returned to the applicant with notation of deficiencies.

(B) Planning Director Decision

The Planning Director shall take final action on the application based on compliance with the use-specific standards of Section 5.2 applicable to the proposed use, as well as other applicable provisions of this Ordinance.

(C) Actions Subsequent to Decision

In the case of approval, the Planning Director shall issue the zoning compliance permit. In the case of denial of an application, the Planning Director shall notify the applicant of the reasons for such denial and the applicant may appeal the decision of the Planning Director pursuant to Section 3.21 of this Ordinance.

3.26.3 Additional Provisions Applicable to Specific Uses**(A) Group Homes and Family Care Home**

In addition to or as an alternative to the option to appeal the decision of the Planning Director per Section 3.26.2(C), the applicant may request approval of a reasonable accommodation by the Zoning Board of Adjustment pursuant to Section 3.25 of this Ordinance.

(Ord. No. 12-LDO-01, passed 2-23-12; Ord. No. 13-LDO-01, passed 2-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15)

3.27 HISTORIC PRESERVATION**3.27.1 Designation of Historic Districts/Historic Landmarks**

The historical heritage of the Town of Cary is a valuable and important asset. By designating historic districts and landmarks, the Town of Cary seeks to safeguard the heritage of the town by preserving districts and landmarks therein that embody important elements of its culture, history, architectural history, or pre-history; to promote the use and conservation of such districts and landmarks for the education, pleasure, and enrichment of the residents of the town, the County and the State as a whole; and to conserve the value of buildings and land and promote the general welfare of its citizens. The Town Manager or designee shall appoint staff who will oversee the historic preservation program and serve as liaison to the Historic Preservation Commission.

(A) Historic District Designation**(1) *Historic Districts Should Be Areas of Special Significance***

Historic district overlay zoning may from time to time be designated, amended, or repealed; provided, however, that no district shall be recommended for designation unless it is deemed to be of special significance in terms of its historical, prehistoric, architectural or cultural importance. Such district must also possess integrity of design, setting, materials, feeling and/or association.

(2) *Historic District Overlay Zoning and Other Zonings Distinguished*

Historic district overlays are established as districts which overlay other zoning districts and include additional development requirements. All uses permitted in the underlying zoning district, whether by right or as a special use, shall be permitted in the historic district.

(3) Application

An application for the designation of properties as a historic district may be submitted by any of the following:

- (a) The Historic Preservation Commission;
- (b) The Town Council;
- (c) The Planning and Zoning Board; and/or
- (d) The Planning Department.

(4) Required Application Information

Applications shall be filed with staff. Each application for designation as a historic district shall be accompanied by a sketch plan that describes the boundaries of the proposed district. An investigation and report, including current electronic images of properties in the proposed district, that describes the particular historical, pre-historical, architectural, or special character of the buildings, structures, features, sites or surroundings included in the proposed district must also accompany the application.

(5) Opportunity for Comment from the North Carolina Department of Natural and Cultural Resources

No district shall be designated, amended, or repealed until the following has occurred:

- (a) Staff shall forward the application and completed report to the Department of Natural and Cultural Resources with a written request for analysis of and recommendations concerning the application, report, and description of proposed boundaries ("the Analysis").
- (b) If the Department of Natural and Cultural Resources does not make its Analysis and submit its comments to the Town Council within thirty (30) calendar days following receipt of the report, the Town shall be relieved of any responsibility for awaiting the Analysis, and the Town Council may at any time thereafter take any necessary action to adopt or amend its zoning ordinance.

(6) Other Reviews

The Historic Preservation Commission will review and provide recommendations concerning the report. The Town Council may also, in its discretion, refer the report and the proposed historic district boundaries to any other interested body for its recommendations prior to taking action to amend the zoning map.

(7) Action

Upon receipt of comments and recommendations pursuant to this subsection, the Town may initiate the process to create a Historic Preservation Overlay zoning district.

(8) *Changes in Boundaries*

With respect to any changes in the boundaries of a historic district after its initial establishment, the investigative studies and reports required by subdivision (4) of subsection (A) of this section shall be prepared by the Historic Preservation Commission, and shall be referred to the Planning and Zoning Board for a finding of consistency with the Comprehensive Plan according to procedures set forth in Section 3.4.1 of this Ordinance. Changes in the boundaries of a historic district shall also be submitted to the Department of Cultural Resources in accordance with the provisions of subdivision (5) of subsection (A) of this section.

(B) *Historic Landmark Designation***(1) *Historic Landmarks Should Be of Special Significance***

Town Council may adopt and from time to time amend or repeal an ordinance designating one (1) or more historic landmarks. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

(2) *Inventory of Possible Landmarks*

As a guide for the identification and evaluation of landmarks, the Historic Preservation Commission shall maintain an inventory of properties of historical, architectural, and cultural significance within the land development jurisdiction of the town.

(3) *Application*

An application for the designation of a property as a historic landmark may be submitted to staff by any of the following:

- (a) The Historic Preservation Commission
- (b) The Town Council
- (c) The Planning Department, and/or
- (d) Any resident or property owner within the zoning jurisdiction of the town.

(4) *Required Application Information*

Applications shall be filed with staff. Each application shall be accompanied by a sketch plan that describes the boundaries of the proposed landmark, electronic images of building elevations for each building proposed for designation and a statement from the property owner indicating consent to the filing of the application. A report shall also be prepared on the historic, architectural, pre-historical, educational or special character of each building, structure, site or object proposed for designation and must accompany the application.

(5) *Opportunity for Comment from the Department of Natural and Cultural Resources*

No landmark shall be designated, amended, or repealed until the following has occurred:

- (a)** Staff shall forward the application and completed report to the Department of Natural and Cultural Resources with a written request to review and comment upon the substance and effect of the designation ("the Review").
- (b)** If the Department of Natural and Cultural Resources does not submit its comments or recommendation to the Historic Preservation Commission within thirty (30) days following receipt of the investigation and report, the Historic Preservation Commission and the Town Council shall be relieved of any responsibility to consider such comments.

(6) *Creation of Ordinance for Designation*

- (a)** Staff, with the assistance of the Legal Department, shall draft all ordinances for the designation of property as a historic landmark.
- (b)** The ordinance shall describe the property designated in the ordinance, the name or names of the owner or owners of the property, those elements of the property that are integral to its historical, architectural or pre-historical value, including the land area of the property so designated, and any other information the Town Council deems necessary.
- (c)** The ordinance shall specify the interior features to be reviewed pursuant to Section 3.27.2 and the specific nature of the Historic Preservation Commission's jurisdiction over the interior, if such jurisdiction has been consented to by the property owner.

(7) *Public Hearing by the Historic Preservation Commission*

The Historic Preservation Commission shall hold a public hearing on the proposed ordinance. Following the public hearing, the Historic Preservation Commission shall make a recommendation to the Town Council whether to approve or deny the proposed designation. No property shall be recommended for designation as a landmark unless it is deemed and found by the Historic Preservation Commission to be of special significance in terms of its historical, prehistoric, architectural or cultural importance, and to possess integrity of design, setting, materials, feeling and/or association.

(8) *Public Hearing by the Town Council*

After receiving the recommendation of the Historic Preservation Commission, the Town Council shall hold a public hearing on the proposed ordinance. Following the public hearing, the Town Council may adopt the ordinance as proposed, adopt the ordinance with any amendments it deems necessary, or reject the proposed ordinance.

(9) Post-Adoption Procedures

- (a) Upon adoption of the ordinance, the owners and occupants of each landmark shall be given written notification of such designation insofar as reasonable diligence permits.
- (b) One copy of the ordinance and all amendments thereto shall be filed by the Historic Preservation Commission in the offices of the register of deeds of the county in which the landmark is located.
- (c) A second copy of the ordinance and all amendments thereto shall be kept on file in the office of the Town Clerk and be made available for public inspection at any reasonable time.
- (d) A third copy of the ordinance and any amendments thereto shall be given to the building inspector for the town.
- (e) The fact that a building, structure, site or area has been designated a landmark shall be clearly indicated on all tax maps maintained by Wake County for such period as the designation remains in effect.
- (f) Upon adoption of the landmark ordinance or any amendments thereto, the Historic Preservation Commission shall give notice thereof to the tax supervisor of the county in which the property is located, and the designation and any recorded restrictions upon the property limiting its use for preservation purposes shall be considered by the tax supervisor in appraising it for tax purposes.

(10) Amendments

Any amendment to an ordinance designating a historic landmark shall be made pursuant to the procedures of this subsection (B).

3.27.2 Certificates of Appropriateness**(A) Certificate of Appropriateness Required**

After the designation of a landmark or a historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished on such landmark or within such district until after an application for a certificate of appropriateness as to exterior features has been submitted to and approved by the Historic Preservation Commission. Such a certificate is required to be issued by the Historic Preservation Commission prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures. A certificate of appropriateness shall be required whether or not a building or other permit is required, and may be issued subject to reasonable conditions necessary to carry out the purposes of G.S. Chapter 160D, Article 9, Part 4. Notwithstanding the foregoing, a certificate of appropriateness for minor works may be reviewed and approved as further described in subsection (B) below.

(1) *Applicability to State of North Carolina*

The State of North Carolina (including its agencies, political subdivisions and instrumentalities) and the Town of Cary shall be required to obtain a certificate of appropriateness for construction, alteration, moving or demolition within a historic district or of designated landmarks; provided, however, that this Section 3.27.2 shall not apply to interiors of buildings or structures owned by the State of North Carolina. The State and its agencies shall have a right of appeal to the North Carolina Historical Commission pursuant to the provisions of G.S. 160D-947(e).

(2) *Exterior Features Defined*

For purposes of this Section 3.27.2, "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features.

(3) *Jurisdiction Over Interior Features*

The jurisdiction of the Commission over interior spaces shall be limited to specific interior features of architectural, artistic, or historical significance in publicly owned landmarks; and of privately owned landmarks for which consent for interior review has been given by the owners. Said consent of an owner for interior review shall bind future owners and/or successors in title, provided such consent has been filed in the Register of Deeds office of the county in which the property is located and indexed according to the name of the owner of the property in the grantor and grantee indexes. The Landmark Designation shall specify the interior features to be reviewed and the specific nature of the Historic Preservation Commission's jurisdiction over the interior.

(4) *Certain Changes Not Prohibited*

Nothing in this Section 3.27.2 shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in a historic district or of a landmark which does not involve a change in design, materials, or appearance thereof, nor to prevent ordinary maintenance or repair of streets, sidewalks, pavement markings, street signs, or traffic signs. Nothing herein shall be construed to prevent a property owner from making any use of his or her property that is not prohibited by other law or to prevent (a) the maintenance, or (b) in the event of an emergency, the immediate restoration of any existing above-ground utility structure without approval by the Historic Preservation Commission.

(5) *Enforcement and Remedies*

Compliance with the terms of the certificate of appropriateness shall be enforced pursuant to the procedures of Chapter 11 of this Ordinance. Failure to apply for a certificate when one is required, or to comply with a certificate once issued, shall be a violation of this Ordinance. An application for a certificate of appropriateness submitted after work has been initiated must be reviewed and approved by the Commission.

(B) Certificate of Appropriateness - Minor Works (Minor COA)**(1) *Minor COA Defined***

Minor works are those exterior changes that do not involve substantial alterations, additions or removals that could impair the integrity of the property and/or district as a whole. Such minor works shall be limited to those listed below:

- (a) Alteration or additions to existing accessory buildings/outbuildings.
- (b) Removal of accessory buildings/outbuildings which are not architecturally or historically significant.
- (c) Alteration/addition/removal of architectural details.
- (d) Alteration/addition/removal of awnings, canopies, or shutters.
- (e) Alteration/addition/removal of existing decks.
- (f) Alteration/removal of existing doors.
- (g) Addition or installation of new doors, including storm doors.
- (h) Alteration/addition to/removal of existing driveways.
- (i) Construction of new driveways.
- (j) Addition/alteration/removal of existing fences or walls.
- (k) Construction of new fences and walls.
- (l) Alteration of exposed foundations.
- (m) Installation or removal of gutters and/or downspouts.
- (n) Removal or significant pruning of trees eight (8) inches or greater in diameter, measured four and one-half (4 ½) feet above ground level.
- (o) Removal of dead, diseased, or dangerous trees.
- (p) Installation/alteration/removal of exterior lighting.
- (q) Installation of window air conditioners.
- (r) Painting when there is a change in color.
- (s) Alteration/addition/removal of existing parking lots.
- (t) Alteration/addition/removal of existing patios.
- (u) Construction of new patios.

- (v) Change in roofing materials.
- (w) Installation of satellite dishes and/or television antennae.
- (x) Alteration/addition of exterior building surfaces.
- (y) Installation/removal of signs.
- (z) Alteration/construction/removal of exterior stairs and steps.
- (aa) Alteration/construction/removal of temporary features associated with a medical condition.
- (bb) Alteration/installation/removal of vents and ventilators.
- (cc) Alteration/addition to/removal of existing walkways.
- (dd) Construction of new walkways.
- (ee) Alteration or removal of existing windows.
- (ff) Addition/installation of new windows, including storm windows.
- (gg) Addition/alteration/removal of other building appurtenances or accessory site features not specifically listed.

(2) *Pre-application Meeting*

A pre-application meeting is not required prior to applying for a minor COA, but applicants are advised to contact staff before submitting an application in order to understand the information required and to avoid delays in processing the application.

(3) *Required Application Information*

Applications shall be filed with staff. A sketch plan and building elevations must accompany the application unless waived by staff for a particular application.

(4) *Determination of Compliance*

Once a complete application is submitted, staff shall review the application and approve or deny it within forty-five (45) days based on compliance with the standards contained in the principles and guidelines adopted by the Historic Preservation Commission for review of changes. If after staff has reviewed the application, and upon closer review and inspection determines that the requested minor alterations or changes are more appropriately considered major, or determines that the request should be denied, staff will so inform the applicant and the application will follow the major COA review and approval process.

(5) *Appeals*

Appeals of approvals of certificates of appropriateness for minor works shall be heard by the Zoning Board of Adjustment in accordance with Section 3.21 of this Ordinance.

(C) Certificate of Appropriateness - Major Works (Major COA)**(1) *Applicability***

This subsection (C) is applicable to any exterior change that does not constitute a Minor COA according to the provisions of Section 3.27.2(B) and that does not constitute relocation, demolition, or destruction of a designated landmark or a building, structure, or site within a historic district; or to any exterior change that does constitute a minor COA and for which application is made after work has been initiated.

(2) *Process Type*

Approval of a major COA by the Historic Preservation Commission requires a quasi-judicial evidentiary hearing.

(3) *Pre-Application Meeting*

A pre-application meeting is not required, but applicants are advised to contact Town staff before submitting an application in order to understand the information required and to avoid delays in processing the application.

(4) *Required Application*

Applications for a major COA shall be filed with the Planning Department. Each application shall be accompanied by sketches, building elevations, photographs, specifications, descriptions and other information of sufficient detail to clearly show the proposed exterior alterations, additions, changes or new construction.

(5) *Determination of Application Completeness*

The staff to the Commission shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for an evidentiary hearing before the Historic Preservation Commission. Staff shall transmit to the Commission all applications, reports, and written materials relevant to the matter being considered, and may distribute them to the Commission members prior to the hearing if at the same time they are also provided to the applicant and to the landowner if that person is not the applicant. As a part of the application review procedure, Commission members may view the premises at issue before the hearing so long as at the commencement of the hearing the members disclose the site visit and any facts or information gleaned from the site visit that are relevant to the case. Staff and Commission members may seek the advice of the Department of Archives and History or other such expert advice as it may deem necessary under the circumstances.

(6) *Evidentiary Hearing*

Notice of the hearing shall be provided and the Historic Preservation Commission shall conduct an evidentiary hearing on the application in accordance with Sections 3.1.6 and 3.1.7.

(7) Decision

The Historic Preservation Commission must act on a request for a Major COA within one hundred eighty (180) days from the date the application is filed. Following the hearing, the Historic Preservation Commission may approve, deny, or approve with conditions the application for a Major Certificate of Appropriateness. The Commission shall take no action regarding a Certificate of Appropriateness except to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs, or other significant features that would be incongruous with the special character of the landmark or district. In making decisions on certificates of appropriateness, the Commission shall apply the rules and standards adopted by the Commission pursuant to G.S. 160D-947(c). The decision shall be reduced to writing and shall be approved by the Commission and signed by the Chair of the Historic Preservation Commission or his designee. The decision is effective upon filing the written decision with the Planning Department. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(8) Appeals

An appeal in the nature of certiorari from the decision of the Historic Preservation Commission regarding a major Certificate of Appropriateness application may be taken to the Zoning Board of Adjustment by any aggrieved party in accordance with Section 3.21 of this Ordinance.

(D) Certificate of Appropriateness - Demolition of Landmarks or of Buildings within Historic Districts**(1) Applicability**

A Certificate of Appropriateness - Demolition, is required prior to the relocation, demolition, or destruction of a designated landmark or a building, structure, or site within a historic district.

(2) Process Type

Approval of a Certificate of Appropriateness – Demolition by the Historic Preservation Commission requires a quasi-judicial evidentiary hearing.

(3) Pre-Application Meeting

A pre-application meeting is not required prior to applying for a COA-Demolition, but applicants are advised to contact staff before submitting an application in order to understand the information required and to avoid delays in processing the application.

(4) Required Application Information

Each application shall be accompanied by a sketch plan designating the extent of the proposed demolition, removal or destruction of historic structures.

(5) *Determination of Application Completeness*

Staff shall review the application to ensure that it is complete, prepare a report and recommendation on the application, and schedule the matter for an evidentiary hearing before the Historic Preservation Commission. Staff shall transmit to the Commission all applications, reports, and written materials relevant to the matter being considered, and may distribute them to the Commission members prior to the hearing if at the same time they are also provided to the applicant and to the landowner if that person is not the applicant. As a part of the application review procedure, Commission members may view the premises at issue before the hearing so long as at the commencement of the hearing the members disclose the site visit and any facts or information gleaned from the site visit that are relevant to the case. Staff and Commission members may seek the advice of the Department of Archives and History or other such expert advice as it may deem necessary under the circumstances.

(6) *Evidentiary Hearing*

Notice of the hearing shall be provided and the Historic Preservation Commission shall conduct an evidentiary hearing on the application in accordance with Sections 3.1.6 and 3.1.7.

(7) *Decision*

The Historic Preservation Commission must act on a request for a COA-Demolition within one hundred eighty (180) days from the date the application is filed. Following the hearing, the Historic Preservation Commission may approve, deny, or approve with conditions the application for a COA-Demolition in accordance with the below provisions. The decision shall be reduced to writing and shall be approved by the Commission and signed by the Chair of the Historic Preservation Commission or his designee. The decision is effective upon filing the written decision with the Planning Department. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

- (a)** The Historic Preservation Commission may approve the request if the request is not incongruous with the special character of the landmark or district.
- (b)** The Historic Preservation Commission may deny the request only if the building, structure or site has been determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places; provided, however, that such request may not be denied if the Historic Preservation Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such property by virtue of the denial.
- (c)** The Historic Preservation Commission may delay the effective date of such a certificate by up to three hundred sixty-five (365) days from the date of approval if the request would be incongruous with the special character of the landmark or district. The period of delay should be reduced by the Historic Preservation Commission if it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by

virtue of the delay. During the delay period, the Historic Preservation Commission shall negotiate with the owner and other parties in an effort to find a means of preserving the building, structure or site. If the Historic Preservation Commission finds that a building, structure or site has no special significance or value toward maintaining the character of a district, it shall waive all or part of such period of delay and authorize earlier demolition or removal. If the Historic Preservation Commission has voted to recommend the designation of a landmark or the designation of an area as a historic district, and final designation has not been made by the Town Council, the demolition or destruction of any building, structure or site located on the property of the proposed landmark or in the proposed district may be delayed by the Commission for up to one hundred eighty (180) days or until the Town Council takes final action on the designation, whichever occurs first.

(8) Appeals

An appeal in the nature of certiorari from the decision of the Historic Preservation Commission regarding a major Certificate of Appropriateness application may be taken to the Zoning Board of Adjustment by any aggrieved party in accordance with Section 3.21 of this Ordinance.

(Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2018-LDO-02, 8-9-2018; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21)

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CHAPTER 4: ZONING DISTRICTS**4.1 GENERAL PROVISIONS****4.1.1 General Use Districts Established****(A) Establishment**

The following general use zoning districts are hereby established:

TABLE 4.1-1: GENERAL ZONING DISTRICTS ESTABLISHED		
	Abbreviation	District Name
Residential Districts	R-80	Residential District
Residential Districts	R-40	Residential District
Residential Districts	R-20	Residential District
Residential Districts	R-12	Residential District
Residential Districts	R-8	Residential District
Residential Districts	TR	Transitional Residential District
Residential Districts	RMF	Multi-Family Residential District
Non-Residential Districts	RR	Resource/Recreation District
Non-Residential Districts	OI	Office and Institutional District
Non-Residential Districts	GC	General Commercial District
Non-Residential Districts	CT	Corridor Transitional District
Non-Residential Districts	ORD	Office/Research and Development District
Non-Residential Districts	I	Industrial District
Non-Residential Districts	TC	Town Center District
Planned Development Districts	PDD (Minor)	Minor Planned Development District
Planned Development Districts	PDD (Major)	Major Planned Development District

(B) Hierarchy of General Use Districts

References in this Ordinance to less restrictive or more restrictive zoning districts refer to the general use districts established above. The above districts are ranked and represent, within the residential and the non-residential categories, a progression from the most restrictive (the "highest" classification) to the least restrictive (the "lowest" classification).

4.1.2 Relationship to Conditional Use Districts and Overlay Districts

Lands within the Town and its extraterritorial jurisdiction may be classified into one (1) of the following:

(A) General use districts set forth in Section 4.2;

- (B) One (1) or more of the conditional use districts set forth in Section 4.3;
- (C) One (1) or more of the overlay districts set forth in Section 4.4.
- (D) Some lands within a general use district may also be classified as "conditional" when the land was previously designated as a conditional use district prior to July 1, 2003, but which designation was removed concurrent with adoption of this Ordinance. In such cases, any conditions associated with the land remain in effect regardless of the land's current designation as a general use district.

Where the property is classified in an overlay district as well as either a general use district or a conditional use district, then the regulations governing development in the overlay district shall apply in addition to the regulations governing development in the underlying district. In the event of an express conflict between the standards set forth in Section 4.2 and the standards set forth in Section 4.4 for an overlay district, the standards set forth in Section 4.4 shall control. In the event of an express conflict between the standards set forth in Section 4.4 and the provisions set forth in a particular conditional rezoning, then the more restrictive provision of either shall control.

4.1.3 Annexed Lands and Lands Added to the Town's Extraterritorial Jurisdiction

(A) Zoning Designation

- (1) The Town Council shall determine the zoning designation and future growth framework development category (if applicable) of properties added to the Town's planning and development regulation jurisdiction through extraterritorial boundary changes or annexation. Such determination shall be based on, but not be limited to, the following factors: the property's future growth framework development category, the property's current land use, the existence of a previously-approved development plan, the character of adjacent properties, current zoning designations, property owner requests or other factors considered relevant at the time of the annexation.
- (2) Any property owner within the land to be added to the Town's planning and development regulation jurisdiction may submit a petition requesting a specific zoning designation. If such a petition is received prior to the time the land is added to the Town's jurisdiction, then the public hearing for zoning may be held concurrently with any public hearing required for addition of the property. If no such petition is received prior to the time of addition of the property, then Section 3.4 of this Ordinance shall govern any subsequent rezoning of the property.

(B) Effect of Zoning Designation on Nonconforming Lot Status

Where a legal, conforming lot existing in a residential zoning district at the time the lot was added to the Town's extraterritorial jurisdiction does not contain sufficient land to permit conformance with the lot size or lot width of this Ordinance, such lot may be used as a building site for a single-unit dwelling notwithstanding the limitations set forth in Chapter 10 of this Ordinance. However, all development on such lot shall comply with the setback requirements of Chapter 6 of this Ordinance.

(Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

4.2 GENERAL USE DISTRICTS

4.2.1 General Purposes

The general use zoning districts contained in this section are intended to:

- (A) Provide appropriately located areas for residential development that are consistent with the Comprehensive Plan and with standards of public health and safety established by this Ordinance;
- (B) Protect sensitive environmental and cultural resources;
- (C) Protect existing neighborhoods and community character;
- (D) Ensure adequate light, air, privacy, and open space for each residential dwelling, and protect residents from the harmful effects of excessive noise, traffic congestion, and other significant adverse environmental effects;
- (E) Protect residential areas from fires, explosions, toxic fumes and substances, and other public safety hazards;
- (F) Ensure the provision of public services and facilities needed to accommodate planned population densities;
- (G) Provide sites for public, semi-public, and commercial land uses, such as schools, parks, and churches, that are needed to complement residential development or requiring a residential environment;
- (H) Provide appropriately located areas consistent with the Comprehensive Plan for a full range of office, commercial, and industrial uses needed by the Town's residents, businesses and workers, and protect such uses from the adverse effects of incompatible uses;
- (I) Strengthen the Town's economic base and provide employment opportunities close to home for residents of the Town and surrounding communities;
- (J) Minimize any negative impact of commercial and industrial development on abutting residential districts;
- (K) Ensure that the appearance and effects of commercial and industrial buildings and uses are of high quality and are harmonious with the character of the area in which they are located; and
- (L) Provide sites for residential, public, and semipublic uses needed to complement commercial and industrial development.

4.2.2 Residential and Non-Residential Zoning Districts

The specific purposes of the general use zoning districts are set forth below, along with any district-specific provisions that may apply. The allowed uses and use specific-standards for each of the districts are set forth in Chapter 5. All uses shall comply with the general dimensional standards set forth in Chapter 6, or as may be specified elsewhere in the Ordinance, including, but not limited to, Section 4.5.2, Mixed Use Districts and Section 8.4, Alternative Development Option: Cluster Residential Subdivisions.

(A) R-80: Residential District

The R-80 district is established to ensure the protection of open space and to promote very low-density residential development that is compatible with watersheds and other environmentally sensitive areas, subject to appropriate standards. The district also can serve as an appropriate buffer between natural resources and water supply reservoirs and more developed areas. The minimum lot area is eighty thousand (80,000) square feet, and the maximum density allowed is fifty-four hundredths (0.54) units per acre.

(B) R-40: Residential District

The R-40 district is established to accommodate large-lot residential uses and development compatible with the natural landscape. The minimum lot area is forty thousand (40,000) square feet, and the maximum density allowed is one and eight hundredths (1.08) units per acre. The R-40 district can accommodate development on wells and/or septic tanks; but lots within new subdivisions in this district are required to connect to public water and sewer.

(C) R-20: Residential District

The R-20 district is established as a district in which the principal use of land is for low-density residential purposes, and is appropriate in areas where the Comprehensive Plan supports very low or low density residential use. All development in the R-20 district shall be required to utilize public utilities. The minimum lot area is twenty thousand (20,000) square feet, and the maximum density allowed is two and seventeen hundredths (2.17) units per acre.

(D) R-12: Residential District

The R-12 district is established as a district in which the principal use of land is for single-unit dwellings, and is appropriate in areas where the Comprehensive Plan supports very low, low or medium density residential use. The regulations of this district are intended to discourage any use that would substantially interfere with the development of single-unit dwellings and that would be detrimental to the quiet residential nature of the district. The minimum lot area is twelve thousand (12,000) square feet, and the maximum density allowed is three and sixty-three hundredths (3.63) units per acre.

(E) R-8: Residential District

The R-8 district is established as a district in which the principal use of land is for single-unit dwellings, and is appropriate in areas where the Comprehensive Plan supports low, medium or high density residential use. The regulations for this district are intended to discourage any use that would substantially interfere with the development, use, and enjoyment of single-unit dwellings or that would be detrimental to the quiet residential character of the district. The regulations of this district also are designed to encourage the wise use of land and natural resources, with the aim of reducing sprawl and the costly provision of infrastructure to serve dispersed development. The minimum lot area is eight thousand (8,000) square feet, and the maximum density allowed is five and forty-four hundredths (5.44) units per acre.

(F) TR: Transitional Residential District

The TR district is established as a district in which the principal use of land is for a variety of residential uses, and is appropriate in areas where the Comprehensive Plan supports medium or high density residential use, with the exception of multi-family structures. This district is appropriate for infill developments smaller than ten (10) acres in established neighborhoods, for denser residential neighborhoods, and for areas identified as supporting medium-density residential uses in Cary's Comprehensive Plan. The regulations of this district are intended to allow innovation in the arrangement of buildings within such developments. The minimum lot size for detached dwellings is five thousand (5,000) square feet, and the maximum density allowed is six (6) units per acre.

(G) RMF: Residential Multi-Family District

The RMF district is established as a district in which the principal use of land is for multi-family dwellings and also less-intensive residential uses such as patio homes, and is appropriate in areas where the Comprehensive Plan supports high density residential use. This district can be applied to locations that are suitable for multi-family development, and thus provide areas within the community for persons desiring to live in multi-family structures at densities sufficient to support public transit. This district should be located so as to not interfere with or damage environmentally sensitive lands and to ensure that adequate open space and recreational facilities are located nearby, or within the district itself, to serve the needs of the persons who are or will be living in the district. The maximum density allowed is twelve (12) units per acre.

(H) RR: Resource/Recreation District

The purpose of the RR district is to protect and preserve parks, scenic areas, and open spaces, and to protect watersheds and water supplies and to allow public recreational uses. In considering the appropriateness of classifying any property into this district, the Town shall consider the physical pattern of development in the area, topography, and proximity to important natural resources deemed worthy of protection.

(I) OI: Office and Institutional District

The OI district provides for the development of offices and community institutions that have similar development characteristics and require locations close to the more intensive commercial districts. This district requires strict development controls since, in most instances, these districts will be located adjacent to residential districts.

(J) GC: General Commercial District

The GC district is generally intended to allow for uses that provide goods and services to residents of the community. Because these commercial uses are subject to the public view, they should provide an appropriate appearance, ample parking, controlled traffic movement, suitable landscaping, and protect abutting residential areas from potentially negative impacts associated with commercial activity.

(K) CT: Walnut Street Corridor Transitional District**(1) Purpose and Intent**

The Walnut Street Corridor Transitional District standards are intended to accomplish the following:

- (a) Provide for the development of offices, personal service and other compatible uses in the area defined between existing residential neighborhoods and the Walnut Street Corridor;
- (b) To minimize impacts on adjacent residential uses;
- (c) To provide a landscape buffer to the residential area;
- (d) To encourage the conversion of existing structures where practical;
- (e) To encourage the consolidation of property to facilitate redevelopment and minimize the number of access points to the thoroughfare;
- (f) To require the provision of cross access where possible;
- (g) To encourage new development to be of a residential style and proportion; and
- (h) To ensure compatibility of design in the district, adequate parking, pedestrian and bicycle accessibility, and consistent streetscape treatment.

(2) *Subdistricts Created and Defined*

Due to the variation in existing character and desired types of future development in various portions of the Walnut Street Corridor, differing land uses, building standards, parking requirements, and other related development standards are imposed within different portions of the Walnut Street Transitional District. In order to present the full range of zoning and development requirements for each different area, this zoning district is divided into such subdistricts as follows:

(a) *Redevelopment Subdistrict*

Parcels located in the redevelopment subdistrict are the larger, deeper parcels located at the western end of the Walnut Street corridor. These parcels lend themselves to redevelopment and larger sized buildings or conversion to certain non-residential uses. These parcels, if redeveloped, are intended to serve as transitions in size between the intense commercial uses at Cary Towne Center Mall and the adjoining low-density residential neighborhoods. Development is intended to respect the residential appearance of the corridor in this location.

(b) *Conversion Subdistrict*

Parcels located in the Conversion subdistrict are shallower in depth and less affected by development pressure than those parcels adjacent to the mall. The Conversion subdistrict is also more suitable for smaller size buildings and conversion of existing homes to certain low-impact non-residential uses. Development and redevelopment should maintain the residential appearance of the central portion of the CT district.

(c) *Infill Subdistrict*

Parcels located in the Infill subdistrict are at least five (5) acres in size and are currently either undeveloped, contain impermanent structures such as mobile homes, or contain only a single home. The type and intensity of use recommended for this classification is the same as for Corridor subdistrict except that it is expected that new buildings will be constructed.

(3) Development Standards for Certain New Construction and Redevelopment

The standards listed in the Table below shall only be utilized when there is a change in the use of a property from the use in existence on July 1, 2003. Detail on the allowable uses, and development standards are listed in the table below as well as in Chapters 5 and 6 of this Ordinance.

TABLE 4.2-1: BUILDING AND SITE DESIGN STANDARDS FOR CERTAIN NEW CONSTRUCTION AND/OR REDEVELOPMENT IN THE WALNUT STREET CORRIDOR TRANSITIONAL DISTRICT (Not applicable to public parks and athletic fields or structures subject to regulation under the North Carolina Residential Code for one- and two-family dwellings).	
Building Materials	Natural siding, brick, stone and wood.
Roofing Materials	Shingles, slate, standing seam metal.
Roof Design	Buildings shall have pitched roofs which are residential in character. Mansard roofs prohibited.
Building Locations	Non-residential buildings shall provide front elevations and an entrance facing Walnut Street. Corner lots shall be double-fronted.
Building Size	Building sizes are limited based upon the standards in Chapter 6, but the maximum building square footage for a new non-residential building within the Conversion sub-district may be increased from two thousand five hundred (2,500) square feet up to five thousand (5,000) square feet through the Special Use process (see Section 3.8) provided that two (2) or more contiguous existing lots designated as "Conversion" are being combined as part of the proposal. See 6.1.4 to reference maximum building size for Infill or Redevelopment sub-districts.
Building Facades	If wider than twenty-five (25) feet, the facade surface shall be divided into two (2) or more portions, each distinguished by a variation in building articulation and or facade treatment. This requirement shall not apply to detached dwellings and townhomes.
Window Treatment	A minimum of forty percent (40%) of the first floor and twenty percent (20%) of the upper floors on the front facade shall have window/door fenestration. Tinted or mirrored glass is prohibited on the front facade. Side elevations which can be seen from the public view shall have a minimum of twenty percent (20%) window/door fenestration. These requirements shall not apply to residential uses.
Streetscape Plantings	Existing healthy trees shall be preserved, but if none exist, then one (1) upper-story tree for each thirty (30) feet of street frontage shall be installed. In addition, one (1) understory tree for each twenty (20) feet on average of street frontage shall also be installed.

TABLE 4.2-1: BUILDING AND SITE DESIGN STANDARDS FOR CERTAIN NEW CONSTRUCTION AND/OR REDEVELOPMENT IN THE WALNUT STREET CORRIDOR TRANSITIONAL DISTRICT

(Not applicable to public parks and athletic fields or structures subject to regulation under the North Carolina Residential Code for one- and two-family dwellings).

Buffer Wall	<ol style="list-style-type: none"> (1) In the conversion area, a masonry wall is required with a minimum height of six (6) feet, with vegetation consisting of evergreen planting spaced no more than fifteen (15) feet apart and ten (10) feet in height at the time of installation. (2) In the redevelopment or infill area, a masonry wall, a minimum height of eight (8) feet, with vegetation consisting of evergreen planting spaced no more than ten (10) feet apart and ten (10) feet in height at the time of installation is required. A masonry wall is not required for detached dwellings or townhome use in the infill area. (3) Walls shall not be placed within utility easements or required drainage areas. (4) The Buffer Wall shall be located within five (5) feet of the common property line unless required to be located outside this area to avoid the removal of mature vegetation. (5) Openings in the wall are permitted to allow access for maintenance. In situations where such openings are provided, vegetation shall be installed to maintain a visual buffer between uses. (6) Walls shall be constructed of brick, cast stone, stone or other high quality, long-lasting masonry material.
Off-Street Parking	No more than thirty percent (30%) of the parking shall be located between the building and Walnut Street.
Pedestrian Access	Pedestrian access between buildings and to Walnut Street shall be provided.
Vehicular Access	Cross-access connections with shared access provisions shall be required unless waived by the Planning Director. Conversion properties bordering Sturdivant Drive are not required to provide cross-access. Parcels with access to two (2) or more public streets shall not be allowed full access to Walnut Street.
Lighting	Exterior lighting shall not exceed twenty (20) feet in height, and shall include cut-off or shielded fixtures. Light poles shall be neutral earth-tone colors. Accent lighting is only permitted on building fronts, and shall be directed away from adjacent residential dwellings and lots.

(L) ORD: Office/Research and Development District

The ORD district is established to provide locations for a wide range of employment generating office, institutional, research and development, and light manufacturing uses, and for certain other uses that could create significant adverse impacts if located in the vicinity of residential areas. The standards of this district are designed to ensure that such uses are developed in a manner compatible with the use and enjoyment of nearby properties, and to minimize potential nuisances or damage to the environment. In addition, by allowing a wide range of permitted uses, this district is intended to accommodate the development of "flex space" arrangements, wherein the developer can establish different combinations of uses on a site over time, as the market dictates, as long as all uses and development conform to the standards established by the Town to protect adjacent land uses and the natural environment.

(M) I: Industrial District

The I district is established as a district in which the principal use of land is for industries which can be operated in a relatively clean and quiet manner and which will not be obnoxious to adjacent residential or business districts, for warehousing and wholesaling activities with limited contact with the general public, and for certain outdoor amusement facilities which generate large volumes of automobile traffic. The regulations are designed to encourage the use of land for industry, which should be properly segregated, and to prohibit any other use that would substantially interfere with the development of industrial establishments in the district.

(N) TC: Town Center District**(1) Purpose and Intent**

The purpose of the TC district is to carry out the land use recommendations contained in the Comprehensive Plan, and to achieve the urban design principles spelled out in the Community Appearance Manual, Downtown Streetscape Master Plan, and Site Design Standards.

(2) [Reserved]**(3) Findings**

The Town Center district seeks to protect, preserve, and enhance the unique aesthetic and architectural character of the downtown; conserve the value of buildings; and encourage appropriate use of the land in the downtown. This district is based, in part, on the findings that:

(a) Overall Image

Cary's central area contributes substantially to the Town's overall image;

(b) Economic Vitality

The economic vitality of downtown is important to the overall welfare of the Town;

(c) Appropriate Uses

Provisions that ensure the appropriate use of property for the downtown area will safeguard its prosperity and offer social and cultural benefits to the citizens of Cary;

(d) Urban Design

Standards that encourage new buildings, retain the values of surrounding properties, and protect the Town's small-town charm and character will promote good urban design;

(e) Diversity of Development

A diverse mix of business, office, institutional, recreational, open space, and residential uses is desirable and appropriate in the core area of the community;

(f) Pedestrian-Friendly Development

Encouragement of pedestrian-friendly development within walking distance of the future regional transit station at sufficient densities to support the station and downtown businesses is a wise use of land;

(g) Sense of Place

Creation of a sense of place that fosters a unique, attractive, and memorable destination for visitors and residents is important; and

(h) Housing Diversity

Encouragement of a diverse range of housing types to accommodate a range of needs is good public policy and helps achieve the policy direction contained in the Town's Comprehensive Plan.

(4) Applicability

The current boundaries of this district are shown on the Official Zoning Map.

(5) Subdistricts Created and Defined

Due to the variation in existing character and desired types of future development in various portions of the downtown area, differing land uses, building standards, parking requirements, open space requirements, and other related development standards are applicable within different portions of the Town Center. In order to present the full range zoning and development requirements for each different area, this zoning district is divided into such subdistricts as delineated on the Official Zoning Map as follows:

TABLE 4.2-2: TOWN CENTER SUBDISTRICTS	
Subdistrict	Description
HMXD	High Intensity Mixed Use
MXD	Mixed Use
HDR Mid-Rise	High Density Residential Mid-Rise
MXDR	Mixed Density Residential
HDR Garden	High Density Residential Garden
MDR	Medium Density Residential
LDR LDR-12	Low Density Residential
PKS/OS	Parks and Open Space
OFC/INS	Office/Institutional
OFC/IND	Office/Industrial
COM	Commercial
CLI	Commercial Low Intensity
CB&R	Cottage Business and Residential
INS	Institutional

(6) *Treatment of Existing Residential Uses*

- (a) Notwithstanding the provisions of Chapter 10, Nonconformities, residential uses that exist in the Subdistricts of the Town Center district on July 1, 2003 are deemed to be conforming to the terms of this Section. Such uses may continue to be used as such, even if left unoccupied for more than one hundred eighty (180) days. However, a nonconforming residential use that is converted to a conforming use after July 1, 2003 shall not be converted to a residential use once a conforming use has been established.
- (b) Expansion of existing detached principal dwellings that existed on July 1, 2003 and on property now located within a Town Center subdistrict in which such use is not permitted under Table 5.1-2 of this Ordinance shall be permitted by right in accordance with Section 10.1.8(H)(1).

(7) *Allowed Principal, Accessory, and Stormwater Uses*

- (a) Principal uses allowed in each subdistrict are detailed in the use table set forth in Section 5.1.3 Accessory or ancillary structures normally associated with such primary uses and that do not constitute more than 33 percent of the total floor area on a site are allowed in conjunction with the principal use.
- (b) The use of residentially zoned property to support nonresidential stormwater devices to include but not limited to detention and retention ponds are allowed in the Town Center (TC) District providing that the following conditions are met:

1. The properties must be contiguous as defined in Section 12.4 of this Ordinance.
2. The same group, entity, or individual must own both properties (residential and nonresidential).

(8) Rezoning Procedure

Because the TC district is a single zoning district with various subdistricts, land use changes within this district do not entail a typical rezoning to a different district procedure. See Section 3.4.4 for the rezoning procedure within the TC district.

(9) General Development Objectives

This district is designed to provide a maximum amount of flexibility to landowners to facilitate new development and redevelopment of existing sites within the Town Center to create the following:

(a) Unique and Dynamic Atmosphere

Create a unique, vibrant, dynamic, pedestrian-friendly location;

(b) Higher Densities in Proximity to Regional Rail Station

Encourage higher residential densities within a short walking distance of the planned regional rail transit station in the center of the district; and

(c) Mix of Uses

Allow multi-story, mixed use buildings, so that the core area of downtown will include a high-intensity collection of retail shops, restaurants, entertainment, housing, offices, and similar uses to establish a place where residents may live, work, and recreate.

(10) Standards for New Development

(a) Exemption from Certain Town Standards

Considering the unique nature of downtown, certain requirements of the following provisions shall not be applicable within the Town Center district in order to provide the flexibility for downtown development:

1. The required number of off-street parking spaces (see Section 7.8) may be reduced up to fifty (50) percent on a case-by-case basis provided there is adequate on-street parking available in a proximate area. All other parking standards in Section 7.8 shall apply.
2. The perimeter buffer requirements in Section 7.2.3 and streetscaping requirements in Section 7.2.4 may be reduced or waived. Additional provisions from Section 7.2 may also be modified on a case-by-case basis provided such modification is consistent with the Community Appearance Manual and the Downtown Streetscape Master Plan; except that a hardship must be demonstrated before the requirements of Section 7.2.5 related to the retention of champion trees may be modified.

3. The exterior lighting requirements in Section 7.9.3 except in cases where a property is bounded by an existing single-unit dwelling or development.
4. The requirements relating to private open space in Section 8.3.1.

(b) General Performance Standards

Except as otherwise exempted, all new projects or proposed expansion, alteration, or major repair must satisfy the standards set forth in all other applicable town plans, guidelines, codes, and regulations. New development shall be appropriate to the site, taking into account the safety, convenience, and amenity of the surrounding neighborhood, and shall be evaluated in relation to existing adjacent or surrounding buildings that fit the overall intent of this section. Downtown projects must, among other requirements, meet the following general performance standards.

1. All access roads, entrance or exit drives will be appropriate for pedestrian and automotive safety and convenience, traffic flow, and control and access in the case of fire or other emergency;
2. All off-street parking, loading, refuse collection and other service areas will be appropriate with respect to pedestrian and automotive safety and convenience, traffic flow, and economic, noise, glare, odor and other impacts upon adjoining properties and other properties in the neighborhood;
3. All landscaping, screening and fencing will be appropriate, with respect to the effectiveness of their type; dimensions and character will be appropriate with respect to minimizing the economic, noise, glare, odor and other impacts adjoining properties and other properties in the neighborhood; and
4. The type, size and intensity of the use and the hours of operation and number of people utilizing the use will be appropriate with respect to minimizing the impact upon adjoining properties and other properties in the neighborhood.

(c) Statement of Design Compatibility

[Reserved]

(d) Required Design Issues

All new development requiring development plan approval within the Town Center district shall be consistent with the applicable design standards in the Community Appearance Manual, Downtown Streetscape Master Plan, and the Site Design Standards.

(e) [Reserved]

(f) [Reserved]

(g) Use-Specific Standards

The use-specific standards set forth in Chapter 5 shall apply to all uses within each subdistrict.

(11) Review Procedures

Review of development plans shall be done in accordance with Section 3.9. of this Ordinance.

(Ord. No. 04-007, 7-15-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2009-LDO-03, 5-14-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-005, 11-19-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2023-LDO-03, 6-22-23)

4.3 CONDITIONAL USE DISTRICTS**4.3.1 Purpose and Intent**

Conditional use district zoning provides an option by which an applicant for a rezoning may be held to certain promises relating to the type of development that occurs on his or her property. This section sets forth the types of conditional use districts and explains their relationship to the general use districts. The procedure for approving a conditional use district rezoning is set forth in Section 3.4.2.

4.3.2 Districts Established

Each general use district set forth in Section 4.2 of this Ordinance shall have a corresponding conditional use district. Accordingly, the following conditional use districts are hereby established:

(A) Residential Districts

- (1) R-80-CU: Residential district;
- (2) R-40-CU: Residential district;
- (3) R-20-CU: Residential district;
- (4) R-12-CU: Residential district;
- (5) R-8-CU: Residential district;
- (6) TR-CU: Transitional Residential district; and
- (7) RMF-CU: Multi-Family Residential district.

(B) Non-Residential Districts

- (1) RR-CU: Resource/Recreation district;
- (2) OI-CU: Office and Institutional district;
- (3) GC-CU: General Commercial district;
- (4) ORD-CU: Office/Research and Development district; and
- (5) I-CU: Industrial district.

(C) Town Center Subdistricts

- (1) TC-HMXD-CU: High Intensity Mixed Use subdistrict;
- (2) TC-MXD-CU: Mixed Use subdistrict;
- (3) TC-HDR Mid-Rise-CU: High Density Residential Mid-Rise subdistrict;
- (4) TC-MXDR-CU: Mixed Density Residential subdistrict;
- (5) TC-HDR Garden-CU: High Density Residential Garden subdistrict;
- (6) TC-MDR-CU: Medium Density Residential subdistrict;
- (7) TC-LDR-CU: Low Density Residential subdistrict;
- (8) TC-OFC/INS-CU: Office/Institutional subdistrict;
- (9) TC-OFC/IND-CU: Office/Industrial subdistrict;
- (10) TC-COM-CU: Commercial subdistrict;

- (11) TC-CLI-CU: Commercial Low Intensity subdistrict;
- (12) TC-CB&R-CU: Cottage Business and Residential subdistrict; and
- (13) TC-INS-CU: Institutional subdistrict.

(D) Walnut Street Corridor Subdistricts

- (1) CT-REDEV-CU: Walnut Street Corridor Redevelopment Area subdistrict;
- (2) CT-CONV-CU: Walnut Street Corridor Conversion Area subdistrict; and
- (3) CT-INFILL-CU: Walnut Street Infill Area subdistrict.

4.3.3 Designation of Conditional Use Districts

Conditional use districts shall be designated only in accordance with the procedures and requirements set forth in Section 3.4.2 of this Ordinance, and may not contain conditions which are less restrictive than this Ordinance or other applicable state and/or federal laws.

4.3.4 Allowable Uses

No use shall be permitted within a conditional use district except pursuant to the conditions imposed on the conditional use district as part of the zoning approval. The permitted uses must be ones that this Ordinance allows in the corresponding general use district.

4.3.5 Applicable Regulations

- (A) All standards and requirements that apply to the corresponding general use district shall apply to the conditional use district.
- (B) Conditions imposed on a conditional use district may be no less restrictive than those standards applying to the corresponding general use district.
- (C) Existing conditional use limitations in a conditional use district shall become null and void if future amendments to this Ordinance require stricter standards than those imposed under existing conditional use zoning.

4.3.6 Conditional Zoning Districts

- (A) In addition to "Conditional Use" zoning designations, the Official Zoning Map also contains parcels with "Conditional" zoning. Parcels with conditional zoning are parcels that were in pre-existing conditional use districts prior to July 1, 2003, that were removed or substantially modified by the adoption of this Ordinance. As a result of these changes, the parcels were translated into corresponding general use districts with the caveat that all previously existing conditions associated with a parcel will remain in effect unless modified through a subsequent rezoning.
- (B) The following Conditional zoning districts are hereby established:
 - (1) R-40-C: Residential district;
 - (2) R-12-C: Residential district;
 - (3) R-8-C Residential district;

- (4) RMF-C Residential district;
 - (5) CT-C Corridor Transition district;
 - (6) TC-C Town Center district.
- (C) Rezoning requests from a general use designation or conditional use designation to the "conditional" designation are prohibited. Any subsequent rezoning of a parcel in a Conditional zoning district listed above shall result in the removal of the "conditional" designation in favor of a new general use or conditional use designation.
- (Ord. 2015-LDO-003, 7-23-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2021-LDO-01, 6-24-21)

4.4 OVERLAY ZONING DISTRICTS

4.4.1 General Purpose; Relationship to General Use Zoning Districts

The overlay zoning districts of this chapter typically apply in combination with the underlying general use zoning districts to impose regulations and standards in addition to those required by the general use districts except where otherwise specified for a particular overlay district. The requirements of an overlay district shall apply whenever they are in conflict with and are more stringent than those in the general use district. Variances may not be granted from overlay district regulations unless specifically provided for in a particular overlay district. The following overlay districts are hereby created:

- (A) Mixed Use Overlay;
- (B) Conservation Residential Overlay;
- (C) Thoroughfare Overlay;
- (D) Airport Overlay;
- (E) Watershed Protection Overlay; and
- (F) Historic Preservation Overlay.

4.4.2 Mixed Use Overlay

(A) Purpose and Intent

It is the purpose and intent of this overlay district to enable the development of land in areas intended to have a compatible mixture of commercial, office, residential, recreational, civic and/or cultural uses which are highly integrated and function in a cohesive manner. Each Mixed Use Overlay District is intended to function at a neighborhood, community or regional scale identified on the Town of Cary Official Zoning Overlay Map. Benefits of this approach to development will help concentrate land uses, reduce sprawl, promote a more efficient pattern of land uses, provide needed goods and services, reduce automobile trips, and facilitate convenient and safe circulation.

(B) Applicability

The Mixed Use Overlay District shall apply to areas designated as such on the Town Of Cary Official Zoning Map.

(C) **[Reserved]**

(D) **Uses Allowed**

The uses allowed in the Mixed Use Overlay District are set forth in the Table of Permitted Uses in Chapter 5. The applicable designation of Neighborhood, Community or Regional will be as identified on the Town Of Cary Official Zoning Overlay Map.

(E) **Authority Under Overlay District**

(1) **General Authority**

Property in a Mixed Use Overlay District may be developed in accordance with requirements for one (1) of the following, as applicable, and as described below in this Section 4.4.2(E):

- (a) an existing general use zoning district, conditional use zoning district, or planned development district established prior to August 13, 2009 (hereinafter collectively, "base zoning");
- (b) an Activity Center Concept Plan ("ACCP") approved between July 1, 2003 and April 27, 2006;
- (c) a Mixed Use Sketch Plan ("MUSP") approved between April 27, 2006 and August 13, 2009;
- (d) modification of a planned development district that was initially created prior to August 13, 2009;
- (e) a conditional use zoning district approved after January 24, 2017, which either modified previously-approved zoning conditions or added initial zoning conditions to the previously-approved base zoning district;
- (f) a MXD District approved after August 13, 2009; or
- (g) where the property is not in the Destination Center, Commercial Center Mixed Use, or Mixed Use Employment Center future growth framework development category as designated in the Shape chapter of the Cary Community Plan, a general use or conditional use zoning district approved after January 24, 2017.

(2) **Utilization of Existing Base Zoning, Excluding Planned Development Districts**

Development plans that are submitted utilizing the base zoning shall be evaluated against the Comprehensive Plan, design guidelines, and related requirements to determine whether the proposed development is in keeping with the overall intent of the MUOD.

Further, if an ACCP or MUSP has been approved for all or a portion of property proposed for development or redevelopment, and if the ACCP or MUSP includes specific site design guidelines, then the design guidelines shall apply to the property, or portions thereof, covered by the ACCP or MUSP. The aspects of ACCP/MUSP design guidelines that are applicable to development under the base zoning include, but are not limited to, more restrictive guidelines related to building placement and orientation, roadway and sidewalk sections, streetscape treatments, landscaping

treatments, individual building or tenant space sizes, open space and public space, parking lot design and placement, block length, connectivity, stormwater controls, block frontage coverage, public art, signage and site entryway features.

Dimensional standards prescribed by ACCP/MUSP site design guidelines are also applicable to development under the base zoning, except for single-unit residential development having lots of twenty thousand (20,000) square feet or more. A development or redevelopment proposal submitted under the base district zoning should facilitate the ultimate attainment of the circulation network outlined in the ACCP/MUSP.

(3) *Utilization of Approved Activity Center Concept Plans or Mixed Use Sketch Plans*

Property for which an ACCP or MUSP was approved prior to August 13, 2009 may be developed in accordance with that ACCP/MUSP.

(4) *Modification of Planned Development Districts*

Requests to modify or expand existing planned development districts shall be evaluated against the Comprehensive Plan, design guidelines, and related requirements to determine whether the proposed development is in keeping with the overall intent of the MUOD.

Staff may approve changes to PDD Master Plans if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Applications for such changes shall be considered using the process set forth in Section 3.19. Proposed changes that do not fall within the criteria allowed for administrative approval in Section 3.19 may occur only through rezoning to amend the Planned Development District, following approval procedures set forth in Section 3.4.5.

(5) *Utilization of a Mixed Use District Approved After August 13, 2009*

Requests to rezone property to the Mixed Use District shall be evaluated against Section 4.5.2 and other applicable Sections of this Ordinance, the Comprehensive Plan, design guidelines, and related requirements to determine whether the proposed development is in keeping with the overall intent of the MUOD.

(6) *Utilization of a General Use or Conditional Use Zoning District Approved After January 24, 2017*

Requests to rezone property to a General Use or Conditional Use Zoning District shall be evaluated against Section 3.4.1(E) and other applicable Sections of this Ordinance, the Comprehensive Plan, design guidelines, and related requirements to determine whether the proposed development is in keeping with the overall intent of the MUOD.

(F) *Development Standards*

Notwithstanding an approved ACCP/MUSP or existing planned development master plan, any development and/or redevelopment proposed for parcels located within a Mixed Use Overlay District shall meet the following development standards:

- (1)** Any conditions related to allowable land uses and/or landscaping buffer provisions applied through a conditional use rezoning shall continue to apply unless the property is subsequently rezoned to the MXD district and said conditions are not included as development requirements of the MXD district; and

- (2) The road network shall be designed to ensure that adjacent residential areas will have direct access to the non-residential portions of the Mixed Use Overlay District in lieu of entering and exiting through thoroughfares and/or collector streets; and
- (3) The development/redevelopment shall provide or contribute to a pedestrian and road network that connects non-residential and existing residential uses (including multi-family and single-unit) developments in accordance with town-wide design guidelines.

Exceptions may be considered to items 2 and 3 above where adjacent established single-unit residential developments (not part of an approved mixed use sketch plan or an existing master plan) are proposed to connect through a roadway to a Regional Mixed Use Overlay District. This exemption shall not apply when public uses (including but not limited to schools, libraries, and parks) are proposed within a Regional Mixed Use Overlay District.

(G) Dimensional Requirements

The general dimensional standards shall be as specified for the applicable base zoning district, ACCP, MUSP, Planned Development District Master Plan, preliminary development plan for property zoned MXD, or applicable general use or conditional use zoning district approved after January 24, 2017.

(H) Changes to the Preliminary Development Plan Component of an Approved MXD District (Including Activity Center Concept Plans and Mixed Use Sketch Plans) or to an Approved PDD Master Plan

Any change in the general location and character of the features depicted on approved preliminary development plans, ACCPs, MUSPs or PDD Master Plans, except where such change is determined by the Planning Director to be a minor modification as outlined in Section 3.19.2(B), shall be considered a material change to the approved preliminary development plan, ACCP, MUSP or PDD Master Plan, and shall be processed as a new application in accordance with the applicable procedures set forth in Sections 3.4.3 and 3.4.5. The Planning Director shall determine whether any such change is a material change.

4.4.3 Conservation Residential Overlay District

(A) Purpose and Intent

The Conservation Residential Overlay District is established to implement the Comprehensive Plan. The goals and objectives of this overlay are to:

- (1) Encourage environmentally sound planning;
- (2) Protect open space and natural resources;
- (3) Create attractive living environments;
- (4) Encourage the creative placement of dwelling units;
- (5) Limit the consumption of scenic, historic, and forested land for development;
- (6) Design residential developments using natural topography, drainage ways and advanced water-quality protection techniques; and

- (7) Create a contiguous network of open spaces by linking the open space areas within the residential development to open space on adjoining land wherever possible.

To further these goals and objectives, the overlay district provides the opportunity for residential developments to receive an increase in the number of potential dwelling units (based on the underlying zoning requirements) when such residential developments meet open space and other design requirements set forth within this Section.

(B) Location of District and Applicability

The provisions of the Conservation Residential Overlay District shall apply to the geographic areas designated as such on the Town of Cary Official Zoning Map. For properties designated as Conservation Residential on the Town of Cary Official Zoning Map and located outside of the Town's extraterritorial jurisdiction (ETJ), annexation and rezoning in accordance with this Section and all other applicable sections of the Land Development Ordinance is required before applicants may utilize the density bonus provisions of Sections 4.4.3(D) through (H).

This overlay district does not preclude any residential or non-residential uses allowed within the underlying zoning districts, provided that all applicable Land Development Ordinance requirements are met. Properties may be rezoned to residential or non-residential districts if supported by the Comprehensive Plan and in accordance with applicable sections of the Land Development Ordinance. Parcels zoned as Planned Development Districts and parcels subject to development plans approved before July 15, 2004, are exempt from the application of this Section for so long as the PDD or development plan remains valid.

The density bonus provisions of Sections 4.4.3(D) through (H) are optional. However, all development within the overlay district shall, in addition to all other requirements of the Land Development Ordinance, provide a buffer of fifty (50) feet in width along the American Tobacco Trail. The buffer shall function as visual separation between the public trail and private property; it shall contain native plant material, supplemented where necessary with deciduous and evergreen trees to provide an opaque screen for the benefit of trail users and adjoining property owners. The buffer shall conform to the requirements of a Type 'A' Buffer as described in LDO Section 7.2.3(D).

(C) Subdistricts Created and Defined

Due to the existing character and desired types of future development in the Conservation Residential Overlay District, differing residential densities, dimensional standards, open space requirements, and other related development standards are set forth within this Section. In order to present the full range of zoning and development requirements for each different area, this overlay zoning district is divided into two (2) subdistricts as follows:

TABLE 4.4-1: CONSERVATION RESIDENTIAL OVERLAY SUBDISTRICTS	
<i>Subdistrict</i>	<i>Description</i>
LCR	Conservation Residential, Low Density
VLCR	Conservation Residential, Very Low Density

(D) Eligibility and Process to Obtain Density Bonus

An increase in the number of lots (density bonus) above the number of lots that could be achieved utilizing the underlying zoning (base number of lots) is allowed, provided the development plan meets open space requirements and other design requirements set forth within this Section.

New residential developments within the Conservation Residential Overlay District seeking to utilize the density bonus provisions of this Section shall require submission of a development plan in accordance with Section 3.9 of this Ordinance, and approval of such plan by the appropriate decision-making body. To be eligible to gain additional units above the base number of lots, the minimum size of the site shall be ten (10) acres.

(1) Rezoning

For property located within the overlay district as shown on the Town of Cary Official Zoning Overlay Map, rezoning is not required in order to submit development plan applications that meet the requirements stated in Sections 4.4.3(D) through (H).

For properties within the Conservation Residential Overlay District but not within the Town Limits and/or Extraterritorial Zoning Jurisdiction (ETJ), annexation and rezoning is required before such properties can be developed pursuant to Sections 4.4.3(D) through (H). Annexation and rezoning (to establish initial zoning) to the Residential-40 district and Conservation Residential Overlay District must be approved before a proposed development plan using the provisions of Section 4.4.3(D) through (H) can be submitted for review.

Rezoning to non-residential and institutional uses may be permitted if consistent with the Comprehensive Plan. Rezoning to non-residential and institutional districts are not required to be subject to the requirements of this Overlay District.

(E) Calculating the Base Number of Lots

The base number of lots is defined as the lot yield based on the implementation of the requirements of the underlying zoning district. The base number of lots is the starting point from which extra lots may be permitted if non-regulatory or bonus open space, as defined below, is provided and other design requirements are met.

The applicant shall choose one (1) of the following methods for calculating the base number of lots:

- (1)** The base number of lots may be determined by taking ninety (90) percent of the potential developable area of the site and multiplying by the maximum density (based on lot area requirements) for the underlying zoning district. The purpose of reducing the potential developable acreage by ten (10) percent is to account for the approximate area that would be allocated to roadways within a conventional subdivision. "Potential developable area" within this Section is defined as the total land area of the site excluding all regulatory floodplains, streetscapes and other required areas (see Chapter 7: Development and Design Standards). For sites that contain and/or are adjacent to the American Tobacco Trail, a buffer of at least fifty (50) feet in width is required. This minimum buffer width is considered regulatory/required area, and shall not be included in the calculation of potential developable area.

Example: Site A

Total Site Acres: One hundred (100)

Acres in regulated/protected areas: Twenty (20)

Potential Developable Area Including Roadways: One hundred (100) - Twenty (20) = Eighty (80) Acres

Calculated Developable Area: Eighty (80) Acres x Ninety (90) percent = Seventy-two (72) Acres

Base Number of Lots: Seventy-two (72) Acres x 1.09 (density permitted in R-40) = Seventy-eight (78) lots

- (2) The base number of lots may be determined based on the applicant providing a sketch development plan that fully complies with the development requirements of the underlying zoning district for the site.

(F) Increases to Base Density; Residential Use Type Allowed; and Minimum Dimensional Standards

- (1) **Increase in Density** - An increase in the number of lots (density bonus) is provided in exchange for the permanent preservation of non-regulatory (referred to as "bonus") open space and compliance with other design requirements. An increase in the number of lots is achieved by allowing a smaller minimum lot size and increasing the permitted density (see Table 4.4-2 below).
- (2) **Allowance for Attached Dwelling Units** - All lots developed in accordance with Sections 4.4.3(D) through (H) shall be for single-unit detached dwelling units with the exception of lots within the Conservation Residential Low Density (LCR) subdistrict. Within this subdistrict, attached, semi-detached, detached patio dwelling and townhome units shall be permitted, but shall not exceed twenty (20) percent of the total development yield. The lots for attached dwellings and detached patio dwellings shall use the Transitional Residential (TR) dimensional requirements, and therefore may have smaller lot sizes than the minimum lot size for detached lots as prescribed below.

(3) Specific Requirements by Subdistrict

TABLE 4.4-2: MAXIMUM DENSITY, MINIMUM LOT SIZE AND OPEN SPACE REQUIREMENTS BY SUBDISTRICT					
Overlay Subdistrict	Maximum Development Density (d.u./acre)	Minimum Lot Size if Site Contains Less than Twenty (20) Percent of the Total Area in regulatory open space (sq. ft.)	Minimum Lot Size if Site Contains between Twenty (20) and Less than Thirty (30) Percent of the Total Area in regulatory open space (sq. ft.)	Minimum Lot Size if Site Contains Thirty (30) Percent or more of the Total Area in regulatory open space (sq. ft.)	Bonus Open Space Required Per Additional Lot
Conservation Residential, Low Density (LCR)	2.5	10,000	8,000	6,000	8,872 sq. ft.
Conservation Residential, Very Low Density (VLCR)	1.5	15,000	8,000	6,000	14,816 sq. ft.

Notes:

Reduction in lot size due to twenty (20) percent or greater area in regulatory open space will be reduced incrementally until the maximum development density or minimum lot size is achieved, whichever occurs first.

The amount of bonus open space required is based on the following ratio:

In VLCR, a density bonus equal to three percent (3%) of the base number of lots is allowed for each one percent (1%) of bonus open space provided from the potential developable area of the site.

In LCR, a density bonus equal to five percent (5%) of the base number of lots is allowed for each one percent (1%) of bonus open space provided from the potential developable area of the site.

LCR Example (continued from 4.4.3(E)(1) above):

Size of Site	Base Number of Lots [see Section 4.4.3 (E)]	Bonus Open Space	Additional Lots (Density Bonus)	Gross Density (d.u./acre)
100 Acres	78	16 acres (20% of potential developable area)	78 (100% more)	1.6
100 Acres	78	24 acres (30% of potential developable area)	117 (150% more)	2.0

(G) Bonus Open Space Requirements

All bonus open space provided must meet the following standards:

- (1) Bonus open space shall be retained in a natural, undisturbed state, with the exception of those activities allowed by this Section. No more than five percent (5%) of the bonus open space area may be disturbed and allowed to be planted with grass or improved with other pervious ground cover in order to provide common informal gardens and/or play/open areas for the development or for the extension of main water and sewer lines. The five percent (5%) does not include disturbed areas due to the installation of required pedestrian systems (e.g., sidewalks, trails). However, active recreation facilities (e.g., basketball and tennis courts) are not permitted in the bonus open space used to obtain additional lots.
- (2) In order to use the bonus density provisions of the Conservation Residential Overlay District, per part (F) of this Section, the subdivision must, at a minimum, provide an eighty (80) foot deep Type A opaque streetscape buffer along all of the subdivision's thoroughfare and collector road frontage. The amount of the eighty (80) foot deep streetscape buffer that is in excess of the amount of streetscape buffer normally required for a conventional subdivision under the requirements of Chapter 7 (See Section 7.2.4) qualifies as non-regulatory or bonus open space. Credit for bonus open space beyond a thirty (30) foot streetscape width may be allowed along thoroughfares that are designed as only two (2) lane roadways (similar to a collector roadway).
- (3) Bonus open space shall be no less than thirty (30) feet in width at any point.
- (4) Pedestrian access trails to the bonus open space areas shall be provided.
- (5) No portion of the bonus open space shall be separated into non-contiguous segments smaller than thirty percent (30%) of the total bonus open space area. Open space divided by a roadway shall be defined as contiguous as well as open space adjacent to or across a roadway from regulatory stream and/or urban transition buffers.
- (6) Credit for bonus open space may be provided for the preservation of contributing historic structure(s) within the Green Level National Register Historic District. This refers to the primary contributing structure on the site, such as the main farmhouse, as identified in the Green Level Historic District National Register Nomination document. The primary contributing structure must be located within a site containing at least one (1) acre of contiguous open space in order to better maintain the structure within its context in the landscape. Preservation is defined as the active restoration or rehabilitation and the ongoing maintenance of a structure. To qualify a primary contributing structure for the density bonus option, the property owner shall enter a preservation agreement with a qualified preservation organization. Preservation agreements may include, but are not limited to, historic preservation easements, facade and exterior covenants, or other methods acceptable to the Town.

The primary contributing structure within the Green Level National Register Historic District shall count as one (1) acre of bonus open space, provided that the structure is preserved and/or rehabilitated to the Secretary of the Interior's Standards for Rehabilitation. The primary structure must also be included within at least one (1) acre of bonus open space to preserve rural character features. This bonus open space may be used in a way that reflects the historic use of the property. If these requirements are met, a minimum of two (2) acres of open space may be credited to obtain bonus lots.

- (7) The bonus open space shall be shown on the development plan, with a notation to indicate that the bonus open space shall not be used for future structures.
- (8) The developer shall establish and incorporate a Homeowners' Association (HOA), which shall own the bonus open space and have the responsibility for maintaining the bonus open space and associated facilities at its own expense. An exception to the ownership of a portion of the bonus open space surrounding a contributing historic structure(s) within the Green Level National Register Historic District may be provided on a case by case basis. As an alternative to an HOA, a private, non-profit organization, whose primary purpose is open space conservation or preservation can own and manage the bonus open space.
- (9) A portion or all of the bonus open space may be conveyed to the Town for use as greenways and parkland, provided it meets Town standards for such facilities and is agreed to by the Town. Such conveyance would occur at no cost to the Town.

(H) Additional Design Requirements

(1) Lot Dimensions

- (a) For LCR lots, all dimensional requirements (i.e., setbacks, lot width) shall conform to R-8: Residential District standards with the exception of side yards. Side yards shall be a minimum of five (5) feet and an aggregate minimum of fifteen (15) feet. Residential lots less than eight thousand (8,000) square feet shall conform to TR: Transition Residential District standards.
 - (b) For VLCR, R-12 dimensional requirements shall be used for lots twelve thousand (12,000) square feet and greater in size. For lots between eleven thousand nine hundred ninety-nine (11,999) and eight thousand (8,000) square feet, R-8 dimensional requirements shall be used. For lots less than eight thousand (8,000) square feet, TR dimensional requirements shall be used.
- (2) Where lots abut other residential lots within an existing subdivision that is not developed pursuant to Sections 4.4.3(D) through (H), said lots shall have a side and rear yard setback not less than the required side and rear yard setback required on the abutting property or the side and rear yard setback of the Residential 40 District.
 - (3) All streetscapes along thoroughfares and collectors shall be planted to a Type A standard.
 - (4) **American Tobacco Trail (ATT) Buffer** - A buffer of fifty (50) feet in width is required along the American Tobacco Trail. The buffer shall function as visual separation between the public trail and private property; it shall contain native plant material, supplemented where necessary with deciduous and evergreen trees to provide an opaque screen for the benefit of trail users and adjoining property owners. The buffer shall conform to the requirements of a Type 'A' Buffer as described in LDO Section 7.2.3(D). The fifty (50) foot wide buffer is not counted as bonus open space.
 - (5) No lot(s) shown on a development plan may be cleared or graded until the building permit for the lot is approved. Exceptions to this requirement may be considered based on factors related to the installation of roadways, public utilities or significant topographic issues. This exception must be approved by the Town based on written justification.

- (6) Streets shall be designed and located as to preserve and maintain the natural topography and topographic features, as well as to minimize cut and fill practices.
- (7) [Reserved]
- (8) The requirements of Section 7.3, Stormwater Management, shall be achieved using LID site planning and techniques or a combination of LID and conventional stormwater management practices. The goal of LID is to develop site design techniques, strategies, and best management practices (BMPs) to store, infiltrate, evaporate, retain, and detain run-off on the site to more closely replicate pre-development run-off characteristics and to better mimic the natural and unique hydrology of the site thereby limiting the increase in pollutant loads caused by development. To the extent practical, stormwater shall be treated at its source through the use of small, non-structural BMPs and natural conveyance devices (swales, etc.). All BMPs shall be located in areas owned by the HOA or other entity (see 4.4.3(G)(8)) to ensure adequate maintenance. Structural BMPs may not be located in the bonus open space.
- (9) **Pedestrian Connectivity:** A comprehensive pedestrian system shall be provided that makes the contiguous open space accessible to neighborhood residents and connects the open space to neighborhood streets. Limited pedestrian access shall be provided through Urban Transition Buffers and floodplain areas in accordance with the standards of this Ordinance.

Pedestrian connectivity shall be provided through an integrated combination of: primary trails, consisting of public sidewalks and greenways; and secondary trails consisting of private trails that provide connections within the development from public sidewalks and greenways to open space areas.

Public greenway trails shall be those depicted on the Parks, Recreation and Cultural Resources Facilities Master Plan. Such trails shall be ten (10) feet wide and constructed within a thirty (30) foot wide permanent Town of Cary greenway easement. The Town shall maintain all public greenway trails.

Secondary trails shall be constructed of asphalt, with a minimum width of eight (8) feet. Where feasible, secondary trails shall be located within Homeowners' Association (HOA) maintained common open space. In cases where this is not feasible, a twenty (20)- foot wide private pedestrian easement centered on these trails must be recorded and any required building setback shall be calculated from the outside boundary of the easement on the lot. All secondary trails shall be owned and maintained by the subdivision HOA and shall be available for public use.

4.4.4 [RESERVED]

4.4.5 Airport Overlay

(A) Purpose and Intent

The Airport Overlay is established to accomplish the following purposes:

- (1) To limit allowable land uses in the immediate vicinity of Raleigh-Durham International Airport to non-residential uses, such as industrial, agricultural, commercial, or conservation uses, which are not subject to high population concentrations, and to keep residential and institutional uses from developing in those areas that are subject to the highest levels of aircraft noise;

- (2) To ensure that such uses are located, designed, constructed, and maintained in a manner that does not impair the safe operation of the airport;
- (3) To ensure that such uses contribute to the attractiveness of the roadside, which will in turn contribute to and enhance trade, tourism, capital investment, property values, and the general welfare; and
- (4) To ensure that such uses are in compliance with the Raleigh-Durham International Airport Height Zoning Ordinance and other supplemental regulations.

(B) Location and Applicability; Compliance Required

The Airport Overlay is an overlay district that applies over lands in the vicinity of the Raleigh-Durham International Airport. The boundaries of the Airport Overlay shall be shown on the Official Zoning Map.

(C) Process for Reviewing Developments; Approval by the Raleigh-Durham Airport Authority

(1) *Raleigh-Durham Airport Authority Approval*

The authority shall be involved with the review of development plans and building permits for structures over fifty (50) feet as measured to the highest part of the structure. The following requirements are to ensure compliance with the authority's ordinances.

- (a) No development plan for property located within the Overlay may be approved unless notification has been received from the Airport Authority that the development complies with its Height Zoning Ordinance and any other supplemental regulations that may apply. The applicant is required to secure and provide the necessary documentation from the Authority on compliance with its ordinances to the Planning Director.
- (b) No building permit shall be issued for establishment of a structure or expansion of an existing structure at a height of greater than fifty (50) feet unless there has first been issued by the Raleigh-Durham Airport Authority (1) a permit for the structure under the provisions of its ordinances, or (2) a determination that a permit is not required for the structure.

(2) *Supplemental Regulations of the Raleigh-Durham International Airport Authority*

All development within the Airport Overlay shall also comply with the airspace regulations adopted by the Raleigh-Durham International Airport Authority, as may be amended from time to time, which are incorporated herein by reference. Whenever said airspace regulations impose more stringent requirements or limitations than are required by this Ordinance, the provisions of the airspace regulations shall control.

(D) Prohibited Uses and Structures

(1) *Prohibited Uses*

- (a) Residential uses, including all forms of dwellings, manufactured homes, nursing homes, and life care communities;

- (b) Places of public assembly and institutional uses including schools, colleges, churches, day care centers, clubs and lodges, libraries, museums, and hospitals, but not including arenas or stadiums for sporting events;
- (c) Indoor and outdoor amusement establishments;
- (d) Guest houses;
- (e) Correctional or penal institutions;
- (f) Radio and television broadcasting stations;
- (g) Landfills or quarries;
- (h) Warehousing/above-ground bulk storage of explosive, hazardous, flammable, or combustible materials, and related facilities or operations that could pose a threat to the welfare of the public in the event of an aircraft crash or other mishap;
- (i) Petroleum refining and other related uses that may be susceptible to explosion or fire;
- (j) Outdoor storage of certain goods and materials, including but not limited to the following: oxides; coal; ores; minerals; produce; furniture; flammable or combustible building supplies; paper and frame products; or wrecked, dismantled or partially dismantled vehicles.
- (k) Wildlife sanctuaries, refuges, and other uses that may be an attractant to birds.

(2) *Prohibited Lighting*

- (a) Any moving, pulsating, flashing, rotating, or oscillating light, other than navigational markings or lights marking potential obstructions in accordance with Federal Aviation Administration requirements;
- (b) Flood lights, spot lights, or other lighting devices which are not shielded so as to prevent illumination in an upward direction;
- (c) Any lights which make it difficult for pilots to distinguish between airport lights and others, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport or otherwise in any way endangers or interferes with the landing, takeoff or maneuvering of aircraft intending to use the airport.

(3) *Prohibited Electronic Signals*

Any electronic impulse or signal which interferes with radio communications between aircraft and the airport, or which interferes with established navigation aids, is prohibited in the Airport Overlay.

(4) *Prohibited Structures*

Structures in excess of the applicable height limit established for the Zones specified in the "Raleigh-Durham International Airport Height Zoning Ordinance" adopted by the

Raleigh-Durham Airport Authority and as may be amended from time to time by the Raleigh-Durham Airport Authority are prohibited in the Airport Overlay. Structure means an object, including a mobile object, constructed, or installed by man, including, but not limited to, buildings, towers, cranes, earth formations, and overhead transmission lines.

(E) Nonconforming Uses and Structures

Nonconforming uses and structures may be continued in the Airport Overlay in accordance with Chapter 10 of this Ordinance. However, no building permit shall be issued that would allow the expansion of a structure or use that does not comply with the requirements of this Ordinance.

(F) Location of Buildings and Parking Areas

All buildings and structures located in the Airport Overlay shall meet the minimum setback requirements of the underlying zoning district and any other applicable setback requirements set forth elsewhere in this Ordinance. All parking areas in the Airport Overlay shall be located no less than thirty (30) feet from the right-of-way of a major thoroughfare.

4.4.6 Watershed Protection Overlay

(A) Purpose and Intent

The intent of the Watershed Protection Overlay is to ensure the availability of public water supplies at a safe and acceptable level of water quality for present and future residents of the Town and the surrounding region. Watershed protection measures allowed by this section include:

- (1) Restriction of land uses allowed within water supply basins;
- (2) Impervious area and density limitations; and
- (3) Engineered stormwater control measures and the best management practices as listed in the Department of Environmental Quality State Design Manual.

(B) Applicability

(1) *Designated Watersheds*

The Watershed Protection Overlay is an overlay district to be applied to all lands lying within the watershed of a public water supply. The boundaries of the Watershed Protection Overlay shall be shown on the Town of Cary Official Zoning Map. The Watershed Protection Overlay consists of three sub-areas:

- (a) Swift Creek Watershed;
- (b) Jordan Lake Watershed; and
- (c) Jordan Lake Watershed Critical Water Quality Area.

(2) *Applicability to Development Activity*

- (a) The following types of development activity are exempt from the requirements of this Section 4.4.6:

1. Development existing prior to June 30, 1993;
2. Development on vacant lots inside of PDs approved prior to June 30, 1993;
3. Development on vacant lands in subdivisions platted prior to June 30, 1993, unless such lands have undergone a zoning change after June 30, 1993 and new development is required to submit a development plan; and
4. Redevelopment provided there is no increase in the total amount of impervious surface for a lot or development site.

(b) The requirements of this Section 4.4.6 shall apply to the following:

1. Vacant land that is rezoned from its designation in place on June 30, 1993;
2. New lands added to a planned development after June 30, 1993, even if the original planned development was approved prior to June 30, 1993;
3. Development in a planned development if the development had to be amended after June 30, 1993, to accommodate the development;
4. Any expansions to existing development in place as of June 30, 1993 (provisions are only applied to the addition, not the impervious surface in place on June 30, 1993).

(3) *Sedimentation and Erosion Control*

Responsible control of erosion and sedimentation is crucial to the protection of stormwater quality and the continued proper function of the measures required in this section. Requirements pertaining to sedimentation and erosion control are addressed in Section 14.4 of this Ordinance.

(C) Procedures for Development Approval

(1) *Development Review*

All development within the Watershed Protection Overlay shall demonstrate compliance with the requirements of this Section 4.4.6 at the time of approval of a development plan. Applicants complying with the standards of this section must also satisfy all other applicable requirements and obtain all other necessary approvals or permits under this Ordinance.

(2) *Protection Measures Prerequisite to Certificate of Occupancy*

A Certificate of Occupancy shall not be issued for any development in the Watershed Protection Overlay until all of the watershed protection measures required by this section have been approved and are in place on the property.

(D) Overview of High Density and Low Density Development Options

There are two (2) development options in the Watershed Protection Overlay, a Low Density Option and a High Density Option, each with different provisions related to either the Swift Creek Watershed or the Jordan Lake Watershed as well as to sub-areas within either watershed.

(1) *Impervious Surfaces*

The maximum allowable amount of impervious surface within a proposed development is limited based upon the Low or High Density Option, and differs from watershed to watershed as depicted in Table 4.4-5.

(2) *Calculation of Impervious Surfaces*

Calculation of impervious surface area shall include the pavement area of all existing and proposed internal public and private streets, one-half ($\frac{1}{2}$) of the width of roadways on the perimeter of the project, driveways, rooftops, parking lots, patios, and all other impervious surfaces. For the purpose of calculating the impervious surface of roadways on the perimeter of a project, the ultimate pavement cross section of the roadway based on the Comprehensive Transportation Plan and any sidewalk(s) or greenway(s) along the perimeter roadway will be included in the calculation. For purposes of calculating the percentage of impervious area coverage, the total project area shall be regarded as the actual area of the property plus the area within the rights-of-way of the internal and perimeter streets included in the calculation of impervious area.

(3) *Residential Density*

In addition to limitations on the amount of impervious surface, the Low and High Density Development Options limit the gross residential densities of projects based upon the watershed where they are proposed, with higher densities allowed under the High Density Option as depicted in Table 4.4-5.

(4) *Runoff Control*

Engineered stormwater control measures intended to contain the runoff from the first one (1) inch of rainfall are required in any development utilizing the High Density Option in either watershed.

(E) *Restrictions on Allowed Uses*

The uses allowed within the Watershed Protection Overlay are the same as the uses permitted in the general use zoning district within which the land is located, pursuant to Table 5.1-1. However, the following uses are allowed within the overlay district only if they comply with the performance standards set forth in this Section 4.4.6.

(1) *Swift Creek Watershed and the Jordan Lake Watershed*

- (a)** All industrial service uses;
- (b)** All waste-related uses;
- (c)** Uses producing and/or storing toxic and/or hazardous materials; and
- (d)** Any use discharging sewage, industrial waste and/or non-process industrial waste.

(2) *Jordan Lake Watershed Critical Water Quality Area*

All uses set forth in paragraph (1) above; and all agricultural uses.

(F) Limitations on Impervious Surface Area and Density**(1) Low Density Option**

Maximum impervious surface limits for the Low Density Option are set forth in the table below. Separate regulations are provided for the Jordan Lake and Swift Creek areas. The Jordan Lake regulations recognize two (2) sub-areas, the Critical Area and the remainder of the watershed; while the Swift Creek regulations distinguish between three (3) different sub-areas: New Suburban, New Urban, and Existing Urban development. These sub-areas are depicted on the Town's Official Zoning Map.

TABLE 4.4-4: MAXIMUM IMPERVIOUS SURFACE LIMITS: LOW DENSITY OPTION				
<i>Suburban-New</i>		<i>Urban-New</i>		<i>Existing Urban</i>
<i>Residential</i>	<i>Non-Residential</i>	<i>Residential</i>	<i>Non-Residential</i>	<i>Residential and Non-Residential</i>
Swift Creek Watershed				
Two and one-half (2.5) dwelling units per acre not to exceed twelve (12) percent impervious surface area.	Twelve (12) percent	Six (6.0) dwelling units per acre east of Holly Springs and Jones Franklin Roads, Greater than six (6.0) units per acre west of Holly Springs and Jones Franklin Roads, not to exceed twelve (12) percent, impervious surface area.	Twelve (12) percent	The impervious surface of the underlying zoning of the property not to exceed twelve (12) percent impervious surface area.
Jordan Lake Watershed				
Impervious surfaces shall not exceed twenty-four (24) percent of the project area, or two (2) dwelling units per acre; or three (3) dwelling units per acre and thirty-six (36) percent impervious surface area for projects containing streets built without curbs and gutters.				
Jordan Lake Watershed Critical Area				
Non-residential and multi-family residential development's impervious surface ratios shall not exceed twenty-four (24) percent. Residential density (other than multi-family) shall not exceed two (2) dwelling units per acre.				

(2) High Density Option

High Density Option development proposals may be approved, provided that the development applications are consistent with the following standards:

TABLE 4.4-5: MAXIMUM IMPERVIOUS SURFACE LIMITS: HIGH DENSITY OPTION					
	Suburban-New		Urban-New		Existing Urban
	Residential	Non-Residential	Residential	Non-Residential	Residential and Non-Residential
Swift Creek Watershed					
Maximum Impervious Surface Limits	Two and one-half (2.5) dwelling units per acre not to exceed thirty (30) percent impervious surface area.	The impervious area allowed under the underlying general use zoning districts, not to exceed thirty (30) percent.	Six (6.0) dwelling units per acre east of Holly Springs and Jones Franklin Roads. Greater than six (6.0) units per acre west of Holly Springs and Jones Franklin Roads, not to exceed seventy (70) percent impervious surface area.	The impervious area allowed under the underlying general use zoning districts, not to exceed seventy (70) percent.	The impervious area allowed under the underlying general use zoning districts, not to exceed seventy (70) percent.
Sewer	Required				
Impoundment and Maintenance	Required to contain and treat the runoff from the first one (1) inch of rainfall and to achieve a minimum of eighty-five (85) percent average annual removal for Total Suspended Solids (TSS). Public or private maintenance. [Other SCMs besides impoundments may be available; consult the Department of Environmental Quality State Design Manual.]				
Jordan Lake Watershed					
Where new development exceeds the Low Density Option Standards above, stormwater control measures shall be used to control and treat runoff from the first inch of rainfall and to achieve a minimum of eighty-five (85) percent average annual removal for Total Suspended Solids (TSS). Development shall not exceed seventy (70) percent impervious surface area.					
Jordan Lake Watershed Critical Area					
Where proposed development exceeds the Low Density Option Standards above, stormwater control measures are required to control and treat runoff from the first inch of rainfall and to achieve a minimum of eighty-five (85) percent average annual removal for Total Suspended Solids (TSS). Development shall not exceed fifty (50) percent impervious surface area.					

(G) Engineered Stormwater Control Measures**(1) Ownership and Design Requirements**

Stormwater control measures shall be owned by a property owner's association, or, for non-residential or multi-family development, the owner of the property. All stormwater control measures shall be designed by either a North Carolina registered professional engineer or landscape architect, to the extent that the N.C. General Statutes allow. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers, landscape architects, to the extent that the N.C. General Statutes allow and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in N.C. General Statutes.

(2) Measures Required for High-Density Option

- (a)** All development under the high-density option shall use engineered stormwater control measures as a primary treatment system. Engineered stormwater control measures shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Department of Environmental Quality. Specific requirements for these systems shall be in accordance with the State's Minimum Design Criteria and Cary's Standard Engineering Details and Specifications Manual.
- (b)** SCM's that control stormwater on a runoff volume basis may be used in lieu of an SCM designed for specific pollutant removal in accordance with Section 4.4.6(G)(2)(a) provided that the post development volume of stormwater leaving the site is equal to or less than the predevelopment volume for the ninetieth (90th) percentile storm.

(3) Ground Cover Required

In addition to the vegetative filters required in Cary's Standard Engineering Details and Specifications Manual, all land areas outside of the engineered stormwater control measures shall be provided with a ground cover sufficient to restrain erosion within fifteen (15) days after any land disturbance. Upon completion of the stormwater control measure, a permanent ground cover shall be established and maintained as part of the maintenance plan described in Section 4.4.6(G)(9) below.

(4) Legal Description Required

A legal description of the area containing the stormwater control measure shall be prepared and filed consistent with Section 4.4.6(G)(9) as a separate deed with the appropriate County's Register of Deeds along with any easements necessary for general access to the stormwater control measure. The deeded area shall include sufficient area to perform inspections, maintenance, repairs and reconstruction. The deeded area shall include, but is not limited to detention pond, vegetative filters, all pipes and water control structures, berms and dikes.

(5) Computation of Total Built-Upon Area

Qualifying areas of the stormwater control measure may be considered pervious when computing total built-upon area. However, if the measure is used to compute the percentage built-upon area for one (1) site, it shall not be used to compute the built-upon area for any other site or area.

(6) Stormwater Control Measures

Stormwater Control Measures (SCM) including Regional SCM's designed following the State Design Manual and Cary's Standard Engineering Details and Specifications Manual, properly constructed, with all required financial assurances and maintenance agreements in place may be regarded as adequate to satisfy the requirements of the entire upstream contributory drainage basin.

(7) Posting of Financial Security Required

All engineered stormwater control measures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs, or reconstruction necessary for adequate performance of the stormwater control measures. Financial assurance shall be in the form of the following:

(a) Acceptable Forms of Security

Acceptable financial security shall be deposited with the Town to ensure that the engineered stormwater control measure is adequately maintained. The permit applicant shall deposit with the Town of Cary either cash or an evergreen letter of credit as financial security approved by the Town that is readily convertible into cash at face value. The cash or evergreen letter of credit shall be in an amount equal to fifteen (15) percent of the total cost of the stormwater control measure.

(b) Operation and Maintenance Agreement

For all development built under the high density development option, the owner shall enter into a binding Operation and Maintenance Agreement between the Town and all persons having a freehold estate in the development. Said Agreement shall require the owning entity to inspect, maintain, repair and, if necessary, reconstruct the stormwater control measure in accordance with the operation and management plan or manual provided by the owner. The owner of the stormwater control measure shall file the Operation and Maintenance Agreement with the appropriate County's Register of Deeds.

(c) Default Under the Cash or Evergreen Letter of Credit

Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control measure in accordance with the Operation and Maintenance Agreement, the Town shall obtain and use all or any portion of the financial security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement. The Town shall not return any of the unused deposited cash funds, which shall be retained for maintenance.

(8) Inspections for Stormwater Control Measures

- (a)** The Stormwater Manager shall inspect the stormwater control measure after the owning entity notifies the Stormwater Manager that all construction-related work has been completed. At this inspection, the owning entity shall provide:

1. The executed deed, related easements, operation and maintenance agreement and survey plat for the stormwater control measure ready for filing with the appropriate County's Register of Deeds;
 2. A certification sealed by a qualified professional stating that the stormwater control measure is complete and complies fully with the approved plans and specifications.
 3. Reproducible as built plans and/or record drawings showing stormwater control measures.
- (b) The Stormwater Manager shall review the documents submitted by the owning entity and Cary's inspection.
1. The owning entity shall file the Operation and Maintenance Agreement, deed and easements with the appropriate County's Register of Deeds and provide proof of recordation to the Stormwater Manager. Following receipt of proof of recordation, and approval of Cary's inspection, deed(s), easement(s), and the certification by the engineer of record, the Stormwater Manager will issue a Certificate of Watershed Compliance.
 2. If deficiencies are found, the Stormwater Manager shall direct the owning entity to correct the deficiencies, make improvements and inspections and/or correct documents and resubmit proof of the corrections and/or improvements to the Stormwater Manager.
- (c) A Certificate of Occupancy shall not be issued for any building within the permitted development until Cary has approved the stormwater control measure, as provided in Section 4.4.6(G)(8)(b).
- (d) The owner of each stormwater control measure shall submit a Maintenance Inspection Report annually on the anniversary date of the Certificate of Watershed Compliance, to the Stormwater Manager. A qualified professional, licensed in the state of North Carolina, must conduct the inspection. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Department of Environmental Quality and shall be provided to the Stormwater Manager in a timely manner.
- (e) In the event the annual inspection reveals the need for corrective action or improvements, the Stormwater Manager shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control measure and the operation and maintenance plan or manual as provided by section 4.4.6(G)(7)(b). After all corrective actions have been taken, the qualified professional shall re-inspect the stormwater control measure and certify to the town that the appropriate corrective actions have been taken.
- (f) Appeals of any order, requirement, decision or determination made by the Stormwater Manager may be made to and decided by the Zoning Board of Adjustment.

(9) Maintenance and Upkeep

- (a) An operation and maintenance plan or manual shall be provided by the developer for each stormwater control measure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control measure to design specifications if a failure occurs.
- (b) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the stormwater control measure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control measure.
- (c) Except for general landscaping and grounds management, the owning entity shall notify the Stormwater Manager prior to any repair or reconstruction of the stormwater control measure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control measure and the operation and maintenance plan or manual. After all repairs have been completed, the owning entity shall engage the services of a qualified professional, licensed in the state of North Carolina, to inspect said improvements and to issue a report to the Stormwater Manager. The owning entity shall perform all additions, changes, or modifications noted in the inspection report supplied by the qualified professional in a timely manner.
- (d) The Stormwater Manager retains the right to perform inspections, deemed necessary by the Stormwater Manager, on any stormwater control measure.
- (e) Amendments to the plans and specifications of the stormwater control measure and/or the operation and maintenance plan or manual shall be approved by the Stormwater Manager. Proposed changes shall be prepared by a qualified professional.
 - 1. If the Stormwater Manager approves the proposed changes, the owning entity of the stormwater control measure shall file sealed copies of the revisions with the Office of the Stormwater Manager.
 - 2. If the Stormwater Manager disapproves the changes, the proposal may be revised and resubmitted as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- (f) If the Stormwater Manager finds that the operation and maintenance plan or manual is inadequate for any reason, the Stormwater Manager shall notify the owning entity of any required changes and the owning entity shall prepare and file copies of the revised agreement first with the appropriate County's Register of Deeds. The owning entity shall then file a copy certified by the Register of Deeds with the Stormwater Manager.

(H) Clustered Development Option

Clustering of development in the Watershed Protection Overlay may be allowed as an optional configuration in either Low Density or High Density developments on a project-by-project basis. Clustering shall follow the procedures and standards set forth in Section 8.4, and is subject to the following additional criteria:

- (1) The overall density and/or impervious surface coverage of the project may not exceed the density and/or impervious surface coverage allowed under either the Low Density or the High Density option. At a minimum, lot sizes shall conform to the standards of the TR district (see Chapter 6) for residential cluster development projects; however the total number of lots shall not exceed the number of lots allowed for residential subdivision development under any Chapter 4 zoning district; and
- (2) Impervious surfaces shall be designed and sited to minimize stormwater runoff impacts on the receiving waters and to minimize the concentration of stormwater flow; and
- (3) The remaining undeveloped portion of the tract shall remain in an undisturbed vegetated or natural state. Where the development has an established property owner's association, the title to the open space area shall be conveyed to the association. Where a property owner's association has not been established, a maintenance agreement shall be filed with the County's Register of Deeds.

(I) Modifications and Variances

Requests for relief from the requirements of this Section 4.4.6 shall be decided either by the Zoning Board of Adjustment or by the Environmental Management Commission, depending on the watershed and the type of standard from which relief is sought.

(1) *Variances Granted by the Environmental Management Commission*

The Environmental Management Commission shall have the sole authority to grant major variances from the provisions of this Section 4.4.6 for properties in the Jordan Lake Watershed and Jordan Lake Watershed Critical Area. For purposes of this section, a major variance is a variance from the minimum statewide watershed protection or Jordan Rules (contained in 15A NCAC Chapter 2B) that results in (a) the relaxation, by factor greater than five percent (5%) of any buffer, density or built upon area requirement under the high density option; (b) any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or (c) relaxation by a factor greater than ten percent (10%), of any management requirement under the low density option.

(2) *Modifications Granted by the Zoning Board of Adjustment*

The Zoning Board of Adjustment shall have primary, but not sole, authority to grant modifications from the provisions of this Section 4.4.6 for properties in the Swift Creek Watershed, pursuant to this Sub-section.

- (a) In the Swift Creek Watershed, the Zoning Board of Adjustment may modify the standards of Section 4.4.6(F), Limitations on Impervious Area and Density, where using perimeter or adjacent roadways in the impervious surface calculation causes a development to exceed the allowed impervious surface percentage.

- (b) In the Swift Creek Watershed, the Zoning Board of Adjustment may modify the standards of Section 4.4.6(F), Limitations on Impervious Area and Density, to allow impervious surface ratios greater than twelve (12) percent but less than twenty-four (24) percent. However, requests for relief greater than twenty-four (24) percent shall be forwarded for review and decision by the Environmental Management Commission.

(3) ***Recommendation by Zoning Board of Adjustment to the Environmental Management Commission***

If an application calls for the granting of a modification as listed in paragraph (2b) or paragraph (1) above that requires a decision by the Environmental Management Commission, the Zoning Board of Adjustment shall first reach a recommendation on the modification in accord with the requirements of Section 3.19. If the Zoning Board of Adjustment decides in favor of granting the modification, the Zoning Board of Adjustment shall prepare a preliminary record of the hearing as soon as possible and forward it to the Environmental Management Commission. The preliminary record of the hearing shall include:

- (a) The modification application;
- (b) The hearing notices;
- (c) The evidence presented;
- (d) Motions, offers of proof, objections to evidence, and rulings on them;
- (e) Proposed findings and exceptions;
- (f) The proposed decision, including all conditions proposed to be added to the permit.

(4) ***Decision by the Environmental Management Commission***

(a) **Approval**

If the Commission approves the variance as proposed or with additional conditions, the Commission shall prepare a decision and send it to the Zoning Board of Adjustment. The Zoning Board of Adjustment shall prepare a final decision in accordance with the Commission's decision.

(b) **Disapproval**

If the Commission denies the variance as proposed the Commission will prepare a decision and send it to the Zoning Board of Adjustment. The Zoning Board of Adjustment shall prepare a final decision in accordance with the Commission's decision.

(J) **Violations; Enforcement**

This Section 4.4.6 shall be enforced by the Town Manager or designee. Any person or association who fails to comply with any provision of this Section 4.4.6, or who fails to submit a report, or who submits a fraudulent or false report, shall be in violation of this Ordinance for each occurrence or non-compliance.

4.4.7 Historic Preservation Overlay

(A) Purpose and Intent

The Historic Preservation Overlay is established with the purpose of implementing additional protections and controls on properties and structures located within locally designated Historic Districts. Local historic districts shall be areas which are deemed to be of special significance in terms of their history, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling, and association.

(B) Location of Districts and Applicability

The provisions of the Historic Preservation Overlay shall apply to the geographic areas designated as local historic districts on the Official Zoning Map. All uses permitted in the zoning district underlying a historic district are permitted in the historic preservation overlay. (Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 05-001, 1-13-05; Ord. No. 05-015, 9-08-05; Ord. No. 06-005, adopted 3-23-06; eff. 3-23-06; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-02, 3-26-09; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-05, 12-11-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-002, 6-25-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2023-LDO-02, 3-23-23; Ord. No. 2023-LDO-03, 6-22-23)

4.5 FLEXIBLE USE ZONING DISTRICTS

TABLE 4.5-1: FLEXIBLE USE DISTRICTS ESTABLISHED

TABLE 4.5-1: FLEXIBLE USE DISTRICTS ESTABLISHED	
<i>District Name</i>	<i>Abbreviation</i>
Mixed Use District	MXD
Minor Planned Development District	PDD Minor
Major Planned Development District	PDD Major

4.5.1 Flexible Use Districts Generally

(A) Purpose of Flexible Use Districts

Flexible Use Zoning Districts are districts in the nature of legislatively approved conditional zoning districts that allow for the establishment of certain uses, or mixes of uses, which because of their nature or scale cannot be properly accommodated within a general use zoning district. Flexible use zoning districts allow opportunity for greater flexibility in design and development of property. Since flexible use zoning is not tied to a corresponding general use zoning district and its associated zoning standards, applicants requesting a flexible use zoning district for property may propose zoning and development standards that are specific to that particular property (or district) that can be more or less restrictive than standards associated with general use districts. Flexible use districts permit multiple, coordinated uses in an integrated concept; require an overall master development plan; and provide suitable

open space amenities, resource protection, gathering spaces, recreational opportunities; and architectural cohesion.

(B) Process Required

Rezoning to a flexible use district shall require submission and approval of an application for a rezoning in accordance with the general procedures set forth in Section 3.4.1, and any modifications applicable to the particular type of flexible use district requested. A rezoning to a flexible use district may be initiated only by an application signed by all of the owners of the property to be included in the district or by an agent authorized by all of the owners to file such application. If the application is approved, the Town Council shall adopt an ordinance authorizing the requested use with such reasonable conditions as are mutually approved by the applicant and Town Council and determined to be desirable in promoting public health, safety and general welfare.

(C) Conditions

- (1)** Rezoning applications for a flexible use rezoning district shall, depending on the type of flexible use district requested, include a master land use plan, preliminary development plan or development plan that specifies the use or uses that are intended for the property, as well as any additional conditions on the use of the property that the applicant may propose as conditions of the rezoning. The applicant may propose conditions regarding building design elements as defined in G.S. 160D-702 and other development considerations. Conditions are limited to:

 - (a)** Those that address conformance of the development and use of the site to Town ordinances or officially adopted plans; or
 - (b)** Those that address the impacts reasonably expected to be generated by the development and use of the site.
- (2)** No condition shall be made part of the application, or shall be attached to approval of the flexible use district, which specifies the ownership status, race, religion, or character of the occupants of housing units, the minimum value of improvements, a minimum square footage of any structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings, or any illegal exclusionary device; or which states that the use of the property will not be subject to regulations or restrictions set forth in this Ordinance which would apply to the property in any event, such as the regulations for an overlay district which covers the property.

4.5.2 MXD: Mixed Use District

This Mixed Use District (MXD) was established on August 13, 2009 and may only be used in areas already zoned Mixed Use Overlay District (MUOD). In support of the MUOD provisions, the Mixed Use District (MXD) is a type of flexible zoning district that allows property owners to rezone land subject to specific requirements set forth in a preliminary development plan.

(A) Intent

Every rezoning to a MXD district must be accompanied by a preliminary development plan (PDP) that illustrates how the proposed district is consistent with and furthers policies identified in the Comprehensive Plan, applicable requirements of the Land Development Ordinance, and other applicable plans, ordinances and manuals identified in Section 1.4. Depending upon the location and the existing nature of development, it is not the intent of a

MXD district to require each separate building or every individual development site to include a complete, integrated mix of land uses but rather for the Mixed Use Overlay District as a whole to contain a mix of uses designed to meet the Town's overall planning objectives.

(B) Approval Procedure

Approval of a MXD district shall require a rezoning pursuant to the procedure set forth in Section 3.4.5 which shall include submission, review, and approval of a preliminary development plan (PDP) or development plan.

(C) Geographic Coverage

Unless there is no adjacent or closely located property under the same or closely related ownership that qualifies for MXD zoning a single, small parcel or portion of a parcel should not be rezoned to a MXD district when a larger geographic area of developable or redevelopable land could be included. In keeping with the Town's longstanding preference for comprehensively planned areas, the intent of this district is to encompass as much land area as practicable to successfully implement the Comprehensive Plan. However, depending upon the location, size and scale of the Mixed Use Overlay District, nature of the property proposed to be rezoned, the existing zoning in the vicinity, whether or not the adjoining land is developed or vacant, and ownership patterns, the amount of land included in any MXD rezoning case may vary and cannot be predicted in advance. Following a required presubmittal meeting, the Development Review Committee staff will recommend the extent of property(ies) that should be included in any Mixed Use District rezoning application.

(D) General Use and Development Standards

(1) Uses Allowed

The extent of appropriate uses and development intensity within Mixed Use Overlay Districts increases from neighborhood to community to regional in scale. Table 5.1-1 found in Chapter 5 of this Ordinance identifies allowed uses within each category.

(2) Applicable Standards

There shall be no minimum dimensional standards for developments in a MXD district. Dimensional standards shall be stated on the approved preliminary development plan. The applicant shall demonstrate that the requirements of the proposed MXD district satisfy applicable approval criteria.

(a) Development in a MXD district shall be subject to all applicable overlay district regulations in Chapter 4, all applicable use regulations set forth in Chapter 5, and all applicable general regulations set forth in Chapters 6, 7, and 8, unless otherwise waived or modified by the approved preliminary development plan. The application shall include development conditions assuring that the proposed preliminary development will meet or exceed the standard requirements of the aforementioned chapters. The preliminary development plan may modify procedural requirements of this Ordinance. Where the preliminary development plan is silent as to a term or requirements, the requirements/standards of this Ordinance and the approved policies and procedures of the Town shall control.

(b) Notwithstanding paragraph (a) above, in no case shall the Town Council approve an MXD zoning district and associated preliminary development plan that waives or modifies environmental or infrastructure adequacy standards for a proposed MXD zoning district including but not limited to:

1. Zones 1, 2, and 3 of urban transition buffers;
2. [Reserved];
3. Stormwater control requirements, and
4. Nitrogen reduction requirements.

(E) Considerations for Mixed Use District Rezoning

In addition to the considerations for a general rezoning contained in Section 3.4.1(E), and without limiting council's broad discretion, council may, when reviewing a proposed rezoning request to a MXD district, consider whether

- (1) The preliminary development plan includes an appropriate intensity, type, and mix of land uses, as outlined by the guidelines contained in the Comprehensive Plan. This may be assessed in relation to the scale of the Mixed Use Overlay District and the mix and relationship of existing and planned uses, including residential, commercial, office, and institutional uses;
- (2) The preliminary development plan shows how the proposed development will meet or exceed the Site Design Standards and other established Town standards, including connections and linkages to immediately adjacent properties;
- (3) The preliminary development plan provides the expected land uses, including medium- and higher-density housing, outlined by the numerical and other guidelines contained in the Comprehensive Plan;
- (4) The preliminary development plan includes some formal outdoor space(s) for public use, such as a park, village green, or plaza; and
- (5) The preliminary development plan demonstrates that the proposed development is appropriate for the context and location, responds to the unique conditions of the area, and provides reasonable transitions within and adjacent to the district.

(F) Changes to the Preliminary Development Plan Component of an Approved MXD District

Changes to preliminary development plans associated with previously-approved MXD zoning districts shall only be allowed in accordance with the provisions in Section 4.4.2(H) or as otherwise stated in this Ordinance.

4.5.3 PDD: Planned Development Districts

This section sets forth regulations for the two (2) types of planned development district (PDD) zoning districts. All PDD zoning districts shall be established either as initial zoning at the time of annexation, or through a rezoning pursuant to the procedures and criteria for rezoning to PDD set forth in Section 3.4.3. PDDs are base zoning districts under this Ordinance (rather than overlay districts, which they were under the previous Unified Development Ordinance).

(A) General Intent/Purposes of the PDD Districts

The PDD zoning districts allow projects of innovative design and layout that would not otherwise be permitted under this Ordinance because of the strict application of zoning district

or general development standards. The PDD districts encourage innovative land planning and design concepts by:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning and development standards that were designed primarily for individual lots;
- (2) Allowing greater freedom in selecting the means to provide access, light, open space, and design amenities;
- (3) Allowing greater freedom in providing a mix of land uses in the same development, including a mix of housing types, housing prices, lot sizes, densities, and non-residential uses in a planned development;
- (4) Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations, and land uses; and
- (5) Encouraging quality urban design and environmentally sensitive development by allowing increases in base densities when such increases can be justified by superior design or the provision of additional amenities such as public and/or private open space.

In return for greater flexibility in site design requirements, planned developments are expected to deliver exceptional quality community designs that preserve critical environmental resources, provide above-average open space amenities, incorporate creative design in the layout of buildings, open space and circulation; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure. The PDD districts shall not be used as a means of circumventing the Town's adopted land development regulations for routine developments.

(B) Types of PDD Districts

(1) *Major PDD District*

Lands rezoned to the Major PDD district shall be twenty-five (25) acres or more in size.

(2) *Minor PDD District*

Lands rezoned to the Minor PDD district shall be at least ten (10) and less than twenty-five (25) acres in size.

(C) Designation Procedure

Designation of either a Major or Minor PDD shall require a rezoning pursuant to the procedure set forth in Section 3.4.3, which shall include submission, review, and approval of a planned development master plan. Simultaneous submission of a development plan is optional for a Major or Minor PDD application.

(D) General Use and Development Standards for All PDD Districts**(1) *Uses Allowed***

A planned development may contain any or all of the uses specified in the approved PDD master plan, provided such uses are consistent with the Comprehensive Plan. A wide range of uses is possible in a PDD district, and the specific uses allowed may be different in each PDD district, so the use tables in Chapter 5 (Table 5.1-1) do not include the PDD districts. All uses that are set out in an approved master plan shall be treated as permitted uses within the planned development, except that uses which are prohibited in this Ordinance shall not be permitted within a PDD. Any use not set out in an approved master plan is a prohibited use. The PDD master plan and/or document shall specify the particular use(s) permitted and their locations within the areas of the PDD. Specific use designations in the PDD shall use the same corresponding terms listed in Chapter 5 of this Ordinance.

(2) *Mixed Uses Encouraged*

- (a)** Mixed use developments are strongly encouraged in the PDD zoning districts, including the mixing of principal residential uses with principal non-residential uses. Mixed use development may occur by having two (2) or more principal uses located in the same building (e.g., retail on ground floor, office space above) or by having two (2) or more principal uses located in different buildings sited on the same lot or parcel (e.g., freestanding child day care center located on the same parcel as an office building).
- (b)** Planned developments containing both residential and non-residential uses shall be designed, located, and oriented on the site so that non-residential uses are directly accessible to residents of the development. For the purposes of this section, "directly accessible" shall mean pedestrian and vehicular access by way of improved sidewalks or paths and streets that do not involve leaving the planned development or using a major thoroughfare. "Directly accessible" does not necessarily mean that non-residential uses need to be located in a particular location, but that the siting of such uses considers the accessibility of the residential component of the development to the non-residential use.

(3) *Applicable Standards*

- (a)** Dimensional standards for development within a PDD zoning shall be stated on the approved master land use plan and/or in the associated document(s). Development in a PDD district shall be subject to all applicable overlay district regulations in Chapter 4, all applicable use regulations set forth in Chapter 5, and all applicable general regulations set forth in Chapters 6, 7, and 8, unless otherwise waived or modified by the Town in the terms of the approved master land use plan. In case of any conflict between a specific regulation set forth in this Section 4.5.3 and any regulation set forth in Chapters 4, 5, and 7, the regulation in this section shall apply unless otherwise expressly allowed.
- (b)** Notwithstanding paragraph (a) above, in no case shall the decision-making body waive or modify the following standards for a proposed PDD zoning district:
 - 1. Zones 1, 2, and 3 of stream buffers;
 - 2. Design guidelines;

3. [Reserved]
 4. Ownership requirements for any open space, buffers, or streetscapes unless otherwise permitted within this Ordinance;
 5. Preservation of existing vegetation in streetscapes, floodplains, and/or buffers;
 6. Street connectivity requirements;
 7. Sidewalk and greenway requirements;
 8. Mixed Use Center requirements (if applicable);
 9. Stormwater control requirements;
 10. Nitrogen reduction requirements; and
 11. Setback reduction below the minimum required by section (c) below.
- (c) There shall be no minimum dimensional standards for planned developments, provided that dimensional standards are stated in the master land use plan and/or the associated development plan, with the following exception:
1. A building setback of less than three (3) feet is permitted only where firewalls are provided in accordance with all applicable building code requirements.

Where the master land use plan and other documents approved as part of the PDD zoning are silent as to a term or requirements, the requirements/standards of this Ordinance and the approved policies and procedures of the Town that are applicable to that aspect of development shall control.

(4) *Transportation and Circulation System*

The planned development's master plan shall demonstrate a safe and adequate on-site transportation system that addresses vehicular, bicycle, transit and pedestrian circulation. The on-site transportation system shall be integrated with the off-site transportation circulation system of the Town.

(5) *Off-Street Parking and Loading*

The planned development's master plan shall comply with the off-street parking and loading requirements of Section 7.8, except that variations from these standards may be permitted if a comprehensive parking and loading plan for the development is submitted as part of the master plan that is suitable for the development and consistent with the intent and purpose of the off-street parking and loading standards of this Ordinance.

(6) Landscaping**(a) Compliance with General Landscaping Requirements**

Landscaping shall comply with the standards of Section 7.2, except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates attractive streetscapes and parking areas, and is consistent with the urban design objectives and/or character of the area.

(b) Stream Buffers Not Variable

Variations from the minimum state-mandated stream buffers including any Neuse River Riparian Buffer shall not be allowed without requisite approvals from the appropriate state agency.

(7) Recreational and Open Space Requirements**(a) Dedication of Recreation Land**

Each residential planned development (or residential portion of a mixed use planned development) shall dedicate recreational open space consistent with the requirements in Chapter 8.

(b) Common Open Space

Each residential planned development (or residential portion of a mixed use planned development) shall provide common open space as a percentage of the entire parcel according to the following table:

TABLE 4.2-4: COMMON OPEN SPACE PROVISION IN PLANNED DEVELOPMENTS		
Number of Acres in Development	Percent of Parcel to be Used as Open Space	Average Gross Density
10 to 49	5.0	0 to 4 units per acre
10 to 49	5.0	4.1 to 8 units per acre
51 to 75	7.5	0 to 4 units per acre
51 to 75	7.5	4.1 to 8 units per acre
76 and above	10.0	0 to 4 units per acre
76 to 100	10.0	4.1 to 8 units per acre
101 to 200	12.5	4.1 to 8 units per acre
201 and above	15.0	4.1 to 8 units per acre

(c) Open Space Utilization

Each residential planned development (or residential portion of a mixed use planned development) shall provide adequate private, common open space facilities including both active and passive recreational uses.

(d) Timing of Completion of Open Space Requirements

All open space and recreational amenities shall be completed and conveyed before certificates of occupancy may be issued for more than fifty (50) percent of the dwelling units in the planned development or, if the approved master plan divides the development into phases, in that phase of the development of which the amenity is a part.

(e) Contingency Plan for Reserve Land

Planned developments with seven hundred (700) or more residential units which are required to set aside reserve land for potential purchase by the Town for use as recreation land shall be required to include alternative contingency plans for the reserve land in the event it is not acquired by the Town.

(Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2023-LDO-03, 6-22-23)

CHAPTER 5: USE REGULATIONS

5.1 TABLES OF PERMITTED USES

5.1.1 Explanation of Table Abbreviations

- (A) Permitted Uses
- (B) Special Uses
- (C) Accessory Uses
- (D) Prohibited Uses
- (E) Use Class
- (F) Additional Regulations

5.1.2 Table of Permitted Uses - General Use Districts (Except TC & CT)

5.1.3 Table of Permitted Uses - TC District

5.1.4 Table of Permitted Uses - CT District, Walnut Street Corridor

5.2 USE-SPECIFIC STANDARDS

5.2.1 Residential Uses

- (A) Boarding House
- (B) Bed and Breakfast
- (C) Dormitory
- (D) Group Home; Family Care Home
- (E) Life Care Community
- (F) Multi-Family Dwelling, and Multi-Family Dwelling, Mid-Rise
- (G) Nursing Home
- (H) Patio Dwelling
- (I) Residential Use in Non-Residential Building
- (J) Residential Use in Mixed-Use Building
- (K) Manufactured Home
- (L) Semi-Detached/Attached Dwelling and Townhouse
- (M) Detached Dwelling
- (N) Tandem Dwelling Unit
- (O) Manufactured Home Parks
- (P) Detached Multi-family Dwellings

5.2.2 Public/Institutional Uses

- (A) Athletic Field, Public
- (B) Day Care Centers
- (C) School
- (D) Neighborhood Recreation Center, Public
- (E) Religious and Other Assembly Uses
- (F) College
- (G) Town Owned and/or Operated Facilities and Services
- (H) Governmental Offices

5.2.3 Commercial Uses

- (A) Athletic Field, Private
- (B) [Reserved]
- (C) Agricultural Uses
- (D) Electronic Gaming Operation
- (E) Kennel
- (F) Commercial Indoor Recreational Facility
- (G) Nightclub/Bar
- (H) [Reserved]

- (I) Postal Center, Private
- (J) Parking Lot as a Principal Use
- (K) Restaurant; Retail Store
- (L) Radio or TV Broadcasting Studio
- (M) Adult Business
- (N) Vehicle Filling Station, Vehicle Repair, Vehicle Service, Car Washes, and Towing and Vehicle Storage
- (O) Veterinary Hospital/Office
- (P) Private Transportation Service
- (Q) Motor Vehicle Sales/Rental
- (R) Wellness Center
- (S) Trade School

5.2.4 Industrial Uses

- (A) Outdoor Storage as a Principal Use
- (B) Recycling and Salvage Operation
- (C) Resource Extraction
- (D) Telecommunications Facilities
- (E) Research Laboratory
- (F) Warehousing and Distribution Establishment and Wholesale Establishment
- (G) Light Industrial
- (H) Small Wireless Facilities
- (I) Brewery, Distillery, or Winery

5.3 ACCESSORY USES AND STRUCTURES

5.3.1 Purpose

5.3.2 General Standards and Limitations

- (A) Compliance with Ordinance Requirements
- (B) Approval of Accessory Uses and Structures
- (C) Accessory Use Permit
- (D) Location of Accessory Buildings, Structures, or Vehicles
- (E) Size of Residential Accessory Buildings and Structures
- (F) Signs
- (G) Temporary Accessory Uses and Structures

5.3.3 Accessory Uses Prohibited

- (A) Prohibited in All Zoning Districts
- (B) Prohibited in Residential Zoning Districts

5.3.4 Accessory Uses and Structures Allowed

- (A) Accessory Dwelling Units
- (B) Utility Dwelling Units
- (C) Home Occupations
- (D) Outdoor Display and Sales
- (E) Outdoor Storage as an Accessory Use
- (F) Satellite Dish Antenna
- (G) Vehicular Gate
- (H) Recycling Drop-Off Stations
- (I) Swimming Pools, Hot Tubs and Spas
- (J) Animal Husbandry
- (K) Yard Parking on Single-Unit and Duplex Residential Lots
- (L) Day Care Homes, Large
- (M) Day Care Homes, Small
- (N) Caretaker's Residence
- (O) Beekeeping
- (P) Food Trucks

- (Q) Cluster Box Unit - Mailbox
- (R) Electronic Gaming Machines
- (S) Photovoltaic Systems

5.4 TEMPORARY USES AND STRUCTURES

- 5.4.1 Purpose
- 5.4.2 Table of Allowed Temporary Uses and Structures
- 5.4.3 [Reserved]
- 5.4.4 Temporary Use Permits
- 5.4.5 General Requirements for All Temporary Uses and Structures
- 5.4.6 Specific Regulations for Certain Temporary Uses and Structures
 - (A) Expansion or Replacement of Existing Facilities
 - (B) Real Estate Sales Office and Model Sales Home
 - (C) Sale/Display of Goods Other Than Agricultural Products
 - (D) Sale of Agricultural Products Grown Off-Site
 - (E) Sale of Fireworks
 - (F) Temporary Structures In or Near the Flood Hazard Area
- 5.4.7 Events
 - (A) Purpose and Intent
 - (B) Types of Events
 - (C) Permit Required
 - (D) No Permit Required
 - (E) Term of Approval/Permit
 - (F) Additional Planning Requirements
 - (G) Submittal Requirements

Chapter 5: USE REGULATIONS**5.1 TABLES OF PERMITTED USES**

Table 5.1-1 below sets forth the uses allowed within all general use districts except the Town Center district, Table 5.1-2 below sets forth the uses allowed within the Town Center district and Table 5.1-3 sets forth the uses allowed within the Corridor Transition district. Each of the uses listed in Tables 5.1-1, 5.1-2, and 5.1-3 are defined in the "Use Classifications" section of Chapter 12. Allowable uses for the PDD districts are discussed in Section 4.5.3(D). Any use not listed in Tables 5.1-1, 5.1-2, or 5.1-3 as a permitted use and not otherwise prohibited or restricted by this Ordinance is an "unlisted use" that shall only be permitted if approved by the Planning Director pursuant to Section 12.3.1 of this Ordinance.

5.1.1 Explanation of Table Abbreviations**(A) Permitted Uses**

A "P" in a cell indicates that a use category is allowed by right in the respective zoning district. Permitted uses are subject to all other applicable regulations of this Ordinance, including the General Development Regulations set forth in Chapter 7.

(B) Special Uses

An "S" in a cell indicates that a use category is allowed only if reviewed and approved as a special use, in accordance with the special use review procedures of Section 3.8.

(C) Accessory Uses

An "A" in a cell indicates that a use category is allowed by right as an accessory, ancillary, or incidental use to a legally-established principal use in the respective zoning district. Accessory uses are subject to all other applicable regulations of this Ordinance.

(D) Prohibited Uses

A blank cell indicates that the use type is prohibited in the zoning district.

(E) Use Class

Adjacent to the "Use Type" entries in Table 5.1-1 is a number or numbers which correspond to the use's "Use Class". This is a figure utilized in Section 7.2 of this Ordinance to determine the required width and type of perimeter landscaping buffer required between two (2) individual uses. The information is provided in Table 5.1-1 for convenience, and more detail is available in Section 7.2.

(F) Additional Regulations

Regardless of whether a use category is permitted by right, as a special use, or as an accessory use, there may be additional regulations that are applicable to a specific use. The existence of these use-specific regulations is noted through a section reference in the last column of the use summary table entitled "Additional Regulations." References refer to subsections of Section 5.2, Use-Specific Regulations. These regulations apply to all districts unless otherwise specified and may not be varied.

5.1.2 Table of Permitted Uses - General Use Districts (Except TC & CT)

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT																	
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit																	
¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Mixed Use Overlay District (MUOD) - Neighborhood, as delineated on the Official Zoning Overlay Map. ³ MUOD - Community, as delineated on the Official Zoning Overlay Map. ⁴ MUOD - Regional, as delineated on the Official Zoning Overlay Map.																	
Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2																	
Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use-Specific Stds
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
RESIDENTIAL USES																	
Group Living	Dormitory [5]									P	P	P		P	P	P	5.2.1(C)
Group Living	Life care community [5]						S	P		P		S		P	P	P	5.2.1(E)
Group Living	Nursing home [4]						S	S		P	S	S		P	PS	PS	5.2.1(G)
Household Living	Bed and Breakfast	S	S														5.2.1(B)
Household Living	Boarding house [4]		S	S	S	S	S	P						S	S	S	5.2.1(A)
Household Living	Detached dwelling [2/3]	P	P	P	P	P	P							P	P	P	5.2.1(M)
Household Living	Duplex dwelling [5]						P	P						P	P	P	
Household Living	Family care home [5]	PZ															5.2.1 (D)(2)
Household Living	Group home [5]	Allowed in all residential dwellings as otherwise permitted by law, and may not be prohibited through zoning conditions															
Household Living	Manufactured home [4]	P	P	S													5.2.1(K)
Household Living	Manufactured home park [4]																
Household Living	Mobile home																5.2.1(O)
Household Living	Multi-family dwelling [4]							P						P	P	P	5.2.1(F)
Household Living	Patio dwelling [4]						P	P						P	P	P	5.2.1(H)
Household Living	Residential use in non-residential building [4/5/6]									P		P		P	P	P	5.2.1(I)

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Mixed Use Overlay District (MUOD) - Neighborhood, as delineated on the Official Zoning Overlay Map. ³ MUOD - Community, as delineated on the Official Zoning Overlay Map. ⁴ MUOD - Regional, as delineated on the Official Zoning Overlay Map.

Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Std's
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
RESIDENTIAL USES (Cont.)																	
Household Living	Semi-detached/attached dwelling [4]						P	P						P	P	P	5.2.1(L)
Household Living	Townhouse [4]						P	P						P	P	P	5.2.1(L)
PUBLIC/INSTITUTIONAL USES																	
Aviation	Airport/landing strip [7]												S				
Aviation	Heliport [7]									S			S				
Cemetery	All [1]	S	S	S	S	S	S	S		S	S	S	S				
Cultural Facilities	Library [4]		S	S	S	S	S	S		P	P	P		P	P	P	
Cultural Facilities	Museum [4]		S	S	S	S	S	S		P	P	P		P	P	P	
Day Care	Day care center [4/5]	S	S	S	S	S	S	S		P	P	P		P	P	P	5.2.2(B)
Government Services	Governmental office [4]	S	S	S	S	S	S	S	P	P	P	P	P	P	P	P	5.2.2(H)
Government Services	Public safety station [4]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Government Services	Public utility facility [7]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Government Services	Town owned/operated facilities and services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.2(G)
Hospital	All [5]									P	P	P		P	P	P	
Park and Open Space	Athletic field, public [4]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.2(A)
Park and Open Space	Community garden [1]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Park and Open Space	Outdoor amphitheater, public [5,6]		S	S	S	S	S	S	S	S	S	S	S	P	P	P	

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Mixed Use Overlay District (MUOD) - Neighborhood, as delineated on the Official Zoning Overlay Map. ³ MUOD - Community, as delineated on the Official Zoning Overlay Map. ⁴ MUOD - Regional, as delineated on the Official Zoning Overlay Map.

Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Std's
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
PUBLIC/INSTITUTIONAL USES (Cont.)																	
Park and Open Space	Park, public [1]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Park and Open Space	Neighborhood recreation center, public [4]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.2(D)
Park and Open Space	Resource conservation facility [1]	P	P	P	P	P	P	P	P	P		S		P	P	P	
Religious Assembly	All [4]	S/P	S/P	S/P	S/P	S/P	S/P	S/P		P	P	P	P	P	P	P	5.2.2(E)
Educational Use	Pre-school [4/5]	S	S	S	S	S	S	S		P	P	P		P	P	P	
Educational Use	College [4]									S/P	S/P	P	P		P	P	5.2.2(F)
Educational Use	School [4]		S/P	S/P	S/P	S/P	S/P	S/P		P	P	S		P	P	P	5.2.2(C)
Non-Governmental Utilities	Utility facility, major [7]	S	S	S	S	S	S	S	S	S	S	S	S				
Non-Governmental Utilities	Transportation facility [7]						S	S		P	P	P	P	P	P	P	
Non-Governmental Utilities	Utility substation, minor [5]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
COMMERCIAL USES																	
Agricultural	Agri-Tourism	P	P														5.2.3(C)
Agricultural	Farming, general [1]	P	P	P									P				5.2.3(C)
Agricultural	Forestry [1]	P	P	P													5.2.3(C)
Agricultural	Produce stand [1]	P	P														5.2.3(C)
Animal Service	Kennel, indoor only [4]	S	S							P	P	P	P	P	P	P	5.2.3(E)
Animal Service	Kennel, indoor/outdoor [6]	S	S							S	S	P	P				5.2.3(E)

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Mixed Use Overlay District (MUOD) - Neighborhood, as delineated on the Official Zoning Overlay Map. ³ MUOD - Community, as delineated on the Official Zoning Overlay Map. ⁴ MUOD - Regional, as delineated on the Official Zoning Overlay Map.

Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Std's
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
COMMERCIAL USES (Cont.)																	
Animal Service	Veterinary hospital/office, with indoor kennel [4]									P	P	P	P	P	P	P	5.2.3(O)
Animal Service	Veterinary hospital/office, with outdoor kennel [6]										S	S	P				5.2.3(O)
Assembly	Club, lodge, or hall [4]									P	P	P	P	P	P	P	5.2.2(E)
Assembly	Special Event Center [4]									P	P	P	P	P	P	P	5.2.2(E)
Financial Institution	Bank, with drive-through service [5]									P	P	P	P	P	P	P	
Financial Institution	Bank, without drive-through service [5]									P	P	P	P	P	P	P	
Food and Beverage Service	Nightclub/bar, indoor operation [6]									S	P			P	P	P	5.2.3(G)
Food and Beverage Service	Nightclub/bar, with outdoor operation [6]										S			P	P	P	5.2.3(G)
Food and Beverage Service	Restaurant, indoor operation [6]									P	P			P	P	P	5.2.3(K)
Food and Beverage Service	Restaurant, with outdoor operation [6]										S			P	P	P	5.2.3(K)
Office	Office, business or professional [4/5/6]									P	P	P	P	P	P	P	
Office	Radio or TV broadcasting studio [4/5/6]									P	P	P	P	P	P	P	5.2.3(L)
Office	Wellness Center [6]	-	-	-	-	-	-	-		P	P	P	P	P	P	P	5.2.3(R)
Public Accommodation	Hotel or motel [5/6/7]									S	P	P		P	P	P	

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Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Std's
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
COMMERCIAL USES (Cont.)																	
Recreation/ Entertainment, Indoor	Amusement establishment [5]										P	S		P	P	P	
Recreation/ Entertainment, Indoor	Commercial indoor recreational facility [5]									P	P	P	S	P	P	P	5.2.3(F)
Recreation/ Entertainment, Indoor	Electronic Gaming Operation [6]										PZ	PZ	PZ				5.2.3(D)
Recreation/ Entertainment, Indoor	Neighborhood recreation center, indoor/outdoor, private [4]	P	P	P	P	P	P	P						P	P	P	5.2.3(F)
Recreation/ Entertainment, Indoor	Pool or billiard hall [5]										P			P	P	P	
Recreation/ Entertainment, Indoor	Theater, large [5]													S	P	P	
Recreation/ Entertainment, Indoor	Theater, small [5]										P			P	P	P	
Recreation and Entertainment, Outdoor	Athletic field, private [4]	P	P	P	S	S	S		P			S	S			S	5.2.3(A)
Recreation and Entertainment, Outdoor	Commercial outdoor recreational facility [6]										S		S	S	S	S	
Recreation and Entertainment, Outdoor	Golf course, privately-owned [4]	S	S	S	S	S	S		P								
Recreation and Entertainment, Outdoor	Golf driving range [4]									S	S	S	S			P	

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¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Mixed Use Overlay District (MUOD) - Neighborhood, as delineated on the Official Zoning Overlay Map. ³ MUOD - Community, as delineated on the Official Zoning Overlay Map. ⁴ MUOD - Regional, as delineated on the Official Zoning Overlay Map.

Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Stds
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
COMMERCIAL USES (Cont.)																	
Recreation and Entertainment, Outdoor	Motor vehicle raceway [7]												S				
Recreation and Entertainment, Outdoor	Outdoor amphitheater, commercial [6]											S	S		S	S	
Retail Sales and Service	ABC store [6]										P			P	P	P	
Retail Sales and Service	Convenience store [6]										P			P	P	P	
Retail Sales and Service	Farm market [5]									S	P	P		P	P	P	
Retail Sales and Service	Crematorium [6]									P	P		P	P	P	P	
Retail Sales and Service	Funeral home [6]									P	P			P	P	P	
Retail Sales and Service	Shopping Center, General [6]										P			P	P	P	
Retail Sales and Service	Shopping Center, Small [6]										P			P	P	P	
Retail Sales and Service	Moped sales/rental [6]										S	P	P	S	S	S	5.2.3(Q)
Retail Sales and Service	Postal center, private [6]									S	P	P	P	P	P	P	5.2.3(I)
Retail Sales and Service	Personal service establishment [6]									P	P	P	P	P	P	P	
Retail Sales and Service	Retail store [6]									P	P			P	P	P	5.2.3(K)
Retail Sales and Service	Adult business [6]											S/P		S	S	S	5.2.3(M)
Retail Sales and Service	Trade school [6]									S/P	S/P	P	P	S	S	S	5.2.3(S)
Parking	Parking lot [4/6]									P	S	P	P	P	P	P	5.2.3(J)

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Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Std's
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
COMMERCIAL USES (Cont.)																	
Parking	Parking structure [6]									P		P		P	P	P	
Vehicles and Equipment	Motor vehicle sales/rental [6]										S/P	P	P	S/P	S/P	S/P	5.2.3(Q)
Vehicles and Equipment	Car wash [6]										P		P	P	P	P	
Vehicles and Equipment	Heavy equipment sales/rental [6]												P				
Vehicles and Equipment	Private Transportation Service [6]									P	P	P	P	P	P	P	5.2.3(P)
Vehicles and Equipment	Towing and vehicle storage [6]											S	P				
Vehicles and Equipment	Vehicle filling station [6]										P		P	P	P	P	5.2.3(N)
Vehicles and Equipment	Vehicle repair, heavy [6]											S	P	P	P	P	5.2.3(N)
Vehicles and Equipment	Vehicle service, light [6]										P	S	P	P	P	P	5.2.3(N)
INDUSTRIAL USES																	
Industrial Service	General industrial service [7]												P		S	S	
Industrial Service	Research laboratory [7]											P	P	P	P	P	
Manufacturing and Production	Manufacturing, heavy [7]												S				
Manufacturing and Production	Manufacturing, light [7]											P	P	S	S	P	
Manufacturing and Production	Brewery [6]										P	P	S/P	P	P	P	5.2.4(I)

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Mixed Use Overlay District (MUOD) - Neighborhood, as delineated on the Official Zoning Overlay Map. ³ MUOD - Community, as delineated on the Official Zoning Overlay Map. ⁴ MUOD - Regional, as delineated on the Official Zoning Overlay Map.

Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Stds
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
INDUSTRIAL USES (Cont.)																	
Manufacturing and Production	Distillery [6]										P	P	S/P	P	P	P	5.2.4(I)
Manufacturing and Production	Winery [6]										P	P	S/P	P	P	P	5.2.4(I)
Manufacturing and Production	Prototype process and production plant [7]											P	P	S	S	P	
Manufacturing and Production	Resource extraction [7]												S				5.2.4(C)
Telecommunications Facilities	Concealed (stealth) telecommunications facility (antennae and wireless support structures) [4/5/6/7]	S/P	S/P	S/P	S/P	S/P	S/P	S/P	P	P	P	P	P	P	P	P	5.2.4(D)
Telecommunications Facilities	Non-stealth telecommunications facility on existing building or structure [4/5/6/7]	P	P						P	P	P	P	P	P	P	P	5.2.4(D)
Telecommunications Facilities	Other freestanding non-stealth wireless support structures [4/5/6/7]	S	S						S/P	S/P	S/P	S/P	S/P	S/P	S/P	S/P	5.2.4(D)
Telecommunications Facilities	Collocation on small wireless facilities [4/5/6/7]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.4(H)
Telecommunications Facilities	City utility poles and utility poles associated with small wireless facilities [4/5/6/7]																5.2.4(H)

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Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Stds
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
INDUSTRIAL USES (Cont.)																	
Warehouse and Freight Movement	Mini-storage [6]										S	P					
Warehouse and Freight Movement	Outdoor storage [7]									P		P				5.2.4(A)	
Warehouse and Freight Movement	Railroad stations and yards [7]											S					
Warehouse and Freight Movement	Warehousing and distribution establishment [6]									S	P	P					
Warehouse and Freight Movement	Wholesale establishment [6]									S	P	P		S	P		
Waste-Related Uses	Recycling and salvage operation [7]											S				5.2.4(B)	
ACCESSORY USES																	
Accessory Uses	Accessory dwelling unit	A	A	A									A	A	A	5.3.4(A)	
Accessory Uses	Utility dwelling unit	A	A	A	A	A	A									5.3.4(B)	
Accessory Uses	Beekeeping	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(O)	
Accessory Uses	Day care home, large	S	S	S	S	S	S	S					S	S	S	5.3.4(L)	
Accessory Uses	Day care home, small	A	A	A	A	A	A	A					A	A	A	5.3.4(M)	
Accessory Uses	Home occupation	A	A	A	A	A	A	A		A	A	A	A	A	A	5.3.4(C)	
Accessory Uses	Kennel	A	A							A	A	A	A			5.2.3(E)	

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² Mixed Use Overlay District (MUOD) - Neighborhood, as delineated on the Official Zoning Overlay Map. ³ MUOD - Community, as delineated on the Official Zoning Overlay Map. ⁴ MUOD - Regional, as delineated on the Official Zoning Overlay Map.

Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2

Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT ¹			Use- Specific Std's
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	N ²	C ³	R ⁴	
ACCESSORY USES (Cont.)																	
Accessory Uses	Outdoor display/sales									A	A	A	A	A	A	A	5.3.4(D)
Accessory Uses	Outdoor storage								A	A	A	A	A				5.3.4(E)
Accessory Uses	Photovoltaic System	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(S)
Accessory Uses	Satellite dish antenna	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(F)
Accessory Uses	Swimming pool, hot tub, or spa	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(I)
Accessory Uses	Recycling drop-off station							A		A	A	A	A	A	A	A	5.3.4(H)
Accessory Uses	Vehicular gate								A	A	A	A	A	A	A	A	5.3.4(G)
Accessory Uses	Animal husbandry	A	A	A	A	A	A							A	A	A	5.3.4(J)
Accessory Uses	Caretaker's residence [4]											A	A	A	A	A	5.3.4(N)
Accessory Uses	Food truck	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(P)
Accessory Uses	Cluster box unit - Mailbox	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(Q)
Accessory Uses	Electronic Gaming Machine [6]										AZ						5.3.4(R)

5.1.3 Table of Permitted Uses - TC District

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES																	
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit																	
Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/ OS	CB &R	COM	CLI	OFC/ INS	INS	OFC/ IND	Use Specific Stds
RESIDENTIAL USES																	
Group Living	Dormitory	P	P	P	P	P						P		P	P	P	5.2.1(C)
Group Living	Life care community	P	P	P	P	P											5.2.1(E)
Group Living	Nursing home	S	P	P	S							S		P	P		5.2.1(G)
Household Living	Bed and Breakfast	P	P								P	P					5.2.1(B)
Household Living	Boarding house	S	S	S	S	S					S		S	S	S	S	5.2.1(A)
Household Living	Detached dwelling	S			P		P	P	P		P						5.2.1(M)
Household Living	Detached multi-family dwelling	S															5.2.1(P)
Household Living	Duplex dwelling				P		P										
Household Living	Family care home	PZ Allowed in all residential dwellings as otherwise permitted by law, and may not be prohibited through zoning conditions															5.2.1 (D)(2)
Household Living	Group home																
Household Living	Manufactured home																
Household Living	Manufactured home park																
Household Living	Mobile home																
Household Living	Multi-family dwelling	P	P	P	P	P	P				P						5.2.1(F)
Household Living	Multi-family dwelling, mid-rise	P	P	P	P	P	P										5.2.1(F)
Household Living	Patio dwelling			P	P	P	P	P	P								5.2.1(H)
Household Living	Residential use in non-residential building	P	P								P						5.2.1(I)
Household Living	Residential use in mixed use building	P	P								P						5.2.1(J)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/OS	CB &R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
RESIDENTIAL USES (Cont.)																	
Household Living	Semi-detached/attached dwelling	P	P	P	P	P	P										
Household Living	Townhouse	P	P	P	P	P	P										5.2.1(L)
PUBLIC/INSTITUTIONAL USES																	
Aviation	Heliport	S	S													S	
Cemetery	All													P	P		
Day Care	Day care center	S	S	S	S	S	S	S	S			P	P	P		P	5.2.2(B)
Government Services	Governmental office	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.2(H)
Government Services	Public safety station	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Government Services	Public utility facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Government Services	Town owned/operated facilities and services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.2(G)
Cultural Facilities	Library	P	P	S	S	S	S	S	S			P		P	P	P	
Cultural Facilities	Museum	P	P	S	S	S	S					P		P	P	P	
Park and Open Space	Athletic field, public			S	S					P				S	S	S	5.2.2(A)
Park and Open Space	Community garden	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Park and Open Space	Outdoor amphitheater, public	S	S							P		S		S	S	S	
Park and Open Space	Park, public	P	P	P	P	P	P	P	P	P		P		P	P	P	
Park and Open Space	Neighborhood recreation center, public	P	P	P	P	P	P	P	P	P				P	P	P	5.2.2(D)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/OS	CB &R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
PUBLIC/INSTITUTIONAL USES (Cont.)																	
Park and Open Space	Resource conservation facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Public Safety Station	All	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Religious Assembly	All	S	S	S	S	S	S	S	S		S	P		P	P	S	5.2.2(E)
Educational Use	Pre-school	S	S	S	S	S	S	S	S		S	S	S	P	P	S	
Educational Use	College	P	P	S	S							P		P	P	P	
Educational Use	School	P	P	S/P	S/P	S/P	S/P	S/P	S/P			P		P	P	S	5.2.2(C)
Non-Governmental Utilities	Utility facility, major	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Non-Governmental Utilities	Transportation facility	P	P	S	S	S						P		P		P	
Non-Governmental Utilities	Utility substation, minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
COMMERCIAL USES																	
Animal Services	Kennel, indoor only		P									P	P	P		P	5.2.3(E)
Animal Services	Kennel, indoor/outdoor		S									S	S	S		S	5.2.3(E)
Animal Services	Veterinary hospital/office, with indoor kennel		P									P	P	P		P	5.2.3(O)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/OS	CB &R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
COMMERCIAL USES (Cont.)																	
Animal Services	Veterinary hospital/office, with outdoor kennel		S									S	S	S		S	5.2.3(O)
Assembly	Club, lodge, or hall	P	P									P	S	P	P	P	5.2.2(E)
Assembly	Special Event Center	P	P									P		P			5.2.2(E)
Financial Institution	Bank, with drive-through service	S	P									P	P	P		P	
Financial Institution	Bank, without drive-through service	P	P									P	P	P		P	
Food and Beverage Service	Nightclub/bar, indoor operation	P	P									P	P	P		P	5.2.3(G)
Food and Beverage Service	Nightclub/bar, with outdoor operation	P	P									P	P	P		P	5.2.3(G)
Food and Beverage Service	Restaurant, indoor operation	P	P									P	P	P		P	5.2.3(K)
Food and Beverage Service	Restaurant, with outdoor operation	P	P									P	P	P		P	5.2.3(K)
Office	Office, business or professional	P	P								P	P	P	P		P	
Office	Radio or TV broadcasting studio	S	S								S	P		P		P	
Office	Wellness Center											P		P	P	P	5.2.3(R)
Public Accommodation	Hotel or motel	P	P									P		S		P	

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES																	
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit																	
Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/ OS	CB &R	COM	CLI	OFC/ INS	INS	OFC/ IND	Use Specific Stds
COMMERCIAL USES (Cont.)																	
Recreation and Entertainment, Indoor	Amusement establishment	S	P									P	P			S	
Recreation and Entertainment, Indoor	Commercial indoor recreational facility	P	P									P	P	P	P	P	5.2.3(F)
Recreation and Entertainment, Indoor	Electronic Gaming Operation											PZ					5.2.3(D)
Recreation and Entertainment, Indoor	Neighborhood recreation center, indoor/outdoor, private	S	S	S	S	S	S	S	S		S						5.2.3(F)
Recreation and Entertainment, Indoor	Pool or billiard hall	S	P									P	S			S	
Recreation and Entertainment, Indoor	Theater, large	P	P									P		P			
Recreation and Entertainment, Indoor	Theater, small	P	P									P		P	P		
Recreation and Entertainment, Outdoor	Athletic field, private									P						S	
Recreation and Entertainment, Outdoor	Commercial outdoor recreational facility											S					
Recreation and Entertainment, Outdoor	Outdoor amphitheater, commercial															S	
Retail Sales and Service	ABC store	P	P									P					

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/OS	CB &R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
COMMERCIAL USES (Cont.)																	
Retail Sales and Service	Convenience store	P	P									P	P				5.2.3(B)
Retail Sales and Service	Farm market	P	P									P		S		P	
Retail Sales and Service	Crematorium																
Retail Sales and Service	Funeral home		S									P	S	P			
Retail Sales and Service	Moped sales/rental	P/S	P/S									P	S			P	5.2.3(Q)
Retail Sales and Service	Postal center, private													P		S	5.2.3(I)
Retail Sales and Service	Personal service establishment	P	P								P	P	P	P		P	5.2.3(K)
Retail Sales and Service	Retail store	P	P								P	P	P	P			5.2.3(K)
Retail Sales and Service	Shopping Center, General											P					
Retail Sales and Service	Shopping Center, Small											P					
Retail Sales and Service	Trade school											S		S		P	5.2.3(S)
Parking	Parking lot	S	S									S		P		P	5.2.3(J)
Parking	Parking structure	P	P											P		P	
Vehicles and Equipment	Motor vehicle sales/rental	P/S	P/S									P	S			P	5.2.3(Q)
Vehicles and Equipment	Car wash	P/S	P/S									P					5.2.3(N)
Vehicles and Equipment	Towing and vehicle storage	P/S	P/S											S		P	5.2.3(N)
Vehicles and Equipment	Heavy equipment sales/rental															S	
Vehicles and Equipment	Vehicle filling station	P/S	P/S									P	S			S	5.2.3(N)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/ OS	CB &R	COM	CLI	OFC/ INS	INS	OFC/ IND	Use Specific Stds
COMMERCIAL USES (Cont.)																	
Vehicles and Equipment	Vehicle service/repair	P/S	P/S									P	S	P		P	5.2.3(N)
Industrial Service	Research laboratory				P											P	5.2.4(E)
Manufacturing and Production	Manufacturing, heavy																
Manufacturing and Production	Manufacturing, light	P	S/P									P				P	5.2.4(G)
Manufacturing and Production	Brewery	P	P									P	P			P	5.2.4(I)
Manufacturing and Production	Distillery	P	P									P	P			P	5.2.4(I)
Manufacturing and Production	Winery	P	P									P	P			P	5.2.4(I)
Manufacturing and Production	Prototype process and production plant		S													P	
Telecommunications Facilities	Concealed (stealth) telecommunications facilities (antennae and wireless support structures)	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	5.2.4(D)
Telecommunications Facilities	Non-stealth telecommunications facility on existing building or structure	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	5.2.4(D)
Telecommunications Facilities	Other freestanding non-stealth support structures	S	S											S	S	S	5.2.4(D)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/OS	CB &R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
COMMERCIAL USES (Cont.)																	
Telecom-munications Facilities	Collocation of small wireless facilities	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.4(H)
Telecom-munications Facilities	City utility poles and utility poles associated with small wireless facilities																5.2.4(H)
Warehouse and Freight Movement	Mini-storage															S	
Warehouse and Freight Movement	Outdoor storage	P/S	P/S									P					5.2.4(A)
Warehouse and Freight Movement	Railroad stations and yards													P			
Warehouse and Freight Movement	Warehousing and distribution establishment	P/S	P/S													P	5.2.4(F)
Warehouse and Freight Movement	Wholesale establishment	P/S	P/S													S	5.2.4(F)
Waste-Related Uses	Recycling and salvage operation															S	5.2.4(B)
ACCESSORY USES																	
Accessory Uses	Accessory dwelling unit						A	A	A		A						5.3.4(A)
Accessory Uses	Utility dwelling unit	A	A		A		A	A	A		A						5.3.4(B)
Accessory Uses	Beekeeping	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(O)
Accessory Uses	Day care home, small	A	A						A			A	A	A	A		5.3.4(M)
Accessory Uses	Day care home, large	S	S						S						A	A	5.3.4(L)
Accessory Uses	Home occupation	A	A	A	A	A	A	A	A		A	A	A	A	A	A	5.3.4(C)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit

Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR -12	PKS/OS	CB &R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
ACCESSORY USES (Cont.)																	
Accessory Uses	Kennel																5.2.3(E)
Accessory Uses	Outdoor display/sales	A	A								A	A	A	A	A	A	5.3.4(D)
Accessory Uses	Outdoor storage										A	A	A	A	A	A	5.3.4(E)
Accessory Uses	Photovoltaic System	A	A	A	A	A	A	A	A	A	A	A	A	A	A	A	5.3.4(S)
Accessory Uses	Satellite dish antenna	A	A	A	A	A	A	A	A		A	A	A	A	A	A	5.3.4(F)
Accessory Uses	Swimming pool, hot tub, or spa	A	A	A	A	A	A	A	A								5.3.4(I)
Accessory Uses	Recycling drop-off station	A	A	A	A	A						A	A	A	A	A	5.3.4(H)
Accessory Uses	Vehicular gate	A	A									A	A	A	A	A	5.3.4(G)
Accessory Uses	Caretaker's residence [4]	A	A	A													5.3.4(N)
Accessory Uses	Animal husbandry						A	A	A								5.3.4(J)
Accessory Uses	Food truck	A	A	A	A	A	A	A	A		A	A	A	A	A	A	5.3.4(P)
Accessory Uses	Cluster box unit - Mailbox	A	A	A	A	A	A	A	A		A	A	A	A	A	A	5.3.4(Q)
Accessory Uses	Electronic Gaming Machine											AZ					5.3.4(R)

5.1.4 Table of Permitted Uses - CT District, Walnut Street Corridor

TABLE 5.1-3: TABLE OF CORRIDOR TRANSITION (CT) DISTRICT USES																			
Walnut Street Corridor																			
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use PZ=Permitted Use Requiring Zoning Compliance Permit (Uses not listed are prohibited)																			
Corridor Sub-Area	Nursing home	Detached dwelling	Family Care & Group Home ¹	Townhouse	Multi-family dwelling	Live/work unit	Day care home, large	Day care home, small	Public utility facility	Town owned/operated facilities and services	Park, public	Religious assembly	Club, lodge or hall	Office	Bed and Breakfast	Funeral home	Personal service establishment	Retail store	Restaurant
Conversion Area		P	PZ			S/P	S	P		P	P			S/P	S/P		S/P		
Redevelopment Area (on parcels with less than 1 acre)		P	PZ			P	P	P		P	P			P	P		P		
Redevelopment Area (on parcels with 1 or more acres)	P	P	PZ		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Infill Area (1st 300 feet from Walnut Street)	P	P	PZ	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Infill Area (301 or more feet from Walnut Street)		P	PZ	P						P	P	P							
Use Specific Standards	5.2.1 (G)	5.2.1 (M)	5.2.1 (D)	5.2.1 (L)	5.2.1 (F)		5.3.4 (L)	5.3.4 (M)		5.2.2 (G)	5.2.2(A) & (D)	5.2.2 (E)	5.2.2 (E)		5.2.1 (B)		5.2.3 (K)	5.2.3 (K)	5.2.3 (K)
¹ Family care Homes and Group Homes are allowed in all residential dwellings as otherwise permitted by law, and may not be prohibited through zoning conditions.																			

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 06-005, adopted 3-23-06; eff. 3-23-06; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-02, 1-28-10; Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-05, 12-15-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-07, 8-23-12; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-LDO-02, 3-30-17; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-01, 1-13-22; Ord. No. 2023-LDO-03, 6-22-23)

5.2 USE-SPECIFIC STANDARDS

5.2.1 Residential Uses

(A) Boarding House

- (1) A minimum of four (4) off-street parking spaces shall be provided for the principal dwelling. The Planning Department may approve an exception to this requirement if the property owner provides written verification that the occupants of the sleeping room(s), due to age or disability, will not have vehicles on-site.
- (2) No more than two (2) vehicles owned by the boarder(s) of each room shall be permitted, and all vehicles on-site shall be parked off-street.
- (3) All parking provided for a boarding house shall meet the requirements of this Ordinance unless otherwise permitted.
- (4) Each rental room shall house no more than two (2) persons.

(B) Bed and Breakfast

- (1) The operator of the bed and breakfast must reside on the premises on a full-time basis;
- (2) The property owner shall maintain a current guest register;
- (3) The structure(s) shall be located on a lot which complies with the required minimum lot area and dimensional standards for existing uses in its respective zoning district;
- (4) The structure(s) shall not be altered in a way that changes its general residential appearance;
- (5) No meals other than breakfast may be served to registered guests;
- (6) No meals shall be served to the general public;
- (7) No cooking or kitchen facilities, apart from microwaves or mini-refrigerators, shall be allowed in the guest rooms;
- (8) A maximum of eight (8) bedrooms may be rented to registered guests;
- (9) A particular guest stay shall not exceed fourteen (14) consecutive days;
- (10) One (1) off-street parking space shall be required for each guest bedroom in addition to parking required for the residential dwelling;
- (11) In the R-40 and R-80 zoning districts, guest parking located less than fifty (50) feet from side and rear property lines shall be screened with landscaping meeting the performance standard of a Type A opaque buffer. Guest parking shall not be located within twenty (20) feet of a side or rear property line or within the applicable front setback. This section 5.2.1(B)(10) shall not apply to Bed and Breakfast use in the Town Center; and

- (12) The resident owner shall comply with all laws and regulations of the Town of Cary, the applicable county, and the State of North Carolina.

(C) Dormitory

- (1) The dormitory shall be accessory to a training facility located on the same property; and
- (2) The dormitory shall house only persons who are students at or employees of the facility.

(D) Group Home; Family Care Home

(1) Group Home

- (a) Group homes shall be limited to a maximum of ten (10) residents.
- (b) Group homes with four (4) or more residents shall be spaced at least one-quarter mile (1,320 feet) from any other group or family care home with four (4) or more residents.
- (c) Parking shall be as required for group homes by Table 7.8-1 of this Ordinance.
- (d) Where four (4) or more parking spaces are required, parking areas shall be clearly delineated, and shall be screened to a minimum height of three (3) feet from the view of adjacent residential properties. Such screening may be provided by evergreen plantings that will attain a minimum height of three (3) feet within three (3) years of planting, or by the use of a fence made of wood (or a comparable composite material) that is at least three (3) feet in height and is designed to screen at least three-quarters (3/4) of the view through the fence from adjacent properties. Screening shall not be required for parking areas located in the portion of a one (1)- or two (2)-car wide driveway between the street and the front of the residence or located adjacent to non-residential property except where such areas are being expanded to meet parking requirements.
- (e) Group homes must comply with any applicable federal, state and local licensing requirements and health regulations.
- (f) The property owner may request a reasonable accommodation to the requirements of Section 5.2.1(D)(1)(a) through (d), or any other standards of this ordinance as needed to ensure compliance with the Federal Fair Housing Act.

(2) Family Care Home

- (a) Family care homes shall be limited to a maximum of six (6) residents.
- (b) Family care homes with four (4) or more residents shall be spaced one-quarter mile (1,320 feet) from any other family care or group home with four (4) or more residents.
- (c) Family Care homes must comply with all applicable federal, state and local licensing requirements and health regulations.

- (d) The property owner may request a reasonable accommodation to the requirements of Section 5.2.1(D)(2)(a) and (b), or any other standards of this ordinance as needed to ensure compliance with the Federal Fair Housing Act.

(E) Life Care Community

- (1) The life care community shall be for the sole residency of persons sixty-two (62) years old or older, and shall not exceed the density set forth in the following table, not including the number of persons occupying hospital or clinic beds:

TABLE 5.2-1: DENSITY FOR LIFE CARE COMMUNITIES	
District	Density (units/acre)
TR	7
RMF	8
OI ORD	12*
TC Mixed Use Overlay	no density limit
* For the purpose of calculating residential density in the OI and ORD districts, dwelling units or rooming units in a structure housing three or more such units shall be equivalent to ½ dwelling unit.	

- (2) The number of persons who may be housed in non-independent rooms or apartments (not including hospital or clinic beds) shall not exceed the number of persons housed in independent dwelling units by a ratio of greater than three to one (3:1);
- (3) The number of hospital or clinic beds shall not be more than fifty (50) percent of the total number of permitted dwelling units;
- (4) All retail stores and personal service establishments located within the life care community shall be part of an existing building and may not exceed twenty (20) percent of the floor area of the building; and
- (5) The life care community shall provide open space and/or recreational facilities in the same amount and ratios as required in Section 8.3.1 of this Ordinance.

(F) Multi-Family Dwelling, and Multi-Family Dwelling, Mid-Rise

- (1) Individual storage space containing at least twenty-four (24) square feet of enclosed floor area with a minimum height of seven (7) feet, shall be provided for each dwelling unit in a multi-family development. Such storage space shall be located either in the same building as the dwelling unit it serves or in an accessory building that may also house parking, recreational, laundry, or other facilities that serve the occupants of the development.
- (2) The development shall include sufficient open space and recreational facilities to meet the needs of its residents in accordance with the provisions of Section 8.3.1 of this Ordinance.
- (3) The development shall provide adequate and appropriate facilities for waste disposal, and such facilities shall be screened from view in a manner consistent with the requirements of this Ordinance.

- (4) The maximum density for multi-family dwelling developments shall be as follows:
- (a) In the RMF district, the total density shall be in accordance with Table 6.1-1, *Table of Density and Dimensional Standards Residential Districts (Not including TC District)*;
 - (b) within the TC district, total density shall be in accordance with Table 6.1-3, *Table of Density and Dimensional Standards Town Center District*;
 - (c) for multi-family dwellings approved through the mixed use district (MXD) zoning process, Section 3.4.5, the maximum density shall be that shown on the approved preliminary development plan (PDP);
 - (d) for multi-family dwellings approved through the Planned Development District (PDD) zoning process, Section 3.4.3, the maximum density shall be that shown on the approved master plan.
- (5) Mid-rise multi-family dwellings shall comply with the following additional standards:
- (a) In districts where a mixing of residential and non-residential uses is allowed, such uses may include ground-level retail stores and personal service establishments as incidental uses, to provide goods and services to residents of the building. Greater amounts of retail and/or personal service establishments may be permitted within a Mixed Use Overlay District, subject to the provisions of 4.4.2 and Table 5.1-1 of this Ordinance.
- (6) Multi-family dwelling units shall be allowed in the Redevelopment Area and first three hundred (300) feet of Infill Area portions of the Corridor Transition District for the Walnut Street Corridor provided the following conditions are met:

- (a) The principal use of the building is for offices or personal services; and
- (b) Such uses combined shall not have more than one (1) entrance for units separate from that of the principal use.

(G) Nursing Home

- (1) The nursing home shall not exceed the density set forth in the following table:

TABLE 5.2-2: DENSITY FOR NURSING HOMES	
District	Density (units/acre)
TR	10
GC RMF TC	15
OI ORD	20
Mixed Use Overlay	no density limit

- (2) All retail stores and personal service establishments located within the nursing home shall be part of an existing building and shall not exceed twenty (20) percent of the floor area of such building; and
- (3) The nursing home shall provide open space and/or recreational facilities in the same amount and ratios as required in Section 8.3.1 of this Ordinance.

(H) Patio Dwelling

- (1) In the RMF district, the density of patio dwelling units shall not exceed twelve (12) dwelling units per acre.
- (2) In the TR district, the density of patio dwelling units shall not exceed six (6) dwelling units per acre.
- (3) There are no density limits for patio homes within a Mixed Use Overlay District.
- (4) Density limits for patio homes within the TC district shall be in accordance with Table 6.1-3.

(I) Residential Use in Non-Residential Building

In the OI and ORD districts, residential uses may be permitted in non-residential buildings without a rezoning provided the following standards are met:

- (1) A development plan (see Section 3.9) shall be required prior to occupation of any residential uses;
- (2) At least fifty (50) percent of the building's total floor space (in square feet) must be reserved for office uses;
- (3) Up to fifty (50) percent of the building's total floor space (in square feet) may be utilized for residential uses;

- (4) No more than twenty (20) percent of the building's total floor space (in square feet) may be utilized for retail or personal services uses;
- (5) The development shall include sufficient open space and recreational facilities to meet the needs of its residents; and
- (6) All residential and non-residential uses must be integrated into the same structure, and stand-alone residential structures are prohibited.

(J) Residential Use in Mixed-Use Building

In the HMXD district of the Town Center, at least twenty (20) percent of the total floor area must be dedicated to a non-residential use.

(K) Manufactured Home

Each manufactured home shall be located on an individual lot meeting the requirements of the applicable base zoning district and shall meet the following requirements:

- (1) All electrical and telephone lines connected directly to the home shall be installed underground.
- (2) There shall be a masonry foundation around the exterior perimeter of all dwellings. The foundation shall have a minimum depth of twelve (12) inches below grade.
- (3) The pitch of the main roof shall not be less than one (1) foot of rise for each four (4) feet of horizontal run. The roofing materials shall be similar in color, texture, and materials to other dwellings in the same zoning district in which the home is to be located.

(L) Semi-Detached/Attached Dwelling and Townhouse

- (1) Densities within the TC district shall be in accordance with Table 6.1-3.
- (2) All developments shall include sufficient open space and recreational facilities to meet the needs of its residents in accordance with the provisions of Section 8.3.1 of this Ordinance.
- (3) In the Infill Sub-district of the Corridor Transition (CT) District, townhouses are a permitted use up to five (5) units per acre.
- (4) Dwellings in the TR, RMF and MUOD zoning districts that have driveways on alleys shall be limited to a maximum of eight (8) units per building. All other dwellings in the TR, RMF and MUOD zoning districts shall be limited to a maximum of five (5) units per building. For such dwellings that are part of a development plan submitted prior to May 7, 2020 and subsequently approved in accordance with G.S. 143-755, more than eight (8) or five (5) units respectively may be attached.

(M) Detached Dwelling

- (1) Detached dwellings constructed in the Infill Area portion of the Corridor Transition District for the Walnut Street Corridor shall be limited to a maximum allowable density of five (5) units per acre on parcels or portions of parcels located three hundred (300) or more feet away from the ultimate right-of-way boundary for Walnut Street.

- (2) Detached dwellings may be allowed in a Neighborhood Center provided the entrance to the subdivision or Planned Development District (PDD) housing the detached dwellings fronts a thoroughfare or collector roadway.
- (3) Detached dwellings may be allowed in a Community Center provided the entrance to the subdivision or Planned Development District (PDD) housing the detached dwellings fronts a thoroughfare or collector roadway.
- (4) Detached dwellings may be allowed in a Destination Center provided the following standards are met:
 - (a) There is an approved mixed use sketch plan that specifies a reasonable mix of housing types and densities consistent with the vision of the Comprehensive Plan, including higher-density housing types such as multi-family dwellings, semidetached/ attached dwellings, or townhouses; and
 - (b) The detached dwellings constitute a reasonable portion of the total housing stock planned for the Destination Center, and do not dominate the overall Destination Center housing stock.
- (5) Detached dwellings may be allowed in the HMXD sub-district of the Town Center provided the following standards are met:
 - (a) Such uses shall obtain a Special Use Permit consistent with Section 3.8 of this Ordinance; and
 - (b) The property is located within the Downtown Historic District.
 - (c) Evidence of issuance of a Certificate of Appropriateness from the Wake County Historic Preservation Commission for any building or property designated as a Cary/Wake County Landmark shall be provided.

(N) Tandem Dwelling Unit

[Reserved]

(O) Manufactured Home Parks

The following provisions shall apply to manufactured home parks established prior to July 1, 2003:

- (1) Manufactured homes lawfully permitted within a manufactured home park established prior to July 1, 2003 may be removed or replaced with another manufactured home or relocated to an alternative manufactured home space within the boundaries of the manufactured home park. A manufactured home shall not be replaced with a modular home or site-built home.

- (2) After January 11, 2011, manufactured home park owners shall not permit the replacement or relocation of a manufactured home, or permit the addition, relocation or modification of an accessory structure or building to the manufactured home within the manufactured home park unless all of the following are met:
- (a) An application for a building permit shall be submitted for the replacement or relocation of a manufactured home, or the addition, relocation or modification of an accessory structure or building to a manufactured home.
 - (b) The building permit application shall include a sketch that includes the location of manufactured homes and other improvements on the manufactured home lot and all adjoining manufactured home lots, sufficient to demonstrate compliance with the following:
 - 1. A minimum separation of ten (10) feet between a manufactured home on a manufactured home space, and a manufactured home on an adjoining manufactured home space;
 - 2. A minimum separation of ten (10) feet between an accessory building or structure located on a manufactured home space, and a manufactured home, accessory building or accessory structure located on an adjoining manufactured home space; and
 - 3. The combined floor area of all detached accessory structures shall occupy no more than thirty-three percent (33%) of the total heated floor area of the manufactured home, unless otherwise allowed in this Ordinance. The accessory structure shall be deemed attached if it is located closer than five (5) feet to the manufactured home.
- (3) Manufactured homes, and accessory structures and buildings existing on January 11, 2011, that do not meet the requirements of 5.2.1(O)(2), shall be deemed conforming with regard to those requirements provided that:
- (a) The manufactured home is in compliance with the HUD-administered National Manufactured Housing Construction and Safety Standards Act of 1974, as amended; and
 - (b) Accessory structures or buildings on the site comply with requirements of the North Carolina State Building Code.

(P) Detached Multi-family Dwellings

- (1) Detached multi-family dwellings may be allowed in the HMXD sub-district of the Town Center provided the following standards are met:
- (a) Such uses shall obtain a Special Use Permit consistent with Section 3.8 of this Ordinance; and
 - (b) The property is located within the Downtown Historic District.
 - (c) Evidence of issuance of a Certificate of Appropriateness from the Historic Preservation Commission for any building or property designated as a Landmark shall be provided.

5.2.2 Public/Institutional Uses**(A) Athletic Field, Public**

- (1) All facilities shall be designed to be compatible with the surrounding landscape, such that the minimum possible grading will be required and the minimum disturbance and removal of existing vegetation will be required.
- (2) Any enclosure, such as fences and walls, shall be designed to be compatible with surrounding structures and shall not include the use of barbed or razor wire.
- (3) If installed, exterior lighting shall meet the functional needs of the facility without adversely affecting adjacent properties or the neighborhood. Exterior lighting shall not be used before 7:00 am or after 10:00 pm.

(B) Day Care Centers

Day care facilities shall comply with all state and federal laws that pertain to child health, safety, and welfare. In addition, all day care facilities shall comply with the following specific requirements:

- (1) The center shall provide a fenced play area as required by the General Statutes. The fence shall be a solid (opaque) fence at least four (4) feet high. This requirement is not applicable for adult day care homes;
- (2) Landscaping shall be provided in order to blend the center into the neighborhood, screen its purely functional aspects from the street and neighboring yards, and absorb and/or deflect any excessive noise; and
- (3) The structure in which the center is located is similar in appearance to the character of the neighborhood in terms of architectural style, predominant building materials, building mass and height, and setbacks.
- (4) If a new center is proposed for property in a residential district, then all the development standards of this Ordinance shall be met, and *minor modifications or other reductions to the standards shall not be granted.*
- (5) If the center is proposed for property in a residential district, then it must be located on property which fronts a thoroughfare or collector street as depicted in the Cary Transportation Plan.

(C) School

- (1)** Any proposed school, whether public or private, proposed within a residential district on a site or parcel of twenty (20) acres in size or smaller shall be required to meet the following standards:
 - (a)** Such uses shall obtain a Special Use Permit consistent with Section 3.8 of this Ordinance;
 - (b)** Such uses shall be located on parcel or site which fronts a thoroughfare or collector roadway; and
 - (c)** New schools shall meet all the development standards of this Ordinance, *and minor modifications or other reductions to the standards shall not be granted*; and
 - (d)** Expansions or alterations to existing schools shall be required to meet these requirements to the maximum extent practicable.
 - (e)** Any subsequent principle or accessory use associated with an existing school (which is required to obtain a Special Use Permit) which would increase the intensity of the facility shall also be required to obtain a special use. For the purposes of this Section, increases in intensity shall be measured as increases in vehicular trips generated and/or increases in impervious surface by five (5) percent or more for either aspect.
- (2)** Temporary structures serving as expansion space for schools are allowed in all districts in which schools are allowed, subject to the following standards:
 - (a)** Such temporary structures shall not be located between the principal building and any abutting right-of-way. An exception to this requirement may be considered where there is no other practical alternative due to topography, presence of utilities or easements, existence of undisturbed open space and buffers, or other site features that are beyond the applicant's control.
 - (b)** At least six hundred (600) square feet of evergreen screening material shall be provided in the immediate vicinity of each temporary structure in order to screen the base of the structures from the view of other properties and public streets.
- (3)** Any proposed school, whether public or private, required by Section 3.9.2 to submit a Traffic Management Plan shall comply with the terms of the approved Traffic Management Plan.

(D) Neighborhood Recreation Center, Public

- (1) *Enclosure Required for Swimming Pools, Hot Tubs, and Spas***
 - (a) General Requirement**

In order to protect unattended children from the risk of drowning:

1. All below-ground outdoor swimming pools, hot tubs, or spas having a depth of eighteen (18) inches or greater at the deepest point shall be completely surrounded by a fence or wall with a height of no less than four (4) feet. The fence or wall may be made of any suitable and durable material. The fence or wall shall be designed so that a four and one-half (4½) inch diameter sphere cannot pass through any opening. The principal or accessory building may be used as part of such enclosure.
2. All above-ground swimming pools shall maintain gates at access points into the pool.
3. All gates required by this section shall have self-closing and self-latching devices that keep the gate or door closed at all times when not in actual use. However, the door of any dwelling that furnishes part of the enclosure need not be so equipped.

(b) Exemption

A portable spa or hot tub with a safety cover that complies with ASTM ES13 entitled "Emergency Standard Performance Specifications for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs," 1989 edition, is exempt from the requirements of this section.

(2) Separate Approval Required

The approval of the Planning Director shall be required prior to the construction of a swimming pool, hot tub, or spa covered by subsection (a) above. The Director shall approve the swimming pool, hot tub, or spa if it meets all of the above standards.

(E) Religious and Other Assembly Uses

- (1) Any religious or other assembly use (i.e., club, lodge, or hall) located upon residentially-zoned property that is twenty (20) acres in size or smaller shall be required to meet the following standards:
 - (a) Such uses shall obtain a Special Use Permit consistent with Section 3.8 of this Ordinance. This requirement shall also apply to residentially-zoned properties twenty (20) acres in size or smaller located within a Mixed Use Overlay District and/or a residentially-designated portion of a planned development district;
 - (b) New or proposed religious or other assembly uses shall be located on parcel or site which fronts a thoroughfare or collector roadway; and
 - (c) Such uses shall meet all the development standards of this Ordinance, *and minor modifications or other reductions to the standards shall not be granted.* Existing religious or other assembly uses shall meet this requirement to the maximum extent practicable.
 - (d) Any subsequent principal or accessory use associated with an existing religious or other assembly (which is required to obtain a Special Use Permit) that would increase the intensity of the facility shall also be required to obtain a special use. For the purposes of this Section, increases in intensity shall be measured as increases in vehicular trips generated and/or increases in impervious surface by five (5) percent or more for either aspect.

- (e) Uses that have or are intended to have more than one worship ceremony or meeting within any two (2) hour window shall be required to provide overflow parking at one (1) space for every two and one-half (2.5) persons of maximum fire-rated occupancy in addition to the standard parking requirements listed in Section 7.8.
- (2) Any religious or other assembly use (i.e., club, lodge, or hall; special event center) required by Section 3.9.2 to submit a Traffic Management Plan shall comply with the terms of the approved Traffic Management Plan.
- (3) Special event centers shall be required to meet the following standards: Outdoor space for tables and/or seating to accommodate event guests may be provided, however the size of such area shall not exceed the event space within the building.

PRINCIPLES OF INTERPRETATION

For the use-specific standards included in Sections 5.2.2(B), (C) and (E), the intent of prohibiting minor modifications or other reductions to development standards is to maximize the compatibility of such proposed uses with surrounding uses when located in residential areas. Reductions or modifications to development standards such as, but not limited to, buffers, landscaping, setbacks, parking, and building height (i.e. standards included in *Chapter 6 - Dimensional Standards and Measurements*, and *Chapter 7 - Development and Design Standards* of this Ordinance) would be inconsistent with the intent of creating and operating uses on sites that are compatible, to the extent practical, with their surroundings.

(F) College

- (1) Special Use Permit approval (see Section 3.8) shall be required for colleges within the OI and GC districts if:
 - (a) The campus includes athletic fields, gymnasiums, auditoriums or residential use including dormitories; or
 - (b) The property is located within four hundred (400) feet of a residential use or zoning district.

(G) Town Owned and/or Operated Facilities and Services

- (1) The development standards for sites and/or uses, including but not limited to setbacks, buffers, landscaping, parking, etc., shall be those specified for the same (or most similar in nature) use listed in Chapter 12 of this Ordinance.

(H) Governmental Offices

To the extent allowed by state and federal law, (see LDO section 1.6), the following use-specific standards apply to governmental offices that are not Town owned or operated:

In any residential, resource/recreational, and/or general commercial districts, government offices may be allowed as either a permitted or a special use in Table 5.1-1, provided that:

- (1) For a federal office, the federal building security level is Level 2 or less as defined by the U.S. Department of Justice; and
- (2) the site contains no physical perimeter security barriers to the building and/or parking areas through the use of fencing or other obstructions.

These types of governmental offices may also be allowed in all Town Center sub-districts that permit residential dwelling units.

All types of governmental offices may be allowed as either a permitted or a special use in Table 5.1-1 or Table 5.1-2 in all other districts not specifically mentioned above.

5.2.3 Commercial Uses

(A) Athletic Field, Private

Private athletic fields shall comply with the use-specific standards for Public Athletic Fields set forth in Section 5.2.2(A).

(B) [Reserved]

(C) Agricultural Uses

(1) Produce Stands

In the R-40 and R-80 districts, any structure or building used for the sale of products grown or raised on the premises shall have a floor area or lot coverage no greater than five hundred (500) square feet, be located no closer than one hundred (100) feet from the side or rear property line, and have a height less than fifteen (15) feet. Such uses shall provide safe vehicular access and adequate parking for customers, and shall comply with applicable sign requirements as set forth in Section 9.3.2 of this Ordinance.

(2) Agri-tourism

In the R40 and R-80 districts, farming operations may operate education and entertainment programs including but not limited to corn mazes, petting zoos of farm animals, hay rides and farming techniques. Accessory uses to the agri-tourism enterprise may include refreshments and concessions, entertainment, and the sale of farm or agricultural related products which may or may not be produced on site.

(3) Bona Fide Farms

Property that is located in the Town's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from the provisions of this Ordinance to the same extent bona fide farming activities are exempt from county zoning pursuant to G.S. 160D-903, as further described in LDO Section 1.6.5.

(D) Electronic Gaming Operation

- (1) In the GC, ORD, and I zoning districts, such use shall be separated by a minimum of five hundred (500) feet from any residence and/or residentially-zoned property, religious assembly, licensed day care facility, public or private school, or another electronic gaming operation. The five hundred (500)-foot distance shall be measured on a straight line from property line to property line, with no consideration as to intervening structures, roads, or land forms.

- (2) In the ORD district, such use shall be allowed only on properties within the Airport Overlay District.
- (3) In the Town Center Commercial (COM) sub-district, such use shall be separated by a minimum distance of five hundred (500) feet from any other electronic gaming operation. The five hundred (500)-foot distance shall be measured on a straight line from property line to property line, with no consideration as to intervening structures, roads, or land forms.
- (4) No alcohol may be served in the establishment.

(E) Kennel

(1) *Requirements for All Kennels*

- (a) All kennel buildings shall be sufficiently insulated so that no unreasonable noise or odor shall be detected off-premises.
- (b) Indoor and outdoor kennels may be allowed in the R-40 and R-80 districts as a special use provided that the kennel is accessory to an existing principal dwelling unit on the same parcel.

(2) *Additional Requirements for Outdoor Kennels*

An outdoor run or pen shall be located on site and shall be screened from the view of all adjacent streets and properties by fencing or vegetation. No unreasonable noise or odor shall be detected off-premises.

(F) Commercial Indoor Recreational Facility

- (1) All swimming pools, hot tubs, and spas shall provide an enclosure meeting the standards set forth in Section 5.2.2(D) above.
- (2) In the OI district, the use shall be allowed only if all of the following conditions are present:
 - (a) The principal use of the building is office;
 - (b) The total floor area of all such uses and/or structures is no greater than twenty (20) percent of the total gross floor area of the building;
 - (c) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use;
 - (d) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.
- (3) In the OFC/INS subdistrict of the TC district, this use may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted or a special use in Table 5.1-2, provided that:
 - (a) The total floor area of all such uses and/or structures is no greater than twenty (20) percent of the total gross floor area of the building;

- (b) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use; and
- (c) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.

(G) Nightclub/Bar

(1) General Provisions

The use shall not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building, unless such feature is approved as part of a special use permit.

(2) Outdoor Activities as Part of a Special Use Permit

Nightclubs and bars having any outside amphitheater, stage, sports equipment, playing field or court, or any provision for live or recorded acoustic or amplified entertainment outside of the building, shall comply with the following standards:

- (a) The use shall be located no closer than one hundred (100) feet from any residential zoning district or use.
- (b) The Town Council may establish a closing time for any outside facility that is earlier than the closing time of the activities that occur entirely within the building.

(3) OI District

Nightclubs or bars may be approved as a special use in the OI district provided they comply with the following standards:

- (a) The principal use of the building shall be office.
 - (b) The total floor area of all such uses shall not be greater than twenty (20) percent of the total gross floor area of the building.
 - (c) Such uses combined shall not have more than one (1) entrance for customers separate from that of the office use.
- (4)** In the OFC/INS subdistrict of the TC district, this use may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted or a special use in Table 5.1-2, provided that:
- (a) The total floor area of all such uses and/or structures is no greater than twenty (20) percent of the total gross floor area of the building; and
 - (b) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use.

(H) [Reserved]

(I) Postal Center, Private

In the OI district, such uses shall meet the following standards:

- (1) The principal uses of the business shall be parking and office, and floor space for the private postal center shall be limited to no more than twenty (20) percent of the gross square footage of the office building.
- (2) Vehicle and/or equipment maintenance, repair, and warehouse uses shall not be permitted.

(J) Parking Lot as a Principal Use

Parking lots shall only be allowed as a permitted principal use of property if the following conditions are met:

- (1) The parking lot is used for shared parking with another principal use and/or offsite parking; or
- (2) The property is located in the Airport Overlay district.

(K) Restaurant; Retail Store

(1) OI District

In the OI district, the use shall be allowed as a permitted use only if all of the following conditions are present:

- (a) The principal use of the building is office;
 - (b) The total floor area of all such uses is no greater than twenty (20) percent of the total gross floor area of the building;
 - (c) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use;
 - (d) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.
- (2) In the OFC/INS subdistrict of the TC district, this use may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted or a special use in Table 5.1-2, provided that:
- (a) The total floor area of all such uses and/or structures is no greater than twenty (20) percent of the total gross floor area of the building;
 - (b) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use; and
 - (c) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.
- (3) In the OFC/IND district, the use shall be allowed as a permitted use provided that:
- (a) The total floor area of all such uses is no greater than thirty-three (33) percent of the total gross floor area of the building; and

- (b) The use does not have a drive-through facility, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.

(4) Outdoor Activities

Restaurants having any outside amphitheater, stage, sports equipment, playing field or court, or any provision for live or recorded acoustic or amplified entertainment outside of the building, shall comply with the following standards:

- (a) The use shall be located no closer than one hundred (100) feet from any residential zoning district or use; and
- (b) The Town Council may establish a closing time for any outside facility that is earlier than the closing time of the activities that occur entirely within the building.

(5) CT District

Restaurants (indoor and/or outdoor) and/or retail stores shall be allowed in the Redevelopment Area and first three hundred (300) feet of Infill Area portions of the Corridor Transition District for the Walnut Street Corridor provided the following conditions are met:

- (a) The principal use of the building is office or personal services;
- (b) The total square footage of such uses (whether combined or otherwise) shall be limited to twenty (20) percent of the total building square footage;
- (c) Such uses combined do not have more than one (1) entrance for customers which is separate from that of the office use; and
- (d) Such uses do not have a drive-up window, nor an outside amphitheater, stage or other provision for live or recorded acoustic or amplified entertainment outside of the building.

(L) Radio or TV Broadcasting Studio

Such uses shall require approval of a special use permit for associated towers or helipads.

(M) Adult Business

- (1) In the Mixed Use Overlay District, and the portion of the ORD district outside of the Airport Overlay District, adult businesses may be permitted with a special use permit (see Section 3.8) provided that:
 - (a) No such business shall locate within two thousand (2,000) feet of any other adult business, as measured in a straight line from property line to property line;
 - (b) No adult business shall be located within one thousand (1,000) feet of a church, public or private elementary or secondary school, child day care center or nursery school, public park, residences and/or residentially zoned property, or any establishment with an on-premise ABC license. The one thousand (1,000) foot distance shall be measured on a straight line from property line to property line, with no consideration as to intervening structures, roads or land forms;

- (c) There shall not be more than one (1) adult business on the same property or in the same building, structure, or portion thereof;
 - (d) No other principal or accessory use may occupy the same building, structure, property, or portion thereof with any adult business; and
 - (e) Except for the signs permitted under Section 9.3 of this Ordinance, no other advertisements, displays or signs or other promotional materials shall be visible to the public from pedestrian sidewalks, walkways, or vehicular use areas.
- (2) In the portion of the ORD district within the Airport Overlay District, adult businesses shall be permitted by right subject to the use-specific standards listed in 5.2.3(M)(1).
- (N) Vehicle Filling Station, Vehicle Repair, Vehicle Service, Car Washes, and Towing and Vehicle Storage**
- (1) No vehicle shall be parked or stored as a source of parts and no vehicle shall be parked for the purpose of sale or lease/rent.
 - (2) All repairs and storage shall be contained within an enclosed building. Temporary vehicle storage may be allowed in an outdoor storage area that shall be no larger than twenty-five (25) percent of the total lot area. Such areas shall be located to the rear of the principal structure and shall be screened from offsite views by a solid, decorative fence or masonry wall at least eight (8) feet in height. The height of materials and equipment stored shall not exceed the height of the screening fence or wall.
 - (3) No vehicle that has been repaired and is awaiting removal, or that is awaiting repair, shall be stored or parked for more than thirty (30) consecutive days.

PRINCIPLES OF INTERPRETATION

In cases where a vehicle has been abandoned by its lawful owner prior to or during the repair process, the vehicle may remain on site as long as is necessary after the thirty (30) day period provided that the owner or operator of the establishment can demonstrate that steps have been taken to remove the vehicle following the premises using the appropriate legal means.

- (4) Uses established after July 1, 2003 or alterations to existing uses established prior to July 1, 2003 shall require compliance with Section 14.3 Illegal Discharges to the Storm Sewer System.
- (5) In the HMXD and MXD subdistricts of the TC district, such uses may be permitted based upon the following conditions:
 - (a) Such uses must be lawfully established prior to July 1, 2003;
 - (b) Expansion of the building(s) or increased use of the site beyond that legally established on July 1, 2003 is permitted by right, provided that such expansions comply with the TC district standards;
 - (c) Maintenance and minor repair of structures and/or the site is permitted by right;

- (d) If the use ceases or is interrupted for more than one hundred and eighty (180) consecutive days, then the use shall not be re-established, with the exception of vehicle service and repair use, which may be re-established by right provided that:

 - 1. The existing building was legally used for vehicle service and repair use at some point in past; and
 - 2. The building has been vacant for a period of at least twenty-four (24) months; and
 - 3. All restoration activities, and storage of automotive parts and materials, shall be contained within an enclosed building, except that storage of vehicles may be allowed in an outdoor storage area that meets all of the following requirements:
 - a) is no larger than twenty-five (25) percent of the total lot area.
 - b) is located to the rear of the principal structure; and
 - c) is screened from offsite views by a solid, decorative fence or masonry wall at least eight (8) feet in height.
- (6) In the HMXD and MXD subdistricts of the TC district, such uses may be permitted with a special use permit (see section 3.8) if there is an addition of land to a parcel or site containing such uses through an action of the owner or their agent after July 1, 2003.
- (7) These standards shall also apply within the HMXD and MXD subdistricts to other land uses in the Vehicles and Equipment Use Category of Table 5.1-2, including but not limited to, car washes and towing and vehicle storage establishments.

(O) Veterinary Hospital/Office

- (1) No kennel shall be maintained outside of the principal building.
- (2) Where outdoor enclosed yard area is provided, such yard area shall be enclosed by a solid, decorative fence or masonry wall at least eight (8) feet in height.
- (3) The animal hospital structure shall be insulated and soundproofed, in order to minimize all loud and disturbing noises that might disturb those persons in adjoining structures or in the nearby vicinity.

(P) Private Transportation Service

Businesses that provide transportation services to move people from one (1) location to another location using passenger vehicles such as sedans, sport utility vehicles, vans, buses, or limousines. The business may include both an office component and a parking component, with the opportunity for the parking component to occur independently of the office component, on a separate lot with a different principal use, if certain conditions are met. This use does not include taxis or medical transportation vehicles.

(1) Vehicle Types Defined

For the purpose of this section, vehicle types shall be distinguished as follows:

(a) Type I Passenger Fleet Vehicles

Type I passenger fleet vehicles are limited to two (2)-axle and four (4)-tire vehicles that are manufactured primarily for the purpose of carrying passengers. Such vehicles include sedans, coupes, station wagons, sport utility vehicles and mini-vans.

(b) Type II Passenger Fleet Vehicles

Type II passenger fleet vehicles are limited to two (2) axles and six (6) tires, and are manufactured primarily for the purpose of carrying passengers. Such vehicles are typically taller, longer or heavier than Type I passenger vehicles, and may include stretch limousines and buses.

(2) Development Standards

Specific standards for the private transportation service use, including both on-site and off-site passenger fleet parking, shall be met in accordance with Table 5.2-2a.

TABLE 5.2-2a USE-SPECIFIC STANDARDS FOR PRIVATE TRANSPORTATION SERVICE					
USE-SPECIFIC DEVELOPMENT STANDARDS		ZONING DISTRICTS WHERE USE IS PERMITTED			
		OI	GC	I	MXD
Office Component - Parking		As required for <i>Office, Business or Professional</i> , per Table 7.8-1			
Passenger Fleet Parking Component	Vehicle Type(s) Allowed	Type I only	Type I and Type II	Type I and Type II	Type I only
	Maximum Number of vehicles per site	30	60	No limit	30
	Location of Parking Spaces on Site	Rear of Building(s)	Side or Rear of Building(s)	No Restriction	Rear of Building(s)

(3) Additional Fleet Parking Requirements

- (a) Such parking spaces shall be in excess of the minimum required for the principal use of the property.
- (b) For off-site passenger fleet parking, a notarized statement from the property owner, or a copy of a parking agreement ensuring permission to utilize the off-site parking spaces, shall be submitted prior to development plan approval.
- (c) When fleet parking is located adjacent to or across a local street from property that is zoned OI or zoned for residential use, the areas being used for fleet parking shall be screened from the view of such properties through the use of either a six (6)-foot tall opaque fence (in addition to normal buffer planting requirements) or through the use of evergreen landscaping (minimum height of six (6) feet at installation, planted every six (6) feet on center) that will screen the view of the fleet parking from the ground level up. If the evergreen landscaping option is selected in this situation, then the evergreen material being utilized to provide this required screening may be counted towards any comparable evergreen plantings associated with the normal buffer landscape requirements.

(Q) Motor Vehicle Sales/Rental

- (1) In the GC district and the Mixed Use Overlay District, motor vehicle rental shall be permitted by right based upon the following conditions:
 - (a) The rental office is located within a tenant space in a general shopping center use;
 - (b) The portion of the parking lot utilized by rental vehicles consists of no more than ten (10) spaces per one thousand (1,000) square feet of heated leasable space for the rental use or as determined by private contract with the property management, whichever is less;
 - (c) The vehicles available for rent shall be limited to passenger vehicles; and
 - (d) No signage may be displayed on vehicles.

- (2) In the GC district and the Mixed Use Overlay District, motor vehicle sales and rental shall be permitted as Special Uses based upon the following conditions:
- (a) The use is proposed or was established or enlarged after March 22, 2001;
 - (b) The vehicles sales or rental lot is separated from any other business use by at least a thirty (30) foot Type A perimeter buffer; and
 - (c) A permanent sales or rental office is located on the site of the sales or rental use.
- (3) In the HMXD and MXD subdistricts of the TC district, motor vehicle sales and rental shall be permitted by right based upon the following conditions:
- (a) Such uses must be lawfully established prior to July 1, 2003;
 - (b) Expansion of the building(s) or increased use of the site beyond that legally established on July 1, 2003 is permitted by right, provided that such expansions comply with the TC district standards;
 - (c) Maintenance and minor repair of structures and/or the site is permitted by right;
 - (d) If the use ceases or is interrupted for more than one hundred eighty (180) consecutive days, then the use shall not be re-established;
 - (e) An addition of land to a parcel or site containing such uses through an action of the owner or their agent after July 1, 2003 shall require special use permit approval (see Section 3.8).

(R) Wellness Center

(1) OI District

In the OI district, the use shall be allowed as a permitted use only if all of the following conditions are present:

- (a) The principal use of the building is office;
- (b) The total floor area of all such uses is no greater than fifty (50) percent of the total gross floor area of the building, or ten thousand (10,000) square feet, whichever is less;
- (c) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use unless required by building or fire code;

(2) ORD District

In the ORD district, any of these uses shall be permitted as an ancillary use provided that:

- (a) The total floor area of all such uses is no greater than fifty (50) percent of the total gross floor area of the building or ten thousand (10,000) square feet, whichever is less;
- (b) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use unless required by building or fire code;

(S) Trade School

- (1) Trade schools within the OI and GC districts shall comply with the following standards:
 - (a) All activities shall be performed inside a building;
 - (b) No outdoor storage shall be associated with the use; and
 - (c) The trade school is not related to metal fabrication, automotive repair, or other industrial activities.
- (2) Special Use Permit approval (see Section 3.8) shall be required for trade schools within the OI and GC districts if the property is located within four hundred (400) feet of a residential use or zoning district.

5.2.4 Industrial Uses**(A) Outdoor Storage as a Principal Use**

- (1) All outdoor storage areas shall be screened from views from adjacent parcels and streets by a solid, decorative fence or masonry wall at least eight (8) feet in height. The height of merchandise, materials, and equipment stored shall not exceed the height of the screening fence or wall.
- (2) No customer or vehicular circulation may occur through the area used for outdoor storage.
- (3) In the GC district, outdoor storage is limited to twenty-five (25) percent of the lot area (this limitation shall not apply in the I district).
- (4) In the HMXD and MXD subdistricts of the TC district, such uses may be permitted based upon the following conditions:
 - (a) Such uses must be lawfully established prior to July 1, 2003;
 - (b) Expansion of the building(s) or increased use of the site beyond that legally established on July 1, 2003 is permitted by right, provided that such expansions comply with the TC district standards;
 - (c) Maintenance and minor repair of structures and/or the site is permitted by right;
 - (d) If the use ceases or is interrupted for more than one hundred and eighty (180) consecutive days, then the use shall not be re-established;
- (5) In the HMXD and MXD subdistricts of the TC district, such uses may be permitted with a special use permit (see section 3.8) if there is an addition of land to a parcel or site containing such uses through an action of the owner or their agent after July 1, 2003.

(B) Recycling and Salvage Operation

In addition to any landscaped buffer required under Section 7.2.3 of this Ordinance, all outdoor storage areas shall be surrounded by a solid fence that is at least eight (8) feet high, located no less than one hundred (100) feet from any public right-of-way, and located no less than fifty (50) feet from any adjacent property.

(C) Resource Extraction**(1) State Mining Permit**

- (a) Prior to applying for a special use permit, the applicant shall secure a mining permit issued by the North Carolina Department of Environment and Natural Resources, Division of Land Resources, in accordance with the requirements set forth in the North Carolina Mining Act of 1971 and G.S. 74-65, as amended;
- (b) Two (2) copies of all documents required by the State of North Carolina for a mining permit shall be submitted with the special use application;
- (c) If the owner, developer, or operator is granted a modification of the terms or conditions of his or her State permit or reclamation plan, the applicant shall be required to reapply to the Town, within sixty (60) days of approval by the State, to have his or her special use permit reapproved by the Zoning Board of Adjustment. Failure to reapply within the specified time will result in the automatic revocation of the special use permit; and
- (d) The suspension or revocation of a State permit for the use shall result in automatic revocation of the special use permit.

(2) Additional Special Use Permit Requirements

- (a) The Zoning Board of Adjustment may require the submission of detailed plans, in addition to those required by the soil erosion and sedimentation control provisions in Section 14.4 of this Ordinance, that specify the type of wind, soil, and water erosion sedimentation control measures that are to be employed during construction and general operation of the proposed use;
- (b) The applicant shall submit additional supporting scientific data and evidence, such as maps, charts or consultant's reports, satisfactory to the Zoning Board of Adjustment, to support a conclusion that the standards and conditions set forth in this Ordinance are met so as to ensure that the value of the surrounding real property is not depreciated;
- (c) Recognizing that land values in the Cary area exceed those in many areas covered by the State Mining Act of 1971, the Zoning Board of Adjustment may require the applicant to submit a bond, in addition to that required by the State, for the purpose of reclamation; and
- (d) The transfer of a special use permit to a new holder shall require the new holder to apply to the Town within sixty (60) days for transfer of the special use permit. Failure to apply within the specified time will result in the automatic revocation of the special use permit.

(3) Development Standards

- (a) All mining activities, buildings, equipment, storage, parking, grading, related structures, and material shall be located no closer than three hundred (300) feet to any property line adjacent to said use. An Opaque Type A buffer, meeting the requirements of this Ordinance (see Section 7.2.3) shall be planted within the three hundred (300) foot setback;

- (b) All mining activities shall comply with the nuisance and hazard control standards set forth in Section 14.2; and
- (c) All mining activities shall conform to the vibration policy adopted by the North Carolina Department of Health, Environment and Natural Resources, Division of Land Resources.

(D) Telecommunications Facilities

(1) *Applicability; Definitions.*

This Section 5.2.4(D) applies to telecommunications facilities that are not “qualifying small wireless facilities,” “qualifying utility poles,” or “qualifying city utility poles” and that are not exempted in Section 5.2.4(D)(4) or (H)(4). Qualifying small wireless facilities, qualifying utility poles, and qualifying city utility poles are addressed in Section 5.2.4(H).

The definitions contained in Section 5.2.4(H) shall apply to this Section 5.2.4(D).

(2) *Purpose*

The purpose of this section is to:

- (a) Minimize the impacts of telecommunications facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- (b) Encourage the location and co-location of telecommunications facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- (c) Encourage coordination between suppliers of telecommunications services in the Town of Cary and its planning and development regulation jurisdiction;
- (d) Accommodate the growing demand for telecommunications services and the resulting need for telecommunications facilities;
- (e) Regulate in accordance with all applicable federal and state laws;
- (f) Establish review procedures to ensure that applications for telecommunications facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- (g) Protect the unique aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- (h) Encourage the use of existing buildings and structures as locations for telecommunications facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.

It is not the purpose or intent of this section to prohibit, have the effect of prohibiting, or materially limit or inhibit wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or

will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the town must approve under state or federal law. The provisions of this Section 5.2.4(D) are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

(3) *Siting*

- (a) New wireless support structures are prohibited in Town right-of-way. See LDO Sections 5.2.4(H) and 8.1.4(E) for provisions regarding utility poles.
- (b) The following list indicates the Town's preferences for facility locations, in descending order of preference:
- Collocations on Existing Wireless Support Structures
 - Concealed (Stealth) Telecommunications Facility on Existing Building/Structure
 - New Concealed (Stealth) Wireless Support Structure
 - Non-Stealth Telecommunications Facility on Existing Building/Structure
 - New Freestanding Non-Stealth Wireless Support Structure (monopoles)
 - New Freestanding Non-Stealth Wireless Support Structure (lattice-type)

These preferences are intended as guidance for development of an application for telecommunications facilities.

(4) *Compliance with Law; Exemptions.*

- (a) Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of telecommunications facilities on privately-owned utility poles or wireless support structures, or on private property, without the consent of the property owner or any person who has an interest in the property.
- (b) Unless expressly set forth herein, the following categories of telecommunications facilities are exempt from the requirements in Section 5.2.4(D), provided they meet the location and design requirements set forth below:
1. Any telecommunications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
 2. Over the air reception devices covered under 47 C.F.R. § 1.4000, so long as it satisfies the requirements set forth in Section 5.3.4(F)(2).
 3. Removal or replacement of an antenna or equipment on an existing wireless support structure or base station that does not change the physical dimensions of the wireless support structure or base station, or defeat any of the concealment elements of the wireless support structure or base station.
 4. Routine maintenance of existing telecommunications facilities, including activities associated with regular and general upkeep of transmission equipment, and the replacement of existing telecommunications facilities with facilities of the same size (so long as any of the concealment elements of the facilities are not defeated).

5. A temporary telecommunications facility, (1) upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town of Cary designees; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency; or (2) if necessary to continue providing service while a wireless support structure or other structure upon which the existing telecommunications facility has been placed, such as a building or water tank, is undergoing maintenance, replacement, or reconstruction during which it will be impossible or unsafe to operate the existing telecommunications facility; except that (i) the temporary facility if located on site must be no taller than the existing wireless support structure or other structure; (ii) the temporary facility if located off site must be no taller than one hundred fifty (150) feet and there shall be no more than one (1) temporary facility per wireless service provider; (iii) the temporary facility must meet the setback requirements of section 5.2.4(D)(7)(c) (setbacks for concealed (stealth) telecommunications facilities; these setbacks are applicable for all temporary support structures, whether concealed (stealth) or non-stealth); (iv) the temporary facility must comply with all federal and state requirements; and (v) the temporary facility must be removed within sixty (60) days of the conclusion of the maintenance, replacement, or reconstruction, or within one (1) year, whichever is shorter, unless the time is extended by the Planning Director for good cause shown.
6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.

(5) *Eligible Facilities Requests and Collocations*

Collocation and eligible facilities requests, as defined in G.S. 160D-931 or 47 U.S.C. 1455, shall be processed in accordance with G.S. 160D-933, 160D-934, and/or federal laws and regulations as appropriate. In approving any eligible facilities request, the Town solely intends to comply with a requirement of federal law or state law and not to grant any property rights or interests except as compelled by federal or state law. Without limitation, approval does not exempt applicant from, or prevent Town from, opposing a proposed modification that is subject to complaint under the National Historic Preservation Act or the National Environmental Policy Act. Collocations are only permitted as provided in LDO Section 5.2.4(D)(6) or (7).

(6) *Non-Stealth Telecommunications Facility on Existing Building or Structure*

Non-Stealth Telecommunications facilities on existing buildings or structures shall be allowed as a permitted use on land used for any purpose in nonresidential zoning districts, and on land used for non-residential purposes in the R-40 district, R-80 district, Planned Development District and Mixed Use Overlay District. Non-stealth telecommunications facilities on existing buildings or structures are prohibited in the public right-of-way.

(a) *Height*

- (i) Non-stealth telecommunications facilities on existing buildings or structures located outside of the right-of-way and not on an existing utility pole shall have a maximum height as described in Table 5.2-3. The antenna portion of a non-stealth telecommunications facility on an existing building or structure shall not exceed ten (10) feet in height.

**TABLE 5.2-3:
MAXIMUM HEIGHT FOR NON-STEALTH TELECOMMUNICATIONS FACILITY ON EXISTING
BUILDINGS OR STRUCTURES (outside of right-of-way, not on utility pole)**

Structure Height	Maximum Height (including antennae; measured from the height of the structure)
Over one-hundred fifty (150) feet	Fifteen (15) percent of structure height
Seventy-five (75) to one hundred forty-nine (149) feet	Twenty-five (25) percent of structure height
Less than seventy-five (75) feet	Forty (40) percent of structure height

(ii) Non-stealth telecommunications facilities are not permitted to locate on an existing utility pole.

- (b) The ground-mounted components of non-stealth telecommunications facilities on existing buildings or structures shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted above ground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.
- (c) All structure-mounted telecommunications facilities shall be designed to meet current building standards and wind load requirements.

(7) Concealed (Stealth) Telecommunications Facilities

(a) Design Considerations and Visibility

Concealed (stealth) wireless support structures shall be designed to complement the physical landscape in which they are intended to be located. Examples of stealth wireless support structures that may be compatible include but are not limited to faux pine trees, unipoles/slick sticks, bell towers, etc. New stealth wireless support structures shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape, horizon, and adjacent properties. New freestanding stealth wireless support structures shall be designed to be compatible with adjacent structures and landscapes with specific design considerations such as architectural designs, scale, color, and texture.

(b) Review and Decision Authority

The decision authority and review type for applications for new concealed (stealth) wireless support structures shall be in accordance with the following:

Max. Height	Location of Proposed Stealth Wireless Support Structure		
	Residentially-Zoned Land Used for Residential Purposes or Vacant	Non-Residential Zoning District	Residentially-Zoned Land Used for Non-residential Purposes
up to 150 feet	A	A	A
greater than 150 feet, up to 175 feet	B	A	A
greater than 175 feet, up to max. height allowed	B	A	A

A — Planning Director * — Permitted Use with Development Plan Review;

B — Zoning Board of Adjustment — Special Use and Development Plan Review

* *Review and decision by the Planning Director is only permitted when no reduction in the minimum required setback(s) is requested. If a reduction of the minimum setback(s) is requested for wireless support structures that could otherwise be reviewed and decided upon by the Planning Director, review and decision by the Zoning Board of Adjustment shall be required pursuant to LDO Section 5.2.4(D)(8)(b).*

(c) Setbacks

Stealth wireless support structures must comply with the minimum building setback for the zoning district in which they are located and shall also be set back as follows:

1. From all existing dwellings in a non-residential zoning district by a minimum of the height of the proposed wireless support structure;
2. From the property line of non-residentially zoned property by a distance equal to one-half (1/2) the height of the proposed wireless support structure, but in no case less than the minimum required buffer width (see Chapter 7 of this Ordinance).
3. From the property line of all residentially-zoned property that is used for residential purposes or is vacant by a minimum of the height of the proposed wireless support structure;
4. From the property line of all residentially-zoned property used for non-residential purposes by a distance equal to one-half (1/2) the height of the proposed wireless support structure, but in no case less than the minimum required buffer width (see Chapter 7 of this Ordinance); and
5. From adjacent road right-of-way boundaries by the height of the proposed wireless support structure.

(d) Height

The maximum permitted height for stealth wireless support structures is one-hundred ninety-nine (199) feet.

(e) Stealth Antennae

Stealth antennae shall be allowed as a permitted use in all non-residential zoning districts, and on residentially-zoned land used for non-residential purposes. A special use permit granted by the Zoning Board of Adjustment is required to erect or install any stealth antenna(e) in the RMF zoning district. Unless otherwise allowed above, stealth antennae shall be prohibited in all other residential zoning districts. If located in the right-of-way of any public road or street, stealth antennae shall be located on an existing utility pole which does not exceed a height of thirty-five (35) feet above the immediate surrounding ground. Stealth antennae located on an existing utility pole, whether inside or outside of the right-of-way, shall not be higher than ten (10) feet above the highest point of the pole. The ground-mounted components of stealth antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted aboveground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.

(8) Other Freestanding Non-stealth Wireless Support Structures**(a) Review and Decision Authority**

1. In non-residential zoning districts, a special use permit granted by the Zoning Board of Adjustment is required to erect any freestanding non-stealth wireless support structure within two hundred (200) feet of the property line of any property used, zoned, or otherwise approved (e.g., MXD, MUSP, PDD, etc.) for residential purposes.
2. In non-residential zoning districts, freestanding non-stealth wireless support structures located more than two hundred (200) feet from the property line of any property used, zoned or otherwise approved (e.g., MXD, MUSP, PDD, etc.) for residential purposes may be permitted without a special use.
3. A special use permit granted by the Zoning Board of Adjustment is required to erect a freestanding non-stealth wireless support structure in the R40 or R80 zoning districts.
4. If a request for reduction of the minimum required setbacks listed in Section 5.2.4(D) is associated with a freestanding non-stealth wireless support structure that could otherwise be reviewed and decided upon by the Planning Director, review and decision by the Zoning Board of Adjustment under a development plan and special use review as part of a quasi-judicial hearing process shall be required pursuant to LDO Section 5.2.4(D)(8)(b).

(b) Setbacks

Freestanding non-stealth wireless support structures must comply with the minimum building setback for the zoning district in which they are located and shall also be set back as follows:

1. From all existing dwellings in a non-residential zoning district by a minimum of two-hundred (200) feet or two times (2x) the height of the proposed wireless support structure, whichever is greater;

2. From the property line of non-residentially zoned property by the height of the proposed wireless support structure;
3. From the property line of all residentially-zoned property that is used for residential purposes or is vacant by a minimum of two-hundred (200) feet or two times (2x) the height of the proposed wireless support structure, whichever is greater;
4. From the property line of all residentially-zoned property used for non-residential purposes by the height of the proposed wireless support structure; and
5. From adjacent road right-of-way boundaries by the height of the proposed wireless support structure.

(c) Height

The maximum permitted height for freestanding non-stealth wireless support structures is three-hundred fifty (350) feet.

(9) *Additional Requirements/Standards for All Wireless Support Structures*

(a) Existing Wireless Support Structures

New antennae may be co-located upon wireless support structures that exist on the effective date of this Ordinance. A request for an increase in height for an existing wireless support structure shall require issuance of a special use permit by the Zoning Board of Adjustment if a special use permit would be required to erect a new wireless support structure at the requested height.

(b) Collocation Required

Wireless support structures shall be constructed to accommodate antenna arrays as follows:

1. All freestanding wireless support structures up to one hundred twenty (120) feet in height shall be engineered and constructed to accommodate no less than four (4) antenna arrays.
2. All wireless support structures between one hundred twenty-one (121) feet and one hundred fifty (150) feet shall be engineered and constructed to accommodate no less than five (5) antenna arrays.
3. All wireless support structures between one hundred fifty-one (151) feet and taller shall be engineered and constructed to accommodate no less than six (6) antenna arrays.

(c) General Development Standards

1. Design and Neighborhood Compatibility

- a. The exterior appearance of all associated support structures and buildings shall be compatible with the other buildings in the

surrounding area. Telecommunications facilities shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Telecommunications facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

- b. The review and decision body may require the applicant to apply to the Federal Aviation Administration (FAA) for compliance with FAA standards for a dual lighting system rather than a red and white marking pattern, when the review and decision-making body determines such a marking pattern would cause aesthetic blight due to the visibility of the wireless support structure.
- c. Support buildings located in any residential district may not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
- d. No sign shall be permitted on any telecommunications facility except for official or public notice or warning signs required by a valid and applicable federal, state, or local law, regulation or chapter; by a public utility company; or by order of a court of competent jurisdiction.

2. Buffering and Screening

- a. All fences and walls shall be screened in accordance with the requirements of Chapter 7 of this Ordinance.
- b. The base of the wireless support structure and each guy anchor shall be surrounded by an opaque fence or wall at least eight (8) feet in height.

(d) Neighborhood Meeting

At the time of submitting an application for a proposed wireless support structure that requires approval as a special use, the applicant shall submit written documentation that they have conducted a neighborhood meeting, to which owners of property within four hundred (400) feet of the subject property have been invited, to explain the proposed facility and answer questions. Documentation should include the time, date, and location of the meeting; a list of meeting attendees; a brief summary of any presentations and/or information discussed; and questions/concerns expressed by neighboring property owners.

(e) Balloon Test

A balloon test shall be required for all wireless support structures that require approval as a special use proposed within four hundred (400) feet of property zoned and used or otherwise approved for residential purposes. The balloon test shall be required prior to the submittal of photo simulations in order to

illustrate the proposed height of the wireless support structure. The applicant shall arrange to raise a colored balloon no less than three (3) feet in diameter at the maximum height of the proposed wireless support structure, and within fifty (50) horizontal feet of the center of the proposed wireless support structure.

The applicant shall meet the following for the required balloon test:

1. Applicant must inform the Planning Department and abutting property owners within four hundred (400) feet of the subject property in writing of the date and times, including alternative date and times, of the test at least fourteen (14) days in advance.
2. The date, time, and location, including alternative date, time and location, of the balloon test shall be advertised in a locally distributed paper by the applicant at least seven (7) but no more than fourteen (14) days in advance of the test date.
3. The balloon shall be flown at the required height for at least four (4) consecutive hours during daylight hours on the date chosen. The applicant shall record the weather conditions during the balloon test.

(10) *Additional Requirements/Standards for All Telecommunications Facilities Requiring a Special Use Permit*

(a) Availability of Existing Structures

Applicants seeking a special use permit for wireless support structures greater than seventy-five (75) feet in height, and proposed to be located within three thousand (3,000) feet of any other wireless support structure greater than seventy-five (75) feet in height, shall provide evidence that reasonable efforts have been made to lease or otherwise acquire space on all existing, planned, or constructed wireless support structures. No new freestanding wireless support structure shall be permitted unless the applicant demonstrates that no existing or previously approved wireless support structure can reasonably be used for the telecommunications facility placement instead of the construction of a new wireless support structure; that residential, historic, and designated scenic areas cannot be served from outside the area; or that the proposed height of a new wireless support structure or initial telecommunications facility placement or a proposed height increase of a substantially changed wireless support structure, or replacement wireless support structure, is necessary to provide the applicant's designed service. Collocation on an existing wireless support structure is not reasonably feasible if collocation is technically or commercially impractical or the owner of the wireless support structure is unwilling to enter into a contract for such use at fair market value.

(b) Setback Reductions

1. In considering an application for special use and/or development plan for telecommunications facilities, the ZBOA may grant a reduction of the minimum required setbacks listed in Section 5.2.4(D) upon consideration of circumstances or aspects which reduce the off-site effects of the facility on adjacent properties. Such circumstances or aspects may include, but are not limited to: topography; berms; the proximity of existing or potential uses; existing vegetation and improvements made or proposed to the site

to obscure or reduce the visibility of the wireless support structure from adjacent properties; the concentration of existing and/or proposed wireless support structures in the area; and whether the height, design (including structural features), placement or other characteristics of the proposed wireless support structure could be modified to have a less intrusive impact.

2. Requests under this sub-section may be approved provided that such action is not inconsistent with the general purposes and applicable approval criteria of this Ordinance. The ZBOA, in considering any request(s) for reduction of the minimum required setbacks under this Section, shall consider any unique circumstances for such a request(s).

(c) Conditions

Notwithstanding any of the standards of this Section, the ZBOA may require any other reasonable conditions (including any modifications of the standards in this Section 5.2.4(D)) to mitigate the impact of the wireless support structure on adjacent properties and uses including, but not limited to, conditions or modifications related to the style, height, and design of the facility.

(11) *Outside Experts and Disputes*

- (a) Review by an outside consultant shall be required for all facilities requiring approval of a special use permit. The fee for review by the outside consultant shall be collected together with the application fee for the special use permit. Additional reasonable and cost based fees may be imposed for costs incurred should the applicant amend its application. Selection of the outside consultant shall be at the sole discretion of the Town.
- (b) If an applicant for a telecommunications facility claims that one (1) or more standards of this Ordinance are inconsistent with federal law as applied to a particular property, or would prohibit the effective provision of wireless communications within the relevant market area, the decision-making body may require that the application be reviewed by a qualified engineer for a determination of the accuracy of such claims. Any costs shall be charged to the applicant.

(12) *Standard Conditions*

- (a) Applicant must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of the proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section 5.2.4(D) is not in lieu of any other permit required under the LDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the LDO, is not valid. No person may maintain a telecommunications facility in place unless required state or federal authorization remain in force.

- (b) All telecommunications facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The telecommunications facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. All the telecommunications facility equipment must be removed upon the expiration/termination/revocation of the approval and/or when no longer in operation, whichever occurs first.

In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification. If a telecommunications facility or portions of a telecommunications facility are taken out of service, the components must be removed within thirty (30) business days of being taken out of service, and affected facilities restored to their prior condition.

- (c) The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- (d) Any approval issued by the Town for a new wireless support structure or collocation that is a substantial change shall be conditioned on the construction of the approved facilities within twenty-four (24) months.
- (e) The applicant or owner shall maintain onsite at the telecommunications facility contact information for all parties responsible for maintenance of the facility.
- (f) Telecommunications facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.
- (g) After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense and according to the then-existing standards for telecommunication facilities, of any telecommunication facility located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.
- (h) Collocation or modification of telecommunications facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitute an eligible facilities request.
- (i) No portion of a telecommunications facility may be placed in the public right-of-way in a manner that:
 - 1. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference;

2. Results in ground-mounted, above-ground equipment cabinets in the public right-of-way associated with the support structure that are ten percent (10%) larger in height or overall volume than other equipment cabinets in the same area; or
3. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.

(13) Submittal Requirements

- (a) In addition to the submittal requirements of Sections 3.8 (Special Uses) and 3.9 (Subdivision Plats and Development Plans) of this Ordinance, as may be applicable, applications for proposed telecommunications facilities shall also include maps, reports, and documents as specified by the Planning Director. At a minimum, this information shall describe the facility with regard to its proposed location, design, and operation; and, if applicable, a clear statement that the request is being made as an eligible facilities request under state law and/or federal law.
- (b) If, as part of review by an outside expert, additional submittal information is determined to be necessary in order to review the application for compliance with this Ordinance, such information shall be required regardless of the items initially submitted with the application.

(14) Nonconforming Setbacks for Existing Wireless Support Structures

Wireless support structures that do not meet the minimum required setbacks from lots that were created after the construction of the wireless support structure shall be deemed conforming with regard to setbacks for the purposes of Section 5.2.4(D).

Note: Refer to Section 6.2.2(C) for requirements associated with creating residentially zoned lots from an existing lot or parcel that contains a wireless support structure (stealth or non-stealth).

(E) Research Laboratory

In the MXDR subdistrict of the TC district, such uses shall be permitted by right based upon the following conditions:

- (1) Such uses must be lawfully established prior to July 1, 2003;
- (2) Expansion of the building(s) or increased use of the site beyond that legally established on July 1, 2003 is permitted by right, provided that such expansions comply with the TC district standards;
- (3) Maintenance and minor repair of structures and/or the site is permitted by right;
- (4) If the use ceases or is interrupted for more than one hundred and eighty (180) consecutive days, then the use shall not be re-established;

- (5) An addition of land to a parcel or site containing such uses through an action of the owner or their agent after July 1, 2003 shall require special use permit approval (see Section 3.8).

(F) Warehousing and Distribution Establishment and Wholesale Establishment

- (1) In the HMXD and MXD subdistricts of the TC district, such uses may be permitted based upon the following conditions:
 - (a) Such uses must be lawfully established prior to July 1, 2003;
 - (b) Expansion of the building(s) or increased use of the site beyond that legally established on July 1, 2003 is permitted by right, provided that such expansions comply with the TC district standards;
 - (c) Maintenance and minor repair of structures and/or the site is permitted by right;
 - (d) If the use ceases or is interrupted for more than one hundred and eighty (180) consecutive days, then the use shall not be re-established;
- (2) In the HMXD and MXD subdistricts of the TC district, such uses may be permitted with a special use permit (see Section 3.8) if there is an addition of land to a parcel or site containing such uses through an action of the owner or their agent after July 1, 2003.

(G) Light Industrial

- (1) In the HMXD and COM Sub-districts of the Town Center, goods produced on site shall be available for retail purchase on the site.
- (2) In the MXD Sub-district of the Town Center, such use shall be allowed by right if goods produced on site are available for retail purchase on the site. Otherwise, such use may be allowed as a special use.

(H) Small Wireless Facilities

(1) Purpose

The purpose of this section is to:

- (a) Minimize the impacts of small wireless facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- (b) Encourage the location and collocation of small wireless facilities equipment on existing structures thereby minimizing new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- (c) Encourage coordination between suppliers of small wireless facilities in the Town of Cary and its planning and development regulation jurisdiction;
- (d) Accommodate the growing demand for wireless services and the resulting need for small wireless facilities;
- (e) Regulate in accordance with all applicable federal and state laws;

- (f) Establish review procedures to ensure that applications for small wireless facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- (g) Protect the unique aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- (h) Encourage the use of existing buildings and structures as locations for small wireless facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.

It is not the purpose or intent of this section to prohibit, have the effect of prohibiting, or materially limit or inhibit wireless communications services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the small wireless facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the town must approve under state or federal law. The provisions of this Section 5.2.4(H) are in addition to, and do not replace, any obligations an applicant may have under any franchises, licenses, encroachments, or other permits issued by the Town.

(2) **Definitions**

The following terms shall be defined as follows:

ACCESSORY EQUIPMENT means any equipment installed and owned by a third party used to deliver a service (other than a communications service) to a telecommunications facility, such as an electric meter.

ANTENNA has the same meaning as the term “antenna” defined in G.S. Chapter 160D, Article 9, Part 3.

APPLICABLE CODES has the same meaning as the term “applicable codes” defined in G.S. Chapter 160A, Part 3E.

BASE STATION means a structure or equipment at a fixed location that enables Federal Communications Commission licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a wireless support structure or any equipment associated with such structure. The term includes wireless facilities.

1. The term includes, but is not limited to, equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.
2. The term includes, but is not limited to, radio transceivers, antennae, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including Distributed Antenna Systems and small wireless facilities).
3. The term includes any structure other than a wireless support structure that, at the time the relevant application is filed with the Town under this section, supports or houses equipment described in paragraphs (1) through (2) above

that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing such support.

4. The term does not include any structure that, at the time the relevant application is filed with the Town under this ordinance, does not support or house equipment described in paragraphs (1)-(2) above.

CITY UTILITY POLE has the same meaning as the term “city utility pole” as defined in G.S. Chapter 160D, Article 9, Part 3.

COLLOCATION has the same meaning as the term “collocation” as defined in G.S. Chapter 160D, Article 9, Part 3.

CONCEALED WIRELESS FACILITY, CONCEALED WIRELESS SUPPORT STRUCTURE, or CONCEALED ANTENNA means a stealth wireless facility, stealth wireless support structure, or stealth antenna.

CONCEALMENT ELEMENT means any design feature, including but not limited to painting, shielding requirements, shrouds, and restrictions on location or height in relation to the surrounding area that are intended to make a telecommunications facility less visible to the casual observer and to make the facility look like something other than a telecommunications facility. The design elements of a concealed (stealth) telecommunications facility are concealment elements. Concealment elements need not have been explicitly articulated as a condition or requirement of a prior approval; any design element considered by the Town in its approval of a stealth wireless support structure or stealth wireless facility is a concealment element, including requirements for walls or fences surrounding equipment. Such design elements are intended to be conditions ensuring the equipment is fully obscured and looks like something other than a telecommunications facility.

ELIGIBLE FACILITIES REQUEST means any request for modification of an existing wireless support structure or base station that does not substantially change the physical dimensions of such telecommunications tower or base station, as defined in either 47 C.F.R. 1.40001(b) or G.S. Chapter 160D, Article 9, Part 3.

MONOPOLE means a single, self-supporting, freestanding pole-type structure built for the sole purpose of supporting one or more antennae. For the purposes of this LDO, a utility pole is not a monopole.

QUALIFYING CITY UTILITY POLE means a modified or replacement city utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such city utility pole.

QUALIFYING SMALL WIRELESS FACILITY means a new small wireless facility that does not extend more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated and is located either (i) in the Town right-of-way or (ii) outside of Town right-of-way on non-residential or multi-family residential property.

QUALIFYING UTILITY POLE means a new utility pole or a modified or replacement utility pole that does not exceed fifty (50) feet above ground level and that is associated with a new small wireless facility that does not extend more than ten (10) feet above such utility pole.

SHROUD means a box or other container that contains, and is designed to camouflage or conceal the presence of, a telecommunications facility, antenna, or accessory equipment.

SMALL WIRELESS FACILITY has the same meaning as the term “small wireless facility” as defined in G.S. Chapter 160D, Article 9, Part 3.

STEALTH WIRELESS FACILITY, STEALTH WIRELESS SUPPORT STRUCTURE, or STEALTH ANTENNA means any telecommunications facility, wireless support structure, or antenna that is integrated as an architectural feature of a structure or that is designed to camouflage or conceal the presence of the telecommunications facility, wireless support structure, or antenna so that the purpose of the telecommunications facility, wireless support structure, or antenna is not readily apparent to a casual observer. Any telecommunications facility, wireless support structure, or antenna that was approved with concealment elements is a stealth wireless facility, wireless support structure, or antenna.

SUBSTANTIAL CHANGE has the same meaning as the term “substantial change” as defined by Federal Communications Commission regulations, 47 CFR 1.40001(b)(7).

SUBSTANTIAL MODIFICATION has the same meaning as the term “substantial modification” as defined in G.S. Chapter 160D, Article 9, Part 3.

TELECOMMUNICATIONS FACILITY means a facility consisting of a base station and accessory equipment, and the utility pole, city utility pole, or wireless support structure, if any, associated with the facility.

UTILITY POLE has the same meaning as the term “utility pole” as defined in G.S. Chapter 160D, Article 9, Part 3.

WIRELESS FACILITY has the same meaning as the term “wireless facility” as defined in G.S. Chapter 160D, Article 9, Part 3. The term includes small wireless facilities.

WIRELESS SUPPORT STRUCTURE has the same meaning as the term “wireless support structure” as defined in G.S. Chapter 160D, Article 9, Part 3. A utility pole or city utility pole is not a wireless support structure.

(3) *Siting*

To protect the unique aesthetics of the Town, to minimize new visual, aesthetic, and public safety impacts, and to reduce the need for additional antenna-supporting structures, the Town prefers that small wireless facilities be located outside the public right-of-way; collocated on existing utility poles or wireless support structures; concealed; and have their accessory equipment mounted on the utility pole or wireless support structure. These preferences are intended as guidance for development of an application for small wireless facilities.

(4) *Applicability; Compliance with Law; Exemptions*

- (a)** The standards established herein shall apply only to qualifying small wireless facilities, qualifying utility poles, and qualifying city utility poles, as defined herein. Nothing in this ordinance shall be interpreted to excuse compliance with, or to be in lieu of, any other requirement of state or local law, except as specifically provided herein. Without limitation, the provisions of this ordinance do not permit placement of small wireless facilities on privately-owned utility poles or wireless

support structures, or on private property, without the consent of the property owner or any person who has an interest in the property.

(b) Unless expressly set forth herein, the following categories of small wireless facilities are exempt from the requirements in Section 5.2.4(H), provided they meet the location and design requirements set forth below:

1. Any telecommunications facility below sixty-five (65) feet when measured from ground level which is owned and operated by an amateur radio operator licensed by the Federal Communications Commission and used exclusively for amateur radio operations.
2. Over the air reception devices covered under 47 C.F.R. § 1.4000, so long as it satisfies the requirements set forth in Section 5.3.4(F)(2).
3. Eligible facilities requests that satisfy the requirements set forth in Section 5.2.4(D)(5).
4. Routine maintenance of small wireless facilities; the replacement of small wireless facilities with small wireless facilities that are the same size or smaller; or installation, placement, maintenance, or replacement of micro wireless facilities (as defined in G.S. Chapter 160D, Article 9, Part 3) that are suspended on cables strung between existing utility poles or city utility poles in compliance with all applicable laws or regulations by or for a communications service provider authorized to occupy the Town rights-of-way and who is remitting taxes under G.S. 105-164.4(a)(4c) or (a)(6).
5. A temporary small wireless facility, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the Town of Cary; except that such facility must comply with all federal and state requirements and must be removed at the conclusion of the emergency.
6. Public safety facilities or installations required for public safety on public or private property, including transmitters, repeaters, and remote cameras so long as the facilities are designed to match the supporting structure.
7. A small wireless facility located in an interior structure or upon the site of any stadium or athletic facility, provided that the small wireless facility complies with applicable codes.

(5) Collocation of Small Wireless Facilities

Collocation of small wireless facilities on land used as single-unit residential property or vacant land that is zoned for single-unit residential development, and any small wireless facility that extends more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated, are subject to LDO Section 5.2.4(D). Notwithstanding the foregoing, replacement of an existing streetlight for which the Town is financially responsible with a streetlight capable of including a collocated, concealed small wireless facility is permitted on land used as single-unit residential property or vacant land that is zoned for single-unit residential development, pursuant to the requirements of Section 5.2.4(H)(6).

Collocations of qualifying small wireless facilities in Town right-of-way or outside of Town right-of-way on land that is in a non-residential zoning district or land that is used for non-single-unit residential property, are subject to the following requirements:

- (a) **Application.** Applicants must complete an application as specified in form and content by the Town.
- (b) **Height.** Each new small wireless facility shall not extend more than ten (10) feet above the utility pole, city utility pole, or wireless support structure on which it is collocated.
- (c) **Public Safety.** In order to protect public safety:
 - (1) Small wireless facilities shall cause no signal or frequency interference with public safety facilities or traffic control devices and shall not physically interfere with other attachments that may be located on the existing pole or structure.
 - (2) A structural engineering report prepared by an engineer licensed by the State of North Carolina shall be submitted by the applicant, certifying that the host structure is structurally and mechanically capable of supporting the proposed additional antenna or configuration of antennae and other equipment, extensions, and appurtenances associated with the installation.
 - (3) A traffic and pedestrian management plan must be submitted for any installation that requires work in the public right-of-way.
 - (4) No portion of a small wireless facility may be placed in the public right-of-way in a manner that:
 - i. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - ii. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.
 - (5) An abandoned small wireless facility shall be removed within one hundred eighty (180) days of abandonment.
- (d) **Objective Design Standards.**
 - (1) No signs are permitted on small wireless facilities except for official or public notice or warning signs required by a valid and applicable federal, state, or local law, regulation or chapter; by a public utility company; or by order of a court of competent jurisdiction.
 - (2) Small wireless facilities shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Small wireless facilities shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

(e) Stealth and Concealment.

- (1) All small wireless facilities shall be stealth facilities. Antenna and accessory equipment must be shrouded or otherwise concealed. Small wireless facilities shall blend with or match the structure to which they are attached.
- (2) Small wireless facilities to be collocated with a streetlight must be designed such that all cabling is inside the streetlight pole.

(f) Screening, Landscaping, and Spacing Requirements for Ground Equipment.

- (1) Ground equipment shall be screened, to the extent possible, with evergreen plantings or other acceptable alternatives approved by the Planning Director.

(g) Historic Preservation.

- (1) Small wireless facilities located in designated historic districts or on property designated as a landmark (pursuant to G.S. Chapter 160D, Article 9, Part 4) shall be required to obtain a Certificate of Appropriateness as required by LDO Section 3.27.

(h) Applicable Codes.

- (1) Small wireless facilities must meet applicable codes.

(6) *Utility Poles and City Utility Poles Associated with Small Wireless Facilities*

The placement of new utility poles is prohibited by the Town's undergrounding requirements in LDO Section 8.1.4(E)(2), unless permitted by that section. Modification or replacement of qualifying utility poles and qualifying city utility poles existing as of December 14, 2017, is not prohibited; however, the maintenance, modification, operation, or replacement of qualifying utility poles and qualifying city utility poles associated with small wireless facilities are subject to the following requirements:

(a) Application.

Applicants must complete an application as specified in form and content by the Town.

(b) Height.

Each modified or replacement utility pole or city utility pole shall not exceed (i) forty (40) feet above ground level on property zoned for or used as single-unit residential property, or in the right-of-way adjacent to such property, where existing utilities are installed underground, unless a variance is granted pursuant

to LDO Section 3.20; or (ii) fifty (50) feet above ground level on all other property. Each new small wireless facility shall not extend more than ten (10) feet above the associated utility pole, city utility pole, or wireless support structure on which it is collocated.

(c) Small Wireless Facilities.

All requirements of LDO Section 5.2.4(H)(5) apply to small wireless facilities located on a utility pole, city utility pole, or wireless support structure.

(d) Public Safety.

In order to protect public safety:

- (1)** No replacement utility poles or city utility poles associated with a small wireless facility are permitted in the clear zone as defined in the Town of Cary Standard Specifications & Details Manual unless such replacement pole is breakaway rated.
- (2)** No portion of a utility pole or city utility pole associated with a small wireless facility may be placed in the public right-of-way in a manner that:
 - i. Obstructs pedestrians or vehicular or bicycle access, obstructs sight lines or visibility for traffic, traffic signage, or signals; or interferes with access by persons with disabilities. An applicant may be required to place equipment in vaults to avoid obstructions or interference; or
 - ii. Involves placement of pole-mounted equipment (other than cabling) whose lowest point is lower than eight (8) feet above ground level.

(e) Objective Design Standards.

- (1)** No signs are permitted on utility poles or city utility poles except for official or public notice or warning signs required by a valid and applicable federal, state, or local law, regulation or chapter; by a public utility company; or by order of a court of competent jurisdiction.
- (2)** Utility poles or city utility poles associated with a small wireless facility shall be blended with the natural surroundings as much as possible. Colors and materials shall be used that are compatible with the surrounding area, except when otherwise required by applicable federal or state regulations. Utility poles or city utility poles associated with a small wireless facility shall be located, designed, and/or screened to blend in with the existing natural or built surroundings to reduce the visual impacts as much as possible, and to be compatible with neighboring land uses and the character of the community.

(f) Stealth and Concealment.

- (1)** All antenna and accessory equipment must be shrouded or otherwise concealed and shall blend with or match the pole to which they are attached.

- (2) Small wireless facilities to be collocated with a streetlight must be designed such that all cabling is inside the streetlight pole.

(g) Historic Preservation.

- (1) Utility poles or city utility poles associated with a small wireless facility located in designated historic districts or on property designated as a landmark (pursuant to G.S. Chapter 160D, Article 9, Part 4) shall be required to obtain a Certificate of Appropriateness as required by LDO Section 3.27.

(h) Applicable Codes.

- (1) Utility poles and city utility poles associated with a small wireless facility must meet applicable codes.

(7) Standard Conditions

- (a) Applicant must obtain all other required permits, authorizations, approvals, agreements, and declarations that may be required for installation, modification, and/or operation of the proposed facility under federal, state, or local law, rules, or regulations, including but not limited to encroachment agreements and FCC approvals. An approval issued under this Section 5.2.4(H) is not in lieu of any other permit required under the LDO or Town Code, nor is it a franchise, license, or other authorization to occupy the public right-of-way, or a license, lease, or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the LDO, is not valid. No person may maintain a small wireless facility in place unless required state or federal authorization remain in force.
- (b) All small wireless facilities and related equipment, including but not limited to fences, cabinets, poles, and landscaping, shall be maintained in good working condition over the life of the use. This shall include keeping the structures maintained to the visual standards established at the time of approval. The small wireless facility shall remain free from trash, debris, litter, graffiti, and other forms of vandalism. Any damage shall be repaired as soon as practicable, and in no instance more than thirty (30) calendar days from the date of notification by the Town. In public rights-of-way, damaged or deteriorated components must be corrected within five (5) business days of notification.
- (c) The property owner(s) or applicant shall submit a certification letter from a North Carolina certified land surveyor or licensed engineer which verifies that structure height complies with the approved development plan.
- (d) The applicant or owner shall maintain onsite at the facility contact information for all parties responsible for maintenance of the facility.
- (e) Small wireless facilities, whether operating alone or in conjunction with other facilities, shall not generate radio frequency emissions in excess of the standards established by the Federal Communications Commission.
- (f) After written notice to the applicant and/or owner, the Town may require the relocation, at the applicant/owner's expense, of any small wireless facility, and the associated

utility pole, city utility pole, or wireless support structure on which it is collocated, located in the public right-of-way, as necessary for maintenance or reconfiguration of the right-of-way or for other public projects, or take any other action or combination of actions necessary to protect the health and welfare of the Town.

- (g) Collocation or modification of small wireless facilities on an existing non-conforming wireless support structure or base station shall not be construed as an expansion, enlargement, or increase in intensity of a non-conforming structure and/or use, provided that the collocation or modification constitute an eligible facilities request.
- (h) Collocation of small wireless facilities shall commence within six (6) months of approval and each small wireless facility shall be activated for use no later than one (1) year from the date of approval. These time limits shall be extended if delay is caused by a lack of commercial power to the small wireless facility. The Planning Director may grant an extension of these time limits, for good cause shown, upon receiving a request from the applicant before the expiration of the applicable time limit. Section 3.9.2(k)(2) of the LDO shall not apply to collocation of small wireless facilities.

(I) Brewery, Distillery, or Winery

(1) *GC, MXD, HMXD, MXD, CLI, COM*

Breweries, distilleries, or wineries in the GC district, Mixed Use District, or HMXD, MXD, CLI or COM subdistricts of the Town Center shall include either a tasting room or restaurant, which shall be open to the public.

(2) *Industrial District*

Breweries, distilleries, or wineries in the Industrial district with a tasting room or restaurant are allowed only as a special use.

(3) *Outdoor Activities Requiring a Special Use Permit*

- (a) In all districts, any brewery, distillery, or wineries proposed to include an outside amphitheater, stage, or provision for live or recorded acoustic or amplified entertainment outside of the building within one hundred (100) feet of the following residential zoning districts shall be allowed only as a special use: R80, R40, R20, R12, R8, TR, RMF, HDR Mid-Rise, HDR Garden, MXDR, MDR, and LDR.
- (b) The one hundred (100) foot distance shall be measured from the center of the outdoor facility to the property line of the nearest residential zoning district specified above.
- (c) Outdoor seating is allowed without a special use permit.

(4) *Outside Storage*

In all districts, storage of materials, products for distribution, and other items requiring long-term storage shall be allowed in areas behind the building, within service alleys, or otherwise screened from view of the public right-of-way or pedestrian way.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-005, adopted 3-23-06; eff. 3-23-06; Ord. No. 06-009, 4-27-06); Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-02, 1-28-10; Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No.

2011-LDO-04, 11-17-11; Ord. No. 2011-LDO-05, 12-15-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-03, 5-10-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2013-LDO-06, 11-21-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2018-LDO-03, 11-15-18; Ord. No. 2018-LDO-04, 12-13-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22; Ord. No. 2023-LDO-03, 6-22-23)

5.3 ACCESSORY USES AND STRUCTURES

5.3.1 Purpose

This section authorizes the establishment of accessory uses that are incidental and customarily subordinate to principal uses. The Town's intent in adopting this Section is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the performance criteria set forth in this section in order to reduce potentially adverse impacts on surrounding properties.

5.3.2 General Standards and Limitations

(A) Compliance with Ordinance Requirements

All accessory uses and accessory structures shall conform to the applicable requirements of this Ordinance, including the use regulations of Chapter 5 and the dimensional standards of Chapter 6. The provisions of this section establish additional requirements and restrictions for particular accessory uses and structures.

(B) Approval of Accessory Uses and Structures

Unless otherwise specified in this Section, any accessory use or accessory structure shall be treated as a permitted use in the zoning district in which it is located. An accessory use or structure may be approved in conjunction with approval of the principal use or structure.

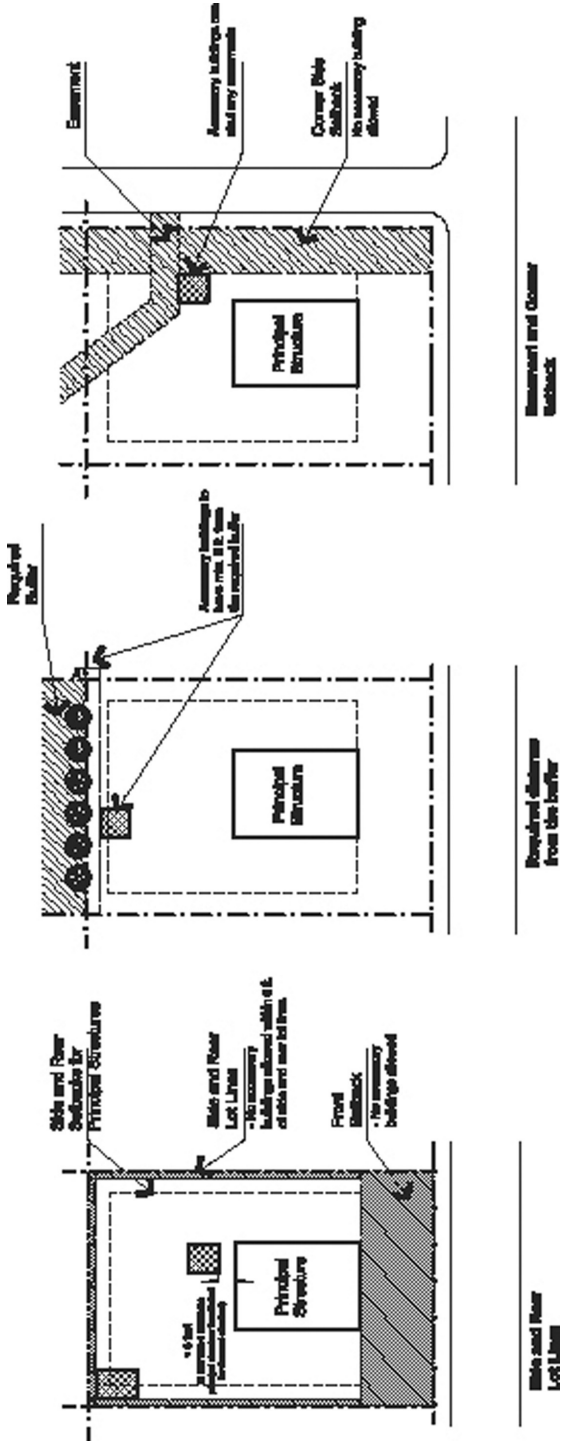
(C) Accessory Use Permit

Some accessory uses in this Section require the issuance of an Accessory Use Permit consistent with the requirements set forth in Section 3.5 of this Ordinance.

(D) Location of Accessory Buildings, Structures, or Vehicles

(1) Definition of Attached Accessory Structure

If an accessory structure other than a garage or similar structure is located closer than five (5) feet to the principal structure, the accessory structure shall be deemed attached to the principal structure.



Location of Accessory Buildings, Structures or Vehicles

(2) General Location Restrictions

Accessory structures or vehicles shall not be located within the following areas:

- (a) a required front setback or corner side setback,
- (b) within five (5) feet of the rear or side lot lines.
- (c) within five (5) feet from the edge of a required buffer.
- (d) within any easements.

In instances where the principal structure is allowed by zoning to be less than five (5) feet from the rear or side property line, the minimum required setback of the accessory structure may equal the setback of the principal structure provided the accessory structure complies with all applicable building code requirements.

(3) Additional Location Restrictions Applicable to Boats, Trailers and Vehicles

Storage or parking of all boats, recreational vehicles and utility or travel trailers or other vehicles allowed by this Section shall be located as follows:

- (a) within a side yard (not including corner side yards) such that they are not closer to the front of a lot or the street than the principal structure;

- (b) within a rear yard (not including rear yards adjacent to a public street); or
- (c) within a corner side yard, or rear yard that is between the principal structure and an adjacent public street, where screened from the view of the street by an opaque fence with a minimum height of six (6) feet, plus additional opaque fencing (up to a height of eight (8) feet) and/or evergreen trees sufficient to obscure the full height of the boat, recreational vehicle, or trailer.

Storage of such boats, vehicles or trailers shall not occur within a front yard (defined as the yard between the façade with the front door and the street) or within a side or rear building setback.

(4) Additional Location Restrictions for Garages and Similar Structures

- (a) Except as provided in Section (b) below, garages and similar accessory structures shall be located no closer to the front of a lot than the principal structure, except where such accessory structure is attached to the principal structure by a minimum of fifty percent (50%) of the length of attached side of the accessory structure.
- (b) Section (a) above shall not apply to garages and similar accessory structures located on lots forty thousand (40,000) square feet or larger, provided that the accessory structure is located a minimum of one hundred (100) feet from the front property line.

This section (4) shall not apply to carports or other structures which are open on three (3) or more sides.

(E) Size of Residential Accessory Buildings and Structures

- (1) For structures accessory to residential uses, the combined floor area of all detached accessory structures shall occupy no more than thirty-three (33) percent of the total heated floor area of the principal structure, unless otherwise allowed in this Ordinance.

This requirement shall not apply to roofed structures without walls (such as carports) provided such structures are not located within the minimum required setbacks for the principal structure on the lot.

For lots forty thousand (40,000) square feet or greater in area:

- a) the combined floor area of all detached accessory structures shall not exceed five percent (5%) of the total lot area;
- b) No single detached structure shall exceed seventy percent (70%) of the total heated floor area of the principal structure, excluding accessory structures for agricultural purposes (e.g. barn).
- c) All detached accessory structures that exceed fifty percent (50%) of the total heated floor area of the principal structure shall meet the minimum required setbacks for the principal structure, regardless of their location on the lot in relation to the principal structure.

(F) Signs

All signs shall be governed by the standards set forth in Chapter 9.

(G) Temporary Accessory Uses and Structures

Temporary accessory uses and structures shall be governed by the standards and temporary use permit procedures set forth in Sections 3.7 and 5.4 of this Ordinance.

5.3.3 Accessory Uses Prohibited**(A) Prohibited in All Zoning Districts**

The following activities shall not be regarded as accessory to a principal use on any site and are prohibited in all zoning districts:

(1) *Use of Travel Trailer, Recreational Vehicle, or Tent as Residence*

The use of a travel trailer, recreational vehicle, or tent as a residence, permanent or temporary is prohibited, with the exception of a trailer approved as a temporary use for security under Section 5.4. However, a recreational vehicle (RV) may be used as a temporary residence for up to two (2) weeks, provided the vehicle is located in the driveway or a side or rear yard, such that the RV is no closer to the front or corner side of a lot than the principal structure. Utilization of an RV as a temporary residence is not considered as "storage" as described in Section 5.3.2.

(2) *Use of Motor Vehicle or Trailer for Sales, Service, Storage, or Other Business*

The use of any motor vehicle, or trailer or shipping container, as a structure in which, out of which, or from which any goods are sold or stored, any services performed, or other businesses conducted. However, this subsection shall not prohibit the following:

- (a) The retail sale of agricultural products, as allowed by Section 5.4.6(D) of this Ordinance; or
- (b) Use of a motor vehicle, trailer, or shipping container in connection with an approved recycling operation; or
- (c) Use of a trailer or shipping container in conjunction with construction authorized by a valid building permit; or
- (d) Use of a trailer or shipping container for the temporary loading and unloading of goods not intended for retail sale, provided that no individual trailer or container is in place longer than forty-eight (48) hours; or
- (e) The operation of a food truck as allowed by Section 5.3.4(P) of this Ordinance.

(B) Prohibited in Residential Zoning Districts

The following activities shall not be regarded as accessory to a residential principal use and are prohibited in residential districts:

(1) *Automotive Repair*

Automotive repair, including engine, body, or other repair or repainting of more than one (1) vehicle at any one (1) time; as well as automotive repair of any vehicle not owned by a person residing at that address, regardless of whether compensation was paid for the service.

(2) *Parking of Business Vehicles*

The storage or parking of a vehicle or trailer, for a period of one (1) or more nights, if the vehicle or trailer is licensed or regularly used for business purposes, and is either:

- (a) A vehicle for which a commercial driver's license is required by state law; or
- (b) A vehicle or trailer having in excess of two (2) axles; or
- (c) Any trailer bearing commercial signage, logo, or carrying commercial or industrial equipment or materials; or
- (d) A vehicle or trailer having a height in excess of ninety (90) inches, which is stored or parked in any yard.

5.3.4 Accessory Uses and Structures Allowed**(A) *Accessory Dwelling Units***

An accessory dwelling unit shall be permitted as an accessory use subject to the following standards:

(1) *Districts Allowed*

Accessory dwelling units, including temporary health care structures as provided in G.S. 160D-915, shall be allowed as accessory uses to principal residential uses as depicted in Table 5.1-1 as well as the following:

- (a) In planned developments where such uses are indicated in the Planned Development Master Plan; and
- (b) In the TC district, as allowed by Section 4.2.2(N).

(2) *Where Permitted on Lot*

A permitted accessory dwelling unit shall comply with all applicable site and building design, access, and other standards for principal dwelling units in the zoning district in which the accessory dwelling unit will be located; except that such structures, not including temporary health care structures, shall only be required to meet the setback requirements for accessory structures. Temporary health care structures shall comply with all setback requirements that apply to the primary structure. Manufactured homes, recreational vehicles, and travel trailers shall not be used as accessory dwelling units.

(3) *Size of Accessory Unit*

No accessory dwelling unit shall exceed thirty-three (33) percent of the size of the habitable floor area of the principal dwelling unit, or eight hundred (800) square feet, whichever is less, except that a temporary health care structure may have no more than 300 gross square feet. An accessory dwelling unit shall contain private sanitary facilities with hot and cold running water and cooking and food storage facilities.

(4) *Limit on Number*

There shall be no more than one (1) accessory dwelling unit on a lot in addition to the principal dwelling.

(5) Off-Street Parking

At least one (1) off-street parking space shall be provided for each bedroom located in an accessory dwelling unit.

(6) Home Occupations

Home occupations shall be prohibited within an accessory dwelling unit.

(B) Utility Dwelling Units

A utility dwelling unit shall be permitted within a principal single-unit dwelling, provided the following conditions are met that insure the use is consistent with such a unit:

- (1)** The utility dwelling unit is within, connected by covered walkway, or situated within five (5) feet of the principal dwelling located on its own lot;
- (2)** The combination of the utility dwelling unit and the principal structure on the lot continue to meet the minimum setback requirements for a single-unit dwelling;
- (3)** The utility dwelling unit shall contain no more than thirty-three (33) percent of the gross livable floor area of the total dwelling, or more than eight hundred (800) square feet, whichever is smaller. The separate bathroom facilities must include a toilet and bathing facilities;
- (4)** Any entrance to the utility dwelling unit from the outside shall not be on the front wall of the principal structure;
- (5)** Home occupations shall be prohibited within a utility dwelling unit; and
- (6)** A minimum total of four (4) off-street parking spaces shall be provided for the principal dwelling and the utility dwelling unit. An exception to this requirement may be approved by the Planning Department if written verification is given by the property owner that the occupants of the utility dwelling unit, due to age or physical disability, will not have vehicles on-site. No more than two (2) vehicles owned by the occupants of the utility dwelling unit will be permitted and must be parked off-street.

(C) Home Occupations

A home occupation shall be permitted as accessory to a principal dwelling unit in accordance with the following:

(1) General Requirements

The following standards apply to all home occupation uses:

(a) Employees and Residency

- (i)** The principal person or persons providing the business or service resides in the dwelling on the premises.
- (ii)** The home occupation employs no more than one (1) person who does not reside on the premises.

(b) Neighborhood Compatibility

- (i) The home occupation causes no change in the external appearance of the existing buildings and structures on the property.
- (ii) There shall be no commercial vehicles, and no more than two (2) noncommercial vehicles associated with the home occupation.
- (iii) There is sufficient off-street parking for patrons of the home occupation, with the number of off-street parking spaces required for the home occupation to be provided and maintained in addition to the space or spaces required for the dwelling itself pursuant to Section 7.8 of this Ordinance.
- (iv) No additional parking areas other than driveways shall be located in the required front setback.
- (v) [Reserved]
- (vi) The property contains no outdoor display or storage of goods or services that are associated with the home occupation.
- (vii) Wholesale or retail sales of goods do not occur on the premises.
- (viii) The home occupation does not create traffic or parking congestion, noise, vibration, odor, glare, fumes, or electrical or communications interference which can be detected by the normal senses off the premises, including visual or audible interference with radio or television reception.

(c) Compliance Regulations for Food Preparation

Prior to receiving an Accessory Use Permit for businesses associated with food preparation or catering, the applicant must show proof of compliance with all County environmental and health regulations and NC State Building Code regulations.

(2) Size and Area**(a) Type I Home Occupation**

A Type I home occupation involves administrative support for the rendering of a service off-site in exchange for monetary fees or other remuneration, and complies with all of the following:

- (i) no customers or clients visit the home;
- (ii) no employees living outside the home are physically employed at the residence;

- (iii) no delivery of goods or materials to the home is required in connection with the business; and
- (iv) no material goods or products are produced, stored, or manufactured at the residence.

A Type I home occupation may occupy up to twenty (20) percent of the heated floor area of the residence, or five hundred (500) square feet, whichever is less.

(b) Type II Home Occupation

A Type II home occupation involves the rendering of service on-site, or administrative or other support for the rendering of a service off-site in exchange for monetary fees or other remuneration in a manner that complies with the general requirements specified in Section 5.3.4(C)(1), but does not qualify as a Type I Home Occupation.

A Type II home occupation may occupy up to ten (10) percent of the heated floor area of the residence, or five hundred (500) square feet, whichever is less.

(3) *Applicability of Accessory Use Permit*

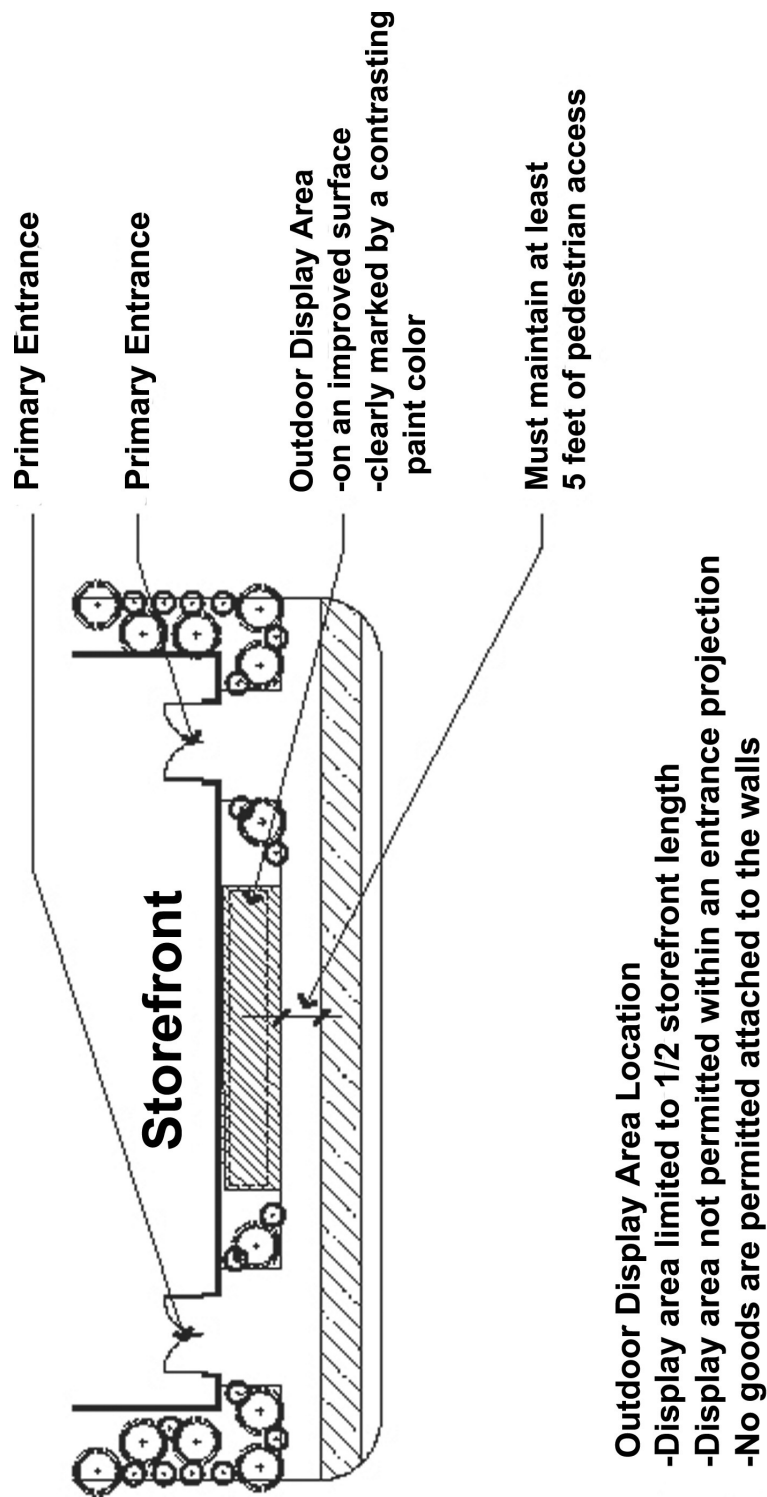
Approval of an accessory use permit shall be required for all Type II home occupation uses.

(4) *Applicability to Small and Large Day Care Homes*

Requirements of this Section 5.3.4(O) do not apply to Large and Small Day Care Homes, which are regulated by Sections 5.3.4(L) and 5.3.4(M), respectively.

(D) Outdoor Display and Sales

Outdoor display and/or sale may be allowed as an accessory use for all uses requiring development plan approval. It is the intent of this Ordinance to allow the display of merchandise for sale by the merchant of the principal use, but not where the display of such items impedes the flow of pedestrian or vehicular traffic, or creates an unsafe condition. This shall not include hazardous and flammable materials, such as gasoline, oil, antifreeze, kerosene, poisons, pesticides and similar items. The display of goods shall meet all of the following requirements:



Outdoor Display and Sales

(1) Procedural Requirements

Outdoor display and/or sale shall require approval of the Planning Director. All new development plans must show the location of such areas in accordance with this section. Existing non-residential uses must submit a sketch showing the location of the outdoor display or sales areas and how the requirements of this section are to be met. Approval may be subject to appropriate conditions by the Planning Director.

(2) Where Permitted

- (a)** All outdoor display and/or sale of goods shall be located immediately adjacent to the storefront and not in drive aisles, loading zones, fire lanes, or parking lots, except as otherwise allowed or required in this Section 5.3.4(D)(2).
- (b)** The area in front of a store that may be used for outdoor display and/or sales shall be limited to no more than one-half (1/2) of the length of the front of the building. In the case of a shopping center, the "front of the building" shall include the entire frontage of the shopping center, meaning that the total amount of display for all the in-line tenants combined shall not exceed fifty (50) percent of the aggregate building frontage of the overall shopping center. If the store is located in a building that is one hundred thousand (100,000) square feet or larger in size and meets a minimum setback of three hundred (300) feet from a thoroughfare, then the area on one (1) side of the building may be used for outdoor display and/or sales, as long as the area is limited to no more than three-quarters (3/4) of that side of the building.
- (c)** The area of outdoor display and/or sales shall not encompass the width of the entrance doors to the facility as projected straight out from the facility. For example, if the width of the entrance doors is ten (10) feet, then there shall be at least a ten (10) foot clearance from the doors as projected straight out and away from the facility.
- (d)** Where adjacent to and accessible from an on-site parking area, at least five (5) feet along the parking lot side of the display shall be maintained free of obstruction to allow for pedestrian and handicap movement, such that handicapped pedestrians and others do not have to enter the parking lot or drive aisle to walk around the display.
- (e)** No goods shall be attached to a building's wall surface.
- (f)** The height of the outdoor display shall not exceed six (6) feet, unless an exception to this provision has been granted by the Planning Director.
- (g)** Where adjacent to and accessible from an on-site parking area, the outdoor display and/or sales area shall take place on an improved surface such as the sidewalk or pavement. Either the outdoor display and/or sales area, or the required area of pedestrian/handicap movement, must be clearly marked by a contrasting paint color or a unique surface treatment (e.g., use of different materials, scored surface, etc.).
- (h)** Retail sales or display of goods, products, or services from a motor vehicle, trailer, or shipping container is prohibited, unless explicitly allowed in this Section 5.3.4(D)(2).

- (i) Where the principal use is located within a general shopping center (as defined in LDO Chapter 12), or Mixed Use Overlay District, sale of bulk horticultural or agricultural products such as plants, mulch and pine straw may occur in parking lots from March 15 through June 15 of each year, subject to all of the following:
 - (i) such display and/or sales may occur from a maximum of two (2) vehicles, trailers, or shipping containers; and
 - (ii) such display and/or sales may occur outside of drive aisles within a designated area in the parking lot not to exceed two thousand (2,000) square feet provided that: any parking spaces located within the designated area are in addition to the minimum number of parking spaces required for the principal use; such designated area is delineated by barrier at least three (3) feet in height, with a single entrance; such designated area is set back at least five (5) feet from any adjacent drive aisle; and access to such designated area is located so as to minimize the need to cross drive aisles;
 - (iii) such designated areas, vehicles, trailers or containers will not interfere with the movement of emergency vehicles to such an extent that adequate police, fire, or other emergency services will be impeded and will not likely cause unreasonable or unwarranted disruption to vehicular or pedestrian traffic; and
 - (iv) such designated areas, vehicles, trailers or containers shall be located in a manner that minimizes visibility from public streets.
- (j) Within the area inside the outer perimeter of the Town Center District, including all subdistricts and conditional use districts, outdoor display and sales area may not exceed twenty-five percent (25%) of the floor area of the principal use, subject to the following:
 - (i) all of or a portion of the allowable outdoor display and/or sales area may be located in the side and/or rear yards if enclosed within a minimum forty-two (42)-inch-high decorative fence attached to the building; and
 - (ii) up to forty percent (40%) of the allowable outdoor display and/or sales area may be located between the front of the building and the street right-of-way.

(3) *Temporary Sales Events Distinguished*

Temporary sales events not meeting all requirements of this Section 5.3.4(D) may be allowed as a special event with approval of a temporary use permit in accordance with Section 5.4.7.

(E) *Outdoor Storage as an Accessory Use*

Outdoor storage may be allowed as an accessory use for all uses requiring development plan approval. The storage area shall meet all of the following requirements:

- (1) Each outdoor storage area shall be incorporated into the overall design of the primary structure on the site and shall be located at the rear of the primary structure.
- (2) Goods stored in an approved outdoor storage area shall be limited to those sold on the premises as part of an associated, additional primary use.

- (3) Each outdoor storage area shall be screened from view from all property lines and adjacent rights-of-way by an opaque fence or wall between six (6) and eight (8) feet in height that incorporates at least one (1) of the predominant materials and one (1) of the predominant colors used in the primary structure. The fence may exceed eight (8) feet in height where the difference in grade between the right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area. Materials may not be stored higher than the height of the primary structure. The perimeter of the fence or wall must be landscaped with a seven (7)-foot wide strip containing a minimum of one (1) tree for every one hundred fifty (150) square feet of lot area.
- (4) A landscaped earth berm may be used instead of or in combination with a required fence or wall.
- (5) If the outdoor storage area is covered, then the covering shall include at least one (1) of the predominant exposed roofing colors on the primary structure.
- (6) Flammable liquids or gases in excess of one thousand (1,000) gallons shall be stored underground.
- (7) No materials may be stored in areas intended for vehicular or pedestrian circulation.
- (8) If installed, exterior lighting shall meet the functional needs of the facility without adversely affecting adjacent properties or the neighborhood.

(F) Satellite Dish Antenna

(1) Purpose

These regulations are adopted in order to:

- (a) Comply with applicable state and federal law, including the federal Telecommunications Act of 1996;
- (b) Control the location and screening of satellite dish antennae to lessen any impact on surrounding properties; and
- (c) Preserve the Town's image and character.

(2) Small Satellite Dish Antennae

Satellite dish antennae of one (1) meter (or thirty-nine (39) inches) or less in diameter are permitted accessory uses in all residential and non-residential zoning districts. Such dishes shall not be located within the public right-of-way.

(3) Large Satellite Dish Antennae**(a) Non-Residential Zoning Districts**

Satellite dish antennae measuring one meter (or 39 inches) or more are permitted accessory uses in non-residential zoning districts.

(b) Residential Zoning Districts

Satellite dish antennae measuring one meter or more are permitted accessory uses in the residential zoning districts. Such dishes are subject to the requirements set forth below to the maximum extent feasible, but only where there is no impairment of acceptable signal quality. These regulations are not intended to impose unreasonable delays or impose unreasonable costs on the installation, maintenance, or use of satellite dishes, and shall not be interpreted or enforced in any manner contrary to federal or state law.

1. Location

Satellite dishes shall be located to the rear of the principal building, but not within ten feet of any side or rear property line or in any required buffer.

2. Screening

Satellite dishes shall be screened so that no more than 40 percent of the area of the satellite dish antenna is visible from any public street or private street open to the public. The screen may consist of, but is not limited to, fences, buildings, plantings, or any other opaque vegetation or structure permanently affixed to the real property. Screens of vegetation may be installed to meet this requirement.

(G) Vehicular Gate**(1) Purpose and Intent**

The regulations of this section are intended to clarify existing Town prohibitions on vehicular gates in residential districts and to specify the conditions under which vehicular gates used for security purposes may be installed in other districts.

(2) Public Streets

No vehicular gate shall be allowed on any public street, nor on private streets in residential districts, nor in any residential development.

(3) Public Vehicular Areas

Vehicular gates may be allowed on public vehicular areas only as set forth in this section. "Public vehicular areas" include areas for driving, parking, and loading or unloading of vehicles.

(a) Residential Districts

No vehicular gate shall be allowed in any residential district.

(b) Non-Residential Districts

1. Vehicular gates may be permitted in non-residential districts, provided they are not in residential use, at entrances and exits of:
 - a. Parking lots to regulate or control parking where the parking lot is a principal use of the property;
 - b. Mini-storage areas, to control access to the mini-storage containers only; and
 - c. Outdoor equipment storage areas, provided in all cases it is only the equipment storage area that is enclosed by the vehicular gate, and no building access is affected by the vehicular gate.
2. Vehicular gates may be permitted in non-residential districts at the entrances and exists of other uses not listed above provided the following standards are met:
 - a. The primary purpose of the gate is to provide safety and security for the area located beyond the gate by regulating access of motor vehicles to that area; and
 - b. The vehicular security gate shall be staffed 24 hours a day so that police and all emergency vehicles will be allowed immediate access without delay, unless all emergency service providers find that such staffing is not necessary; and
 - c. The vehicular security gate is maintained in good operating condition.

(H) Recycling Drop-Off Stations

Recycling drop-off stations shall be permitted as accessory uses in conjunction with any use which does not receive refuse collection from the Town of Cary. Section 10-37 of the Code of Ordinances states that the Town will not provide refuse collection services for any building with more than six (6) units in a residential, office, business or industrial zone or permitted use in an overlay zone, nor will the Town provide refuse collection services for any use or building which exceeds the maximum stated volume of refuse (four 32 gallon containers picked up twice a week). Recycling drop-off stations shall comply with the following standards:

- (1) All drop-off containers and storage bins, with the exception of roll-out carts located in townhouse and multi-family developments and recycling containers located on school sites, shall be screened from view to at least fifty (50) percent of the height of the containers and bins in the station. The screen may be fencing or plantings. If plantings are used, the plants must reach the height indicated in the previous sentence within three (3) years of planting. Roll-out carts shall be a neutral or earth tone color, not be visible from a public street, and be located within the interior of the development;
- (2) The station shall be kept free of litter, debris, and residue;

- (3) Each station shall be allowed one ground identification sign no more than sixty (60) inches high and seventeen (17) square feet in area, apportioned between all the sides of the sign. The sign shall include the name and telephone number of a party responsible for management and maintenance of the station shall be clearly posted at the station;
- (4) Drop-off containers and storage bins shall be located no closer than fifty (50) feet to a lot occupied by a dwelling;
- (5) Excluding screening, drop-off containers and storage bins shall occupy no more than five hundred (500) square feet in total;
- (6) The station shall not occupy or block access to parking spaces or aisles which Chapter 12 of this Ordinance requires for the principal use;
- (7) The station shall not involve the unattended parking of a trailer;
- (8) All drop-off containers and storage bins shall be durable, waterproof, rustproof, covered, and secure from unauthorized entry, and shall be clearly marked to indicate the type of material to be deposited therein;

(I) **Swimming Pools, Hot Tubs and Spas**

(1) ***Enclosure Required for Swimming Pools, Hot Tubs, and Spas***

(a) **General Requirement**

In order to protect unattended children from the risk of drowning:

1. All below-ground outdoor swimming pools, hot tubs, or spas having a depth of eighteen (18) inches or greater at the deepest point shall be completely surrounded by a fence or wall with a height of no less than four (4) feet. The fence or wall may be made of any suitable and durable material. The fence or wall shall be designed so that a four (4) and one-half (1/2) inch diameter sphere cannot pass through any opening. The principal or accessory building may be used as part of such enclosure.
2. All above-ground swimming pools shall maintain gates at access points into the pool.
3. All gates required by this section shall have self-closing and self-latching devices that keep the gate or door closed at all times when not in actual use. However, the door of any dwelling that furnishes part of the enclosure need not be so equipped.

(b) **Exemption**

A portable spa or hot tub with a safety cover that complies with ASTM ES13 entitled "Emergency Standard Performance Specifications for Safety Covers and Labeling Requirements for All Covers for Swimming Pools, Spas, and Hot Tubs," 1989 edition, is exempt from the requirements of this section.

- (2) Such uses shall be required to meet the setback provisions for accessory structures indicated in Table 6.3-1.

(J) Animal Husbandry

For the purpose of this section the definitions of "chicken," "domestic fowl" and "livestock" from Chapter 6 of the Town of Cary Code of Ordinances shall apply.

(1) Residential-80 and Residential-40 Zoning Districts

The keeping of livestock and domestic fowl shall be allowed as an accessory use in the R-40 and R-80 zoning districts with no permit required, provided all of the following conditions are met:

- (a) Such animals may not be kept for the express purpose of commercial sale;
- (b) Cows, bulls, horses, mules, ponies, burros, llamas or other hooved mammals are limited in quantity per acre in accordance with North Carolina Department of Agriculture guidelines;
- (c) Stables for the keeping of hooved mammals may not be erected closer than three hundred (300) feet to any residence on an adjacent property;
- (d) The keeping of swine is prohibited; and
- (e) The keeping of roosters is prohibited on lots smaller than five (5.0) acres.

(2) Other Zoning Districts

The keeping of chickens shall be permitted as an accessory use in conjunction with detached, single-unit residential uses in the R-20, R-12, R-8, TR, TC-MDR, TC-LDR, TC-LDR-12, PDD and MXD districts where the minimum lot size is six thousand (6,000) square feet. Such use shall only occur in accordance with the following:

(a) Accessory Use Permit Required

An accessory use permit must be secured in accordance with Section 3.5. The permit application must include a plot plan that shows the location and dimensions of the chicken coop and chicken pen, and their distance from the property lines.

(b) Number and Type of Chickens Allowed

The maximum number of female chickens (hens) allowed is five (5) per lot. No roosters are permitted.

(c) Personal Use Only

Eggs, chicks, adult chickens, and processed chickens shall not be sold. Chicken manure and compost using chicken manure shall not be sold or otherwise distributed.

(d) Chickens Enclosed

A chicken coop and pen shall be provided, and such coops and enclosures may not include residential structures or garages. Chickens shall be secured in the

chicken coop during non-daylight hours. During daylight hours, chickens may be located in the chicken pen.

(e) Location of Coops, Pens and Tractors

Chicken coops, pens, and tractors (whether stationary or moveable) shall only be located in rear yards (behind the line formed by the back wall of the residence), shall comply with a minimum setback of fifteen (15) feet from side and rear property lines, shall be located closer to the owner's primary structure than any neighbor's primary structure, and shall be outside of regulated urban transition buffers. The cumulative area limitations for accessory structures contained in Section 5.3.2(E) are not applicable unless a building permit is required for such an accessory structure.

(f) Coop and Pen Construction and Design

The chicken coop, tractor, and/or pen shall be properly designed and constructed to provide adequate security from rodents, wild birds, and predators; sufficient ventilation; and suitable shelter for the hens.

(g) Chicken Coop and Pen Management

(i) Maintenance.

The permittee shall ensure that chickens shall have adequate access to feed, clean water, and bedding at all times. The chicken coop, chicken pen, and surrounding area shall be cleaned of hen droppings, uneaten feed, feathers and other waste, and shall be kept in a neat and sanitary condition at all times to preclude odors and aesthetic nuisances. Chicken feed shall be stored in a secure container.

(ii) Manure and Compost.

Chicken manure shall be bagged and disposed of with household waste or composted on-site. All stored manure shall be completely contained in a waterproof container. Any compost using chicken manure shall be produced in an enclosed backyard composter and such activity shall comply with the Town Code of Ordinances.

(iii) Slaughter or Disposal of Dead Chickens.

On-site slaughter shall be prohibited in accordance with the Town Code of Ordinances.

Dead chickens. If a chicken dies from causes other than slaughter, it shall be promptly placed into a plastic bag, which shall be closed securely and disposed of with household waste.

(K) Yard Parking on Single-Unit and Duplex Residential Lots

(1) Vehicular parking area shall not exceed either of the following:

(a) Forty (40) percent of any streetyard; or

(b) Three hundred and thirty (330) square feet plus:

- i) an area equal to the linear depth of the front yard multiplied by fifteen (15) feet; or
 - ii) a circular or semi-circular driveway, not to exceed a width of fifteen (15) feet, with no more than two (2) access points on the street; or
 - iii) a combination of i) and ii) above.
- (2) Vehicular parking area shall be located in clearly delineated space(s) on an improved surface such as concrete, asphalt, gravel or other non-eroding material, with the following exception:
 - (a) Up to two (2) vehicles may be parked on an unimproved surface on lots recorded and developed prior to January 14, 2010, provided that said parking is parallel to the driveway.

PRINCIPLES OF INTERPRETATION

Section 5.3.4(K) is not intended to apply to parking for a short duration, such as for deliveries, visitors, and infrequent social events.

(L) Day Care Homes, Large

- (1) A large day care home is intended for the care of seven (7) to twelve (12) children at any given time. Large day care home uses may be permitted as a special use in any single-unit residential dwelling on a lot which is twelve thousand (12,000) square feet or greater in size provided that all the following provisions are met:
 - (a) Appropriate licensing by the North Carolina Department of Health and Human Services, Division of Child Development is maintained;
 - (b) The home shall be reviewed and approved as a special use in accordance with the procedures and standards set forth in Section 3.8 of this Ordinance;
 - (c) No building modifications may be made to the structure to accommodate the use except those required by the Building Code;
 - (d) The home shall comply with or exceed the parking standards in Table 7.8-1 and the number and location of parking spaces shall be adequate to provide for child drop-off and pick-up in a safe manner;
 - (e) If construction of additional parking area or driveway width is needed in order to meet minimum parking requirements, then such areas shall be clearly delineated, and shall be screened to a minimum height of three (3) feet from the view of adjacent residential properties. Such screening may be provided by evergreen plantings that will attain a minimum height of three (3) feet within three (3) years of planting, or by the use of a fence made of wood (or a comparable composite material) that is at least three (3) feet in height and is designed to screen at least three-quarters (3/4) of the view through the fence from adjacent

properties. Screening shall not be required for parking areas located in the portion of a one (1)- or two (2)-car wide driveway between the street and the front of the residence or located adjacent to non-residential property.

- (f) A sketch of the site shall be provided showing the residence, driveway and parking areas, outdoor play area, fencing, residences located on adjoining lots;
 - (g) The principal person or persons operating the day care home must reside on the premises;
 - (h) The day care home shall employ no more than one (1) person who does not reside on the premises; and
 - (i) The operator obtains all required permits and licenses from the Town of Cary.
- (2) Day care homes that are licensed by the State of North Carolina and authorized by the Town of Cary to care for up to eight (8) children as of January 28, 2010 shall be deemed conforming and may continue to operate as approved without a Special Use Permit as long as a valid license from the North Carolina Department of Health and Human Services, Division of Child Development is maintained and the use does not cease operation for more than one hundred eighty (180) consecutive days.

(M) Day Care Homes, Small

- (1) A small day care home is intended for the care of up to six (6) children not related to the care provider by birth, marriage, or adoption at any given time. Adult care is limited to three (3) adults eighteen (18) years old or older. Small day care home uses shall be permitted as an accessory use in a residential dwelling unit provided that all the following provisions are met:
- (a) Appropriate licensing by the North Carolina Department of Health and Human Services, Division of Child Development is maintained;
 - (b) The home shall comply with the parking standards in Table 7.8-1. No less than three (3) on-site parking spaces shall be provided, and the number and location of parking spaces shall be adequate to provide for child drop-off and pick-up in a safe manner;
 - (c) If construction of additional parking area or driveway width is needed in order to meet minimum parking requirements, then such parking areas shall be clearly delineated, and shall be screened to a minimum height of three (3) feet from the view of adjacent residential properties. Such screening may be provided by evergreen plantings that will attain a minimum height of three (3) feet within three (3) years of planting, or by the use of a fence made of wood (or a comparable composite material) that is at least three (3) feet in height and is designed to screen at least three-quarters (3/4) of the view through the fence from adjacent properties. Screening shall not be required for parking areas located in the portion of a one (1)- or two (2)-car wide driveway between the street and the front of the residence or located adjacent to non-residential property.
 - (d) The principal person or persons operating the day care home must reside on the premises;

- (e) The day care home shall employ no more than one (1) person who does not reside on the premises; and
- (f) The operator obtains all required permits from the Town of Cary.

(N) Caretaker's Residence

A caretaker's residence may be allowed as a permitted accessory use provided the following standards are met:

- (1) The residence shall be occupied by a bona fide caretaker or watchman employed by the principal on the property and shall be accessory to the principal use;
- (2) The principal use of the property shall be a kennel, animal hospital, mini-storage facility, light or heavy manufacturing establishment, warehousing and distribution establishment, wholesale establishment, research laboratory, or prototype processing and production plant;
- (3) There shall be no more than one (1) caretaker's residence on the property; and
- (4) The living quarters shall be limited to one (1) floor and constructed so that the exterior of the premises provides a development style uniform with the main structure.

(O) Beekeeping

(1) General Requirements

- (a) The maximum number of hives allowed shall be five hives on a single parcel.
- (b) No hive shall be established or kept within ten (10) feet of a property line.
- (c) Hives shall be placed at ground level or securely attached to an anchor or stand.
- (d) A constant and adequate on-site source of fresh water shall be provided, and shall be located closer to the hive than any water source on adjacent property.
- (e) An accessory use permit must be secured in accordance with Section 3.5. The permit application must include a plot plan that indicates the number of beehives, shows the location of each beehive and water source(s), and their respective distances from property lines.
- (f) In the event that a nuisance is not abated in accordance with Town Code Section 6-71a (Nuisance Bees) and no final appeal is made, then the Planning Director may revoke the owner's Accessory Use Permit, and the owner shall be unable to reapply for another Accessory Use Permit for Beekeeping for a period of twelve (12) months. The owner may appeal revocation of the Accessory Use Permit to the Zoning Board of Adjustment pursuant to Section 3.21 of the Land Development Ordinance.

(2) Additional Requirements for Community Gardens

Beekeeping shall also be permitted as an accessory use in conjunction with a community garden. Such use shall only occur in accordance with the requirements identified in Section 5.3.4(O)(1) and the following additional requirements:

- (a) The property owner(s) signs the accessory use permit application granting permission for beekeeping to occur on the property.
- (b) A beekeeper(s) that is a registered member of a local or state beekeeping association and has documented training in beekeeping, also signs the application and certifies that he/she will be responsible for the ongoing maintenance and overall care of the hive(s).

(P) Food Trucks

The purpose of these regulations is to promote the general health, safety and welfare of the citizens of the town by establishing reasonable regulations and review procedures to allow for the retail sale of food and food products via mobile food vending vehicles, commonly called "food trucks." The intent of these provisions is to establish rules related to the location and operation of food trucks on private and public property within the town, while considering their potential effects on public streets, public properties, nearby residential properties, and other food service establishments. These provisions are not intended to apply to peddlers and solicitors who are otherwise regulated under Chapter 20, Licenses and Business Regulations, of the Cary Town Code.

(1) *Developed Sites in Non-Residential Zoning Districts, Mixed Use Overlay Districts and Non-Residential Portions of Planned Development Districts, and HMXD, MXD, COM, OFC/INS and OFC/IND Sub-districts of the Town Center District*

(a) Permits Required

1. An accessory use permit per Section 3.5 shall be obtained by the property owner for any lot proposed to accommodate one (1) or more food truck businesses. A copy of the accessory use permit shall be kept in the food truck.
2. The accessory use permit application shall include a list of potential food truck businesses expected to operate on the lot, and a copy of the following for each business:
 - a. NC Sales and Use Certificate for collecting and paying the proper sales taxes and prepared meals taxes; and
 - b. Wake County Environmental Services Vending Permit and a means for the disposal of grease within an approved grease disposal facility.

Said certificate and permit shall be clearly displayed on the food truck.

3. The accessory use permit shall be valid for up to one (1) calendar year and may be amended during the period of validity to remove or add specific food truck business(es) authorized to operate on the lot.
4. The Accessory Use Permit shall designate the specific locations on a given site where a food truck may operate.

(b) Locational Standards

Food trucks shall be located on developed lots in accordance with the following standards:

1. Food trucks must be located in an area that is not actively used by an existing, approved principal use on a developed lot.
2. Food trucks may not encroach upon open space, landscaping, fire lanes, vehicular access ways or pedestrian walkways, and shall not obstruct or disturb existing buffers or required setbacks from buffers or streetscapes,
3. Food trucks shall be located a minimum of one hundred (100) feet from the main entrance of any eating establishment or similar food service business, any outdoor dining area, and any other food truck location, as measured in a straight line. This one hundred (100) foot separation requirement shall not apply to a food truck located on the same lot as an eating establishment or similar food service business, outdoor dining area, or other food truck, so long as all other requirements of this Ordinance are met. No more than three (3) food trucks may be located on single lot.
4. Food trucks may not be located within one hundred fifty (150) feet of a lot with a dwelling unit as measured in a straight line from the location of the food truck to the nearest property boundary.
5. In the event that one (1) or more permanent restaurant or other food service establishments or residences locate within the minimum separation requirement after an accessory use permit for a food truck location has been issued, the food truck may continue to operate under the terms of its Accessory Use Permit until said permit expires.
6. Food trucks shall be located a minimum of five (5) feet from any fire hydrant, sidewalk, utility box, handicap ramp and building entrance.
7. Food trucks may not occupy parking spaces required to fulfill the minimum requirements of the principal use, unless the hours of operation of the principal use do not coincide with those of the food truck.

(c) General Operational Standards

1. Food trucks may only operate between the hours of 6:00 a.m. to midnight.
2. Food trucks must be removed from all permitted locations during the hours when they are not permitted to be in operation, and may not be stored, parked, or left overnight on any public street or sidewalk.
3. One sandwich board sign shall be allowed.
4. Amplified music is not permitted.
5. Outdoor seating areas for dining associated with a food truck, including but not limited to tables, chairs, booths, bar stools, benches, and standup counters, are not permitted.

(d) Health and Sanitation Standards

1. All food preparation, storage, and sales or distribution by a food truck operator shall be in compliance with all applicable County, State and Federal Health Department sanitary regulations. In accordance with such laws, the food truck shall return daily to a commissary for proper servicing.

2. The operator shall keep all areas within five (5) feet of the food truck and any associated customer or dining area clean of grease, trash, paper, cups or cans associated with the food truck.
3. Each food truck operator is responsible for the proper disposal of solid waste associated with the operation of the food truck and any outdoor dining areas. Public trash receptacles are not to be used for this purpose.
4. Operators shall remove all waste and trash prior to leaving their approved location or as needed to maintain the health and safety of the public.
5. No waste or grease may be disposed in storm drains, the sanitary sewer system or onto the sidewalks, streets, or other public spaces.
6. If at any time evidence of the improper disposal of liquid waste or grease is discovered, the food truck operator shall be required to cease operation immediately. The owner of the food truck business shall be liable for the violation.

(2) Other Zoning Districts

In all zoning districts other than those listed in Section 5.3.4(P)(1) above, food trucks may be allowed only on commonly-owned property within a residential development serving residents and guests at a neighborhood activity or function. Requirements of Section 5.3.4(P)(1) shall apply.

(3) Public Property

Food trucks may not be operated on public property such as parks or plazas, parking lots, public street rights-of-way, or public sidewalks except as specifically authorized by the Town and as part of an official public event sponsored or co-sponsored by the Town of Cary.

(4) Component of Temporary Event

In accordance with Sec. 5.4, Temporary Uses and Structures, food trucks may be placed on private property in conjunction with a public or private event. If food trucks are included as part of the event, the temporary use permit for the event itself, if required in Table 5.4-1, shall also identify the inclusion of food trucks and shall serve as the accessory use permit for the site for the duration of the event. Such food trucks shall only be operated during the hours of the event, which time does not include the time before and after the event where the operator is preparing to set up or remove the food truck.

(5) Construction Sites

In all zoning districts, food trucks may be allowed on construction sites in accordance with the following:

- (a) The site is undergoing construction in accordance with an approved and valid development plan and building permit.
- (b) Such trucks may vend to person(s) lawfully authorized to be on the construction site, and not to the general public.

- (c) Food trucks shall be parked in an appropriate location based on the location of active construction activity, as authorized by the general contractor consistent with safe construction site management practices.
- (d) A copy of the following shall be clearly displayed on each food truck:
 - 1. NC Sales and Use Certificate for collecting and paying the proper sales taxes and prepared meals taxes; and
 - 2. Wake County Environmental Services Vending Permit and a means for the disposal of grease within an approved grease disposal facility.
- (e) General operational standards specified in Section 5.3.4(P)(1)(c) shall apply.
- (f) Health and sanitation standards specified in Section 5.3.4(P)(1)(d) shall apply.

(Q) Cluster Box Unit - Mailbox

- (1) The local post manager will work with builders and developers to determine the best mode for mail delivery for the area, prior to extending or establishing delivery service. If central mail delivery service is the option chosen by the postal manager in the form of Cluster Box Units (CBU), then the arrangement and location of the CBU(s) shall be in accordance with the Town's Standard Specifications and Details Manual.
- (2) Parking for Cluster Box Units shall be provided as required in Table 7.8-2.
- (3) Evergreen shrubs shall be provided in the vicinity of each CBU to promote high quality appearance and good design. The number, location and height of such landscape material shall be appropriate to the specific location, based on available planting area, topography, and safety considerations, as determined by the Planning Director or designee. The maximum height of any such shrubs located in the public right-of-way or within a sight triangle shall not exceed thirty (30) inches.

(R) Electronic Gaming Machines

Four (4) or fewer electronic gaming machines shall be permitted as an accessory use to any legal conforming principal use other than an Electronic Gaming Operation.

(S) Photovoltaic Systems

- (1) Photovoltaic systems are permitted accessory uses in all residential and non-residential zoning districts.
- (2) Photovoltaic systems will not be included in the measurement of building height.
- (3) Components of a photovoltaic system that are not mounted on the roof shall be located to the rear of the principal building. No component of a photovoltaic system shall be located within five (5) feet of any property line or in any required buffer.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-003, 4-15-04; Ord. No. 04-007, 7-15-04; Ord. No. 06-009, 4-27-06; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-02, 1-28-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2012-LDO-07, 8-23-12; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14;

Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-LDO-02, 3-30-17; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-01, 1-13-22; Ord. No. 2022-LDO-02, 4-28-22)

5.4 TEMPORARY USES AND STRUCTURES

5.4.1 Purpose

This section allows for the establishment of certain temporary uses of limited duration, provided that such uses do not negatively affect adjacent properties or Town facilities, and provided that such uses are discontinued upon the expiration of a set time period. Temporary uses do not involve the construction or alteration or any permanent building or structure.

5.4.2 Table of Allowed Temporary Uses and Structures

Table 5.4-1 summarizes the temporary uses and structures that are allowed within the Town and any general or specific regulations that apply. Temporary uses or structures not listed in Table 5.4-1 are not allowed under this Ordinance.

TABLE 5.4-1: TABLE OF ALLOWED TEMPORARY USES AND STRUCTURES		
Temporary Activity	Maximum Allowable Time Frame	Specific Regulations
TEMPORARY STRUCTURES		
Expansion or Replacement of Existing Facilities (including temporary offices for construction and/or security personnel) not to include temporary classroom facilities for schools	(A)	Temporary Use Permit Required; see Section 5.4.6(A)
Temporary Classroom Trailers	N/A	No Temporary Use Permit Required; Development Plan Required; see Section 5.2.2(C)
Portable Medical Equipment	(F)	Temporary Use Permit Required; see Section 5.4.4 and 5.4.5; Applicant shall coordinate with all necessary Town Departments (e.g., Police and Fire), and comply with any conditions required by those departments.
Real Estate Sales Office/ Model Sales Home	(A)	Temporary Use Permit Required; see Section 5.4.6(B)
TEMPORARY SALES		
Sale/Display of Goods and Products	(B)	Temporary Use Permit Required; see Section 5.4.6(C)
Garage and/or Yard Sales	(E)	Temporary Use Permit Not Required
Temporary Not-For-Profit Car Wash	(E)	Temporary Use Permit Not Required

TABLE 5.4-1: TABLE OF ALLOWED TEMPORARY USES AND STRUCTURES		
Temporary Activity	Maximum Allowable Time Frame	Specific Regulations
EVENTS		
Town-Recognized Event	N/A	Temporary Use Permit Required; No fee required; Includes only those events listed in the Town Clerk's Office
Not-For-Profit Event with 100 People or More in Attendance	(D)	Temporary Use Permit Required; see Section 5.4.4; Applicant shall coordinate with all necessary Town Departments (e.g., Police and Fire), and comply with any conditions required by those departments
Special Event with 100 People or More in Attendance	(D)	Temporary Use Permit Required; see Section 5.4.4; Applicant shall coordinate with all necessary Town Departments (e.g., Police and Fire), and comply with any conditions required by those departments
Athletic Event at a Sports Facility	N/A	Temporary Use Permit Not Required
Block Parties	(D)	Temporary Use Permit Not Required
Other Public Events with 99 People or Fewer in Attendance	(E)	Temporary Use Permit Not Required
Private Event	N/A	Temporary Use Permit Not Required
(A)	Such structures may be in place for no more than one (1) to three (3) years.	
(B)	Such sales are limited to a maximum of ninety (90) days per calendar year with no more than three (3) occurrences per lot or parcel per year.	
(C)	[Reserved]	
(D)	Such events are limited to seven (7) total days per calendar year.	
(E)	Such events are limited to two (2) events per calendar year per lot or parcel and/or no more than four (4) total days per calendar year.	
(F)	Such portable equipment shall be limited to one (1) twenty-four (24) hour period per week for no more than one (1) calendar year. Depending on individual circumstances and for good cause shown, either time period may be increased or altered.	

5.4.3 [Reserved]**5.4.4 Temporary Use Permits**

All temporary uses and structures that are required to obtain a temporary use permit by Table 5.4-1 shall obtain such permit pursuant to the procedures set forth in Section 3.7 of this Ordinance. A temporary use permit shall be reviewed, approved, or revoked only in accordance with the regulations of Section 3.7 of this Ordinance. Temporary uses must meet the requirements of the North Carolina State Building Code.

5.4.5 General Requirements for All Temporary Uses and Structures

All temporary uses or structures shall meet the following general requirements, unless otherwise specified in this Ordinance:

- (A) The temporary use complies with all applicable general and specific regulations of this section and Section 3.7, unless otherwise expressly stated, and with all requirements of this Ordinance and applicable Town specifications.
- (B) Permanent alterations to the site are prohibited.
- (C) Signage shall comply with applicable provisions of Chapter 9.
- (D) The temporary use or structure will not violate any applicable conditions of approval that applies to a principal use on the site.
- (E) If the property is undeveloped, it contains sufficient land area to allow the temporary use or structure to occur, as well as any parking and traffic movement that may be associated with the temporary use, without disturbing protected resources, including required buffers.
- (F) If the property is developed, the temporary use must be located in an area that is not actively used by an existing approved principal use, and which would support the proposed temporary use without encroaching or disturbing existing buffers or required setbacks from buffers or streetscapes, open space, landscaping, traffic movements, pedestrian circulation, or parking space availability.
- (G) Tents and other temporary structures will be located so as to not interfere with the normal operations of any permanent use located on the property.

- (H) Off-street parking is provided in accordance with the requirements set forth in Section 7.8 of this ordinance.
- (I) All inspections and permits required by applicable construction codes have been made and approved by the Inspections and Permits Department.
- (J) Applications for temporary structures to be located in or near the one percent (1%) annual chance floodplain will be required to submit a plan to the Stormwater Manager for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan must include the following information:
 - (1) The name, address, and phone number of the individual responsible for the removal of the temporary structures.
 - (2) The time frame prior to the event at which a structure will be removed;
 - (3) A copy of the contract or other suitable instrument with a trucking company to insure availability of removal equipment when needed; and
 - (4) Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

5.4.6 Specific Regulations for Certain Temporary Uses and Structures

(A) Expansion or Replacement of Existing Facilities

(1) *Purpose and Scope*

Factory-fabricated, transportable buildings that are designed to arrive at the site ready for occupancy, except for minor unpacking and connection to utilities, and designed for removal to and installation at other sites, may be placed on a property to serve as the following:

- (a) Expansion space for existing churches, health care facilities, and government offices, provided that plans for the permanent expansion of the existing facilities have been submitted to and approved by the Town.
- (b) Temporary offices for construction and security personnel during the construction of a development for which the Town has issued a grading permit or building permit pursuant to Chapter 5 of this Ordinance.
- (c) Temporary quarters for recreational facilities that are being provided in conjunction with a new residential development, provided that the Town has approved a development plan for the development.
- (d) Temporary quarters for a non-residential use when the permanent building has been destroyed by a fire or other physical catastrophe, provided that a building permit for the permanent facility is obtained within ninety (90) days after approval of the temporary quarters. The Planning Director may approve a written request for an extension of an additional ninety (90) days for good cause shown. Failure to obtain a building permit within the time frame allowed will revoke approval for the temporary quarters.

- (e) One (1) temporary office per site to include, but not be limited to, the following uses: hiring, membership solicitation, apartment office/leasing, and other general office uses provided that the Town has approved a development plan for the development. The number of modular buildings housing such uses shall be limited to one (1), in addition to those already allowed by this section. Such modular buildings shall not be placed on the property prior to the issuance of a building permit.

(2) *Standards and Requirements for Approval*

In addition to meeting the general standards of Section 5.4.5, all temporary structures approved pursuant to this section shall meet the following standards and requirements:

(a) Location

Temporary structures allowed under Section 5.4.6(A) may be located anywhere on site, except within the following areas:

1. Existing vegetated buffers or within the buffer setbacks.
2. Areas designated for future vegetated buffers whether or not vegetation currently exists.
3. Other areas designated on the development plan for open space, vehicular use, or ingress/egress.

(b) Other Requirements

1. The temporary structure shall be factory-fabricated and transportable.
2. Underskirting shall be installed around all temporary structures requiring development plan approval.
3. In addition to any other off-street parking required on the site, off-street parking shall be provided in accordance with the requirements set forth in Section 7.8 of this Ordinance.
4. All permits required by applicable building, electrical, plumbing, and mechanical codes shall be obtained from the Inspections and Permits Department prior to installation of the temporary structure.
5. For those temporary structures requiring development plan approval, the temporary structure shall be compatible with the existing buildings on the site in terms of exterior color.
6. Foundation plantings installed in accordance with Section 7.2.9(B) of this Ordinance shall be required for temporary structures intended for use as temporary recreation facilities.
7. A sketch plan containing sufficient information to show compliance with the above standards shall be submitted to and approved by the Planning Department prior to installation of the temporary structure.

(3) Duration

Temporary structures under this section may remain on the site for no more than twelve (12) months. This period may be renewed for two (2) twelve (12)-month periods, for good cause shown, upon approval of a written request, submitted to the Planning Director thirty (30) days prior to the expiration of the permit. In no event, however, shall such extensions allow the temporary structure to remain on the site for more than three (3) years.

(B) Real Estate Sales Office and Model Sales Home**(1) General Requirements**

One (1) temporary real estate sales office or model sales home may be allowed as incidental to a new residential or non-residential development provided that:

- (a)** The use is located on a single-unit residential lot or within a multi-family development that was approved by the Town as part of a residential development, or within a non-residential area of an approved planned unit development.
- (b)** Reserved.
- (c)** The temporary use is aesthetically compatible with the character of the community and the surrounding development in terms of exterior color, predominant exterior building materials, and landscaping.
- (d)** The temporary use complies with the minimum yard and setback requirements of the zoning district in which it is located.
- (e)** Parking spaces shall be provided on the lot in a number sufficient to meet the requirements set forth for offices in Section 7.8 of this Ordinance. Such parking spaces may be located on an adjacent vacant residential lot within the development.
- (f)** For single-unit residential developments, at least three hundred (300) square feet of evergreen plantings shall be provided around the base of the temporary use; one (1) upper-story tree shall be provided per forty (40) feet of street frontage of the lot on which the structure is located; and one (1) ornamental tree shall be provided per twenty (20) feet of street frontage, pursuant to the general landscaping requirements of Chapter 7.
- (g)** A development plan containing sufficient information to show compliance with the above standards shall be submitted to and approved by the Planning Department prior to installation of the sales office.
- (h)** The temporary use shall connect to both Town utilities if they are within four hundred fifty (450) linear feet to the property.
- (i)** If the utilities are not within four hundred fifty (450) linear feet, private water and/or septic systems may be allowed by the Director of Water Resources.
- (j)** Upon termination of the temporary real estate sales office or model sales home, the structure will be converted into, or removed and replaced with, a permanent residential use.

(2) Duration**(a) Temporary Real Estate Sales Offices**

Temporary real estate sales offices may be approved for a period of up to one (1) year. This period may be renewed for two (2) additional twelve (12)-month periods, but not exceeding a total of three (3) years, for good cause shown, upon approval of a written request for such an extension by the Planning Director, filed thirty (30) days prior to the expiration date of the existing approval. All temporary trailers shall be removed from the site prior to the issuance of the last certificate of occupancy for the site.

(b) Model Sales Homes

Model sales homes may be approved for a period of up to three (3) years. This period may be renewed for additional six (6)-month periods, for good cause shown, upon approval of a written request for such an extension by the planning director. There is no time limit on the use of model units for rental housing.

(c) Associated Parking Area

Associated parking area shall be removed within sixty (60) days of termination of use of the temporary real estate office or conversion of a model sales home to a permanent residential use.

(C) Sale/Display of Goods Other Than Agricultural Products**(1) Applicability**

Merchants may display and/or sell goods in the Town on a temporary basis without establishing a permanent place of business, subject to the standards and requirements set forth in this section. Receipt of Peddler's Permit from the Police Department does not exempt a merchant from the need to obtain a temporary use permit for such sales.

(2) Location

(a) The outdoor display and/or sale of goods consistent with the provisions in Section 5.3.4(D) is considered as an accessory use and does not need to obtain a temporary use permit.

(b) The proposed display and/or sale of goods, products and/or services for commercial purposes may not occur within two hundred (200) feet of an occupied residential dwelling unit.

(c) Commercial Sales

A temporary display or sale of goods for commercial purposes shall take place on a developed site where the principal use is retail sales, or on an immediately adjacent developed out-parcel of such a site.

(d) Non-Commercial Sales

A temporary sale of goods for public or institutional purposes may take place on a developed site where the principal use is retail sales, or on an immediately adjacent developed out-parcel of such a site. Upon approval of the Planning Director, such sales may take place on public property, including: public parks owned or maintained by the Town, public street rights-of-way, any other property owned by the Town, a special district, or other political subdivision of the State of North Carolina.

(3) Similar Products, Goods, and Services

A temporary display or sale of products, goods and/or services for commercial purposes shall be limited in scope to similar or complimentary products, goods, and/or services to those offered by the existing principal use located upon the same site. The temporary sale of non-agricultural products, goods, and/or services that differ from the normal range of those offered by an existing principal use shall be prohibited.

(4) Submittal Requirements

The operator of the temporary sale of products, goods and/or services shall provide the Planning Department with the following:

- (a)** Written permission from the property owner.
- (b)** A sketch plan showing:
 - 1. The location of any tent or temporary structure to be used.
 - 2. The location of pedestrian, vehicular, and emergency ingress and egress over the entire property, including pedestrian access to streets, driveways, and parking areas, and obstructions of vehicular rights-of-way.
 - 3. The location and number of available off-street parking spaces to serve the temporary sale of goods.
 - 4. [RESERVED]
 - 5. Electrical power connections, if applicable.

(5) Hours of Operation

The hours of operation of the temporary sale of products shall be from no earlier than 7:30 am to no later than 10:00 pm, or the same as the hours of operation of the principal use, whichever is more restrictive.

(6) Duration; Sales per Year

- (a)** The temporary sale of non-agricultural products shall be allowed on an individual parcel or site for no more than ninety (90) total days per calendar year.

- (b) The number of temporary sales of products per site per calendar year shall not exceed three (3). For the purposes of this section, "site" shall mean the entire parcel, including out-parcels, whether it is a single tenant, multi-tenant, or shopping center use.

(7) Requirements

The Planning Director shall issue a temporary use permit for the temporary display and/or sale of products if the proposed use satisfies the following requirements:

- (a) The property contains an area that is not actively used which would support the proposed temporary sale of products without encroaching into or disturbing existing buffers, open space, landscaping, or traffic movements.
- (b) Tents and other temporary structures will be located so as not to interfere with the normal operations of any permanent use located on the property.
- (c) All tents and other temporary structures shall match the predominant color of the principle structure on the premises or be of a neutral or earth tone color.
- (d) The temporary use will not occupy any existing parking required for the principal use.
- (e) The temporary sale of products will not likely cause interference with the movement of emergency vehicles to such an extent that adequate police, fire, or other emergency services will be impeded and will not likely cause unreasonable or unwarranted disruption to vehicular or pedestrian traffic.
- (f) All inspections and permits required by applicable construction codes have been made and approved by the Planning Department.

(D) Sale of Agricultural Products Grown Off-Site

(1) Agricultural Products Defined

For the purposes of this section, agricultural products are defined as products obtained primarily through farming or agricultural activities, including, but not necessarily limited to: pumpkins; grains and seed crops; fruits of all kinds; vegetables; nursery, floral, ornamental, and greenhouse products; trees and forest products, including Christmas trees, firewood, and pine straw; bees and beekeeping products; seafood; and dairy products. For the purposes of this section, processed or prepared food products of any kind shall not be considered as agricultural products.

(2) Approval Criteria

- (a) The temporary sale of agricultural products grown off-site may be allowed subject to issuance of a temporary use permit pursuant to Chapter 5 of this Ordinance. Temporary sales of agricultural products shall meet all requirements for temporary sale of non-agricultural goods set forth in Section 5.4.5(C) above; however, the temporary sale of agricultural products for commercial purposes may occur from a vacant lot, a lot containing a detached dwelling provided that such residential lot contains at least three (3) acres and has a minimum of 250 feet of road frontage on a major thoroughfare, or a developed site where the principal use is non-residential.

- (b) The temporary sale of agricultural products grown off-site is exempt from the requirement for similar products, goods, or services to those offered by an existing principal use as required under the provisions for the temporary sale of non-agricultural products.
- (c) The temporary sale of agricultural products grown off-site may be accomplished from a vehicle, trailer, or shipping container, provided such vehicle, trailer, or container is located in accordance with the provisions of Section 5.4.6(C) of this Ordinance.
- (d) The temporary sale of agricultural products grown off-site shall be allowed on an individual parcel or site for no more than one hundred eighty (180) total days per calendar year.
- (e) The number of temporary sales of agricultural products per site per calendar year shall not exceed three (3).

(E) Sale of Fireworks

(1) *Approval Criteria*

The temporary sale of fireworks may be allowed subject to issuance of a temporary use permit pursuant to Chapter 3 of this Ordinance. Temporary sales of fireworks or other pyrotechnics shall meet all requirements for temporary sale of non-agricultural goods set forth in Section 5.4.6(C) above; however, the temporary sale of fireworks or pyrotechnics are exempt from the similar product provisions which apply to the sale of other non-agricultural products.

(F) Temporary Structures In or Near the Flood Hazard Area

Prior to the issuance of any development permits for a temporary structure in the Flood Hazard Area, all applicants must submit to the Stormwater Manager, for review and written approval, a plan for the removal of such structure(s) in the event of a hurricane or flash flood notification. The plan shall include the following information:

- (1) The name, address and phone number of the individual responsible for the removal of the temporary structures.
- (2) The time frame prior to the event at which a structure will be removed;
- (3) A copy of the contract or other suitable instrument with a trucking company to insure availability of removal equipment when needed; and
- (4) Designation, accompanied by documentation, of a location outside the floodplain to which the temporary structure will be moved.

5.4.7 Events

(A) Purpose and Intent

The purpose for this section is to establish permit requirements, allowable time frames, and submittal requirements for four (4) recognized types of events.

These provisions are intended to address potential significant negative impacts to public or private properties from events or event-related activities, not to prevent such activities from occurring or to unduly restrict private events.

(B) Types of Events

(1) *Town-Recognized Event*

A Town-recognized event is one that is in part or wholly sponsored by the Town, recognized by the Town, or proclaimed as a Town-recognized event by the Town Council. Such events shall include only those events listed on the Town-recognized Event List as maintained by the Town Clerk. The Town-recognized Event List may be amended as needed by the Town Council.

(2) *Not-For-Profit Event*

A not-for-profit event is any event that is requested by, or held for, a recognized non-profit organization or other charitable organization, with at least fifty-one (51) percent of the revenue derived from the event intended for a not-for-profit entity or for its programs.

(3) *Special Event*

Special events are any organized event, specifically including, but not limited to: a temporary sales event accessory to a principal use, or a circus, carnival, cultural event, fair, celebration, communal camping, ground-breaking, grand opening, religious service, musical or other show, which reasonably may be expected to attract one hundred (100) or more persons, but which do not meet the criteria of a Town-recognized event or a not-for-profit event.

(4) *Private Event*

Private events are any organized event which is not open to members of the general public, typically has a duration of less than twelve (12) hours, and which is not expected to have significant negative impacts on surrounding properties. Examples of such events include, but are not limited to wedding ceremonies, funerals, private parties or other similar gatherings.

(C) Permit Required

- (1) No special event or not-for-profit event, as specified above shall be permitted unless a temporary use permit has first been obtained in accordance with this section and the procedures of Section 3.7, unless otherwise specified in this section.
- (2) Any application to hold a special event or not-for-profit event shall be made in advance of the event.

- (3) A permit to hold a special event or not-for-profit event issued to one (1) person or organization shall permit any person to engage in any lawful activity in connection with the holding of the permitted assembly.

(D) No Permit Required

- (1) The following types of events do not need to obtain temporary use permits, but may be subject to the maximum allowable time frames and specific regulations as listed in Table 5.4-1 above:
 - (a) Athletic events held at approved sports facilities.
 - (b) Temporary not-for-profit car washes held on developed sites.
 - (c) Garage and/or yard sales.
 - (d) Block parties occurring entirely upon the grounds of a private residence or common area of a multi-family residential development.
 - (e) Other events with ninety-nine (99) people or fewer in attendance.
 - (f) Private events.
- (2) Events that occur or take place entirely within the boundaries of a parcel or parcels that possess development plan approval for such activities (e.g., assembly halls, convention centers, amphitheaters, or event centers).
- (3) Events taking place on county-owned park property.

(E) Term of Approval/Permit

Table 5.4-1 lists the maximum allowable time frame for all allowable events. The Planning Director may extend the consecutive-day limit or the annual limit upon approval of a written request for such an extension, for good cause shown.

(F) Additional Planning Requirements

In addition to meeting the general standards of Section 5.4.5, all not-for-profit and special events shall also meet the planning requirements set forth below. The Planning Director shall be responsible for determining the adequacy of submitted plans.

- (1) An adequate plan for security and safety shall be implemented on and around the site of the event, including sufficient staffing, provision for pedestrian safety, restroom facilities (if necessary), and traffic routing.
- (2) An adequate plan for public health, safety, and welfare on, around, and outside the site of the event shall be implemented, including a showing that the event will not likely cause interference with the movement of emergency vehicles to such an extent that adequate police, fire, or other emergency services cannot be provided throughout the Town and will not likely cause unreasonable or unwarranted disruption to vehicular or pedestrian traffic.

(G) Submittal Requirements

All applications for special and not-for-profit events shall include such information and supporting materials as are required by the Planning Director, including, but not necessarily limited to, the following:

- (1) A description of the proposed event, including the event's starting date and time, the event's ending date and time, the date and time preparatory activities will commence, and the date and time of completed post-event clean-up.
- (2) The location of the property(ies) upon which the proposed event will take place.
- (3) A security plan, if requested.
- (4) A parking plan.
- (5) A Traffic Management Plan as described in Section 8.1.1.
- (6) Evidence of the non-profit status of an applicant or event beneficiary if not-for-profit event status is being requested, as well as a signed affidavit from the event sponsor indicating that at least fifty-one (51) percent of the revenue generated by the event is intended for a recognized 501(c)(3) or 426(c)(3) organization.
- (7) A statement as to whether the applicant has requested the Town Manager to apply the provisions of Chapter 6, Article II of the Code of Ordinances during the event. If the applicant desires to have the provisions of Chapter 6, Article II apply, the applicant shall also provide evidence that all reasonable attempts will be made to notify the public that animals will not be permitted within the boundaries of the event. Public notification shall include notice in all advertisements and the posting of notices on the property immediately before and during the event. All such notices shall state that animals are prohibited and shall refer to Chapter 6, Article II of the Cary Code of Ordinances.
- (8) A statement as to whether the applicant has requested the Town Manager to apply the provisions of Section 24-18(e) of the Code of Ordinances during the event prohibiting the sale, use, and possession of fireworks type items that might otherwise be permitted pursuant to G.S. 14-414 ("non-exploding fireworks"). If the applicant desires to have the provisions of Section 24-18(e) apply, the applicant shall also provide evidence that all reasonable attempts will be made by the applicant to notify the public that non-exploding fireworks will not be permitted within the boundaries of the event. Public notification shall include notice in all advertisements and the posting of notices on the property immediately before and during the event. All such notices shall state that all pyrotechnics and fireworks including non-exploding fireworks like smoke bombs, sparklers, and party poppers are prohibited and shall refer to Section 24-18(e) of the Cary Code of Ordinances.

(Ord. No. 05-001, 1-13-05; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

CHAPTER 6: DIMENSIONAL STANDARDS AND MEASUREMENTS

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 - (B) Additional Regulations
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- (A) Density, Gross
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Chapter 6: DIMENSIONAL STANDARDS AND MEASUREMENTS

6.1 TABLES OF DENSITY AND DIMENSIONAL STANDARDS

All primary and accessory structures shall be subject to the density and dimensional standards set forth in the following tables. These standards may be further limited or modified by other applicable sections of this Ordinance. Rules of measurements and exceptions are set forth in Sections 6.2 through 6.5.

6.1.1 Residential Districts (not including TC District)

(A) Table of Density and Dimensional Standards

Density and dimensional standards for the residential districts are set forth in the following table. These standards may be further limited or modified by other applicable sections of this Ordinance (e.g., streetscape buffer requirements), or by actual site conditions (e.g., presence of roads on side or rear lot lines). Additional regulations, referenced in brackets, are set forth immediately following the table in Section B.

TABLE 6.1-1: TABLE OF DENSITY AND DIMENSIONAL STANDARDS							
RESIDENTIAL DISTRICTS (Not Including TC District)							
Use	Minimum Lot Dimensions		Minimum Building Setbacks (Ft) (NOTE: These setbacks are minimums; streetscape and buffer width standards may require greater setbacks.)			Height (Ft) (NOTE: Height may be increased one foot for every foot provided in addition to the min. setbacks)	Max Gross Density (du/acre)
	Area (Sq Ft)	Width (Ft)	Roadway (NOTE: these set backs apply to any portion of a lot which abuts a street)	Side	Rear		
R-80: Residential District							
With septic tank/well	80,000	175 (185 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	20	30	35	0.54
With public sewer	80,000	150 (160 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	15	30	35	0.54
R-40: Residential District							
With septic tank/well	40,000	150 (160 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	20	30	35	1.08
With public sewer	40,000	125 (135 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	15	30	35	1.08
R-20: Residential District							
All uses and structures	20,000	90 (100 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	10	25	35	2.17
R-12: Residential District							
All uses and structures	12,000	80 (90 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	10	25	35	3.63
R-8: Residential District							
All uses and structures	8,000	60 (70 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	5' minimum, 20 combined	20	35	5.44

TABLE 6.1-1: TABLE OF DENSITY AND DIMENSIONAL STANDARDS							
RESIDENTIAL DISTRICTS (Not Including TC District)							
Use	Minimum Lot Dimensions		Minimum Building Setbacks (Ft) (NOTE: These setbacks are minimums; streetscape and buffer width standards may require greater setbacks.)			Height (Ft) (NOTE: Height may be increased one foot for every foot provided in addition to the min. setbacks)	Max Gross Density (du/acre)
	Area (Sq Ft)	Width (Ft)	Roadway (NOTE: these set backs apply to any portion of a lot which abuts a street)	Side	Rear		
TR: Transitional Residential District							
Detached single-unit dwellings	5,000	40 per dwelling unit	From thoroughfare: 50 From collector avenue: 30 From other streets: 10/18 [1]	0/3 minimum, 6 combined [4]	[2]	35	6
Patio dwellings [5]	-	20 per dwelling unit	From thoroughfare: 50 From collector avenue: 30 From other streets: 10/18 [1]	Detached: 0/3 minimum, 16 combined. Attached or semi-attached: 0/3 minimum, 16 between building groupings [4]	[2]	35	6
Duplexes [5]	-	50	From thoroughfare: 50 From collector avenue: 30 From other streets: 10/18 [1]	0/3 minimum, 16 combined. [4]	[3]	35	6
Subdivided attached, semi-attached, and townhouse developments [5]	-	20 per dwelling unit	From thoroughfare: 50 From collector avenue: 30 From other streets: 7, 10 or 18 [1]	0/3 minimum, 20/25 between building groupings [4] [7]	[3]	35	6
All other uses	-	70 (80 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	10	20	35	-

TABLE 6.1-1: TABLE OF DENSITY AND DIMENSIONAL STANDARDS							
RESIDENTIAL DISTRICTS (Not Including TC District)							
Use	Minimum Lot Dimensions		Minimum Building Setbacks (Ft) (NOTE: These setbacks are minimums; streetscape and buffer width standards may require greater setbacks.)			Height (Ft) (NOTE: Height may be increased one foot for every foot provided in addition to the min. setbacks)	Max Gross Density (du/acre)
	Area (Sq Ft)	Width (Ft)	Roadway (NOTE: these set backs apply to any portion of a lot which abuts a street)	Side	Rear		
RMF: Multi-Family Residential District							
Patio dwellings [5]	-	20	From thoroughfare: 50 From collector avenue: 30 From other streets: 10/18 [1]	Detached: 0/3 minimum, 16 combined. Attached or semi-attached: 0/3 minimum, 16 between building groupings [4]	20	35	12
Subdivided attached, semi-attached, duplexes, and townhouse developments [5]	-	20	From thoroughfare: 50 From collector avenue: 30 From other streets: 7, 10 or 18 [1]	0/3 minimum, 20/25 between building groupings [4] [7]	[3]	35	12
Multi-Family Structures [5][6]	-	-	20 feet combined between front and rear	0/3 minimum, 16 between building groupings [4]	[3]	35	12
Non-residential uses	10,000	60 (70 for corner lot)	From thoroughfare: 50 From collector avenue: 30 From other streets: 20	10, plus an additional four feet for each full story of building height over 2 stories	20	35	-

(B) Additional Regulations

(1) *TR and RMF Districts: Roadway Setback Requirements*

Where parking is provided between the dwelling and the roadway, the length of the driveway and front setback shall be at least eighteen (18) feet, as measured from the public right-of-way. For townhouses and semi-detached/attached dwellings that are part of a development plan submitted prior to May 7, 2020 and subsequently approved in accordance with G.S. 143-755, the length of the driveway and the front setback may be measured from the inside edge of the sidewalk, or the back of curb where no sidewalk is provided.

When townhouses and semi-detached/attached dwellings have driveways on alleys, the front roadway setback shall be a minimum of ten (10) feet. If townhouses and semidetached/attached dwellings with driveways on alleys provide street trees in coordination with on-street parallel parking at a ratio of at least one (1) tree per two (2) spaces, then the front setback shall be a minimum of seven (7) feet.

(2) *TR District: Roadway and Rear Setbacks for Detached Dwellings and Patio Homes*

On thoroughfare, collector, or other streets, the width of the roadway and rear setbacks combined shall equal at least thirty-five (35) feet and any individual setback shall be at least three (3) feet.

(3) *TR and RMF Districts: Roadway Setbacks for Duplexes, Subdivided Attached, Semi-Attached, Townhouse Units and Multi-Family Structures*

The width of the roadway or front and rear setbacks combined shall equal at least twenty (20) feet and any individual rear setback shall be at least three (3) feet.

(4) *Firewall Requirements for Individual Dwelling Units*

A building setback of less than three (3) feet may be permitted where firewalls are provided in accordance with all applicable building code requirements and where it is permitted by the zoning district.

(5) *Permanent Common Open Space Required*

One (1) of the following shall be provided, whichever is greater:

- (a)** Five Hundred (500) square feet per unit as required in Section 8.3.1; or
- (b)** Twenty (20) percent of the total parcel proposed for development, excluding dedicated right-of-way. The Planning Director may allow this requirement to be reduced to ten (10) percent of the total parcel area when this common space preserves significant and healthy trees located outside of required buffers or streetscapes.

(6) *Individual Enclosed Storage Space*

At least twenty-four (24) square feet of individual enclosed storage space with an external entry shall be provided for each dwelling unit in a multi-family development.

(7) *TR and RMF Districts: Building Separation Requirements for Townhouses and Subdivided Semi-Detached/Attached Units*

This subsection applies only to Townhouses and Semi-Detached/Attached dwellings.

Dwellings that have driveways on alleys shall have a minimum building separation of twenty (20) feet. All other dwellings shall have a minimum building separation of twenty (20) feet if there are four (4) or fewer attached units per building, and a minimum building separation of twenty-five (25) feet if there are five (5) attached units per building. (See Section 5.2.1.(L)(4) for additional information regarding building placement.)

For such dwellings that are part of a development plan submitted prior to May 7, 2020 and subsequently approved in accordance with G.S. 143-755, more than five (5) units may be attached, and the building separation may be a minimum of sixteen (16) feet.

6.1.2 Non-Residential Districts (not including TC District and CT District)

TABLE 6.1-2 TABLE OF DENSITY AND DIMENSIONAL STANDARDS		
Minimum Lot Size		None
Minimum Setback from Street Right-of-Way (feet)		30
Minimum Setback from Private Street in OI District (feet)		15
Minimum Side Yard Setback		None
Minimum Rear Yard Setback		None
Maximum Building Height	Within 100 feet of residential zoning district	35 feet
	More than 100 feet from residential zoning district	50 feet
General Increases to Maximum Building Height	The maximum height limits set forth above may be increased by one (1) foot for every additional foot provided between the building footprint and the minimum required setbacks	

6.1.3 Town Center District

(A) Table of Density and Dimensional Standards

The density and dimensional requirements for the Town Center district are set forth in the following table. Additional regulations, referenced in italicized brackets, are set forth immediately following the table.

**TABLE 6.1-3: TABLE OF DENSITY AND DIMENSIONAL STANDARDS
TOWN CENTER DISTRICT**

Subdistrict	Minimum Lot Dimensions		Minimum Building Setbacks (ft)			Building Height (ft)		Maximum Residential Density (units/acre)	Minimum Parking Requirements
	Area (sq.ft)	Width (ft)	Roadway (These setbacks apply to any portion of a lot that abuts a street)	Side	Rear	Minimum Building Height [1 story = 15 feet]	Maximum Building Height		
Expansion of a residential building constructed or approved prior to 7/1/03 in subdistricts that no longer allow such uses, or creation of a new lot containing an existing residential building constructed or approved prior to 7/1/03 in subdistricts that no longer allow such uses. (SEE NOTES)	5,000	50 (55 for corner lot)	10/18 [2]	0/3 minimum, 16 combined [1]	10	N/A	35	N/A	N/A
HMxD: detached dwelling; detached multi-family dwelling	N/A	20	10/18 [2]	16 total; only one req'd	10	N/A	35	8	2 per dwelling unit
HMxD: all other uses	N/A	N/A	0 [2]	N/A	N/A	20 for new buildings, 0 for existing	65 south of CSX RR, 75 west of N. West St., 90 elsewhere	N/A	1 per dwelling unit
MXD	N/A	N/A	0	N/A	N/A	N/A	45	N/A	1 per dwelling unit + 0.5 per additional bedroom over 1, + 1 per 300 sq. ft. non-residential

**TABLE 6.1-3: TABLE OF DENSITY AND DIMENSIONAL STANDARDS
TOWN CENTER DISTRICT**

Subdistrict	Minimum Lot Dimensions		Minimum Building Setbacks (ft)			Building Height (ft)		Maximum Residential Density (units/acre)	Minimum Parking Requirements
	Area (sq.ft)	Width (ft)	Roadway (These setbacks apply to any portion of a lot that abuts a street)	Side	Rear	Minimum Building Height [1 story = 15 feet]	Maximum Building Height		
HDR Mid-Rise: Subdivided Attached, Semi-detached, Townhouse, Patio	N/A	20	10/18 [2]	16 total; only one req'd	10	N/A	45	8	2 per dwelling unit
HDR Mid-Rise: All other uses	100,000	N/A	0	N/A	N/A	30	65 south of CSX RR, 75 west of N. West St., 90 elsewhere	50	1 per dwelling unit + 0.5 per additional bedroom over 1
MXDR: Multi-family dwelling (including mid-rise) 0-1 bedroom	100,000	N/A	0	N/A	N/A	N/A	90	50	1 per dwelling unit
2 or more bedrooms	100,000	N/A	0	N/A	N/A	N/A	90	50	2 per dwelling unit
MXDR: All other uses	100,000	N/A	0	N/A	N/A	N/A	90	50	2 per dwelling unit
HDR Garden: Multi-family dwelling (including mid-rise) 0-1 bedroom	N/A	N/A	N/A	N/A	N/A	N/A	45	25	1 per dwelling unit
2 or more bedrooms	N/A	N/A	N/A	N/A	N/A	N/A	45	25	2 per dwelling unit
HDR Garden: All other uses	N/A	N/A	N/A	N/A	N/A	N/A	45	25	2 per dwelling unit

**TABLE 6.1-3: TABLE OF DENSITY AND DIMENSIONAL STANDARDS
TOWN CENTER DISTRICT**

Subdistrict	Minimum Lot Dimensions		Minimum Building Setbacks (ft)			Building Height (ft)		Maximum Residential Density (units/acre)	Minimum Parking Requirements
	Area (sq.ft)	Width (ft)	Roadway (These setbacks apply to any portion of a lot that abuts a street)	Side	Rear	Minimum Building Height [1 story = 15 feet]	Maximum Building Height		
MDR: Attached, Semi-detached, Townhouse	N/A	20	10/18 [2]	0/3 minimum, 16 between building groupings [1]	10	N/A	45	8	2 per dwelling unit
MDR: Patio	N/A	20	10/18 [2]	Detached: 0/3 minimum, 16 combined. Attached or semi-attached: 0/3 minimum, 16 between building groupings [1]	10	N/A	45	8	2 per dwelling unit

**TABLE 6.1-3: TABLE OF DENSITY AND DIMENSIONAL STANDARDS
TOWN CENTER DISTRICT**

Subdistrict	Minimum Lot Dimensions		Minimum Building Setbacks (ft)			Building Height (ft)		Maximum Residential Density (units/acre)	Minimum Parking Requirements
	Area (sq.ft)	Width (ft)	Roadway (These setbacks apply to any portion of a lot that abuts a street)	Side	Rear	Minimum Building Height [1 story = 15 feet]	Maximum Building Height		
MDR: Multi-family dwelling (including mid-rise) 0-1 bedroom	5,000	40 (45 for corner lot)	10/18 [2]	0/3 minimum, 6 combined [1]	10	N/A	45	N/A	1 per dwelling unit
2 or more bedrooms	5,000	40 (45 for corner lot)	10/18 [2]	0/3 minimum, 6 combined [1]	10	N/A	45	N/A	2 per dwelling unit
MDR: All other uses	5,000	40 (45 for corner lot)	10/18 [2]	0/3 minimum, 6 combined [1]	10	N/A	45	N/A	2 per dwelling unit
LDR	8,000	50 (55 for corner lot)	10/18 [2]	0/3 minimum, 16 combined [1]	10	N/A	35	N/A	2 per dwelling unit
LDR-12	12,000	80	30	10	15	N/A	35	3	2 per dwelling unit
OFC/INS	N/A	N/A	0	N/A	N/A	N/A	90	N/A	As per Section 7.8
OFC/IND	N/A	N/A	0	N/A	N/A	N/A	45	N/A	As per Section 7.8
COM	N/A	N/A	0	N/A	N/A	N/A	45	N/A	As per Section 7.8
CLI	N/A	N/A	0	N/A	N/A	N/A	30	N/A	1 per 300 sq. ft.

**TABLE 6.1-3: TABLE OF DENSITY AND DIMENSIONAL STANDARDS
TOWN CENTER DISTRICT**

Subdistrict	Minimum Lot Dimensions		Minimum Building Setbacks (ft)			Building Height (ft)		Maximum Residential Density (units/acre)	Minimum Parking Requirements
	Area (sq.ft)	Width (ft)	Roadway (These setbacks apply to any portion of a lot that abuts a street)	Side	Rear	Minimum Building Height [1 story = 15 feet]	Maximum Building Height		
CB&R: Multi-family dwelling 0-1 bedroom	N/A	N/A	10	N/A	N/A	N/A	35	N/A	1 per dwelling unit
2 or more bedrooms	N/A	N/A	10	N/A	N/A	N/A	35	N/A	2 per dwelling unit
CB&R: All other uses	N/A	N/A	10	N/A	N/A	N/A	35	N/A	2 per dwelling unit
INS	N/A	N/A	0	N/A	N/A	N/A	60	N/A	As per Section 7.8

NOTES:

1. Expansions of residential buildings existing before July 1, 2003 in subdistricts that no longer allow such uses shall be in accordance with the provisions of Sections 4.2.2(N)(6) and 10.1.8(H) of this Ordinance.
2. When creating a new lot containing a residential building existing before July 1, 2003 in subdistricts that no longer allow such uses, current building setback requirements must be met except when a required setback is from a property line not being altered or modified from that which previously existed.

(B) Additional Regulations

(1) Firewall Requirements for Individual Dwelling Units

A building setback of less than three (3) feet may be permitted where firewalls are provided in accordance with all applicable building code standards and where it is permitted by the zoning district.

(2) Driveway Length

Where parking is provided between the dwelling and the roadway, the length of the driveway shall be at least eighteen (18) feet, as measured from the inside edge of the sidewalk, or back of curb where no sidewalk is required.

(3) Overhang of Features in Public Right-of-Way

Architectural features such as marquees and cantilevered portions of buildings, and other features such as canopies, awnings, and projecting or suspended signs, may encroach into the public right-of-way subject to approval of an encroachment agreement by the Town of Cary or NCDOT, whichever is responsible for maintenance of improvements within the right-of-way.

6.1.4 Corridor Transition District

TABLE 6.1-4: TABLE OF DIMENSIONAL STANDARDS				
CORRIDOR TRANSITION DISTRICT				
Walnut Street Corridor				
Development Standard	Conversion Area	Redevelopment Area	Infill Area (1st 300 feet from Walnut Street)	Infill Area (301 or more feet from Walnut Street)
Minimum Lot Size	None	1 Acre	-	-
Minimum Lot Width (feet)	50	50	Detached dwellings: 40 Townhomes: 34 Other uses: 50	Detached dwellings: 40 Townhomes: 34 Other uses: 50
Minimum Side and Rear Yard Setback (feet) adjacent to non-residential use ¹	10	10	10	10
Minimum Side and Rear Yard Setback (feet) adjacent to residential use ¹	25	25	Townhomes: 0 side; 15 rear Detached dwellings: 3 side; 15 rear Other uses: 25	Townhomes: 0 side; 15 rear Detached dwellings: 3 side; 15 rear Other uses: 25
Minimum Setback from internal streets (feet)	15	15	Townhomes and detached dwellings: 18 Other uses: 15	Townhomes and detached dwellings: 18 Other uses: 15
Minimum Separation (feet) between attached residential building groupings	N/A	N/A	6	Between groupings of no more than two units each: 6 Otherwise, 16
Minimum Streetscape Along Walnut Street (feet)	20	20	20	-
Minimum Streetscape Along Other Streets (feet)	15	15	15	15
Minimum Buffer Width (feet) Along Residential District Boundaries (Type A Buffer)	15	40	Detached dwellings and townhomes: 20 Other uses: 40	Detached dwellings and townhomes: 20 Other uses: 25
Maximum Individual Building Square Footage (square feet) for Non-residential Buildings	2,500 or size of existing building, whichever is larger (May be increased up to 5,000 square feet with a Special Use permit and combination of 2 or more lots)	7,500 8,500 with 2+ acres 10,000 with 5+ acres	7,500	7,500
Maximum Building Height (feet)	35	35	35	35

(Ord. No. 04-001, 1-8-04; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-02, 1-28-10; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2019-LDO-04, 12-12-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-01A, 2-24-22; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2023-LDO-03, 6-22-23)

6.2 LOT MEASUREMENT AND REQUIREMENTS

6.2.1 Definitions/Measurements

(A) Lot Area

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site. Public rights-of-way shall not be included in calculating lot size, except where specifically allowed by this Ordinance.

(B) Lot Width

Lot width refers to the horizontal distance between side lot lines. Lot width shall be measured as the distance between the side lot lines as measured at the front building line, provided that the width at the street property line is not less than twenty (20) feet.



Lot Area, Lot Width, and Lot Depth

(C) Lot Depth

The average horizontal distance between the front lot line and the rear lot line.

6.2.2 General Lot Requirements

(A) Minimum Lot Dimensions

Any lot that is created, developed, used, or occupied shall meet the minimum lot area and lot width requirements set forth in Table 6.1-1 for the zoning district in which it is located, except as otherwise established in this Ordinance for particular uses. New lots shall also meet the lot development standards set forth in Section 8.1.9(C), *Lots*.

(B) Number of Principal Buildings or Uses Per Lot

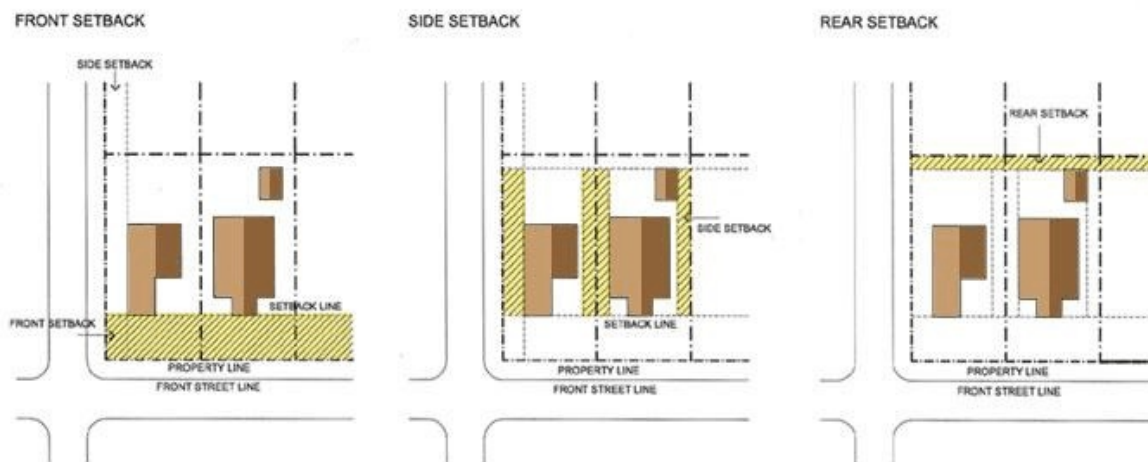
For uses that require development plan approval pursuant to Section 3.9 of this Ordinance, there shall be no limit on the number of principal or accessory buildings or uses on an

individual lot provided such structures and uses meet the other requirements related to setbacks, buffers and impervious coverage limitations contained within this Ordinance. However, there shall be no more than one (1) principal detached dwelling per lot in all residential districts where such uses are allowed.

(C) Distance From Existing Telecommunications Facilities Towers

When creating residentially zoned lots from an existing lot or parcel that contains a telecommunications facility tower (stealth or non-stealth), the new lot(s) shall be located no closer to the existing tower than the height of the tower.

(Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2013-LDO-06, 11-21-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2021-LDO-01, 6-24-21)



Setback Measurement

6.3 SETBACK MEASUREMENT AND REQUIREMENTS

6.3.1 Definition/Measurement

(A) Setback Line

That line that is the required minimum distance from any lot line, or pedestrian easement in the Conservation Residential Overlay District, and that establishes the area within which the principal structure must be erected or placed.

(B) Setback, Roadway

A setback that extends across the full width of a site, the depth of which is the distance between the front or side property line and the furthestmost allowable projection of a building or structure along a line at right angles to the roadway or side lot line, excluding those projections set forth in Section 6.3.2(D). On lots fronting thoroughfares and collector streets, the setback must be measured from the ultimate right-of-way as shown on the Comprehensive Transportation Plan. Roadway setback requirements shall apply to the drip line of any detached canopies on the lot, as well as to the building itself.

(C) Setback, Rear

A setback that extends across the full width of a site, the depth of which is the distance between the rear property line and the furthestmost allowable projection of a building or structure along a line at right angles to the rear lot line, excluding those projections set forth in Section 6.3.2(D).

(D) Setback, Side

A setback on that portion of a lot that is not adjacent to a private or public street. It extends from the required roadway setback, or the front property line of the site where no roadway setback is required, to the front line of the required rear setback, or the rear property line where no rear setback is required.

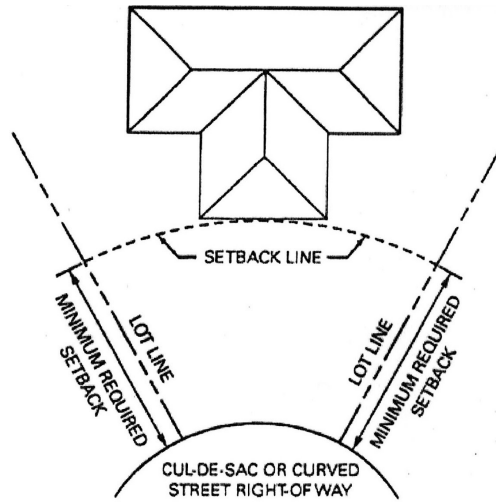
(E) Setback, Front

A setback on that portion of the lot that extends along the full length of the front lot line between two (2) side setbacks or a side and a roadway setback.

[Text continues on p. LDO 6-17.]

(F) Setback Measurement, Cul-de-Sac

A setback on that portion of a lot that extends parallel to the arc of the street right-of-way. Rear setback for cul-de-sac lots include that portion of a lot that extends parallel to the arc of the rear lot line.



Cul-de-sac Setback Measurement

(G) General Guidelines for Determining Residential Setbacks

The purpose of this section is to clarify the appropriate setbacks to apply to new residential construction or redevelopment where there is uncertainty or conflict between the following documents: development plans, recorded plats, zoning districts, and PD documents.

(1) Setbacks Shown on Development Plan Only

- (a) If setbacks are shown on the development plan only, then the setbacks shown on the development plan will apply provided that said setbacks are greater or equal to those required in the corresponding zoning district. [For example, if the development plan shows a fifty (50) foot rear yard setback, then the required setback will be fifty (50) feet even though the corresponding zoning district may be only twenty-five (25) feet.] In such case, however, the setbacks may be reduced to that required within the zoning district if the homeowners' association concurs (HOA written approval will be deemed final). Where there is no homeowners' association, the setbacks in the zoning district will control.
- (b) If setbacks are shown on the development plan only, and those setbacks are less than that required in the corresponding zoning district, then the setbacks in the zoning district will control.

(2) Setbacks Shown on Recorded Plat

If setbacks are shown on the recorded plat, those setbacks shall control. This shall apply even if the setbacks on the recorded plat are in conflict with those shown on the

plan and/or the requirements for corresponding zoning district set forth in Section 6.1 of this Ordinance. This applies even if changes are made to this Ordinance subsequent to plat recordation that would require greater setbacks than those shown on the plat.

(3) *No Setbacks Shown Anywhere*

If there are no setbacks on any documents, such as the development plan or recorded plat, the setbacks shown for the corresponding zoning district in Section 6.1 of this Ordinance shall apply.

(H) Guidelines for Determining Residential Setbacks Within Planned Developments

(1) *Setbacks Shown on the Development Plan Only*

If setbacks are shown on the development plan only, then such setbacks shall control.

(2) *Setbacks Shown on the Recorded Plat or the Master Plan for the Planned Development*

If setbacks are shown on the master plan for the planned development, then such setbacks shall control. However, if a plat was approved and recorded with larger setbacks than what the master plan would allow, an applicant must utilize the setbacks in the approved plat.

(3) *No Setbacks Shown Anywhere*

If no setbacks are shown on any documents, then the setbacks for a structure or portion of a structure receiving building permit approval after January 14, 2010, shall be those applicable to the general zoning district to which the approved use and density of a particular property most closely conform. A structure or portion of a structure that received building permit approval prior to January 14, 2010, shall be deemed conforming with regard to building setbacks if documentation is provided demonstrating that the initial construction was approved by the homeowner's association.

6.3.2 Setback Requirements

(A) General Requirements

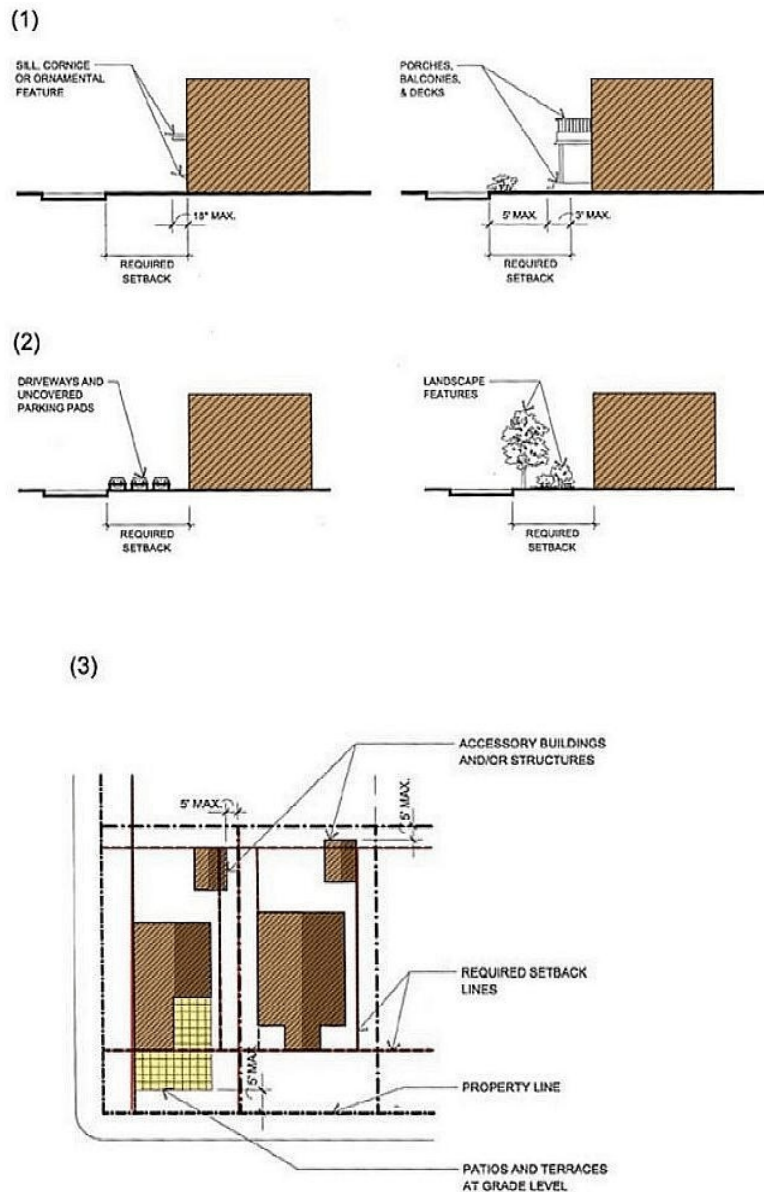
- (1)** A building, structure, or lot shall not be developed, used, or occupied unless it meets the minimum setback requirements set forth in Section 6.1 for the zoning district in which it is located, except as otherwise established in this Ordinance for particular uses or unless a variance has been granted.
- (2)** A setback, court, or other open space required by this Ordinance shall not be included as part of a setback or other open space required by this Ordinance for another building or structure or lot.

(B) [Reserved]

(C) Setbacks from Required Buffers and Streetscapes

Buildings, structures and parking areas shall be set back from required perimeter, streetscape, and Urban Transition Buffers as provided below:

Table 6.3-01 Setbacks From Required Buffers			
		Perimeter Buffer and Streetscape Buffer	Urban Transition Buffer
Neuse River Basin: Lot Created Prior to July 22, 1997 * Jordan Lake Protected Watershed: Lot Created Prior to July 27, 2000*			
Single-Unit Residential Use	Principal Use	10' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	NA
	Accessory Use or Vehicular Use Area	5' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	NA
Other Uses	Principal Use	10' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	10' for new development or expansion of existing development, receiving development plan approval after <i>effective date</i> ; else not applicable
	Accessory Use or Vehicular Use Area	5' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	5' for new development or expansion of existing development, receiving development plan approval after <i>effective date</i> ; else not applicable
Neuse River Basin: Lot Created After July 22, 1997 * Jordan Lake Protected Watershed: Lot Created After July 27, 2000*			
Single-Unit Residential Use	Principal Use	10'	
	Accessory Use or Vehicular Use Area	5'	
Other Uses	Principal Use	10' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	10'
	Accessory Use or Vehicular Use Area	5' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	5'
*Date of adoption of Riparian Buffer Rules by the NC Department of Environment and Natural Resources.			



Features Allowed within Required Setbacks

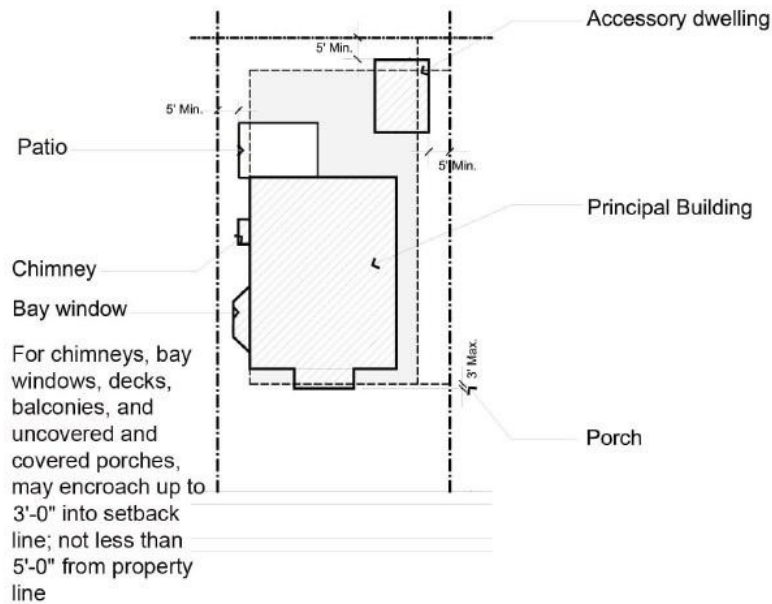
(D) Features Allowed within Required Setbacks or Yards

- (1)** A building, structure, or lot shall not be developed, used, or occupied unless it meets the minimum lot size, setback, and yard requirements set forth for the zoning district in which it is located, except as otherwise established in this Ordinance.
- (2)** A yard, court, or other open space required by this Ordinance shall not be included as part of a yard or other open space required for another building or structure.
- (3)** Trees, shrubs, flowers, fences, walls, hedges, other landscape features, driveways, and uncovered parking pads may be located within any required setback and/or yard.

- (4) The buildings or structures on a lot shall not be located in whole or in part within a required setback or yard, except in certain cases. The following table lists features that may be located within any required setbacks, subject to the specific limitations noted:

TABLE 6.3-1: PROJECTIONS PERMITTED INTO REQUIRED SETBACKS	
Feature That May Encroach Into Setback	Limitation
At-grade sidewalks; and steps, ramps, handrails, and supporting elements	May project into a required roadway setback where making a connection to another sidewalk or a street, May project into a required side or rear setback, but no closer than five (5) feet to the property line. On a lot containing a detached dwelling, no setback is required for at-grade sidewalks.
Eave, soffit, sill, cornice, or ornamental feature	May project up to eighteen (18) inches into any required setback or building restriction line, except where a lesser projection is required to assure conformance with building separation requirements of the North Carolina Building Code.
Bay windows that project outward but do not touch the ground, and similar features projecting from the principal building (does not include cantilevered floor area or cantilevered walls)	May project up to three (3) feet into any required yard or building restriction line shown on the subdivision plat for the property, but no closer than five (5) feet to the property line or buffer. **
Uncovered porches, stoops, balconies, decks, steps, and similar features projecting from the principal building. (Roofs may not encroach into building setbacks).	
Chimneys	
Patios, terraces, and similar features that are not covered and are located on the ground and constructed at grade level	May project into a required yard or building restriction line shown on the subdivision plat for the property, but no closer than five (5) feet to the property line or buffer.
Accessory buildings and/or structures that are detached from the principal structure	May project no closer than five (5) feet to the rear lot line and no closer than five (5) feet to the side lot lines. No projection is allowed into the required roadway setbacks.
Driveway (may not be covered)	May encroach up to lot line(s)
HVAC equipment, utility equipment, mechanical equipment, and electrical panels related to the operation of a detached residential dwelling	
Retaining walls and fences eight (8) feet or less in height that are not located within thirty (30) feet of a street that is classified as a collector or thoroughfare.	

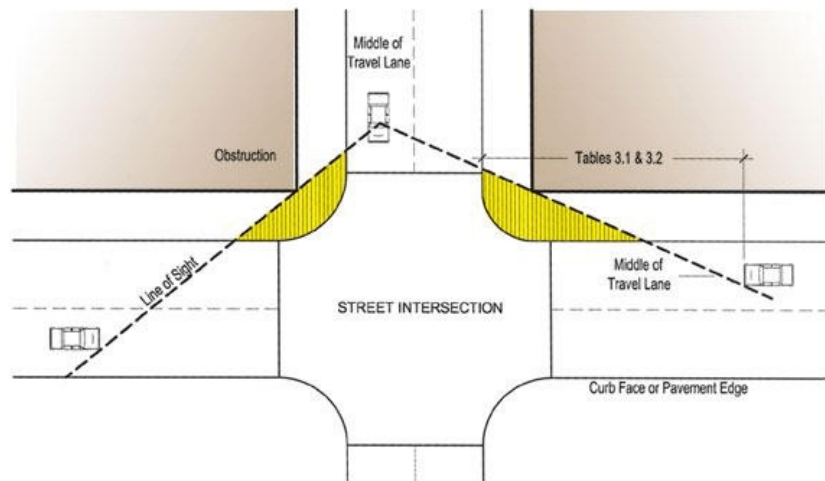
** Such features that encroach into setbacks and were approved prior to September 26, 2013 are exempt from this limitation and shall be considered to be a conforming feature on such properties.



Minor Residential Building Encroachments into Required Setbacks

6.3.3 Clear Sight Triangles

A clear sight triangle is an area of unobstructed vision at the intersection of two (2) or more vehicular use areas where drivers can view oncoming traffic from either direction. All development shall maintain clear sight triangles at all street and driveway intersections in accordance with the current regulations of the North Carolina Department of Transportation and the Town's Standard Specifications and Details Manual.



Clear Sight Triangles

6.3.4 Exemptions

Public Utility Facilities owned and/or operated by the Town are not required to meet the setback or height provisions of this Chapter.

(Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-04, 8-28-14; Ord. No. 2015-LDO-002, 6-25-15; Ord. No. 2017-LDO-02, 3-30-17; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

6.4 HEIGHT MEASUREMENT AND REQUIREMENTS

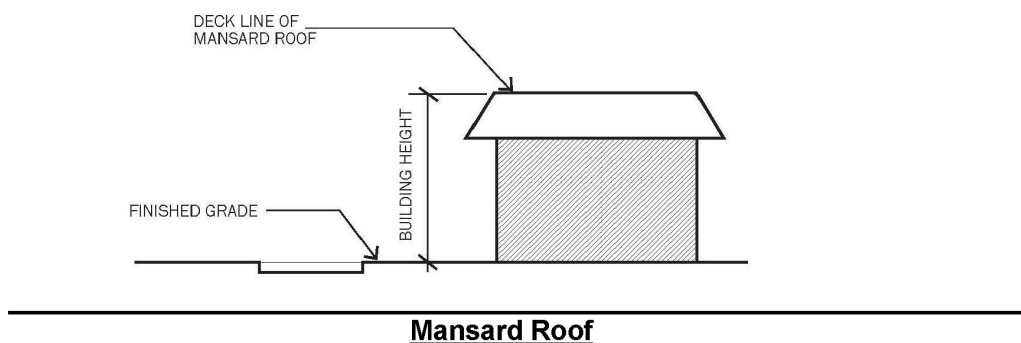
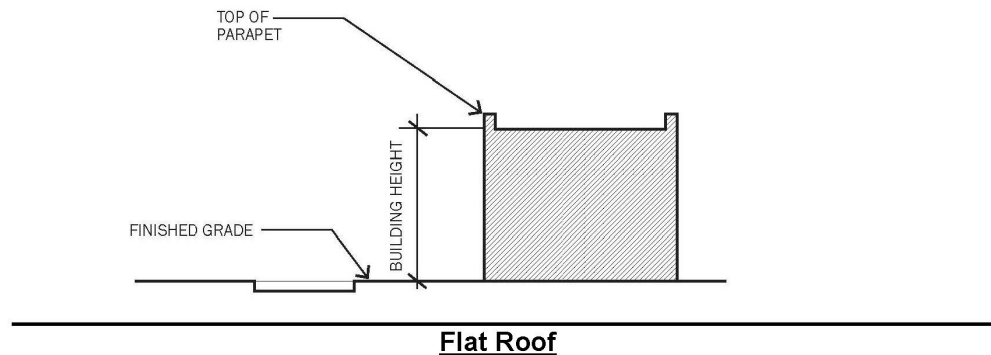
6.4.1 Definition/Measurement

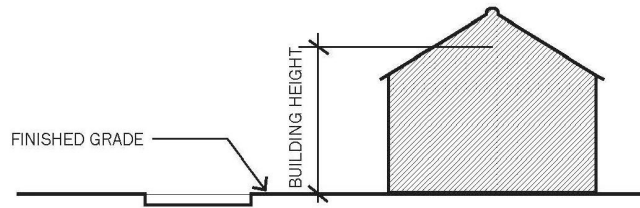
(A) Building Height

Building height is the vertical distance measured from the average elevation of the proposed finished grade at the front of the building to the highest point of the roof deck of a flat roof, to the highest point of a mansard roof, or to the mean height level between the eaves and ridge of a gable, hip, or gambrel roof.

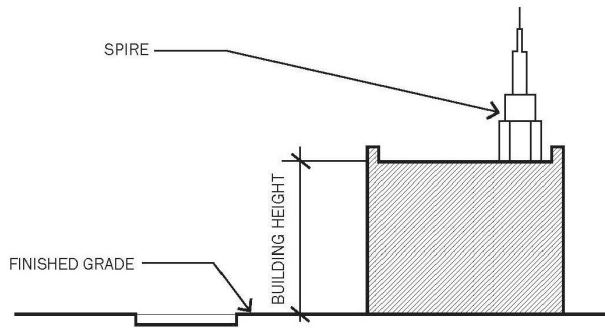
(B) Exceptions

Parapets, spires, cupolas, antennae attached to a building, projections from buildings, mechanical equipment, and accessory structures associated with an activated roof deck, are not to be included in the calculation of building height.

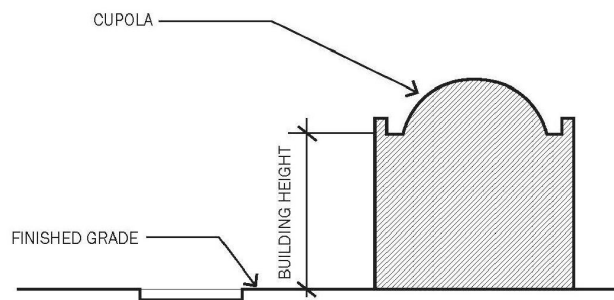




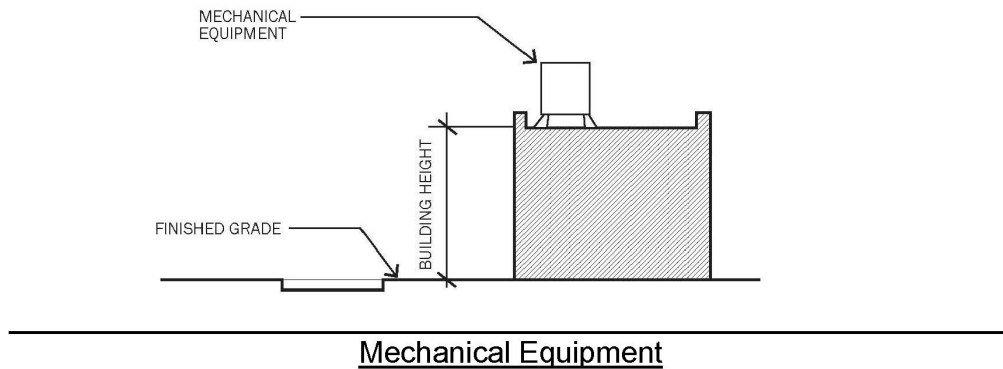
Gable, Hip, or Gambrel Roof



Spires



Cupolas



6.4.2 General Height Regulations

PRINCIPLE OF INTERPRETATION

- Maximum building heights may be increased beyond the maximum height listed on a one-to-one (1:1) basis for each additional foot that the structure is setback from all property line(s) beyond the minimum required setback.
- Individual building story height for a residential structure typically equals twelve (12) feet.
- Individual building height for a nonresidential structure typically equals fifteen (15) feet.

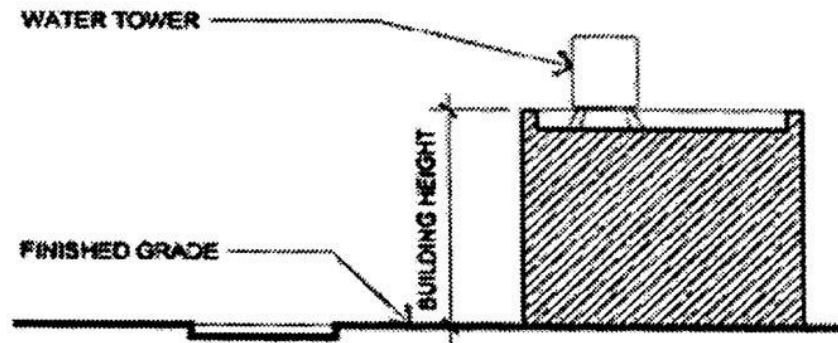
(A) General Increases to Maximum Height Requirement

- (1) The maximum height limits set forth in Section 6.1 may be increased by one (1) foot for every additional foot provided between the building footprint and the minimum required setbacks determined in accordance with this Ordinance.
- (2) The Planning Director may increase the maximum building height up to 15% if the following criteria are met:
 - a. The building is in the Town Center District or a Destination Center;
 - b. The building is part of a mixed-use development; and
 - c. Plans for the property are subject to a development agreement approved by the Town Council pursuant to G.S. Chapter 158, Article 1; Chapter 160D, Article 10; or 160D-1315.

(B) Telecommunications Facilities

Telecommunications facilities may exceed the thirty-five (35) feet minimum height requirement, up to a maximum of three hundred and fifty (350) feet. See Section 5.2.4(D).

(Ord. No. 04-001, 1-8-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2019-LDO-04, 12-12-19; Ord. No. 2021-LDO-01, 6-24-21)



Building Height Exceptions

6.5 BULK MEASUREMENT AND REQUIREMENTS

6.5.1 Measurements

(A) Density, Gross

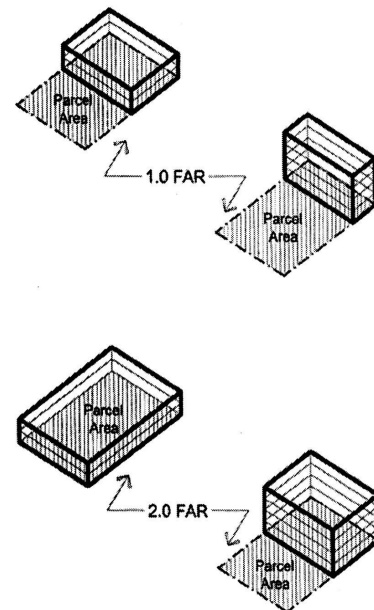
The number of dwelling units on a particular tract or parcel of land, taking into account the entire area of that tract or parcel.

(B) Density, Net

The total number of dwelling units on a particular tract or parcel of land, not taking into account portions of the tract or parcel that contain rights-of-way for collector or larger streets, Flood Hazard Area, lakes or other water bodies, or wetlands falling under the regulatory jurisdiction of the U.S. Army Corps of Engineers, but taking into account all other areas of the tract or parcel.

(C) Floor Area

The gross total horizontal area of all floors, including usable basements and cellars, below the roof and within the outer surface of the main walls of principal or accessory buildings, or the centerlines of a party wall separating such buildings or portions thereof, or within lines drawn parallel to and two feet within the roofline of any building or portions thereof without walls, but excluding, in the case of non-residential facilities, arcades, porticos, and similar areas open to the outside air which are accessible to the general public and which are not designed or used as areas for sales, display, storage, service, or production.

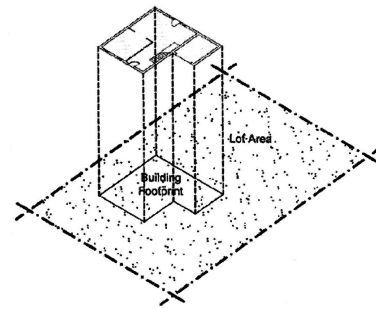


Floor Area

(D) Building Footprint

The ratio of the horizontal area measured from the exterior surface of the exterior walls of the ground floor of all principal and accessory buildings on a lot to the total lot area.

(Ord. No. 06-009, 4-27-06)



Building Footprint

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Chapter 7: DEVELOPMENT AND DESIGN STANDARDS**7.1 GENERAL PROVISIONS****7.1.1 Purposes**

The purposes of this chapter include:

- (A) To encourage the proper use of the land by promoting an appropriate balance between the built environment and the preservation of open space and natural environmental resources;
- (B) To protect private and public investment through preservation of open space; protection of natural resources including the existing tree canopy and forests; providing buffers between incompatible uses and along roadways; reducing heat and air pollution; capturing carbon; and encouraging the planting of new vegetation as deemed appropriate;
- (C) To protect and promote the health and economic values trees, forests, open space and natural lands provide;
- (D) To promote water conservation/efficiency through preserving natural areas, encouraging good soil management, and encouraging the use of native and/or drought tolerant plant materials.
- (E) To provide proper standards that ensure a high quality appearance for Cary and promote good design while also allowing individuality, creativity, and artistic expression; and
- (F) To preserve and protect the identity and character of Cary, and to enhance the business economy.

7.1.2 Applicability

The requirements of this chapter shall apply to all uses for which development plan approval is required pursuant to Section 3.9 of this Ordinance.

7.1.3 Pre-Application Conference

- (A) A pre-application conference is required for most development plans submitted under Chapter 3 of this Ordinance, and thus is required for most development proposals regulated under this chapter. Pre-application conferences are not required for development plans that have already been approved and that request changes which amount to less than fifty (50) percent in non-residential square footage or less than fifty (50) percent increase in the number of lots/units.
- (B) At the pre-application conference, the applicant and Planning Department staff shall discuss the requirements of this chapter in order to avoid relocation of major site elements after the plan is submitted for review and approval.

7.1.4 Community Appearance, Site Design Standards, and Other Documents

This chapter contains minimum legal requirements related to site design and layout, appearance, landscaping, and building design. This chapter shall be used in conjunction with other related documents including, but not limited to, those listed in Section 1.4. These documents express Town policy and contain standards, guidelines, examples, and details needed to make this

chapter easy to understand and apply in various situations. Some of these documents contain minimum requirements that may or may not be included within the text of this Ordinance, or may in some situations differ with this Ordinance; in such cases, the more restrictive of the two (2) requirements shall apply. The requirements of Chapter 7 may be eligible for Minor Modifications. (See Section 3.19 for applicability.)

7.1.5 Limitations on Site Disturbance

(A) Limits of Disturbance

This Section is provided for informational purposes as a general guideline about where land disturbing activities should or should not take place on a development site. On all development sites subject to this chapter, the following areas shall generally be considered to be off-limits to development or land-disturbing activities, unless otherwise specified in this Ordinance:

- (1) The Flood Hazard Area;
- (2) Required streetscape areas as measured from the ultimate right-of-way;
- (3) Undisturbed perimeter buffers, including the Thoroughfare Overlay;
- (4) Zones 1, 2, and 3 of all UTBs;
- (5) Wetlands under the jurisdiction of the Army Corps of Engineers unless otherwise permitted by this agency;
- (6) Conservation easements;
- (7) Preservation areas required by applicable conditional use zoning conditions;
- (8) Champion trees and required protection areas associated with such trees (e.g. root zone); and
- (9) Any other areas indicated for protection by the Planning Director.

(B) Limited Disturbance or Construction Outside Limits of Disturbance

In some cases, limited disturbance or land disturbing activities may occur within the areas to be protected provided all necessary approvals are obtained. Such activities include, but are not limited to the following:

- (1) Mitigation of development activities;
- (2) Restoration of previously disturbed or degraded areas;
- (3) Personal gardens not operated on a for-profit basis and maintained by individual homeowners;
- (4) Utility installations and emergency public safety activities;
- (5) Construction of a trail or pedestrian walkway that will provide public access;

- (6) The enhancement of the habitat values and/or other natural resource values of an identified natural area;
- (7) Landscaping according to an approved landscaping plan; and
- (8) Construction of public transit amenities, as required by Section 7.10.6 of this Ordinance.

(Ord. No. 2007-04, 3-22-07; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-01, 1-13-22)

7.2 LANDSCAPING, BUFFERING, SCREENING, AND TREE PROTECTION

7.2.1 Purpose

The purpose of these provisions is to establish minimum requirements for the provision and maintenance of functionally adequate, attractive screening and buffering of structures, parking areas, driveways, and other facilities and land uses, while providing standards for the protection of existing and new trees and vegetation and their root zones. These requirements are intended to carry out the following objectives:

- (A) To promote and increase design compatibility between different land uses, while ensuring attractive views from streets and adjacent properties;
- (B) To assist in delineating separations of spaces, structures, uses, and activities on a site, or between adjacent sites;
- (C) To shield adjacent properties from potentially adverse external impacts of development, and development from potential negative impacts of adjacent land uses and activities;
- (D) To enhance the streetscape by separating the pedestrian from motor vehicles; abating glare and moderating temperatures of impervious areas; filtering air of pollutants, fumes, and dust; providing shade; attenuating noise; and reducing the air temperature, heat, amount and rate of stormwater runoff, and visual impact of large expanses of pavement;
- (E) To promote the preservation of open space; existing tree canopy and vegetation; and natural diversity and wildlife habitat, using supplemental plantings when necessary to meet the performance criteria of this section;
- (F) To mitigate adverse grade changes between adjacent properties;
- (G) To improve the quality of the built and natural environments through air quality enhancements; heat reduction; carbon capture; energy conservation; reductions in the amount and rate of stormwater runoff and erosion; stormwater runoff quality improvements; and increase in the capacity for groundwater recharge; the provision of health, economic values, and social benefits; and
- (H) To enhance the appearance and value of both residential and non-residential properties.

PRINCIPLES OF INTERPRETATION

The *Landscaping, Buffering, Screening, and Tree Protection* section contains requirements for the following: perimeter buffers, streetscape and street front landscaping, tree and vegetation protection, vehicular use area landscaping, fences and walls, screening, and miscellaneous landscaping requirements.

7.2.2 General Provisions**(A) Landscaping Plans**

- (1) In order to implement the requirements of this section, landscaping plans are required as part of each development plan required under Section 3.9 of this Ordinance. Plans shall be developed by individuals or professional firms having the competence and knowledge to satisfactorily develop plans required by this Section.
- (2) Landscaping plans shall be designed to improve efficiency of irrigated areas (if applicable) through minimizing slopes, preserving topsoil, and retaining stormwater drainage on-site
- (3) Landscaping plans shall meet the standards of this Section 7.2, and shall be consistent with the standards contained in the Community Appearance Manual and the Site Design Standards, which contain standards, guidelines, examples, and details needed to make this section easy to understand and apply in various situations, including examples of required plans, recommended plant species for various applications, and illustrated examples of what Cary considers to be good site design.

(B) Violations

Violations of this section are subject to fines, replacement of damaged vegetation, stop-work orders, or any combination of the penalties listed in Section 7.2.13 or Chapter 11.

7.2.3 Requirements for Perimeter Buffers and Landscape Areas**(A) Applicability**

- (1) All uses subject to the requirements of this chapter shall provide an undisturbed buffer to separate that use from adjacent land uses in accordance with Table 7.2-1. The buffer shall have the width, amount of vegetation, and other features to properly mitigate negative effects of continuous land uses. Whenever new landscape material must be used, such material shall consist of native or non-invasive non-native, drought-tolerant plantings to reduce the need for irrigation systems and promote restoration of a natural forest.
- (2) Within the area inside the outer perimeter of the Town Center District, including all subdistricts and conditional use districts, and individual Mixed Use Overlay Districts, the requirements of this section shall apply only to boundaries between properties located within the district and properties located outside the districts.
- (3) If an undisturbed buffer does not exist on the site, or has been disturbed as allowed in this section, then a re-vegetated natural buffer may be installed. The intent of the re-vegetated buffer is to restore the natural area (i.e., sufficient upper-story trees to achieve a closed canopy in the future and, preferably, no installation of turf grasses).

- (4) The developer of a site/subdivision development shall install the required landscaping within all streetscapes and buffers when: (1) construction activity is discontinued for more than one hundred eighty (180) days; and/or (2) the area graded exceeds the initial phase of development. In such instances, all required streetscapes and buffers shall be installed following the completion of the installation of site stabilization measures for all areas graded.

(B) Type and Width of Required Buffer

(1) *Buffers Based on Land Use Class*

Table 7.2-1 specifies the type of undisturbed buffer or landscaped buffer that must be in place. The buffer type is indicated by letter and the total buffer width in feet is indicated by number. Depending on the land use classification of the proposed use and the use of the adjacent property, Table 7.2-1 requires an undisturbed buffer or landscaped area (if permitted) of a particular type and a particular minimum width. Subsection 7.2.3(C) below identifies the land uses that fall within each land use class shown in Table 7.2-1. This information is also listed by use type in Table 5.1-1 of this Ordinance. Subsection 7.2.3(D) below identifies the performance standards for each buffer type (i.e., A, B, or C).

(2) *Buffer Adjacent to American Tobacco Trail*

A fifty (50) foot wide Type A buffer shall be provided adjacent to the American Tobacco Trail as required by Section 4.4.3(H)(4) of this Ordinance.

TABLE 7.2-1: REQUIRED UNDISTURBED PERIMETER BUFFER/LANDSCAPED AREAS BY CLASS											
Proposed Use Class	IF DEVELOPED Adjacent Use Class							IF VACANT Adjacent Property Zoning District			
	1	2	3	4	5	6	7	Residential Zones (See [D][2] below for exceptions)	CT TC OI PDD	GC	ORD I
1	0	20 B	20 B	20 B	25 B	35 B	45 B	20 B	25 B	35 B	45 B
2	20 B	20 B*	30 B	40 A	50 A	65 A	80 A	20 B	50 A	65 A	80 A
3	20 B	30 B	20 B	30 A	40 A	50 A	65 A	30 B	40 B	50 A	65 A
4	20 B	40 A	30 A	20 B	30 B	40 B	50 A	40 A	30 B	40 A	50 A
5	25 B	50 A	40 A	30 B	20 C	20 C	30 B	50 A	20 C	20 C	30 B
6	30 A	65 A	50 A	40 B	20 C	20 C	25 B	65 A	20 C	20 C	25 C
7	45 B	80 A	65 A	50 A	30 B	25 B	20 C	80 A	30 B	30 B	20 C

- (1) No buffer is required between shared public uses (e.g., a park adjacent to a school, library, or other shared public facility).
- (2) * Required landscaping areas to be provided between two Class 2 uses are not subject to the ownership restrictions applied to other buffers, and may be located within the platted portion of a lot.
- (3) Once a detached dwelling has been constructed and occupied, in instances where the landscaping area (planted to a Type B standard) between two (2) type 2 uses is located within the individual building lot, the landowner(s) may remove or supplement vegetation on the lot.

(C) Land Use Classes

The seven land use classes appearing in Table 7.2-1 include the following uses and structures (refer to Table 5.1-1 for definition of use categories):

TABLE 7.2-2: LAND USE CLASSES	
Class	Uses Included
Class 1	Uses permitted under the <i>Agricultural Uses</i> category, including produce stands.
	Cemetery.
	Uses permitted under the <i>Park and Open Space</i> use category, except athletic fields, amphitheaters, and neighborhood recreation centers.
	Open space: No buffer is required for any use adjacent to permanent and/or zoned open space unless it is needed to meet the buffer width and type requirements in Table 7.2-2 (e.g., open space that is part of a multifamily development plan). If this open space is not wide enough, or contains insufficient vegetation to meet the buffer type requirements, then the development is required to add additional buffer area and/or vegetation so as to meet the requirements. Buffer width and type are based on the land use on the opposite side of the open space. Setbacks from open space shall be the same as those for buffers since the open space is being used to meet buffer requirements.
Class 2	Single-unit detached dwellings in residentially zoned districts on lots that are eight thousand (8,000) square feet in area or larger and like uses.
	Single-unit detached dwellings on lots eight thousand (8,000) square feet in area or larger that are located on non-residentially zoned property shall be classified as vacant non-residential for determining the required buffer.
	In addition, "underdeveloped" properties (larger size properties greater than ten (10) acres that have the potential for higher density development based on the future growth framework development category designated for the property in the Shape chapter of the Cary Community Plan) that may presently be zoned and/or used for residential uses shall be placed in a class consistent with future growth framework development category.
Class 3	Single-unit detached dwellings in residentially zoned districts on lots of less than eight thousand (8,000) square feet and like uses (including detached patio dwellings).
Class 4	Uses permitted under the <i>Animal Service</i> use category, except outdoor kennels.
	Uses permitted under the <i>Assembly</i> use category.
	Day Care Centers
	Athletic fields (public and private).
	Golf course.
	Golf driving range.
	Uses permitted under the <i>Government Services</i> use category, except public utility facilities.
	Bed & Breakfast.
	Uses permitted under the <i>Household Living</i> use category, except detached dwellings (including detached patio dwellings) and duplex dwellings.
	Libraries.

TABLE 7.2-2: LAND USE CLASSES

Class	Uses Included
Class 4	Museums.
	Public safety stations.
	Neighborhood recreation centers, indoor and outdoor (public and private).
	Nursing homes.
	Uses permitted under the <i>Office</i> use category with a gross floor area on the property of fifty thousand (50,000) square feet or less when located adjacent to residential uses or zoning.
	Parking lots as a principal use containing less than fifty (50) parking spaces.
	Uses permitted under the <i>Religious Assembly</i> use category.
	Uses permitted under the <i>School</i> use category, including pre-schools when adjacent to residential uses.
	Uses permitted under the <i>Telecommunications Facilities</i> use category up to seventy-five (75) feet in height from the finished grade elevation to the top of the tower (not including antennae).
Class 5	Amphitheaters, outdoor (public) seating not more than two hundred fifty (250) persons.
	Pre-schools and day care centers when located adjacent to non-residential uses.
	Duplex dwelling.
	Farm markets.
	Uses permitted under the <i>Financial Institutions</i> use category.
	Uses permitted under the <i>Group Living</i> use category, except nursing homes.
	Hospitals.
	Uses permitted under the <i>Recreation/Entertainment, Indoor</i> use category, except neighborhood recreation centers.
	Uses permitted under the <i>Office</i> use category with a gross floor area on the property of more than fifty thousand (50,000) square feet when located adjacent to residential uses or zoning.
	Parking lots as a principal use containing greater than fifty (50) parking spaces.
	Uses permitted under the <i>Public Accommodation</i> use category, except guest houses that are not located adjacent to a residential district and that have no more than one hundred fifty (150) rooms.
	Uses permitted under the <i>Telecommunications Facilities</i> use category up to one hundred fifty (150) feet in height from the finished grade elevation to the top of the tower (not including antennae).
	Railroad rights-of-way, including lines and/or tracks.
	Utility substation, minor.

TABLE 7.2-2: LAND USE CLASSES

Class	Uses Included
Class 6	Amphitheaters, outdoor (commercial/private).
	Amphitheaters, outdoor (public) seating more than 250 persons.
	Dog kennels, outdoor.
	Uses permitted under the <i>Food and Beverage Service</i> use category.
	Uses permitted under the <i>Public Accommodation</i> use category, except guest houses that have 150 rooms or more and that are not located adjacent to a residential district.
	Uses permitted under the <i>Office</i> use category when located adjacent to a non-residential use or zoning district.
	Recreation, general outdoor (commercial/private).
	Uses permitted under the <i>Retail Sales and Service</i> use category, except farm markets and funeral homes.
	Uses permitted under the <i>Telecommunications Facilities</i> use category up to 225 feet in height from the finished grade elevation to the top of the tower (not including antennae).
	Uses permitted under the <i>Vehicles and Equipment</i> use category.
	Uses permitted under the <i>Warehouse and Freight Movement</i> use category, except outdoor storage and railroad stations and yards.
	Commuter rail transit station.
Class 7	Uses permitted under the <i>Aviation</i> use category.
	Uses permitted under the <i>Industrial Service</i> use category.
	Uses permitted under the <i>Manufacturing and Production</i> use category.
	Motor vehicle raceways.
	Uses permitted under the <i>Non-Governmental Utilities</i> use category, except minor utility substations and rail transit stations.
	Outdoor storage.
	Uses permitted under the <i>Public Accommodation</i> use category, except guest houses, that are located adjacent to a residential district.
	Public utility facilities.
	Railroad stations and yards.
	Uses permitted under the <i>Telecommunications Facilities</i> use category above 225 feet in height from the finished grade elevation to the top of the tower (not including antennae).
	Uses permitted under the <i>Waste-Related Uses</i> category.

(D) Types of Buffers and Landscaped Areas

- (1) The three (3) types of landscaped buffers that appear in Table 7.2-1 are as follows. Detailed illustrations and supplemental information on buffer configurations are available in the Community Appearance Manual.

(a) *Type A*

1. This buffer is intended to provide the greatest degree of screening feasible and minimize visual contact between uses, creating a strong impression of total separation from the ground to a height of at least eighteen (18) feet. Vegetative material within this buffer shall meet the following criteria:
 - a) Upper-story trees shall be planted at a density of four (4) trees for every one hundred (100) linear feet of buffer, with a maximum spacing of thirty (30) feet between trees. Upper-story trees shall attain a height at maturity of no less than sixty (60) feet.
 - b) Evergreen understory trees shall be planted at a density of fourteen (14) trees for every one hundred (100) linear feet of buffer, with a maximum spacing of ten (10) feet between trees. Understory evergreen trees shall attain a height at maturity of no less than eighteen (18) feet.
 - c) Type A buffers that are wider than thirty (30) feet shall also incorporate shrubs planted at a density of ten (10) shrubs per one hundred (100) linear feet of buffer. Shrubs shall attain a height at maturity of no less than three (3) feet.
 - d) Type A buffers may include a wall, fence, landscaped earthen berm, planted vegetation, existing vegetation, or any appropriate combination of these elements.
2. The Planning Director may modify the planting criteria for a Type A buffer pursuant to this section, where shown on any development plan requiring or identifying a Type A or opaque buffer or landscape area, including such plans approved prior to the effective date of this ordinance, and/or pursuant to Section 4.3.5(D)(3) where such buffer is required as a zoning condition, if the Planning Director determines in accordance with established horticultural guidelines that achieving the desired degree of buffer opacity while maintaining existing healthy vegetation within the buffer may not be feasible due to a combination of the factors listed below, provided that the intended performance standard is achieved to the extent practicable:
 - a) type and conditions of significant vegetation remaining within the landscape area or buffer,
 - b) availability of sunlight;
 - c) dimension of required planting area;
 - d) separation between plants;

- e) impact of installation of new plant material on root zones of any existing material;
- f) topography;
- g) proximity of man-made features such as utilities, buildings, sidewalks and retaining walls; and
- h) other unique site factors or conditions affecting plant growth and long-term health of the buffer, streetscape or landscape area.

(b) Type B

This buffer is intended to function as a semi-opaque screen from the ground to at least a height of six (6) feet. Vegetative material within this buffer shall meet the following criteria:

1. Mid- or upper-story trees shall be planted at a density of four (4) trees for every one hundred (100) linear feet of buffer, with a maximum spacing of thirty (30) feet between trees. Mid- or upper-story trees shall attain a height at maturity of no less than forty (40) feet.
2. Shrubs shall be planted at a density of sixteen (16) shrubs for every one hundred (100) linear feet of buffer, with a maximum spacing of eight (8) feet between shrubs. At least seventy-five (75) percent of the shrubs shall be an evergreen species locally adapted to the area.
3. Type B buffers may include a wall, fence, landscaped earthen berm, planted vegetation, existing vegetation, or any appropriate combination of the elements.

(c) Type C

This buffer area is intended to function as an intermittent visual obstruction from the ground to a height of at least twenty (20) feet, and create the impression of spatial separation without eliminating visual contact between uses. Vegetative material within this buffer shall meet the following criteria:

1. Upper-story trees shall be planted at a density of three (3) trees for every one hundred (100) linear feet of buffer, with a maximum spacing of forty (40) feet between trees. Upper-story trees shall attain a height at maturity of no less than sixty (60) feet.
2. Understory or ornamental trees shall be planted at a density of five (5) trees for every one hundred (100) linear feet of buffer, with a maximum spacing of twenty-five (25) feet between trees. Understory or ornamental trees shall attain a height at maturity of no less than fifteen (15) feet.
3. Type C buffers may include a wall, fence, earth berm, planted vegetation, existing vegetation, or any appropriate combination of these elements.

(2) Buffer plantings shall conform to the following standards:

- (a) The new plantings comprising the buffer shall be evenly distributed throughout the buffer. In instances where planting in a row or rows is necessary to achieve the desired performance objective, trees shall be planted in staggered rows whenever practicable. In cases where the entire buffer width may not be needed to achieve the desired performance objective of the buffer type, the remainder of the required buffer area should have a minimum spacing of trees as required by the associated buffer type.
- (b) Buffer performance requirements must be achieved in the quickest time possible (preferably no more than five (5) years).
- (c) When detailed information regarding existing vegetation is not available at the time of development plan approval, then a Town Zoning Compliance Officer shall determine when existing vegetation may be utilized in-lieu of new plantings prior to the approval of a Certificate of Occupancy.
- (d) Depending on actual field conditions, additional trees and shrubs may be required in addition to the existing vegetation to meet these buffer requirements.
- (e) In instances where planting requirement calculations produce a fraction, the plants shall be rounded up to the next whole number (e.g. five and one-tenth (5.1) required shrubs shall equal six (6) provided shrubs).

(E) Determination of Buffer Width and Responsibility for Installation

Buffer widths and installation responsibility shall be in accordance with the following:

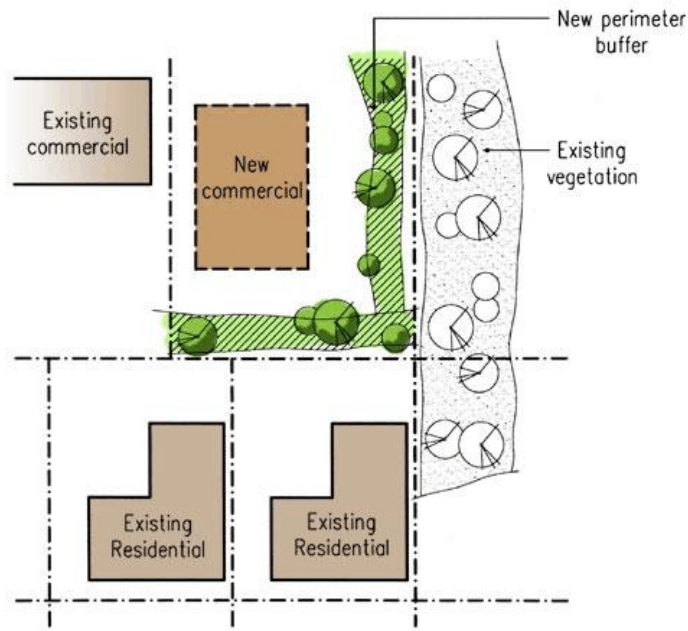
- (a) Where a developing parcel is adjacent to a vacant parcel, then the developing parcel may provide one-half of the buffer required adjacent to the vacant land as indicated in Table 7.2-1.
- (b) Where a developing parcel is adjacent to an existing land use, then the developing parcel shall provide the full buffer required adjacent to the existing land use as indicated in Table 7.2-1.
- (c) The developing parcel next to an existing land use shall provide the full buffer required unless the existing use already has a buffer that may be credited towards the required width, or the buffer for an existing non-residential use was reduced or not required with its development plan approval.
- (d) Credit for existing buffers is not given when the existing use is residential and its existing buffer is on the same lot as the residential use; see subsection 7.2.3(J), Ownership of Buffers.

(F) Location of Buffers

- (1) The perimeter buffers and/or perimeter landscaped areas required by this Section shall be located along the outer perimeter of the parcel and shall extend to the parcel boundary line or right-of-way line; however, the buffers may be located along shared access easements between parcels in non-residential developments. Within shopping centers or other non-residential centers/developments, the perimeter buffer area

between outparcels (non-residential uses) may be provided, totally or in part, elsewhere on the site. For example, a twenty (20)-foot buffer between like uses may be shifted elsewhere on the site (preferably within the site's interior) as long as the total area is provided for. The intent of this subsection is to provide for more flexibility in site design and to potentially save large natural areas that may exist elsewhere on the site.

[Text continues on p. LDO 7-23.]



Location of Buffers

- (2) Perimeter buffers or landscaped areas shall not include any portion of an existing or proposed public or private street, easement, or right-of-way. Additional buffer area shall be required when easements and other similar features intrude in the buffer.

(G) Existing Vegetation, Fences, Walls, and Berms

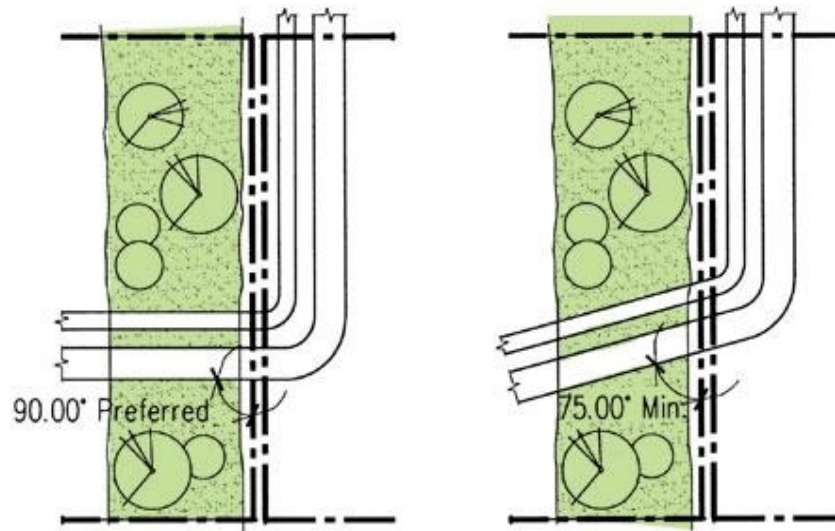
- (1) Existing significant vegetation within the required buffer shall be preserved and credited toward standards for the type of buffer required, unless the existing vegetation is seriously diseased, damaged and treatment would not be practical, or vegetation has or will give rise to a nuisance situation. Wherever practical, vegetation removal will be limited to just those portions of the vegetation area necessary to correct any problems, while the remainder of the vegetation area without problems shall be left intact.
- (2) Existing berms, walls, or fences within the buffer, but not including chain link fencing, may be used in part to fulfill the requirements for the six (6)-foot tall screen where required, provided that these elements are in a condition of good repair. Where fences or walls are used, they shall be screened pursuant to the requirements of Sec. 7.2.7(C). Other existing site features within the required buffer area which do not otherwise function to meet the standards for the required buffer shall be screened from the view of other properties or removed, as determined during review and approval of the development plan.

- (3) If existing significant vegetation and other site features do not fully meet the standards for the type of buffer required, then additional vegetation and/or site features (including fences) shall be planted or installed within the required buffer area to meet the performance criteria outlined in this section.

(H) Development within Required Buffers

No grading, development, land-disturbing activities, or removal of vegetation shall occur within buffers or associated tree protection areas with exception of the following, unless otherwise explicitly permitted in this Ordinance. Where disturbance within the buffer is allowed, damage to existing vegetation shall be minimized to the extent practicable and supplemental planting shall be provided as necessary to meet the performance standard of the applicable buffer type.

- (1) Sidewalks, street-side trails and public transit amenities;
- (2) Utilities, including but not limited to water and sewer lines, stormwater drainage channels or piping, and similar features, provided that no reasonable alternative location exists; and
 - (a) they are located perpendicular to the buffer or at an angle of at least seventy-five (75) degrees; or
 - (b) they are located at an angle less than seventy-five (75) degrees, and the area contained in the disturbed area is replaced with an equal amount of buffer area meeting the applicable buffer standard, in proximity to the disturbed area.
- (3) Stormwater impoundment areas or other BMPs provided that no reasonable alternative location exists.



Development within Required Buffers

(I) Zoning Change

A revised plan will be required if changes of use or change in zoning classification occur for an existing use or parcel and such change results in a higher land use classification per criteria listed in subsection 7.2.3(C) above. The proposed use or parcel shall be brought into compliance with the perimeter buffer/landscaped area requirements of this section or as close as existing site conditions permit, as determined by the Planning Director. Compliance with this Section shall require the submittal and approval of a revised plan showing that the development is being brought into compliance to the extent practicable.

(J) Ownership of Buffers

No required buffer in a residential subdivision shall be included within any single-unit residential lot, or be wholly owned (in fee simple absolute) by the owner of an individual residential building lot zoned for residential uses. The buffers shall be owned by a homeowner's association or be owned outright by a third party or shall be otherwise divided so that the buffer is not removed, modified, or damaged.

- (1) Any required buffer (including those required as a zoning condition) for a residential development shall not be credited toward meeting the lot size requirements. The preferred method is that the residential buffer be a separate lot and owned by a separate entity (e.g., a homeowners association).
- (2) Where control and/or ownership of the buffer is through a property owner's association, any modifications, removal, or damage to the buffer by an adjacent homeowner shall be prohibited.

- (3) The property owner's association or owner shall be responsible for any violation related to the buffers in accordance with Section 7.2.13, *Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines*.
- (4) Buffers may be included within residential lots only when all of the following conditions are met:
 - (a) The subdivision is less than ten (10) acres in size and has no homeowners association; and
 - (b) There is no reason for the formulation of a homeowner's association (e.g. covenant, other common areas or engineered stormwater control structures); and
 - (c) The buffer is placed within a permanent conservation easement or other legal instrument dedicated to the Town (required documents must be provided prior to recording the plat for the impacted area).

(K) Use of Off-Site Landscape Easements

Off-site permanent landscape easements may be used to meet required buffer areas, provided that the size or shape of the parcel significantly restricts the ability to reasonably use the property and meet the buffer requirements. These easements must be recorded prior to or in conjunction with the approval of the development plan. The easement must not be under the same ownership as the developing site.

(L) Distance of Buildings and Structures from Required Buffers

Building, structures, parking lots and vehicular use areas shall be set back from required buffers or streetscapes as specified in Section 6.3.2(C) of this Ordinance.

(Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2021-LDO-01, 6-24-21)

7.2.4 Streetscape Landscaping

(A) Preservation of Existing Vegetation Along Roadways

All uses that require development plan approval shall preserve existing healthy vegetation (as described below) within the streetscape along all existing and proposed streets and thoroughfares.

(1) Residential Development

Natural and dense vegetation along streets is critical to maintain, especially along major collectors and thoroughfares, to mitigate the impact of these roadways. For this

reason, existing healthy vegetation shall be supplemented, if necessary, to achieve a Type A (opaque) standard.

(2) *Non-Residential Development*

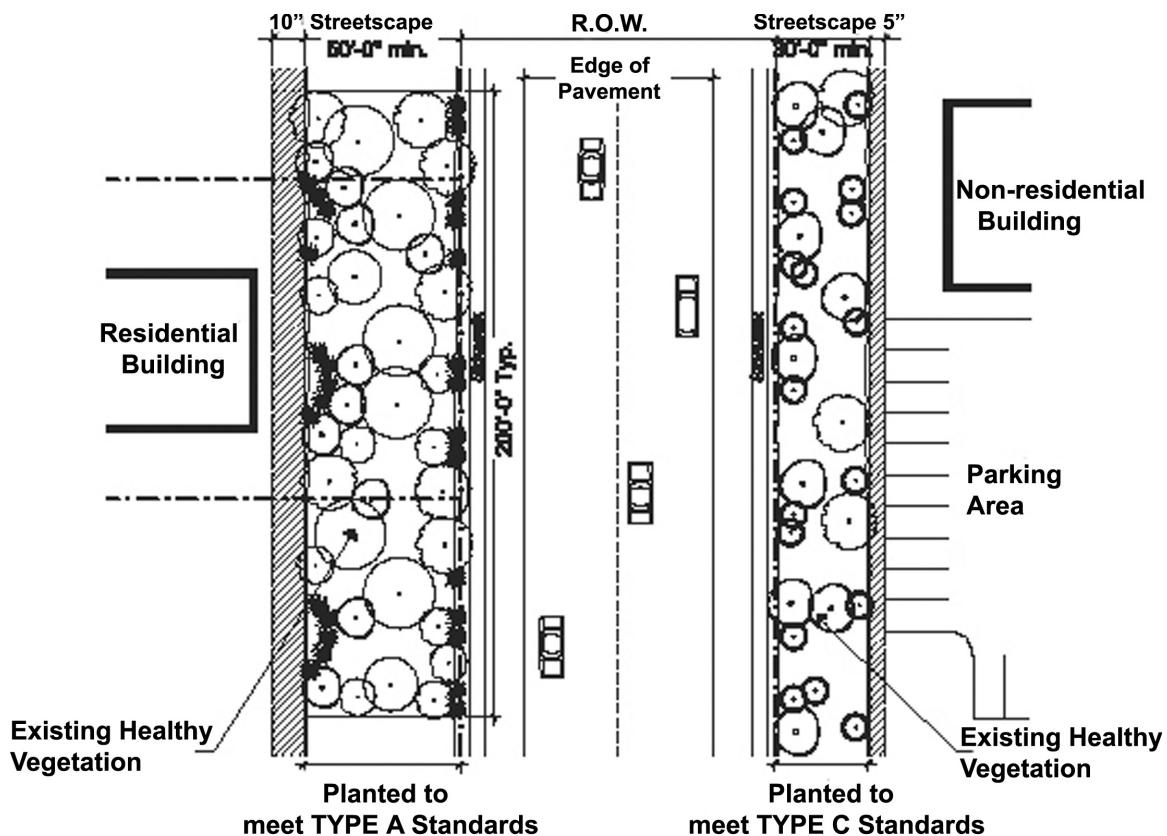
- (a)** Selective thinning of trees less than six (6) inches DBH may occur to improve the viability of trees within the streetscape. An evaluation of the existing vegetation and recommendation for thinning shall be prepared by a certified arborist or by a certified forester and submitted in support of any request involving the removal of trees two (2) inches in DBH or larger. Viable ornamental trees two (2) inches in caliper or larger must be saved.
- (b)** An applicant may request an exception to remove a portion of existing trees and undergrowth less than two (2) inches DBH to improve the viability of the remaining trees or to allow for greater visibility of the site, unless this vegetation is needed to meet the minimum planting requirements for a streetscape. Viable ornamental trees two (2) inches in caliper or larger must be saved.
- (c)** All proposals for thinning streetscapes shall be accompanied by a report from a registered landscape architect, certified arborist, or other such specialist justifying the request and containing a more detailed tree survey showing all plant material two (2) inches in caliper or larger that is located within the area of streetscape to be thinned. The Planning Director may require that a portion of existing saplings be left intact to help ensure that the streetscape can function as a natural tree stand.
- (d)** Non-Residential sites containing existing forest vegetation within an area designated as the streetscape that is subsequently removed due to construction-related activity shall be revegetated to partially re-establish a native forest condition meeting the following criteria:

 - 1. Existing vegetation or planted upper-story deciduous and evergreen trees shall attain a height at maturity of no less than sixty (60) feet.
 - 2. At least fifty (50) percent of the required upper-story trees, and at least seventy-five (75) percent of the required shrubs shall be native, evergreen species locally adapted to the area.
 - 3. The re-established forest shall contain rows of upper-story trees with each row spaced at least fifteen (15) feet apart. Within each row of upper-story trees the trees shall be spaced no wider than twenty (20) feet between tree trunks. The new forest shall also contain native ornamental trees spaced no wider than twenty (20) feet, and one shrub six (6) feet high randomly placed for every ten (10) feet of streetscape length.
 - 4. A re-forested streetscape may include a wall, fence, or landscaped earthen berm, but must also include all required plant material required by this section.

(B) *Installation of Planted Vegetation Along Roadways*

The Director may allow the installation and maintenance of a planted streetscape in lieu of preservation of the existing vegetation along any streets which are adjacent to the site upon sound justification related to topography, drainage, site configuration, quality and quantity of existing healthy vegetation, the road construction requirements, or other similar issue. If a planted streetscape is permitted, then the following requirements shall apply:

- (1) Any required vegetation shall be installed to reforest the streetscape in an amount comparable to what existed naturally (given time for maturity at a later date).
- (2) Existing healthy vegetation may be removed after review and approval by the Planning Director for the following purposes:
 - (a) to achieve required automobile sight distance triangles at intersections, driveways, or ingress/egress points;
 - (b) to provide drive access to the site;
 - (c) to locate sidewalks, street-side trails and public transit amenities;
 - (d) to locate residential and non-residential monument signs, provided that no trees greater than six (6) inches dbh are removed for such purpose unless there is no alternative sign location of lesser impact to vegetation outside of the sight distance triangle that would provide adequate visibility for the sign;
 - (e) to locate stormwater impoundment areas or other BMPs provided that no reasonable alternative location exists.
- (3) The applicant may appeal the Director's decision by electing to have the development plan forwarded to Town Council for consideration.



Streetscape Width Based on Use and Roadway Type

(C) Required Width of Streetscapes for all Types of Development

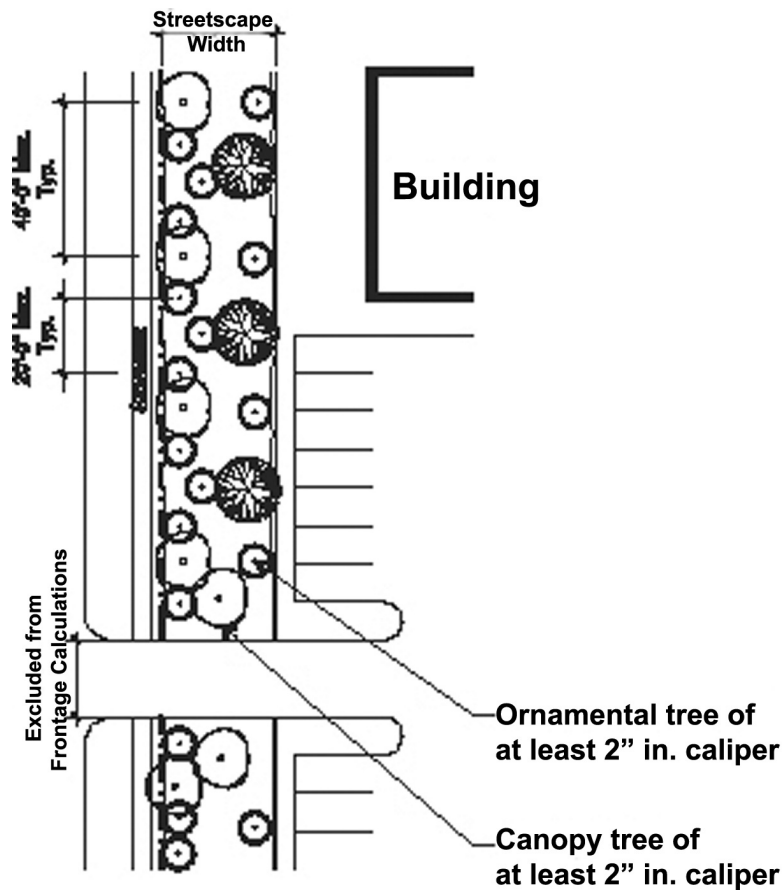
- (1) The width of the streetscape for non-residential uses shall be a minimum of thirty (30) feet along thoroughfares and collectors designated on the Cary Comprehensive Transportation Plan or otherwise designated by the Town, as measured from the ultimate right-of-way line, except as provided.
- (2) For residential developments along thoroughfares, the width of the streetscape shall be a minimum of fifty (50) feet, except as provided; along collectors, a minimum of thirty (30) feet shall be provided, except as provided.
- (3) To protect the historic character of the Carpenter community, an historic character preservation streetscape is hereby established. New development (residential and non-residential) located along the following streets shall provide a fifty (50) foot historic character preservation streetscape outside the right-of-way and/or any public access easements:
 - (a) Both sides of Morrisville Carpenter Road from its intersection with Good Hope Church Road to its intersection with Louis Stephens Drive;
 - (b) Both sides of existing Good Hope Church Road from its intersection with Morrisville Carpenter Road to a point one thousand one hundred (1,100) feet north;
 - (c) Both sides of Saunders Grove Lane;
 - (d) The west side of Louis Stephens Drive from its intersection with Morrisville Carpenter Road to a point nine hundred (900) feet north; and
 - (e) The west side of Louis Stephens Drive from its intersection with Morrisville Carpenter Road to a point five hundred (500) feet south.
- (4) If existing healthy vegetation is located within the streetscape, a ten (10) foot building/five (5) foot vehicular use area setback from the streetscape is required.
- (5) According to Section 7.2.10, *Allowable Modifications and Reductions*, the Planning Director may allow averaging of the width of a residential streetscape to no less than thirty (30) feet only if the remaining streetscape effectively mitigates the impact of the adjacent roadway (i.e., through the use of walls or berms with a substantially more intensive landscape plan). Only the Zoning Board of Adjustment may permit other reductions in buffer or streetscape widths.
- (6) Non-residential developments located on local or private streets shall provide a fifteen (15) foot streetscape. In situations where property across the street is zoned or used for residential purposes, the streetscape shall be installed in accordance with the Type A standards.
- (7) The Zoning Board of Adjustment may reduce the prescribed width of streetscape to as little as ten (10) feet at the time of development plan approval. On redeveloped sites or existing non-conforming sites, the staff may reduce the streetscape to no less than the streetscape shown on a previously approved plan for the site to promote redevelopment and reuse of existing sites where it is impractical to meet current requirements (see Section 7.2.10, *Allowable Modifications and Reductions*). The applicant shall submit a statement justifying the reduction based on the below criteria:

- (a) The relationship of existing topography to the finished street grades.
 - (b) The type, amount, and location of existing vegetation within thirty (30) feet of the right-of-way line.
- (8) All streetscapes are to be made up of existing trees and supplemented if necessary, unless approved by the Planning Director (see subsection 7.2.4(A)).

(D) Plantings in Streetscape

(1) General Provisions

- (a) The property owner or developer shall preserve existing healthy trees.
- (b) The calculation of road frontage to meet the spacing requirements for trees shall not include driveway widths measured at the right-of-way line.
- (c) In instances where planting requirement calculations produce a fraction, the plants shall be rounded up to the next whole number (e.g. five and one-tenth (5.1) required shrubs shall equal six (6) provided shrubs).



Typical Streetscape Plantings

(2) Upper-story Trees

- (a) The property owner or developer shall install three (3) upper-story trees at least two (2) inches in caliper for each one hundred (100) linear feet of streetscape. The maximum spacing between upper-story trees shall be forty (40) feet.
- (b) If existing trees that meet the intent of the upper-story tree requirement are preserved, then the requirement shall be reduced proportionally.
- (c) Upper-story trees shall be planted at appropriate distances from public rights-of-way, sidewalks, and other utilities as required by the Land Development Ordinance and the Community Appearance Manual.
- (d) Within historic character preservation streetscapes, upper-story trees shall be native species, at least fifty percent (50%) of which shall be evergreen. Trees shall be planted at a density of four (4) trees per one hundred (100) linear feet of streetscape, installed in an irregular manner to mimic a natural forest stand.

(3) Understory/Ornamental Trees

- (a) Where the required streetscape is thirty (30) feet or less in width, the property owner or developer shall install or preserve five (5) deciduous understory or ornamental trees at least two (2) inches in caliper for each one hundred (100) linear feet of streetscape. The maximum spacing between understory/ornamental trees shall be twenty (20) feet except as noted in Section 7.2.4(D)(3)(c).
- (b) Where the required buffer width is greater than thirty (30) feet and less than fifty (50) feet, one (1) additional understory/ornamental tree shall be provided every one hundred (100) linear feet for every four (4) additional feet of buffer width (or portion thereof) beyond thirty (30) feet.
- (c) Where the required buffer is fifty (50) feet or greater in width, the property owner or developer shall install or preserve ten (10) deciduous understory/ornamental trees at least two (2) inches in caliper for each one hundred (100) linear feet of streetscape.
- (d) Sites with streetscapes that meet all LDO requirements and have a minimum width of at least thirty (30) feet, may cluster understory or ornamental trees in accordance with the following requirements:
 - (i) Up to twenty percent (20%) of the required understory or ornamental trees (or a minimum of two (2) along a specific frontage) may be relocated elsewhere in the streetscape along the same frontage;
 - (ii) Gaps that are created between understory or ornamental trees may not exceed eighty (80) feet in length; and there shall be a minimum of two hundred (200) linear feet between gaps.
 - (iii) When understory or ornamental trees are removed from existing streetscapes, at least an equal number of replacement trees shall be provided and the total diameter of all replacement trees shall be a minimum of fifty percent (50%) of the total tree diameter removed.

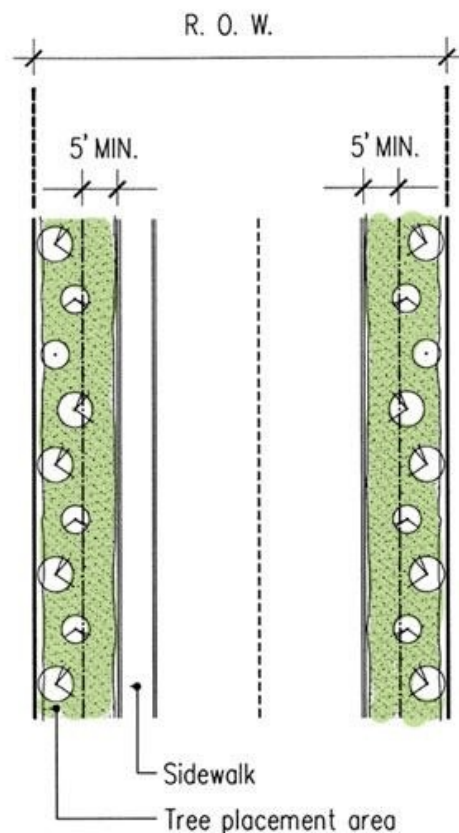
- (e) Within historic character preservation streetscapes, understory trees shall be native evergreen species and shall be planted behind the required upper-story trees as viewed from the right-of-way or public access easement. Trees shall be planted at a density of fourteen (14) trees per one hundred (100) linear feet of streetscape, in a single row parallel to the right-of-way or public access easement. The intent is for these plantings to mimic a traditional fenceline planting.

(4) Power Line Encroachment

Where overhead power lines encroach into the streetscape or buffer, each required upperstory tree may be replaced with two (2) understory trees. The selected tree type may reach a maximum height of twenty to twenty-five (20-25) feet at maturity.

(E) Tree Placement

Trees shall be installed on the thoroughfare side of any berm or screen planting, and no less than five (5) feet from a sidewalk or trail, or from back of curb where no sidewalk exists or is planned within the thoroughfare right-of-way. Trees should be installed in a staggered fashion, or in clusters or groupings of upper-story and/or understory trees in combination with associated plantings. Trees may be planted in a linear arrangement parallel to the street, depending upon the area (e.g., downtown areas, neotraditional developments, etc.). In order to prevent conflicts and allow for appropriate maintenance, canopy trees shall be placed at least ten (10) feet from electrical transformers and twenty (20) feet from light poles.



Tree Placement

(F) Pervious Area and Soil Volume for New Trees

A minimum of three hundred (300) square feet of pervious ground area and nine hundred (900) cubic feet of total soil volume for roots per upper-story tree shall be provided, unless two (2) or more upper-story trees are sharing one (1) planting bed, in which case at least seven hundred twenty (720) cubic feet of soil must be provided per upper-story tree. Where possible, smaller individual planting areas should be combined to allow for larger planting areas that contribute to healthier trees. Any planting area bounded by an impervious surface should be at least ten (10) feet wide. No upper-story tree should be planted closer than five (5) feet to a sidewalk, paved areas, or other impervious surface. Modifications to soil volume requirements may be granted pursuant to Section 7.2.10(C).

(G) Stabilizing Steep Slopes

All slopes two to one (2:1) and steeper shall be stabilized with permanent slope retention devices or suitable combination of plantings and retention devices. Slopes greater than three to one (3:1) shall not be stabilized with turf grass (e.g., grasses that need to be mowed), but with other permanent ground cover such as those listed in the Standard Specifications and Details Manual, with preference given to native species. No permanent overhead spray-type irrigation is allowed on slopes greater than two to one (2:1).

(H) Planting Criteria for Steep Slopes Adjacent to Rights-of-Way

Where the right-of-way is bounded by slopes steeper than three to one (3:1) or is otherwise not suitable for the planting of upper-story trees, the following standards shall apply:

- (1)** If natural areas are permitted to be removed and/or graded, the streetscape slope shall be somewhat level (no greater than four to one [4:1]) planting strip for upper-story trees at least ten (10) feet wide, located parallel to both sides of the thoroughfare. The planting strip shall be positively drained throughout. Upper-story trees required by this section may only be located closer than five (5) feet to the curb or sidewalk on certain streets, such as those found in neo-traditional developments, or when trees which do not exceed twenty-five (25) feet in height at maturity are used, but in no case shall they be closer than two and one-half (2 1/2) feet. Plantings may be located in the right-of-way only with the prior approval of the authority or agency that controls the right-of-way (e.g., Town of Cary, Department of Transportation, or other agency).
- (2)** Existing significant vegetation within thirty (30) feet of and extending to the right-of-way may be used to satisfy the requirements of this section, provided that:
 - (a)** The existing vegetation meets the requirements of this section.
 - (b)** The vertical grade change is less than four (4) feet above or below the existing or proposed permanent features of the thoroughfare.

(I) Ownership of Streetscapes

The ownership of streetscapes shall follow the same requirements as stated in Section 7.2.3(J) Ownership of Buffers.

(Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2010-LDO-05, 12-16-10)

7.2.5 Tree Protection, Tree Surveys, and Replacement Trees

(A) Tree Protection and Tree Surveys

(1) *Intent and Purpose*

It is the intent of the Town Council to preserve trees and other vegetation through buffer (including urban transition buffer), streetscape, and floodplain regulations, and through champion tree preservation requirements, to the extent practical and reasonable. Preserving trees and vegetation on a site should not prevent the reasonable development of a site, given its zoning classification. This section 7.2.5 is designed to recognize unique site conditions and to allow flexibility in meeting the requirements.

The Town Council finds that preserving trees and healthy vegetation on a site during development:

- (a)** Maintains and enhances the visual character and aesthetic qualities and appearance of the community and preserves community values;
- (b)** Conserves and enhances the value of buildings and land
- (c)** Conserves the natural resources and environmental quality of the Town and its environs;
- (d)** Screens and softens the impact of construction and buildings and balances the scale of buildings;
- (e)** Preserves wildlife habitat, controls surface water runoff, and moderates temperatures; and
- (f)** Conserves water due to increased absorption ability and reduced heat effects.

(2) *Requirement to Protect Champion Trees*

No champion tree may be disturbed or removed except as specifically allowed by this Ordinance. Preserved champion trees and their associated tree protection areas must be shown on development plans and reuse/redevelopment plans as located in a buffer, streetscape, private open space, or other designated permanent tree protection area. In addition, champion trees permitted to be included on a residential lot must be shown on plans for the purpose of designating tree protection fencing during the development and prior to the certificate of occupancy for buildings/structures.

(3) *Tree Survey Requirements*

A tree survey aids in the protection of trees by locating trees on a site before development plans are fully designed so modifications can be made to the plans to protect trees. A tree survey prepared by a licensed surveyor, engineer, or landscape architect is required with the submission of all development plans. Surveys shall have been reviewed and signed by a certified arborist to confirm tree species, especially understory champion trees. A tree survey is required for development plans and reuse/redevelopment plans that propose to disturb areas that contain or are within the critical root zone of champion trees or specimen and significant trees within required buffers, streetscapes, and floodplains.

The survey shall, at a minimum, provide the following information:

- (a) The number, caliper size, and location of either:
 - (i) All champion and upperstory specimen trees within all areas to be disturbed, all champion trees within one hundred (100) feet of all areas to be disturbed, and all upperstory specimen trees within fifty (50) feet of all areas to be disturbed; or
 - (ii) All champion trees located throughout the development plan boundaries, all upperstory specimen trees located within any buffer or streetscape, and all upperstory specimen trees located within fifty (50) feet of any buffer or streetscape; and
- (b) All significant trees within the interior ten (10) feet of all buffers, streetscapes, and floodplains; and,
- (c) A general description of the forest or forest stands on site located outside of buffers, streetscapes, and floodplains, including information on the type of trees and general size ranges.

(4) *Incentives and Design Flexibility*

Section 7.2.10 provides incentives and design flexibility for preserving existing healthy trees and forest stands and for protecting the critical root zone of specimen trees located outside of buffers, streetscapes, and floodplains. For example, the Planning Director may permit the exchange of trees otherwise required to be preserved for the preservation of trees within certain non-residential buffers and may grant parking reductions if trees or forest stands that are not otherwise required to be preserved or are located outside of buffers, streetscapes, and floodplains, are preserved.

(5) *Definitions*

For purposes of Sections 7.2.5 and 7.2.10 of this Ordinance, the following definitions apply:

- (a) *Adversely impacted* means that twenty-five percent (25%) or more of the critical root zone of a champion tree will be, or, within the three (3) years prior to the date of application, was disturbed.
- (b) *Disturbed* means any use of land that results in a change in the natural cover or topography. This may include the grading, digging, cutting, scraping, compaction, or excavation of soil, placement of fill materials, paving, construction, substantial removal of vegetation, or any activity which bares soil or rock or involves the diversion or piping of any natural or man-made watercourse. Routine maintenance of landscape areas is not included as "land disturbance."
- (c) *Grouping* means that the critical root zone of two (2) or more champion trees or champion tree(s) and specimen tree(s) overlap.
- (d) *Open Space* means all buffers, streetscapes, or floodplains; open space required through rezoning conditions; permanent tree protection areas; designated community gathering spaces; bonus open space for conservation residential subdivisions; and other non-regulated permanent open space.

- (e) *Large Champion Tree* means any upperstory champion tree forty (40) caliper inches and larger or any understory champion tree fifteen (15) caliper inches and larger.
- (f) *Small Champion Tree* means any upperstory champion tree less than forty (40) caliper inches or any understory champion tree less than fifteen (15) caliper inches.
- (g) *Prominent Location* means areas: along any thoroughfare or collector roadway; along a public/private street interior to the site; surrounded by buildings/homes on at least two (2) sides; or immediately adjacent to or within twenty (20) feet of a public greenway easement or public greenway property boundary.
- (h) *Tree protection area* means areas that are required by this ordinance to be encircled and enclosed within a tree protection fence.
- (i) *Tree protection fencing* means the fencing required by Section 7.2.5(B)(2) of this Ordinance.

(B) Tree Protection During Construction

(1) Owner's Responsibility

During development of the property, the owner, developer, and/or builder shall be responsible for the erection of tree protection fencing to protect existing and/or installed vegetation from damage during development and prior to certificate of occupancy for buildings/structures. Any disturbance within the boundaries of such tree protection areas that is not authorized by the terms of this Ordinance shall result in fines as identified in Section 11.5.2(B)(2)(b), in addition to any other fines and replanting requirements for the removal or damage of vegetation within tree protection areas.

(2) Tree Protection Fencing

(a) Where Required

All existing trees and vegetation that are to be preserved shall be completely encircled and enclosed within a fence that meets the requirements of this Ordinance before grading begins. Additionally, tree protection fencing shall be required around champion trees and shall extend in a circular manner a distance of at least one and one-quarter (1.25) feet from the tree for each inch of caliper (excluding existing and undisturbed non-pervious area on redevelopment/reuse sites). The distance may be reduced if allowed under Section 7.2.10 of this Ordinance. Tree protection fencing of areas adjacent to existing and proposed roadways is also required. Tree protection fencing is required on all Town transportation projects that are adjacent to streetscapes or buffers. Existing site conditions shall be taken into consideration in determining the exact location of any tree protection fencing and staff may authorize field adjustments to the amount of tree protection fencing needed.

(b) Type of Tree Protection Fencing

All tree protection fencing required by this section shall be four (4) feet orange polyethylene laminar fencing a minimum four (4) feet high and of durable construction. Passive forms of tree protection may be utilized to delineate tree

save areas that are remote from areas of land disturbance at the discretion of the Planning Director.

(c) *Signage*

Signs shall be installed on the tree protection fence visible on all sides of the fenced-in area (minimum one (1) on each side and/or every three hundred (300) linear feet). The size of each sign must be a minimum of two (2) feet by two (2) feet and shall contain the following language in English and Spanish: "TREE PROTECTION ZONE, KEEP OUT."

(d) *When Required*

The tree protection fencing shall be clearly shown on the development plan. No construction, grading, equipment or material storage, or any other activity shall be allowed within the tree protection area. Tree protection fencing shall be maintained until the final site inspection prior to the Certificate of Occupancy is scheduled (including any required perimeter buffer for single-unit dwelling construction). The tree protection fencing shall be removed prior to final site inspection for the Certificate of Occupancy.

(3) *Disturbance*

Disturbance within the area required to be designated as a tree protection area, shall occur only if approved by staff on the development plan. If such a disturbance is permitted for reasons such as location of minor utility lines, the following preventive measures shall be employed:

(a) *Clearing Activities*

The disturbance of land, including disturbance caused by the removal of trees adjacent to tree protection areas can cause inadvertent damage to the trees in the tree protection area. If trees are being removed adjacent to tree protection areas, a minimum one and one-half (1 1/2)-foot trenches must be cut along the limits of land disturbance, so as to cut, rather than tear, roots. Trenching shall be required for the protection of specimen and/or champion tree critical root zones immediately adjacent to or within the land disturbance area (see Community Appearance Manual for further guidance).

(b) *Soil Compaction*

Where compaction might occur due to traffic or the transportation of materials through the tree protection area, the tree protection area must first be mulched with a minimum four (4)-inch layer of processed pine bark or wood chips or a six (6)-inch layer of pine straw (see Community Appearance Manual). Equipment or materials storage shall not be allowed within tree protection areas.

(C) *Protection of Champion Trees*

(1) *Intent/Purpose*

One purpose of this subsection is to protect healthy champion trees during the development process. This shall be accomplished through the review and implementation of development plans and reuse/redevelopment plans. Trees,

including champion trees located on existing single-unit lots, that are otherwise not subject to regulation under Chapter 7 of this Ordinance, are not subject to these requirements. Flexibility in site design is provided for in Section 7.2.10 which permits area used to preserve champion trees that is not otherwise required to be preserved to be offset by deducting area from other required landscape/buffer areas. No champion tree may be removed during development, unless the approval criteria of Section 7.2.5(D) are met and the removed champion tree is replaced pursuant to Section 7.2.5(E). In support of any application which requests removal of a champion tree, the applicant must submit a report from a certified arborist that addresses the criteria of Sections 7.2.5(C) (2) and (D).

(2) *Priority Order For Preserving Champion Trees*

When applicants are designing development plans, champion trees and their critical root zone shall be preserved in the following priority order (which order shall be reviewed when the decision-making authority is making a determination as to whether a plan is in compliance with Section 7.2.5):

(a) Tier 1 Champion Tree (excludes pine trees):

- (i) Any champion tree grouping located in a prominent location;
- (ii) Any single large champion tree located in a prominent location;
- (iii) Any single small champion tree located in a prominent location;
- (iv) Any champion tree grouping located in a non-prominent location; and
- (v) Any single large champion tree located in a non-prominent location.

(b) Tier 2 Champion Tree:

- (i) Any single small champion tree, excluding pine, located adjacent to other open space areas;
- (ii) Any single small champion tree, excluding pine, located in a non-prominent location;
- (iii) Any single champion tree, excluding pine, that is forked (see champion tree definition), located anywhere on site; and
- (iv) Any single champion pine tree located anywhere on site.

(D) Administrative Approval of Removal of Champion Trees

(1) The Planning Director shall administratively approve the removal of any champion tree if the criteria of either (a), (b), (c) or (d) below are met.

(a) After exhausting the allowable modifications/reductions in Section 7.2.10, the tree is adversely impacted by one (1) of the following:

- (i) Required road connections;

- (ii) Required sanitary sewer or storm drain lines;
 - (iii) Public infrastructure improvements made or to be made by others;
 - (iv) Required stormwater treatment devices located in geographically and topographically appropriate areas; or
 - (v) Town design standards or requirements that limit the reasonable location of new structures and expansions to buildings and/or other features such as parking and private streets on the site (e.g. requirements for the buildings to front on streets, access points, and similar).
- (b) All the following criteria have been met:
- (i) All allowable modifications in Section 7.2.10 have been exhausted; and
 - (ii) The tree is included in the Tier 2 champion tree list;
 - (iii) The total site consists of at least thirty percent (30%) open space or at least fifteen percent (15%) open space if located in the Town Center Zoning District or on a reuse/redevelopment site.
- (c) After exhausting the allowable modifications/reductions in Section 7.2.10, and due to the site's topography and/or in order to meet town design standards or requirements (e.g., roadway elevations, sidewalks, etc.), the finish site elevation will result in the champion tree critical root zone area being ten (10) feet or more above or below grade on more than one (1) complete side of the tree.
- (d) Based upon a certified arborist's report, a large champion tree has a life expectancy of less than ten (10) years and one (1) or both of the following exist:
- (i) Twenty-five (25) percent or more of the tree's canopy is dead/dying; and/or
 - (ii) Two (2) or more major limbs are dead/dying.

Replacement pursuant to Section 7.2.5 (E) shall be required if the champion tree meets this criteria and is removed.

- (2) The Zoning Board of Adjustment shall review and take action on any other request to remove a champion tree as a Minor Modification pursuant to Section 3.19.

(E) Replacement of Champion Trees

- (1) When a champion tree is removed during construction, or is dying or dies within one (1) year following completion of construction pursuant to a development plan for a site that is not located in the Town Center District and is not a reuse/ redevelopment site, the applicant or developer shall replace such champion tree as follows:
- a. Trees of similar type must be planted at least thirty (30) feet from any other tree such that the total caliper inches of trees planted is no less than the caliper inches of the tree removed;

- b. The size of such replacement trees at the time of installation shall be a minimum of two and one-half (2 1/2) inches in caliper;
 - c. Tree protection areas that are not in required open space may, if placed in private permanent open space, be credited towards this replacement requirement at one hundred fifty percent (150%) of the caliper inches of the trees preserved for healthy hardwood trees a minimum of two (2) caliper inches in size and healthy evergreen trees a minimum of four (4) caliper inches in size; and
 - d. If sufficient area does not exist on the site to plant replacement trees, the applicant or owner must coordinate with Town staff to design and implement a plan to plant the required replacement trees on town properties, town-maintained properties, and/or other public property within the Town's jurisdiction. If the Town determines this is not feasible, fines shall be assessed in accordance with Section 11.5.2(B)(2)(d).
- (2) When a champion tree is removed during construction, or is dying or dies within one (1) year following completion of construction pursuant to a development plan on a site located within the Town Center District or on a reuse/redevelopment site, the applicant or developer shall comply with the requirements of section 7.2.5(E)(1), except that the total caliper inches of trees planted may be less than the diameter of the tree removed if it is not practical to replant the required number and size of trees spaced at least thirty (30) feet from any other tree on the same site or any adjacent property under common ownership. The maximum size of any replacement tree shall be three (3) caliper inches.
- (3) In consultation with the Town staff, acceptable replacement trees shall be determined by a person qualified by training or experience to have expert knowledge of the subject. Alternatively, the valuation of trees removed may be established in accordance with standards established by the International Society of Arboriculture and replaced with trees of equal dollar value.
- (4) Replacement trees shall be maintained through an establishment period of at least three (3) years, except that replacement trees planted in association with development of detached dwellings on an individual lot shall have an establishment period of only one (1) year. The property owner and developer shall execute a landscape agreement guaranteeing the survival and health of all replacement trees during the establishment period and guaranteeing to replace any replacement tree(s) that does not survive the establishment period in good health as determined by a certified arborist.
- (F) Preservation and Removal of Trees on Town Property**
- (1) *Preservation on Town Property***
- (a) The Town shall have the right to plant, maintain, and remove trees and vegetation on all Town property as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of Town property. The Town also may remove any Town-owned tree, shrub, or part thereof that is in an unsafe condition, which by its nature is injurious to sanitary sewers, electrical power lines, gas lines, water lines, or other public improvements, or which is infected with any injurious fungus, insect, or other pest.
 - (b) This section does not prohibit the planting of upperstory trees or shrubs by adjacent property owners on Town property, provided that the selection and

location of said trees or shrubs complies with the planting guidelines developed by the Community Appearance Manual or other documents and is approved by the Town.

(2) *Injury or Obstruction to Trees on Town Property Prohibited*

No person shall, without prior written permission from the Town, place or maintain upon the ground in any public street right-of-way or Town property any stone, cement, or other impervious matter or any fill material in a manner that may obstruct the free access of air and water to the roots of any tree or shrub in any such street right-of-way or Town property. Any person who is erecting, repairing, altering, or removing any building or structure shall place a guard or protector around any tree or shrub on Town property so as to prevent injury to such tree or shrub.

(G) Removal of Unsafe, Injurious, or Infected Trees on Private Property

- (1)** The Town may cause to be removed from private property any tree, shrub, or part thereof which is or contributes to a public nuisance.
- (2)** The Town or its agent may enter upon private property to trim, treat, or remove any tree or shrub infected by any parasite, insect, or pest, when necessary to prevent the breeding or scattering of any parasite or pest and to prevent danger to persons, property, or trees and shrubs planted in public street rights-of-way or other Town property.

(3) Prior to exercising the authority conferred by this section, the Town shall give the owner an opportunity to correct the condition by ordering the corrective action be taken. The order shall be sent by certified or registered mail to the owner of the property in question, and shall be acted upon by the owner or occupant within fourteen (14) days from the date he or she receives the order. If, after fourteen (14) days, the owner or occupant has not corrected the condition or undertaken action that would lead to a timely correction of the condition, then the Town may enter upon the property, perform the work necessary to correct the condition, and bill the owner or occupant for the actual costs incurred in addition to an administrative fee.

(4) For trees located within open space, the determination of whether a tree or trees are unsafe, injurious, dead, or dying shall be made only by the Town or its recognized representative.

(H) Waivers in Emergencies

During emergencies, such as windstorms, ice storms, fire, or other disasters, the Town Manager may waive the requirements of this section in order to avoid hampering private or public work to restore order in the Town. This section shall not be used, however, to otherwise circumvent the requirements of this Section 7.2.

(I) Clear Cutting of Trees and Other Vegetation

(1) The removal or clear cutting of trees and other existing vegetation on undeveloped or under-developed sites within the corporate limits or extra-territorial jurisdiction is prohibited except as otherwise permitted in this Ordinance.

(2) Any clear cutting or vegetation removal on vacant, undeveloped, or underdeveloped sites must be done in accordance with an approved development plan or in accordance with the Tree Clearing Certificate process in Section 3.22.

(3) Trees and other existing vegetation shall be maintained within existing UTBs consistent with the requirements of this Ordinance and state law. Removal of existing trees and vegetation without approval from the Town and/or the State shall be a violation of this Ordinance, and shall be subject to the requirements and penalties of Sections 7.2.9(H), 7.2.13 and Chapter 11 of this Ordinance.

(Ord. No. 2009-LDO-01, 2-12-09)

7.2.6 Parking Lot Landscaping

(A) Landscaping Requirements in Parking Areas and Vehicular Use Areas

All vehicular use areas shall contain at least one (1) upper-story tree for every seven parking spaces required. If overhead utility lines are present and would impair the growth of an upper-story tree, two (2) understory trees fifteen (15) to twenty-five (25) feet in height at maturity may be used instead of one (1) upper-story tree. All vehicular use areas used for parking shall be screened from the view of adjacent properties and streets by evergreen plantings that will attain a height of three (3) feet within three (3) years of planting. The use of shrubs and ground covers is greatly encouraged in parking area islands and along the borders of parking areas.

(B) Existing Vegetation

Existing healthy, well-formed upper-story trees may be counted toward the requirements of this section, provided that these trees are protected in accordance with Section 7.2.5, *Tree*

Protection and Replacement, before and during development of the site and maintained thereafter in a healthy growing condition.

(C) Design Standards

The design of the vehicular use area with landscaped areas, and the selection of plant materials, shall conform to the following standards:

- (1) Install one (1) upper-story tree for every seven (7) parking spaces as required (see paragraph (A) above).
- (2) Trees shall be selected for their appropriateness based on site conditions from the Standard Specifications and Details Manual.
- (3) All upper-story trees shall not be planted any closer than five (5) feet, to the edge of the parking area pavement or curb.
- (4) A parking lot consisting of fewer than ten (10) spaces may incorporate the required upper-story trees around its perimeter. These parking lot trees shall be located no farther than ten (10) feet from the back of curb.
- (5) Only upper-story trees shall be used for perimeter planting areas and interior parking area islands. For auto sales and rental lots understory trees may be used.
- (6) All trees shall be evenly distributed throughout the parking areas and parking perimeter at the required ratio.
- (7) No more than fourteen (14) continuous parking spaces shall be allowed without a minimum of one (1) landscape island containing an upper-story tree. In developments using double-sided parking bays, a parking lot island measuring no less than eighteen (18) feet square may be provided in a staggered pattern to provide no more than twenty-eight (28) contiguous spaces.
- (8) The size of parking area landscape islands and upper-story tree placement shall be as specified in the Community Appearance Manual.
- (9) All planting medians and/or islands containing a tree shall be at least ten (10) feet long by ten (10) feet wide from back of curb to back of curb, with a minimum of three hundred (300) square feet of space per upper-story tree. Linear planting strips between the lengths of parking isles are strongly encouraged rather than numerous small one (1) tree islands. If a linear strip is used, fifteen (15) shrubs per one hundred (100) linear feet must be planted in addition to the required trees.
- (10) A continuous linear island no less than ten (10) feet in width [fifteen (15) feet in width if sidewalk is included in island] shall be installed in off-street parking areas approximately every one hundred twenty-two (122) linear feet (one (1) linear median to every two (2) double-loaded parking bays) in one (1) direction for vehicular surface areas exceeding forty thousand (40,000) square feet. Other design options may be approved provided that the intent of "visually breaking up" large areas of parking is met. Credit may be given for saving existing trees located interior to the site. This requirement does not apply to vehicular display lots, to vehicular rental lots, or to other similar lots.

- (11) The size of the planting area and size of plant material at maturity shall allow for a two and one-half (2½) foot bumper overhang from the face back of the curb. Barriers, such as curbs or wheel stops, must be provided between vehicular use areas and landscaped areas.
- (12) All sidewalks shall be at least five (5) feet from the trunks of upper-story trees, unless otherwise approved by the Planning Director. For example, when the placement of the sidewalk would require the removal of an existing upper-story tree to meet this requirement or where there is not enough space on the site to accommodate both the tree and the sidewalk, this requirement may be modified.
- (13) Parking lots shall be graded so that landscape islands do not impound water, unless surface impoundment is required as a method of on-site retention of stormwater. Landscape islands should be composed of well-prepared structured soil and thoroughly cultivated and amended so as to support healthy plant growth.
- (14) Preservation of existing groups, stands, or groves of trees, as well as isolated islands with single trees, is strongly encouraged (see Section 7.2.10, *Allowable Modifications and Reductions*).
- (15) Upper-story trees shall be at least two (2) inches in caliper when installed.
- (16) Evergreen shrubs shall be at least two (2) feet in height and minimum three (3) gallon container size at the time of installation.
- (17) The standards for all plants in vehicular use areas shall conform to the American Standard for Nursery Stock published by the American Association of Nurserymen for that type of tree or shrub at the time of installation. (The selection and planting of trees and shrubs shall conform to the standards set forth in this publication or the Town's Community Appearance Manual, whichever is stricter).
- (18) Adequate drainage, mulching, and irrigation shall be provided for landscape medians and islands. If automatic underground irrigation systems are permitted, moisture sensor regulators, soil moisture sensors, or drip irrigation shall be used.
- (19) The property owner or developer shall provide for continuous maintenance of the landscaped areas after occupancy of the building. The property owner shall ensure that performance criteria within this Ordinance and/or included on the approved development plan are met. Failure to correct deficiencies in a timely manner shall result in a citation for violation of this Ordinance in accordance with Chapter 11.

(D) Screening Vehicular Use Areas

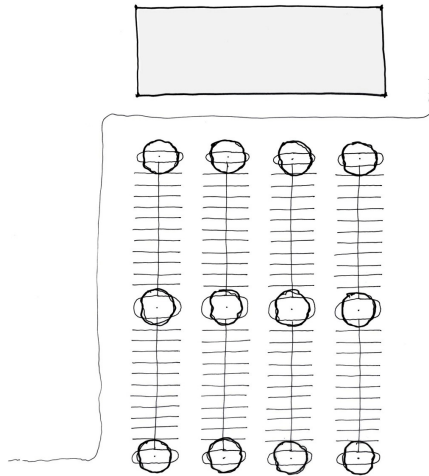
Where there is a vehicular use area between the thoroughfare and a permanent non-residential building, an opaque screen shall be provided between the right-of-way and the vehicular use area. The screen may consist of plants, earthen berms, fences, walls, or any combination thereof, which meet the following requirements:

- (1) The screen shall be continuous, occupying the full length of the vehicular use area, except for sidewalks and driveways that cut through the screen to connect the vehicular use area to streets and other properties. Shrubs shall be at least two (2) feet in height above finished grade, and healthy at the time of installation. Vehicular use area screening shrubs shall be maintained so as to permit the shrubs to form a continuous evergreen screen.

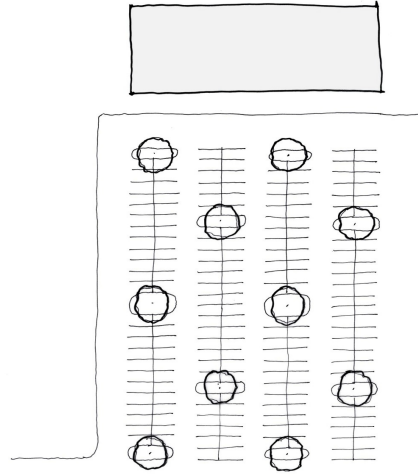
- (2) Berms may be used or installed in lieu or in addition to plantings. If the berm does not meet the performance standards of this section, then plant materials shall be installed which meet these standards. The installation of additional plant materials is encouraged so as to enhance the visual and aesthetic qualities of the streetscape. Plantings should be placed based upon topography of the site, usually at the top of the slope.
- (3) Berms must, at a minimum, be planted and maintained with a groundcover vegetation or grass that will permanently stabilize the soil.
- (4) Shrubs, plantings, hedges, or walls shall provide an opaque screen or barrier for the first three (3) feet of height within three (3) years of planting.
- (5) Vehicular use areas used for the purpose of loading/unloading, and accessways to those areas shall be screened from views of streets and adjacent development.

(E) Exceptions for Underground Parking and Above Ground Parking Structures

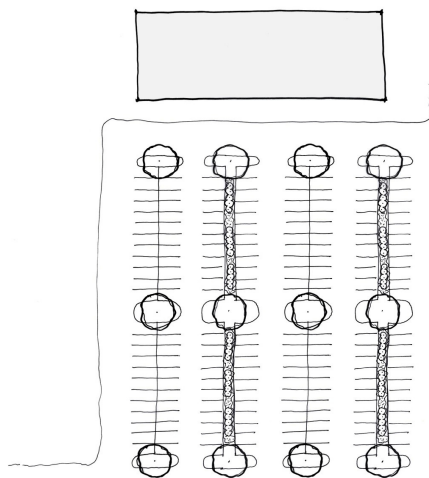
When parking is provided underground or within buildings, the above requirements shall not apply. However, if the parking is visible from a public right-of-way or adjacent property, then it shall be screened from views from streets and adjacent properties pursuant to subsection (D) above. Unless they are designed to look like, reflect the architectural style of, and blend in with the adjacent buildings, dense landscaping should visually separate all parking structures from the view of streets and adjacent property. If this is not possible, then the walls of the structure should be softened by the use of terracing, plantings, or other techniques.

7.2.6 VEHICULAR USE AREA PLANTING STANDARDS - Parking Lot Planting Requirements**ISLANDS - ALIGNED PLANTING**

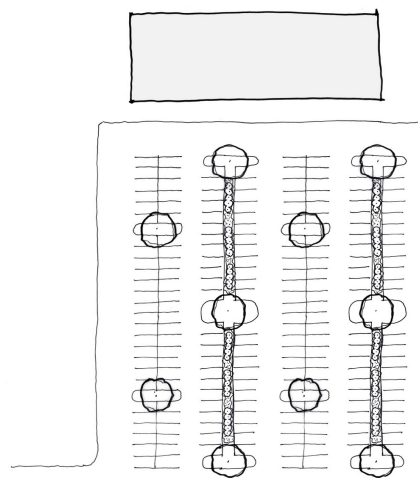
No more than 14 spaces may be in a row without a tree island.
192 Spaces, 12 Trees

**ISLANDS - STAGGERED PLANTING**

No more than 14 spaces may be in a row without a tree island.
200 Spaces, 10 Trees

**LINEAR STRIP - ALIGNED PLANTING**

Linear planting strips are required every 130 linear feet in lots exceeding 40,000 square feet.
192 Spaces, 12 Trees, and 15 Shrubs/100 linear feet

**LINEAR STRIP - STAGGERED PLANTING**

Linear planting strips are required every 130 linear feet in lots exceeding 40,000 square feet.
200 Spaces, 10 Trees, and 15 Shrubs/100 linear feet

(Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2010-LDO-01, 1-14-10)

7.2.7 Fences and Walls

Fences and walls are permitted as an accessory use in all zoning districts provided that they meet the following requirements:

(A) Fence and Wall Height Outside of Required Setbacks

Fences and walls located outside of the minimum front, rear and/or side yard setbacks, as shown in Section 6.1, *Tables of Density and Dimensional Standards*, may be erected to any height permitted for buildings in the respective zone district, also indicated in Section 6.1.

(B) Fence and Wall Height within Required Setbacks

Fences and walls located within a minimum roadway, rear and/or side yard setbacks, as shown in Section 6.1, *Tables of Density and Dimensional Standards*, shall not exceed eight (8) feet in height unless specifically approved as part of a buffer under Section 7.2.3, or approved by the Town Council as part of a development plan or approved by the Zoning Board of Adjustment as part of a Special Use Permit or variance. Columns and entry features shall not exceed twelve (12) feet in height unless specifically approved as an entry monument alternative to a principal ground sign under Section 9A.3.1(H). These features shall be located outside of required sight distance triangles.

(C) Landscaping and Screening of Fences and Walls

Fences and walls taller than forty-two (42) inches and located within thirty (30) feet of a thoroughfare or collector street right(s)-of-way shall meet the following landscape requirements:

- (1) One (1) shrub shall be installed for each five (5) feet of property frontage along a thoroughfare or collector street. Shrubs shall be evergreen and shall be a minimum of twenty-four (24) inches tall at time of installation. Shrubs may be installed in a staggered, clustered, grouped or linear fashion, and all plantings shall be installed on the side of the fence that faces the right-of-way.
- (2) Retaining walls that are forty-two (42) inches or more above an established grade are also required to meet the above screening requirements.
- (3) A fence permit shall be obtained for fences adjacent to thoroughfare or collector street right(s)-of-way.

(D) Maintenance

The owner of the property (or other party responsible for maintenance as depicted on the approved development plan) on which the fence or wall is located is required to maintain the fence or wall in a safe and attractive condition. This shall mean the following:

- (1) No fence or wall shall have more than twenty (20) percent of its surface area with disfigured, cracked, ripped or peeling paint or other material; and
- (2) A fence or wall shall not stand with bent or broken supports, including loose or missing appendages; and
- (3) Fences and walls shall be plumb (vertical) to the ground.
- (4) Replacement of non-conforming fences shall comply with all the requirements of this section.

(E) Exposed Framing Toward Interior Yard

Fences and walls that are visible from a thoroughfare or collector street right-of-way shall be constructed such that exposed framing faces the interior yard and not the thoroughfare or collector street right-of-way.

(F) Fences and Walls within Buffers or Streetscapes

Fences and walls shall be installed so as to not disturb or damage existing, significant vegetation or installed plant material.

(G) Setback Requirement

To allow sufficient room for the landscaping to mature, fences and walls located within thirty (30) feet of a thoroughfare or collector street right-of-way shall be installed a minimum of five (5) feet (preferably ten (10) feet to allow room between plants and the sidewalk) from the property line. There shall be no setback for fences not located adjacent to a thoroughfare or collector street right-of-way.

PRINCIPLES OF INTERPRETATION

Where there is a separate property located between the right-of-way and the proposed fence or wall (such as common open space that is owned by a homeowners association or other entity), the setback may be measured from the right-of-way and not from the property line.

(H) Fences Prohibited

Fences that are electrically charged and those constructed of barbed or razor wire shall be prohibited. This prohibition shall not apply to fences used to enclose livestock on bona fide farms and those serving a public or quasi-public institution for public safety or security purposes.

(I) Sight Distance

No fence or wall shall be allowed to obstruct sight distance triangles.

(J) Rails Required for Retaining Walls and Steep Grade Changes

- (1)** All retaining walls over thirty (30) inches in height and steep grade changes at a one to one (1:1) ratio or greater shall include guards or other acceptable fencing/barricades measuring a minimum thirty-six (36) inches in height on a residential lot with a detached dwelling, townhouse, duplex, bed and breakfast, group home, or a family care home with four (4) or fewer residents. Guards or other acceptable fencing/barricades measuring forty-two (42) inches in height shall be required for all other uses. Guards shall be constructed with no opening greater than four (4) inches.

7.2.8 Screening**(A) Stormwater Devices**

Stormwater Best Management Practices (BMPs) shall be designed, constructed, and maintained to contribute to the aesthetic values of development. Visible hardscape transitions or edges (walls) for stormwater devices should not be used outside of Mixed Use Overlay Districts. BMPs should be graded and landscaped to blend with the surrounding landscape to provide better transitions as demonstrated in the Site Design Standards Document. Culverts, outlet structures, level spreaders, and other devices associated with stormwater BMPs shall be landscaped to reduce their visual impacts. All proposed landscaping shall be shown on an approved development plan. The Planning Director may allow the use of hardscape transitions for developments outside of a Mixed Use Overlay District pursuant to Section 3.19.1.

Where used, visible hardscape transitions shall be subject to the following criteria:

- (1)** The exterior surface of the wall should consist of decorative material such as stone or brick. Where public visibility is limited, split-face block or other modular design may be used. Poured-in-place concrete walls shall not be used for stormwater device edges.
- (2)** The stormwater device shall be located and designed such that it is accessible to the public and intended to serve as an aesthetic amenity to the site. The device shall be incorporated into or located in immediate proximity to pedestrian plazas or other active areas of the site.
- (3)** The design of the wall shall be tiered in order to accommodate the plantings installed to soften the mass of the upper half of the wall height. Wall tiers shall not exceed approximately six (6) feet in height and three (3) feet in depth. Draping plant material planted at the top of the wall may be acceptable in circumstances in which the wall height is limited and a tiered structure is not appropriate.

(B) Mechanical and Utility Equipment

- (1) Heating, ventilation, air conditioning, and other mechanical and utility equipment, including but not limited to hoses, pipes, vents, fans, compressors, pumps, and heating and cooling units, ground based electrical transformers, telephone, or cable junction boxes, which are located on, beside, or adjacent to any building or development, shall be fully screened from the view of streets and adjacent property.
- (2) The screen shall exceed the height of the equipment, shall not interfere with the operation of the equipment, and shall use building materials and design which are compatible with those used for the exterior of the principal building.
- (3) Where mechanical and utility equipment is located on the roof of a structure, all devices shall be fully screened from the view of streets or adjacent property after grading or other improvements are made outside or adjacent to the site.
- (4) The Planning Director may require mufflers or other noise reducing technique on mechanical and utility equipment in developments adjacent to existing or future residential projects to mitigate noise impact (refer to Town Code for noise requirements).
- (5) Utility equipment and facilities associated with on-site electric, cable, telephone, gas or other similar utility, including ground-based electrical transformers and power meters, shall be placed in service areas on the sides or rear of buildings, and shall be screened, to the extent possible, with evergreen plantings or other acceptable alternative approved by the Planning Director. (This requirement applies to both residential and non-residential developments). Areas around this equipment and facilities shall remain clear based on each utility company's guidelines.

(C) Trash Containment Areas

Developments must account for disposal of trash, including trash and recycling containment devices. Restaurants, large retail establishments and other similar businesses must indicate how they plan to address cardboard recycling prior to development plan approval. All trash containment devices, including compactors, dumpsters, and recycling drop-off bins, shall be located and/or screened so as not to be visible from the view of internal travelways, adjacent streets and properties. The type of screening used shall be determined based on the proposed location of the trash containment area, existing site conditions, and the type and amount of existing and proposed vegetation on the site. All such areas shall meet the following standards:

- (1) All trash containment areas shall be enclosed with solid gates to allow for access and security and contain windblown litter. In addition, the Planning Director may require self-closing gates for such enclosures. Gates must be maintained in good working order.
- (2) The enclosure shall be at least eight (8) feet tall or two (2) feet taller than the highest point of the compactor or dumpster, whichever is greater.
- (3) The enclosure shall be made of a material that is opaque at the time of installation and compatible with the design and materials of the principal building. The material shall be masonry or other material that matches the building material; however, wood and other similar material may be used for gates.

- (4) All compactors and dumpsters shall be placed on a concrete pad that is large enough to provide adequate support, allows for positive drainage, and, where applicable, conforms to the Wake County Health Department regulations governing compactor pads.
- (5) The Planning Director may require some uses to install a pad and screening enclosure large enough to accommodate both a trash container as well as a recycling container for cardboard.
- (6) The enclosure shall be kept free of litter, debris, and residue.
- (7) The dumpster or compactor shall be accessible to the handicapped.
- (8) All recycling drop-off containers and storage bins, with the exception of roll-out carts located in townhouse and multi-family developments and recycling containers located on school sites, shall be screened from view to at least fifty (50) percent of the height of the containers and bins in the station. The screen may be fencing or plantings. If plantings are used, the plants must reach the required height within three (3) years of planting. Roll out carts associated with non-residential uses shall be a neutral or earth tone color, not be visible from a public street, and be located within the interior of the development. Drop-off containers and storage bins shall be located no closer than fifty (50) feet to a lot occupied by a dwelling.

7.2.9 Miscellaneous Landscaping Requirements

(A) Required Landscaping on Single-Unit Residential Lots

- (1) Minimum requirements shall be written out on the approved development plan; however, no specific landscape plan is required for individual lots.
- (2) Landscaping for individual lots shall be installed or secured for a future planting date prior to the Certificate of Occupancy permit.
- (3) Existing vegetation on individual lots shall be retained to the maximum extent possible.
- (4) A ten (10) foot wide landscape area meeting the Type B buffer standard shall be provided on each lot where rear yards back up to each other or are visible from other rear yards.

(B) Required Foundation Plantings for Non-Residential Buildings

With the exception of building in the Town Center district, foundation plantings are required on all non-loading and non-service sides of non-residential buildings unless approved through a Statement of Architectural Compatibility (see Section 7.7.4).

(C) Standards for New Planting

- (1) All trees shall be at least eight (8) feet high above ground level and a minimum of two (2) inches in caliper at the time of installation, and shall have an expected mature height based on the buffer type.

- (2) All shrubs shall be healthy, at least twenty-four (24) inches in height above ground level and shall reach the height required for performance within five (5) years after installation.
- (3) The standards for all trees and shrubs, including the minimum height, root ball size, number of branches, and width, shall conform with the American Standard for Nursery Stock published by the American Association of Nurserymen for that type of tree or shrub at the time of installation.
- (4) The selection and planting of trees and shrubs shall conform to the standards set forth in the Community Appearance Manual and Standard Specifications and Details Manual. Trees intended for use in areas that are ten (10) feet wide or less and are adjacent to impervious surfaces shall be species that are suited to use in urban environments (i.e., reflected heat, limited pervious area, limited moisture) and are not shallow rooted, so as to avoid future damage to sidewalks and paved areas.

(D) Irrigation

- (1) The use of irrigation systems and lawn turf is generally discouraged, but may be permitted if connected to a private well, other private water source, or public reclaimed water system.
- (2) If automatic irrigation systems are permitted, moisture sensor regulators, soil moisture sensors, or drip irrigation shall be used.
- (3) Irrigation systems may connect to the main water connection for the building unless otherwise restricted through other Town ordinances or policies.
- (4) The above provisions shall also apply to all landscape areas required in parking and vehicular use areas per Section 7.2.6.

(E) Design Standards for Berms

All berms used in a perimeter buffer (or in a streetscape) shall meet the following design standards:

- (1) The slope of all berms shall not exceed a two to one (2:1) ratio (horizontal to vertical), shall have a top width at least one-half ($\frac{1}{2}$) the berm height, and a maximum height of four (4) feet above the toe of the berm. The Planning Director shall approve all berms. Berms proposed to be greater than four (4) feet in height may be permitted by the Director if the four (4) foot maximum height is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure.
- (2) Proposed berms to be placed over an existing or proposed utility easement(s) shall be approved by the Development Review Committee.
- (3) All berms, regardless of size, shall be stabilized with a ground cover or other suitable vegetation according to the Town's Standard Specifications and Details.

- (4) The Directors of Public Works, Transportation and Facilities, and Planning shall approve all berms proposed to be placed along street right(s)-of-way. Such berms shall be designed and constructed to provide adequate sight distances at intersections and along all other roads.
- (5) Berms proposed to satisfy the buffer requirements specified in subsection 7.2.3 shall be vegetated as required by this section. Berms must be stabilized with ground cover to prevent erosion and sedimentation. Use of berms as a substitute for existing healthy vegetation is strongly discouraged. However, if berms are allowed to replace existing vegetation that already meets the standards contained in this section, then they must also meet the buffer standards and must be approved by the Planning Director.
- (6) Berms shall in no case damage the roots of existing healthy vegetation designated to be preserved.

(F) Easements

Nothing shall be planted or installed within an underground or overhead utility easement or a drainage easement without the consent of the Town and the easement holder at the time of development plan approval.

(G) Designated Utility Corridors

In order to reduce the damage to root systems of existing vegetation within streetscapes, buffers or any other tree save areas, designation of planned utility connection corridors is required to be shown on all development plans to coordinate the location of electrical, telephone, cable, and other similar utilities.

(H) Additional Requirement for Clear-Cut Sites or Sites with Removed Vegetation in Required Vegetation Protection Areas

Larger trees up to four (4) inches in caliper and/or up to double the amount of the required number of trees and shrubs may be required by the Planning Director if the site and/or the required vegetation protection areas specified in this Ordinance were clear cut within five (5) years prior to submittal of a development plan.

- (I) It is recommended that all common areas and similar areas used as general unspecified open space be stabilized using warm season grasses or planted with trees to increase canopy cover.

(J) Variety of Plant Species Required

No single species of tree shall constitute more than twenty-five (25) percent of the plant material of its type installed on a single development site. This restriction may be modified by the Planning Director on sites smaller in size than two (2) acres provided that an acceptable variety of plant material is proposed.

(K) Soil Amendments Required

Soil amendments shall be specified and used to improve the quality of soil used as planting media for trees. This requirement applies to all development, except for residential single-unit lots. Common areas of subdivisions and townhouse developments are subject to the requirements of this section.

- (1) A registered Landscape Architect shall provide a recommended soil amendment schedule based on the existing soils found on-site and the type of plant material proposed. This schedule shall be included as part of the required landscape plan submitted as part of a development plan.
- (2) Prior to the issuance of a Certificate of Occupancy, a certified statement shall be provided to town staff Cary Site Inspector attesting to the fact that the soil amendment schedule was followed as specified in the approved development plan. This statement shall be certified by a registered landscape architect, certified arborist, or other such specialist.

(L) Reforestation of Cut and Fill Slopes

Where portions of a site have been graded due to, but not limited to, topography, cut and fill slopes associated with road and/or parking lot construction; with transitional perimeter grading; or with the installation of major utilities, and other similar areas, the development plan shall contain a reforestation plan prepared by a landscape architect, a certified arborist, a registered forester, or another such professional specialist. The reforestation plan shall conform to the following standards:

- (1) Loblolly Pine (*Pinus taeda*) seedlings shall be installed on a staggered grid with a spacing of ten (10) feet within a row and fifteen (15) feet between rows.
- (2) Alternate tree species or planting arrangements may be approved by the Planning Director in response to site-specific characteristics that dictate such a change.
- (3) The plantings required by this subsection shall not be subject to the requirements of subsections (J) and (K) above.

(M) Separation from Utility Appurtenances

In order to prevent conflicts and allow for appropriate maintenance, canopy trees shall be placed at least ten (10) feet from electrical transformers and twenty (20) feet from light poles.

7.2.10 Allowable Modifications and Reductions

- (A)** This Section 7.2.10 provides flexibility and presents alternative ways to meet the standards set forth in this Ordinance, while encouraging the preservation of existing healthy vegetation and innovation in site design.
- (1) Existing healthy vegetation and the area of land used to maintain the vegetation may be counted toward meeting the performance criteria for buffers, streetscapes, and vehicular use areas set out in Sections 7.2.3, 7.2.4, and 7.2.6.
 - (2) Up to a twenty (20) percent reduction in the number of parking spaces required on the site shall be allowed to the extent that the reduction in the amount of required pavement will preserve existing healthy trees in an undisturbed, natural condition.
 - (3) Reduction of the buffer width may be approved, as provided below.
 - (a) The Zoning Board of Adjustment may reduce the width of required streetscapes and buffers to no less than ten (10) feet pursuant to this section. Buffer reductions between uses may be considered based on the use of innovative site/building design concepts. The Zoning Board of Adjustment may make exceptions to this minimum width for development within the Town Center

District and for reuse/redevelopment sites. Reductions in the width of streetscapes and buffers should only be allowed when:

- (1) At least one (1) of the following conditions exists:
 - a. meeting the required width prevents reasonable use of the property based on the zoning; or
 - b. additional open space beyond that already required is provided elsewhere on the site; and
- (2) The modification advances the goals and purposes of the LDO.

The Planning Director may allow reuse/redevelopment sites to maintain their existing buffer and streetscape widths even if such width is less than current ordinance requirements so long as the proposed development plan does not reduce the existing buffer or streetscape width on the site. If existing pavement, curbs, and/or buildings are being removed from the required buffer and streetscape widths, the Planning Director may require plantings to reasonably meet the intent of the landscape requirements (i.e., parking lot screening, streetscape/buffer and parking lot trees).

- (4) An average buffer/streetscape width that equals the width of the required buffer/streetscape may be approved, provided that all of the following requirements are met:
 - (a) The buffer/streetscape average equals the required width {for example, a required fifty (50) foot buffer could average a minimum of fifty (50) feet in width.}
 - (b) In no case shall a buffer/streetscape that is adjacent to single-unit residential development be less than thirty (30) feet in width.
 - (c) All buffer/streetscape areas that are less than the required minimum width must include additional vegetation, walls/fencing, and/or other measures.
- (5) Where spacing of required streetscape trees evenly across the frontage of the property or existing vegetation would interfere with the visibility of features or landscapes intended specifically for public or civic purposes such as art, monuments, memorials, and historic structures, the required number of trees may be staggered, clustered and otherwise arranged as deemed appropriate in order to promote optimal growth and health of the vegetation. In addition, existing vegetation may be removed from the streetscape for visibility of features provided that an area equal to the area of vegetation being removed is preserved elsewhere on the site (in addition to required buffers).
- (6) The area used for preserving existing healthy non-champion trees within the site may be used as credit for required perimeter non-residential buffers and interior buffers, at a rate of one and one-half (1.5) times. For example, if the area taken up by the preserved vegetation is one thousand two hundred (1,200) square feet, then the applicant may deduct an area equal to one thousand eight hundred (1,800) square feet from other required landscape/buffer areas. However, the application of this subsection is subject to the limits provided under Section 7.2.10. In addition, the area removed from required perimeter buffers should not contain specimen tree stands. For purposes of this section, "area taken up by preserved vegetation" includes the area under the tree canopies.

- (7) Interior buffer areas may be relocated provided that the square footage of area is relocated elsewhere on the site (preferably to save more existing vegetation).
 - (8) The required streetscape along thoroughfares and collectors may be reduced to ten (10) feet, and building setbacks from the streetscape to zero (0) when buildings are placed close to the street inside Mixed Use Overlay Districts.
- (B) In addition to subsection (A) above, and in order to provide for flexibility in site design and landscape requirements to preserve champion trees, the Planning Director shall administratively approve the below modifications in the order listed and only to the extent necessary to preserve champion trees. Specifically, the area preserved in association with saving champion trees may be exchanged for area used to meet the other LDO requirements referenced below. Refer to Section 7.2.5(A) for definitions applicable to this subsection.
- (1) The required number of parking spaces may be reduced by up to twenty-five (25) percent;
 - (2) Linear parking lot islands may be reduced and/or eliminated;
 - (3) The area encompassed by the critical root zone of preserved champion trees may be used to meet the community gathering space requirements;
 - (4) The area encompassed by the critical root zone of preserved champion trees and designated as common open space may be used to meet the bonus open space requirements within the conservation residential overlay district without being contiguous or meeting the area size requirements;
 - (5) Residential lot lines may be created at other than substantially right angles to other lot lines provided the lot meets all other dimensional requirements of this ordinance and permits a reasonable building envelope for a dwelling;
 - (6) Residential lot setbacks may be reduced up to fifty percent (50%) when the setback is adjacent to a champion tree critical root zone area.
 - (7) The connectivity index, primary circulation standards, and the cross-access requirements within Section 7.10.3 (A) and (C) may be modified provided the circulation pattern shall continue to provide for the safe, controlled, and orderly flow of pedestrians and vehicles;
 - (8) Champion trees and their critical root zones or a portion thereof may be included within residential lots provided such inclusion permits a reasonable building envelope for a dwelling and designated as tree protection areas on the development plan;
 - (9) Interior non-residential buffers and interior buffers within non-residential centers/subdivisions may be reduced to no less than ten (10) feet or the width required to meet the planting requirements of the buffer type, whichever is greater, provided specimen hardwood tree stands are not adversely impacted;
 - (10) Total perimeter buffers widths adjacent to non-residential uses or zoning districts may be reduced to no less than twenty (20) feet, provided specimen hardwood tree stands are not adversely impacted and there is sufficient room to plant the required buffer type;

- (11) Buffers and streetscape areas may be used for bio-retention, provided specimen hardwood tree stands are not adversely impacted and the buffer is adjacent to a non-residential use or zoning district.
- (12) Critical root zone measurement and tree protection area may be reduced to one (1) foot from the champion tree for each inch of caliper.

For the purpose of the allowable modifications above, the "area encompassed by the critical root zone of preserved champion trees" also includes the area needed to preserve an existing structure on a site, the demolition of which would have adversely impacted the critical root zone of one (1) or more champion trees.

(C) Soil Volume

The Planning Director shall administratively approve modifications to soil volume requirements (section 7.2.4(F)) where soil volume requirements cannot be met due to unusual planting conditions, provided the developer or property owner provides the Town with a certification from a certified arborist on a form approved by the Planning Department that the modifications will not decrease the viability of the trees.

7.2.11 Time for Installation of Required Landscaping

(A) Time Limit

All landscaping, including mulching and seeding, shall be completed in accordance with the approved development plan prior to issuance of a Certificate of Occupancy for the site, unless the Planning Director grants an exception to meeting this requirement due to extreme heat or cold conditions. The installation of these requirements shall comply with the required planting standards set forth in the Town's Community Appearance Manual and the soil erosion and sedimentation control provisions in Section 7.4. Installation of required landscaping (i.e., trees and shrubs) shall be strongly discouraged during the months of April through September. The use of alternative water source (other than public water) is encouraged to ensure plantings are healthy after first growing season. Projects which require installation of landscaping between April and September are required to have a landscape agreement in place prior to the issuance of a Certificate of Occupancy.

(B) Extensions and Exceptions

The Planning Director may grant exceptions and extensions to the above time limit in the following circumstances and under the following conditions:

- (1) Exceptions may be granted due to unusual environmental conditions, such as drought, ice, over-saturated soil (deep mud), or inappropriate planting season for the plant species (plantings between April through September are strongly discouraged), provided that the developer or property owner provides the Town with a certification on a form approved by the Planning Department ensuring the installation of the remaining landscape materials. In such cases, the Planning Director may issue a conditional Certificate of Occupancy for a period of thirty (30) to one hundred eighty (180) days, depending on the Director's recommendation for the next earliest planting season.
- (2) Exceptions may be granted due to the substitution or unavailability of plant species or acceptable plant size as specified on the development plan, provided that the developer or property owner provides the Town with a certification on a form approved by the Planning Department to ensure that the unavailable plants will be installed on the property. In such cases, the Director may issue a temporary Certificate of Occupancy for a term of up to one hundred eighty (180) days or to the next planting season, whichever comes first. Only twenty (20) percent of the plant materials to be installed on the property may be delayed under this exception. All such substitutions shall be marked on the "as-built" landscaping plans submitted to the Planning Director, and must be signed, dated, and approved by that Director prior to installation.
- (3) Exceptions may be granted due to circumstances beyond the developer's or property owner's control, such as incomplete construction or utility work to occur in a proposed landscaped area within thirty (30) days after expected site completion, provided that the developer or property owner submits a letter from the utility company stating the estimated installation date, and provides certification on a form approved by the Planning Department to ensure installation of the required landscaping. In such cases, the Inspections and Permits Department may issue a temporary conditional Certificate of Occupancy.

7.2.12 Implementation of Landscape Plan; Inspections**(A) Inspections Prior to Certificate of Occupancy**

The Planning Department shall inspect the site prior to the issuance of a permanent Certificate of Occupancy for the development and the Inspections and Permits Department shall not issue the permanent Certificate of Occupancy if the landscaping required under this section is not living or healthy or is not installed in accordance with the standards set forth in this section and in accordance with the approved development plan.

(B) Inspections After First Year

The Planning Department shall inspect the site one (1) year after the issuance of a permanent Certificate of Occupancy in order to ensure compliance with the approved development plan and to ensure that the landscaping is properly maintained. Failure to maintain required landscape areas (trees and shrubs) shall result in fines according to Chapter 11 of this Ordinance.

7.2.13 Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines**(A) General Maintenance Responsibility**

The owners of the property shall be responsible for the installation, preservation, and maintenance of all planting and physical features (installed or vegetated natural areas) in all buffers, streetscapes, vehicular use areas, and other landscaped areas required under Sections 7.2.1 through 7.2.12 and Section 7.2.15, by zoning condition(s) or by an approved development plan or final plat, including areas labeled on such plans or plats as undisturbed, (hereinafter, in this Section 7.2.13, referred to collectively as "required landscape areas"), as provided below:

- (1) Required landscape areas shall be free of refuse and debris, shall be treated for pest/diseases in accordance with the approved development plan, and shall be maintained so as to prevent mulch, straw, dirt, or other materials from washing onto streets and sidewalks.
- (2) The owner shall take actions to protect vegetation in required landscape areas from unnecessary damage during all facility and site maintenance operations, including preventing parking or intrusion of equipment or vehicles and storage of any materials in root zones.
- (3) Plants shall be maintained in a way that does not obstruct sight distances at roadway and drive intersections, obstruct traffic signs or devices, and/or interfere with the use of sidewalks or pedestrian trails (see Community Appearance Manual). Shrubs within existing vehicle use areas, streetscapes, and street fronts may be pruned, but must maintain a height of at least three (3) feet.
- (4) Any dead, unhealthy, or missing vegetation, or vegetation disfigured by severe pruning, shall be replaced with locally adapted vegetation that conforms to the standards of this Ordinance and the approved development plan.

(B) Removal, Damage and Pruning of Vegetation**(1) *Removal, Disturbance, Damage and Severe Pruning Prohibited***

Vegetation in required landscape areas may not be removed, disturbed, damaged, or severely pruned except as allowed in accordance with Section 7.2.13(B)(2). For purposes of this Section 7.2.13, "disturbance" shall be defined as any action that results in injury or harm to required trees, shrubbery, or other vegetation. Plants shall be considered severely pruned if pruned in such a manner that growth of their natural form is impaired.

(2) *Exceptions*

Vegetation within required landscape areas may be removed or modified with approval of a tree clearing certificate or with approval of the Planning Director as provided below:

- (a) Upper-story and understory trees may be pruned in accordance with Section 7.2.4, Streetscape Landscaping to prevent damage to utilities or buildings, and to maintain sight distance requirements.

- (b) Where vegetation poses an immediate or imminent threat to improved structures on private or public property, severe pruning and/or removal of the vegetation is allowed, provided the performance standard of the required landscape area is maintained consistent with this Ordinance.
- (c) Where vegetation or a physical element functioning to meet the standards of this Ordinance is severely damaged due to an unusual weather occurrence or natural catastrophe, or other natural occurrence such as natural death or damage by wild or domestic animals, the owner may be required to replant if the required landscape area no longer achieves the required performance standards of this Ordinance. The owner may have one (1) growing season to replace or replant after reconstruction is complete. The Planning Director shall consider the type and location of the landscape buffer or required vegetation area as well as the propensity for natural revegetation in making a determination on the extent of replanting requirements.
- (d) Trees may be removed after approval of a tree clearing certificate pursuant to Section 3.22 of this Ordinance.

(C) Replacement of Disturbed and Damaged Vegetation

Where existing required vegetation has been removed, disturbed, or damaged in violation of this Ordinance, the Planning Director shall require revegetation of the affected area consistent with the provisions of Section 11.5.2(B)(1).

(D) Fines

Fines for unauthorized removal or disturbance of, damage to, or severe pruning of vegetation shall be assessed pursuant to Section 11.5.2(B)(2).

7.2.14 Reserved

7.2.15 Highway Corridor Buffer

(A) Purpose and Intent

The purpose of the Highway Corridor Buffer is to provide orderly development along US 1, I-40, I-440 and NC-540, to encourage the most appropriate use of adjacent lands, to maintain the scenic natural beauty of the area visible from such fully-controlled-access highway and adjacent lands, to provide open space, and to promote the safe and efficient movement of traffic. These highways commonly establish an image of the quality of life in the Town for visitors and residents alike. Preservation of this natural beauty is required to enhance trade, capital investment, tourism, and the general welfare. All development within this buffer shall comply with the regulations of this Section.

(B) Applicability

The Highway Corridor Buffer is established along both sides of existing and planned fully-controlled-access highways. Such highways include US 1, I-40, I-440, and NC-540. The Highway Corridor Buffer covers all lands adjacent to the right-of-way along both sides of each such fully-controlled-access highway.

(C) Buffer Requirements**(1) General Requirement**

A buffer strip, with a width extending one hundred (100) feet from and parallel to the right-of-way boundary of the fully-controlled-access highway, shall be maintained.

(2) Interchange Requirements

A buffer strip width extending fifty (50) feet from and parallel to the right-of-way for interchange ramps shall be maintained.

(3) Reductions**(a) Town Council**

The Town Council may reduce the required width of this buffer strip as part of its approval of a concept plan or preliminary development plan as a component of a rezoning request, taking into consideration: the topography of the area; surrounding land uses, particularly residential uses; the actual location of the controlled/limited access highway; the size and shape of land parcels affected by the buffer; and whether the buffer requirement would render the entire property unusable. In reducing the width of the buffer strip, the Town Council shall ensure that the applicant and/or developer will provide appropriate landscaping meeting the requirements of Section 7.2.15(C)(4) below. In no event, however, shall the Town Council reduce the required width of the buffer strip to less than thirty (30) feet.

(b) Zoning Board of Adjustment

Pursuant to the procedure in Section 3.19.1, the Zoning Board of Adjustment may consider a reduction of the required width of this buffer strip as a component of a development plan, taking into consideration: the topography of the area; surrounding land uses, particularly residential uses; the actual location of the controlled/limited access highway; the size and shape of land parcels affected by the buffer; and whether the buffer requirement would render the entire property unusable. In reducing the width of the buffer strip, the Zoning Board of Adjustment shall ensure that the applicant and/or developer will provide appropriate landscaping meeting the requirements of Section 7.2.15(C)(4) below. In no event, however, shall the Zoning Board of Adjustment reduce the required width of the buffer strip to less than thirty (30) feet pursuant to this section.

(4) Maintenance of Existing Vegetation

Within the required buffer strip, all existing vegetation shall be maintained in a natural, undisturbed state and, unless the existing natural vegetation provides such a buffer, the applicant and/or developer shall install and maintain an Opaque Type A buffer meeting the requirements of Section 7.2.3(D) and (G) of this Ordinance. The owners of the property are responsible for maintenance of the buffer and the consequences resulting from disturbance to the buffer in accordance with Section 7.2.13, Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines. If the developer caused or is responsible for such disturbance of the buffer, and the developer is not the owner of the buffer, then the developer shall also be responsible for the consequences of such disturbance in accordance with Section 7.2.13.

(5) Development within Buffer

No development shall be allowed within the required buffer strip except as provided for in Section 7.2.3(H)(1) and (H)(2).

(D) Variances

The required width of the buffer strip may be reduced to less than thirty (30) feet pursuant to Section 3.20 (Variances).

(E) Actions of Government or Public Utilities

The law may permit the width of this buffer strip to be reduced through the action(s) of a unit of government or Public Utility (as such term is defined by G.S. 62-3), or may permit development within the buffer by a unit of government or Public Utility, such as but not limited to construction of highways or utility transmission facilities. In such situations, the action to reduce the buffer width or engage in development within the buffer by the government or Public Utility may not be subject to requirements of the LDO, including review or approval by the Zoning Board of Adjustment. See LDO Section 1.6.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-009, adopted 4-27-06; eff. 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-02, 1-28-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-03, 7-14-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2011-LDO-05, 12-15-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2013-LDO-07, 12-19-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-04, 8-28-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-LDO-02, 3-30-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-01, 1-13-22; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22; Ord. No. 2023-LDO-03, 6-22-23)

7.3 STORMWATER MANAGEMENT**7.3.1 Purpose and Definitions**

- (A)** This section is intended to protect water quality for present and future residents of the Town and surrounding regions by limiting the amount of pollutants, including but not limited to nitrogen and phosphorus, in stormwater runoff. Specific objectives include: control of nitrogen and phosphorus export from development, control of peak stormwater runoff, and the use of best management practices.
- (B)** For the purpose of this section 7.3, the following definitions shall apply:

LARGER COMMON PLAN OF DEVELOPMENT OR SALE

A site where multiple separate and distinct development activities may be taking place at different times on different schedules but governed by a single development plan regardless of ownership of the parcels. Information that may be used to determine a "common plan of development" include plats, blueprints, marketing plans, contracts, building permits, public notices or hearings, zoning requests, and infrastructure development plans. Common Plan of Development is synonymous with "Larger Common Plan of Development".

REDEVELOPMENT

Any development on previously-developed land.

7.3.2 Nutrient Reduction Requirements**(A) Nitrogen and Phosphorus Control Plan Required**

For purposes of this section, nitrogen and phosphorus control plans shall be required for the following:

- (1) Any activity that, alone or as part of a larger common plan of development or sale, disturbs greater than one (1) acre of land in order to establish, expand, or modify a single-unit or duplex residential development or a recreational facility.
- (2) Any activity that, alone or as part of a larger common plan of development or sale, disturbs greater than twelve thousand (12,000) square feet of land in order to establish, expand or modify a multifamily residential development or a commercial, industrial or institutional facility.
- (3) Any redevelopment alone or as part of a larger common plan of development or sale in order to establish, expand, or modify a multifamily residential development or a commercial, industrial or institutional facility that increases built upon area and has an existing Stormwater Management Plan is subject to this rule regardless of disturbed area.
- (4) Any grubbing, stump removal, and/or grading activity that disturbs greater than twelve thousand (12,000) square feet.
- (5) Demolition and subsequent construction upon a previously developed site.

(B) Exemptions

- (1) For purposes of this section, development or land disturbance shall not include agriculture, mining, or forestry activities.
- (2) Existing development as of March 1, 2001 in the Neuse River Basin, is not subject to the requirements of this Section. Expansions to existing development must meet the requirements of this Section. The impervious surface area of the existing development is not required to be included in the nitrogen load attributed to the site expansion. All calculations must use the approved accounting tool.
- (3) Redevelopment and/or rebuilding activity which results in no net increase in the built-upon area from that that previously existed and which provides equal or greater stormwater control than that provided by previous development.
- (4) In the Cape Fear River Basin any proposed new development that would replace or expand structures or improvements that existed as of December 1, 2001, and that would not result in a net increase in built-upon area shall not be required to meet the nutrient loading targets or high-density requirements, in accordance with Section 4.4.6(D), except to the extent that it shall provide stormwater control at least equal to the previous development.

(C) Nitrogen and Phosphorus Export Standards

- (1) Any activity that is required to submit a nitrogen control plan in the Neuse River Basin must achieve a nitrogen export of less than or equal to three and six-tenths (3.6) pounds per acre per year. Any activity that is required to submit a nitrogen and phosphorus control plan in the Cape Fear River Basin must achieve an export rate of less than or equal to two and two-tenths (2.2) pounds per acre per year of nitrogen and eighty-two hundredths (0.82) pounds per acre per year of phosphorus in the Upper New Hope and four and four-tenths (4.4) pounds per acre per year of nitrogen and seventy-eight hundredths (0.78) pounds per acre per year in the Lower New Hope. If the development contributes greater than three and six-tenths (3.6) pounds per acre per year of nitrogen in the Neuse River Basin, greater than two and two-tenths (2.2) pounds per acre per year of nitrogen and/or eighty-two hundredths (0.82) pounds per acre per year of phosphorus in the Upper New Hope, or greater than four and four-tenths (4.4) pounds per acre per year of nitrogen and/or seventy-eight hundredths (0.78) pounds per acre per year of phosphorus in the Lower New Hope, then the table below explains the options available depending whether the development is residential or non-residential.
- (2) Notwithstanding the foregoing, in the Cape Fear River Basin, redevelopment that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting the loading standards identified in section 7.3.2 (D)(1) or meeting a loading rate that achieves the following nutrient loads compared to the existing development: in the Upper New Hope Watershed, thirty-five (35) percent reduction in nitrogen and five (5) percent reduction in phosphorus; and in the Lower New Hope Watershed, no increase for nitrogen or phosphorus.
- (3) Development subject to this section 7.3 shall attain a maximum nitrogen loading rate on-site of six (6) pounds per acre per year for single-unit, detached and duplex residential development and ten (10) pounds per acre per year for other development, including multi-family residential, commercial and industrial and shall meet any requirements for engineered stormwater controls otherwise imposed by the LDO. An applicant may achieve the additional reductions in nitrogen and phosphorus loading required by this section by making offset payments to the North Carolina Division of Mitigation Services contingent upon the acceptance of payments by that program. An applicant may propose other offset measures, including providing his or her own offsite offset or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0273 (2) through (4) and 15A NCAC 02B .0714.

TABLE 7.3-1: NITROGEN/PHOSPHORUS EXPORT REDUCTION OPTIONS	
Residential	Commercial/Industrial/Institutional/Local Government/Multifamily Residential
If the computed export is less than 6.0 lbs/ac/yr, then the owner may either:	If the computed export is less than 10.0 lbs/ac/yr, then the owner may either:
Install SCMs to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr in the Neuse River Basin. Install SCMs to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.	Install SCMs to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr in the Neuse River Basin. Install SCMs to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.
Pay a one-time offset payment to bring the nitrogen down to the 3.6 lbs/ac/yr in the Neuse River Basin. Pay a one-time offset payment to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.	Pay a one-time offset payment to bring the nitrogen down to the 3.6 lbs/ac/yr in the Neuse River Basin. Pay a one-time offset payment to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.
Do a combination of SCMs and offset payment to achieve a 3.6 lbs/ac/yr export in the Neuse, 2.2 lbs/ac/yr nitrogen and 0.82 lbs/ac/yr phosphorus in the Upper New Hope and 4.4 lbs/ac/yr nitrogen and 0.78 lbs/ac/yr phosphorus in the Lower New Hope.	Do a combination of SCMs and offset payment to achieve a 3.6 lbs/ac/yr export in the Neuse, 2.2 lbs/ac/yr nitrogen and 0.82 lbs/ac/yr phosphorus in the Upper New Hope and 4.4 lbs/ac/yr nitrogen and 0.78 lbs/ac/yr phosphorus in the Lower New Hope.
If the computed nitrogen export is greater than 6.0 lbs/ac/yr, the owner must use on-site or regional SCMs to bring the development's export down to 6.0 lbs/ac/yr. Then, the owner may use one of the three options above to achieve the reduction between 6.0 and 3.6 lb/ac/yr in the Neuse River Basin, 2.2 lbs/ac/yr in the Upper New Hope or 4.4 lbs/ac/yr in the Lower New Hope of the Cape Fear River Basin.	If the computed nitrogen export is greater than 10.0 lbs/ac/yr, the owner must use on-site or regional SCMs to bring the development's export down to 10.0 lbs/ac/yr. Then, the owner may use one of the three options above to achieve the reduction between 10.0 and 3.6 lb/ac/yr in the Neuse River Basin, 2.2 lbs/ac/yr in the Upper New Hope or 4.4 lbs/ac/yr in the Lower New Hope of the Cape Fear River Basin.

Once it has been determined that an offset payment is forthcoming, the owner shall furnish the Town with evidence that the payment for the reductions in nitrogen and/or phosphorus has been made prior to the Town's issuance of a grading permit.

- (4) The nitrogen and phosphorus export standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 2B .0267, .0268 and .0714.

(D) Calculation of Nitrogen and Phosphorus Export

- (1)** The developer shall determine the need for engineered stormwater controls to meet the loading rate targets in the Cape Fear River Basin and Neuse by using the most current approved accounting tool for nutrient loading.
- (2)** Neuse River buffers and Jordan Lake Buffers required by the Department of Environmental Quality may not be used for compliance with nutrient reduction requirements; however, any portion of Zone 1, Zone 2, or Zone 3 UTB may be claimed as Protected Forest in the approved accounting tool if all the following are met:
 - (a)** No easements, including but not limited to Public or Private Utilities, Retaining Walls, Access, Greenway, Drainage, or Stormwater Control Structure and Access easements, may be located within the area claimed as protected forest.
 - (b)** The area claimed as protected forest must be recorded as Permanently Protected on the plat.
 - (c)** Allowable activities within the Protected Forest are limited to those related to removal of nuisance and invasive and diseased or dying vegetation or in the interest of protecting human safety or property damage.

7.3.3 Town of Cary NPDES Phase II Post Construction Runoff Controls

To meet the requirements of the Town of Cary NPDES Phase II Permit any new development or redevelopment as of July 1, 2005, not exempted pursuant to Section 7.3.2(B) must meet either the low density or high density option requirements described below and in the Neuse Rules. New development or redevelopment in the Swift Creek or Jordan Lake Watersheds must meet the requirements of Section 4.4.6 of the LDO. For purposes of this Section 7.3.3, impervious surface area shall be calculated pursuant to Section 4.4.6(D)(2) of the LDO and the provisions of Section 4.4.6(G) of the LDO shall apply to all engineered stormwater control measures.

- (A)** Low Density Projects, having no more than two (2) dwelling units per acre or no more than twenty-four (24) percent impervious surface area for all residential and non-residential development, shall transport stormwater runoff by vegetated conveyances to the maximum extent practicable.
- (B)** High Density Projects, having more than two (2) dwelling units per acre or more than twenty-four (24) percent impervious surface area for all residential and non-residential development, shall implement stormwater control measures that comply with each of the following standards:
 - (1)** The stormwater control measures shall control and treat the difference between the pre-development and post-development conditions for the one (1) year twenty-four (24) hour storm. Runoff volume drawdown shall be a minimum of twenty-four (24) hours, but not more than one hundred twenty (120) hours.
 - (2)** Stormwater control measures shall be designed to achieve a minimum of eighty-five (85) percent average annual removal for Total Suspended Solids (TSS).

7.3.4 Peak Runoff Control

There shall be no net increase in peak stormwater run-off flow leaving a development from pre-development conditions for the one (1)-year design storm. New developments are required to minimize damage to subject streams caused by storm flows.

(A) Calculation of Peak Flow

Acceptable methodologies for computing pre- and post-development conditions for the one (1)-year design storm include:

- (1) The Rational Method (used when the drainage area is two hundred (200) acres or less)
- (2) The Peak Discharge Method as described in USDA Technical Release Number 55 (TR-55) (drainage area is two thousand (2,000) acres or less)
- (3) The Putnam Method (drainage area is greater than two thousand (2,000) acres)
- (4) USGS Regression Equations, where applicable

The same method must be used for both the pre- and post-development conditions.

(B) Exceptions to Peak Flow Control

Developments with less than ten (10) percent net increase in peak flow of the one (1)-year design storm are not required to control peak flow for the one (1)-year storm from the site. However, if the net increase in peak flow from the new development is greater than ten (10) percent, the entire net increase from pre-development one (1)-year design storm peak flow must be controlled.

7.3.5 Maintenance of Stormwater Control Measures

All best management practices that are implemented to achieve nitrogen or phosphorus reduction and flow attenuation will require complete legal documentation and a maintenance plan and must comply with all requirements of Section 4.4.6(G), Engineered Stormwater Control Measures.

7.3.6 Variance

To the extent any state or federal law or regulations requires the Town to establish a variance procedure for any requirement of this section 7.3, the variance procedure established in Section 4.4.6(I) of the LDO shall be utilized.

(Ord. No. 05-001, 1-13-05; Ord. No. 05-015, 9-8-05; Ord. No. 06-009, adopted 4-27-06; eff. 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2019-LDO-02, 11-21-19; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22; Ord. No. 2023-LDO-02, 3-23-23)

7.4 RESERVED

7.5 RESERVED

7.6 NUISANCE AND HAZARD CONTROL STANDARDS

7.6.1 Purpose and Applicability

This section is intended to ensure that industrial, research, and other business activities are established and maintained with proper appearance from streets and adjoining properties, and to ensure that such activities are good neighbors to adjoining properties by controlling the emission of noise, odors, glare, vibration, smoke, dust, liquid wastes, radiation, radioactivity, and similar pollutants. Accordingly, this section states the performance standards and conditions with which the Town expects the construction and operation of industrial, research, and other business activities to comply. These performance standards, like all other provisions of this Ordinance, are continuing obligations, and all industrial, research, and other business uses will be expected to operate in compliance with these standards. Any land use that fails to comply with these standards shall be in violation of this Ordinance.

7.6.2 General Standards and Measures for Compliance

- (A) All uses shall be conducted so as to preclude any nuisance, hazard, or commonly-recognized offensive condition or characteristics of the use, including the creation or emission on other properties of dust, gas, smoke, noise, fumes, odors, vibrations, particulate matter, chemical compounds, toxic matter, fire, explosions, electrical disturbance, heat, glare, or excessive night illumination. At any time before or after a building is used or occupied, the Planning Director may require that adequate control measures be provided in accordance with the requirements or standards of the appropriate state or federal government agency responsible for regulating that condition or pollutant, in order to protect the public health, safety, comfort, convenience, and general welfare from any such nuisance, hazard, condition, or pollutant.
- (B) Federal and State environmental regulations may also apply to one or more of the features governed by the standards in Section 7.6.3 below. The intent is for the standards of this section to supplement and complement, not supersede or replace, any applicable Federal and State regulations. If any standard herein conflicts with an applicable Federal or State standard, then the Federal or State standard shall control.

7.6.3 Performance Standards

(A) Landscaping

All required front yards, side yards, and rear yards shall be open, landscaped green areas or left in their natural state. Where landscaped, such yards shall be planted attractively with lawn, trees, shrubs, and the like in accordance with the development plan which the Town has approved for the use. Any areas left in their natural state shall be properly maintained in a sightly and well-kept condition. Parking areas also shall be maintained in a sightly and well-kept condition.

(B) Noise

Noise shall be muffled so as not to become objectionable at or beyond the property line due to intermittent beat frequency, shrillness, or intensity.

(C) Odors

Odors from any use shall not exceed the standards established by the State of North Carolina.

(D) Glare

Direct or reflected glare, such as from floodlights or high temperature processes, and as differentiated from general illumination, shall not be visible at or beyond any property line.

(E) Smoke

Smoke emissions shall not exceed the maximum limits established by the State of North Carolina.

(F) Dust and Other Particulate Matter

Solid or liquid particulate matter shall not be emitted at any point in a concentration exceeding three-tenths (0.3) grains per cubic foot of the conveying gas or air.

[Text continues on p. LDO 7-109.]

(G) Gases

Fumes or gases shall not be emitted at any point in concentrations or amounts that are noxious, toxic, corrosive, or in excess of any applicable maximum limits established by State or Federal regulations.

(H) Fire and Explosion Hazards

All operations shall be carried out in accordance with the Town Fire Code and with reasonable precautions against fire and explosive hazards.

(I) Radiation and Radioactivity

Operations shall cause no radiation or radioactivity at or beyond any property line that exceeds any applicable standards or regulations established by the U. S. Nuclear Regulatory Commission or by other federal or state agencies or laws.

(J) Electrical Radiation

Any electrical radiation shall not at any point adversely affect or interfere with any operations or equipment other than those of the person, company, or other entity emitting the radiation. Avoidance of adverse effects or interference from electrical radiation by appropriate single or mutual scheduling of operations is permitted.

(K) Wastewater and Industrial Wastes

All wastewater and industrial wastes shall be treated and disposed in such a manner as to comply with the water quality standards applicable to the classification assigned to the receiving waters by the State of North Carolina. Approval by the State of North Carolina of all plans for waste disposal facilities shall be required before the issuance of any building permit. All uses connected to the Town's sanitary sewer system also shall comply with all applicable requirements established in Chapter 19, Article IV of the Code of Ordinances of the Town of Cary.

(L) Underground and Above-Ground Storage Tanks

All storage tanks which are placed above or below the ground shall be designed and installed so as to prevent the infiltration of their contents into groundwater or surface waters, and to comply with all applicable State regulations promulgated by the North Carolina Department of Health, Environment and Natural Resources.

7.6.4 Effects of Concurrent Operations on Different Properties

The sum total of the effects of concurrent operations on two (2) or more parcels measured at any property line shall not be greater or more offensive to the senses than the standards contained in this section. Compliance with the provisions of this section may occur by independent or mutual changes in operational levels, scheduling of operations, and other adjustments.

7.6.5 Determination of Violation of Performance Standards

- (A)** The Planning Director shall have the authority to determine violations of the standards set forth in this section. The procedures set forth in this section shall be followed prior to the initiation of any enforcement action under Chapter 11 of this Ordinance.

- (B) Where determination of a violation of these standards requires the use of personnel or instruments not available to the Town, and a violation exists in the opinion of the Planning Director, the following procedures shall be followed:
- (1) The Planning Director shall give written notice of the alleged violation by registered or certified mail, return receipt requested, to the owner or occupant of the property. The notice shall describe the alleged violation, state the reasons why the Director believes there is a violation, and require that the owner or occupant answer the allegation within thirty (30) days of receiving the notice.
 - (2) After the thirty (30)-day period passes, if a dispute still exists between the Director and the alleged violator regarding the existence of violation, then the alleged violator may appeal to the Zoning Board of Adjustment. The Director shall then transmit to the Town Council a copy of the notice given to the alleged violator, along with any recommendations as to alterations, modifications, or securing the services of a consultant to determine whether a standard has been violated. The Town Council then shall make a determination as to whether a violation exists.
 - (3) If the Zoning Board of Adjustment finds the alleged violation to exist, then the costs of making that determination shall be charged to the owner or occupant of the property responsible for the violation. If the Zoning Board of Adjustment determines that no violation exists, then the Town shall cover the costs of making the determination.
 - (4) If a violation is not removed or corrected as directed by the Town Council, then the Director may:
 - (a) Recommend to the Town Council that any occupancy permits previously issued to the violator be voided and that the operator be required to cease operation until the violation is removed, corrected, or otherwise remedied; and/or
 - (b) Initiate further enforcement actions under Chapter 11 of this Ordinance.

(Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2021-LDO-01, 6-28-21)

7.7 BUILDING DESIGN STANDARDS

7.7.1 Purpose and Intent

The review and approval of building design is critical to upholding and promoting high quality development throughout the Town. The purpose of this section is to ensure that proposed developments are designed in a way that promotes compatibility throughout the Town, including within residential developments, within non-residential centers, and between residential and non-residential areas. Specifically, the intent of this Section is as follows:

- (A) To encourage high quality appearance for developments, thoroughfares, and streets;
- (B) To provide proper standards that ensure a high quality appearance for Cary, and promote good design while also allowing individuality, creativity, and artistic expression;
- (C) To encourage the proper use of the land by promoting an appropriate balance between the built environment and preservation/conservation of open space (note that some places may be appropriate for more urban type development and less open space, such as the downtown and other areas designated in the Comprehensive Plan);

- (D) To preserve and improve property values and protect private and public investment; and
- (E) To preserve and protect the identity and character of Cary, and to enhance the business economy.

7.7.2 Applicability

Except for structures subject to regulation under the North Carolina Residential Code for One- and Two-Family Dwellings, all projects requiring submission of a development plan under Section 3.9 of this Ordinance shall comply with the requirements of this Section. Such projects also must comply with the Town's Community Appearance Manual and the Site Design Standards which provide examples and illustrations of concepts discussed in this Section.

7.7.3 General Requirements

(A) Development within Non-Residential Centers

All proposed buildings within non-residential centers shall be designed to be consistent within the center in terms of architectural design, exterior building materials, colors, and arrangement of buildings and other features. A Statement of Architectural Compatibility (SAC) shall be required prior to the approval of the first development plan within the development; see Section 7.7.4.

(B) Development Outside of Non-Residential Centers

For all other non-residential development located outside of non-residential centers (e.g., subdivisions, buildings on "stand alone" parcels, modifications to existing developments, and infill development), the building design(s) shall be compatible within the subdivision or with adjacent buildings in close proximity to the proposed building. In such cases, a Statement of Architectural Compatibility is not required.

(C) Building Placement

Buildings shall comply with the following standards and those provisions that address building orientation, arrangement, mass, and other elements. All development plans must also follow the provisions in the Town's Community Appearance Manual and Site Design Standards.

- (1) All buildings must front a street, park, open space, or pedestrian way. A street may be an external roadway adjacent to a property, or a public or private street within a site. Buildings with one (1) double-loaded bay of parking between them and a street count as being sited to front a street. In addition, in non-residential centers, ten (10) acres or more in size within Mixed Use Overlay Districts, a majority of the tenant spaces forty thousand (40,000) square feet or less must be located on a double fronted street with no more than one hundred eighty (180) feet between buildings. For infill or redevelopment sites, buildings may front adjacent public streets in lieu of the double-loaded requirement.
- (2) Drive-throughs with roof structures or canopies shall be oriented away from major roadways. Cantilevered awnings or metal canopies are acceptable as part of a drive through.
- (3) Infill development should have the same predominate setbacks and orientation of adjacent existing buildings, unless there is an opportunity to establish a new predominate street-front orientation.

- (4) Buildings on adjacent outparcels must be grouped adjacent to one another in groups of two (2) or more. Grouped outparcel buildings must be sited no more than one hundred (100) feet apart.

(D) Review Considerations

The approval authority may consider alternative colors and designs for buildings provided that they meet the intent of this section. The approval authority should consider criteria such as the intensity of the colors, the extent of the design difference and the spatial separation of each building.

7.7.4 Statement of Architectural Compatibility (SAC)

A Statement of Architectural Compatibility (SAC) shall be included with all development plans for buildings within a non-residential center, and shall be submitted with the first development plan submission (see Section 3.9) on the application form specified in the Community Appearance Manual. The Town Council or the Planning Director shall consider the SAC as part of the development plan review. The SAC shall include:

- (A) Primary physical characteristics including predominant color(s), exterior materials and architectural features;
- (B) Primary landscape theme (general, not specific);
- (C) Building height and placement;
- (D) Lighting elements (general);
- (E) Other elements which may be relevant to a specific development and how they are compatible with the adjacent sites; and
- (F) Master Sign Plan (general).

The SAC shall designate the unifying elements that are to be incorporated within the entire project (including any outparcel) and specifically how these elements are to be used.

7.7.5 Criteria for Review of SAC

(A) Primary Color(s)

A maximum of three (3) predominant colors shall be designated as a primary unifying element (this does not include accent colors). Flexibility may be used to allow additional colors and/or a range of predominant colors provided that these colors are in the same family of colors (similar to each other). Any color specified as a primary unifying element shall be dominant in the building facade. Color "samples" shall be provided to the staff at the time of development plan review. Colored renderings may be required, but shall not be a substitute for this requirement. In addition to listing the color(s), the SAC shall also describe how and where the color will be used. It is recognized that the same color on a different material may not match exactly.

(B) Accent Colors

These colors may be used as a secondary unifying element provided they are used throughout the development. Non-illuminated accent bands (e.g. canopies with gas stations and the roof of fast food buildings) on roofs, canopies, or other features shall be one (1) of the primary colors of the development or be white or earth tone in color.

(C) Exterior Materials

The dominant material or combination of materials shall be defined. For each building material selected, the color of that material shall also be defined.

(D) Architectural Features

Architectural features refer to a number of building elements that are repeated throughout the development. These include, but are not limited to: roof lines, canopies, building ornamentation, patterns, and building form. Any architectural feature designated as a unifying element throughout all buildings shall contribute to the identity of the development and not be just a minor architectural detail.

(1) Use of Awnings

No awnings/canopies shall be internally lit. All awnings/canopies shall utilize the same design and color throughout the development.

(2) Roof Type

Outparcels may use a different roof type (e.g., pitch vs. flat) than the main buildings within centers provided that the building on the outparcel is a size where the different roof type does not dominate the center and/or the roof type has a tie to the other buildings (e.g., mansard roofs).

(3) Detached Canopies

Detached canopies are subject to the provisions of the Community Appearance Manual, including color and roof pitch requirements.

(E) Landscaping

Plant materials may be used in such a way as to reinforce compatibility depending on the type of plant materials selected and their placement on the site. This previous statement is not intended to limit creative landscape designs within the center, but to promote general compatibility in materials. Drought tolerant or native species (including trees, shrubs, and turf grasses) that do not require extensive watering are strongly recommended.

(F) Setbacks and Building Placement

The use of common setbacks and building orientation from a street right-of-way may be an appropriate unifying element where a number of freestanding buildings occur within the development.

(G) Building Height

A standard height among a group of buildings can usually tie the buildings together visually.

(H) Lighting

A consistent type of lighting fixture repeated throughout the development as well as a similar wattage, height, type of light produced and/or color of light are to serve as a unifying element. Light pole height, wattage, pole/fixture/light color should all be the same.

7.7.6 Recording Requirements

Where non-residential development plans or residential multi-family development plans are approved, no lots shall be recorded without noting the general requirements for architectural compatibility on the maps for recordation. Owners of properties with non-residential development plans which include outparcel lots are strongly recommended to record architectural compatibility covenants which refer to these requirements on record in the Planning Department. These covenants shall run with the land and be administrated by a property owners' association or similar organization.

7.7.7 Amendment Process

(A) The SAC may be amended if the amendments are signed by the owner of the non-residential center or overall project and approved by the Planning Director. The Director shall review the amendments based on their ability to meet the intent of this Ordinance. The SAC for the main structures of the development shall be approved as part of the first development plan within a development.

(B) Any revision to the SAC that involves a change in the primary characteristics of an existing development (such as a change in color or addition of a canopy) shall be reviewed and approved by those with the authority to approve plans and all owners of property falling under the SAC governance. Any change in primary or secondary characteristics shall be implemented comprehensively throughout the entire development including outparcels within a reasonable time frame (i.e., less than one (1) year unless otherwise approved by the Planning Director). Any approved changes shall meet the criteria of Section 7.7.5.

(Ord. No. 06-009, adopted 4-27-06; eff. 4-27-06; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2023-LDO-03, 6-22-23)

7.8 OFF-STREET PARKING AND LOADING**7.8.1 Purpose**

In order to relieve traffic congestion in the streets, to minimize any detrimental effects of off-street parking areas on adjacent properties, to ensure the proper and uniform development of parking areas throughout the Town, and to support opportunities for development and redevelopment of businesses in the portions the town center with the most intensive development potential, off-street parking and loading spaces for each land use shall be provided in accordance with the standards established in this section.

7.8.2 Off-Street Parking Space Requirements**(A) Applicability**

(1) Except as provided in Section 7.8.2(A)(2) below, each use or establishment within the Town shall initially and continually provide sufficient off-street parking spaces, in compliance with the requirements of this section, for all residents, employees, customers, visitors, and others who may spend time at the use or establishment.

- (2) Off-street parking shall not be required for existing and new non-residential uses within the HMXD sub-district of the Town Center zoning district. However, where off-street parking spaces are provided, they shall be considered "Required Parking Spaces" for the purpose of determining the proportionate number of required handicapped parking spaces per Section 7.8.2(F).

(B) Effect on New and Existing Uses

(1) *Parking Spaces Required*

Permanent off-street parking spaces shall be provided as specified by this section for all uses occupying land or facilities (or portions thereof). Such parking spaces may be provided in a parking garage. The requirements of this section shall be met:

- (a) At the time a Certificate of Occupancy is issued for a building or structure in which an approved use takes place;
- (b) At the time any principal or ancillary use or building is enlarged or increased in capacity, such as by adding dwelling units, guest rooms, seats, floor area, or other units of measurement used in Table 7.8-1, which follows; or
- (c) Before conversion from one (1) type of use or occupancy to another, or any change in the manner in which the use is constructed that would result in additional parking requirements.

(2) *Certification*

Each development plan that is submitted for approval shall include information as to the number, location, and dimensions of all off-street parking and loading spaces and the means of ingress and egress to such spaces. This information shall be illustrated in sufficient detail to indicate whether the requirements of this Section are met. In those cases where no development plan is required, the applicant must show that the number of parking spaces and the design and construction of all parking areas meet the requirements of this Section in order to receive a Certificate of Occupancy.

(3) *Timing of Construction*

- (a) Except as provided in paragraph (B)(2) above, all parking areas required under this Section shall be completed prior to the issuance of a Certificate of Occupancy for the use or uses that they serve.
- (b) Parking areas for phased development projects shall be provided in accordance with Table 7.8-1.

(C) Computation of Off-Street Parking Requirements

(1) *Calculations*

When measurements of the number of required spaces result in fractions, the space requirements shall be rounded upward to the next highest whole number.

(2) *Different Use Areas*

Except as provided for in this chapter, parking shall be calculated separately for each different use area in a building or on a site, including all ancillary uses.

(3) *On-Street Parking*

Except as provided for in this chapter, on-street parking within public or private streets, driveways, or drives, shall not be used to satisfy the off-street parking requirements prescribed by this section, except for townhouse developments. Townhouses may count delineated, on-street parking spaces within the development towards their visitor parking requirements.

(4) *Commercial Parking Maximums*

- (a)** For uses classified as commercial, the number of spaces shown in Table 7.8-1 shall be considered the maximum number of surface spaces allowed for such uses for the purpose of reducing unnecessary/rarely-used parking and decreasing the amount of impervious surface on sites.
- (b)** Parking spaces provided within a parking deck or other parking structure shall not count toward the maximum parking requirement. For the purposes of this subsection, a parking structure includes any structure that provides parking vertically on more than one (1) level or that provides parking underneath a building that has occupied floor(s) above the parking level.
- (c)** As part of the review and approval of any procedure set forth in Chapter 3, the Planning Director may approve an increase in the maximum number of surface parking spaces of up to thirty (30) percent only if the additional surface parking is necessary to satisfy the parking expected for the use, based on factors including, but not limited to, the number of employees per square foot; the number of trips generated by the use, and the time of day when the use generates the most trips.
- (d)** The Zoning Board of Adjustment may approve an increase in the maximum number of surface parking spaces above thirty (30) percent only if it finds, after conducting a quasi-judicial hearing, that the increase advances the goals and purposes of this Ordinance and is necessary to satisfy the demand for parking expected for the use based on factors including, but not limited to, the number of employees per square foot; the number of trips generated by the use; and the time of day when the use generates the most trips.

(5) *Parking Based on Seating*

When requirements use seating as a unit of measurement, all calculations shall be based on the design capacity of the areas used for seating.

(6) *Parking Based on Floor Area*

Except as provided for in this Section, when requirements use amount of square footage in buildings as a unit of measurement, all calculations shall be based on gross floor area.

(7) *Parking Based on Students, Staff, and Occupants*

Except as provided for in this chapter, when requirements use number of students, staff, or occupants as a unit of measurement, all calculations shall be based on the maximum enrollment, the largest number of persons working on any single shift, or the maximum fire-rated capacity, whichever is applicable and results in the greater number of required spaces.

(8) *Residential Parking*

(a) Driveways may be used to satisfy minimum on-site parking requirements, provided that sufficient space is available to prevent vehicle encroachment onto sidewalk and/or into adjoining vehicular travel lanes.

(b) All parking required by Table 7.8-1 shall be located directly at the dwelling unit for which the parking is intended, or not more than two hundred (200) feet away from the dwelling unit. Adequate off-street pedestrian access shall be provided between the required parking space(s) and the dwelling unit. With appropriate justification, this distance may be increased by the Planning Director.

(c) **Visitor Parking.** Visitor parking shall be installed in accordance with Section 7.8.2(G).

Visitor parking for townhouses shall not be more than three (300) feet from the dwelling unit(s) for which it is provided to serve. These spaces may be provided via delineated on-street or off-street parking spaces.

(d) Parking for single-unit and duplex dwelling units shall be considered an accessory use subject to requirements of Section 5.3.4(K).

(9) *Parking for Unlisted Uses*

Parking requirements for uses not specifically listed in Table 7.8-1 shall be determined by the Planning Director based on the requirements for the closest comparable use, as well as on the particular parking demand and trip generation characteristics of the proposed use. The Planning Director may alternately require the submittal of a parking demand study that justifies estimates of parking demand based on the recommendations of the Institute of Traffic Engineers (ITE), and includes relevant data collected from uses or combinations of uses that are the same or comparable to the proposed use in terms of density, scale, bulk, area, type of activity, and location.

(10) *Unimpeded Parking*

Generally, no parking spaces shall be located so as to require the moving of any vehicle on the premises in order to enter or leave any other space. Notwithstanding the above, the Planning Director may allow stacking spaces provided for auto-related uses to count toward the minimum required parking, as long as such spaces are not part of areas required for site ingress or egress, or areas intended for fueling.

(D) Required Off-Street Parking Spaces**(1) Schedule "A"**

Unless otherwise expressly stated in this Ordinance, off-street parking spaces shall be provided in accordance with Table 7.8-1. Off-street parking spaces for uses within the Town Center District shall be provided according to Section 6.1.3 of this Ordinance. For uses classified as commercial, the number of motor vehicle spaces shown on the table shall be considered the maximum allowed for such uses. Exceptions to the maximum parking allowed may be approved if justified in accordance with Section 7.8.2(C)(4).

TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"			
("du" = dwelling unit; "sf" = square feet)			
	Land Use	Number of Motor Vehicle Spaces	Number of Bike Spaces
RESIDENTIAL USES			
Household Living	Boarding house	1.5 per guest room	1 rack, or 1 rack per 40 guests
Household Living	Caretaker's residence	2 per du	N/A
Household Living	Detached dwelling	2 per du	N/A
Household Living	Duplex dwelling	2 per du	N/A
Household Living	Manufactured home	2 per du	N/A
Household Living	Multi-family dwelling (including mid-rise)	0-1-bedroom unit: 1 per du 2-bedroom unit: 2 per du 3 or more bedroom unit: 2.5 per du + 0.5 per bedroom over 3 bedrooms All units: 0.15 per du designated for visitor parking {See 7.8.2(C)(8)}	1 rack per building, or 1 per 50 units*
Household Living	Patio dwelling	2 per du	N/A
Household Living	Residential use in non-residential building	2 per du + 0.5 per bedroom over 2 bedrooms	N/A
Household Living	Semi-detached/attached dwellings	2 per du + 0.5 per bedroom over 2 bedrooms	N/A
Household Living	Townhouse	2 per du + 0.5 per bedroom over 2 bedrooms, + 0.25 per du designated for visitor parking {See 7.8.2(C)(8)}	N/A
Household Living	Accessory dwelling unit	1 per bedroom	N/A
Group Living	Dormitory	1.5 per guest room	1 rack per building, or 1 per 50 units*
Group Living	Family care home	0.25 per resident + 1 per each staff person	1 rack per building
Group Living	Group home	0.50 per resident	1 rack per building
Group Living	Life care community	0.25 per resident + 1 per each staff person	1 rack per building
Group Living	Nursing home, congregate care, dependent living units	0.25 per resident + 1 per each staff person	1 rack per building

TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"			
("du" = dwelling unit; "sf" = square feet)			
	Land Use	Number of Motor Vehicle Spaces	Number of Bike Spaces
PUBLIC/INSTITUTIONAL USES			
Aviation	Airport/landing strip	See Schedule "C"	N/A
Aviation	Heliport	See Schedule "C"	N/A
Cemetery	All	See Schedule "C"	N/A
Day Care	Child day care center	1 per each 200 sf	N/A
Day Care	Day care home, large	4 per home + 1 additional space if there is an employee who does not reside in the home	N/A
Day Care	Day care home, small	3 per home + 1 additional space if there is an employee who does not reside in the home	N/A
Government Services	Governmental offices	1 per every 200 sf of gross floor area used by the public + 1 per each 600 sf of gross floor area not used by the public	1 rack per building, or 1 rack per 50,000 sf *
Government Services	Public safety station	1 per each 500 sf	1 rack
Government Services	Public utility facilities	See Schedule "C"	N/A
Hospital	All	1 per patient bed + 1.25 per full-time employee (total number of full time employees regardless of shift size)	1 rack per building, or 1 rack per 50,000 sf *
Library	All	1 per each 200 sf	3 racks, or 1 rack per 50 auto spaces*
Museum	All	1 per each 500 sf	3 racks, or 1 rack per 50 auto spaces*
Park and Open Space	Athletic field, public	1 per 5,000 sf of land area	3 racks, or 1 rack per 50 auto spaces*
Park and Open Space	Community Garden	0.1 per each acre	3 racks, or 1 rack per 50 auto spaces*
Park and Open Space	Outdoor amphitheater, public	1 per every 3 fixed seats or 1 per each 35 sf of non-fixed seating*	3 racks, or 1 rack per 50 auto spaces*
Park and Open Space	Park, public	See Schedule "C"	3 racks, or 1 rack per 50 auto spaces*
Park and Open Space	Neighborhood recreation center, public	1 per each 250 sf	3 racks, or 1 rack per 50 auto spaces*
Park and Open Space	Resource conservation facility	See Schedule "C"	3 racks, or 1 rack per 50 auto spaces*

TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"			
("du" = dwelling unit; "sf" = square feet)			
	Land Use	Number of Motor Vehicle Spaces	Number of Bike Spaces
PUBLIC/INSTITUTIONAL USES (Cont.)			
Passenger Terminal	Bus, air, or rail terminal	1 per each 200 sf	2 racks
Religious Assembly	All	1 per every 3 persons of maximum fire-rated capacity in the assembly area or sanctuary	1 rack, or 1 rack per 100 auto spaces*
Educational Use (public or private)	College	1 per classroom + 1 per every 2 students	1 rack per 40 students above 2nd grade and all employees
Educational Use (public or private)	Elementary, middle	2.25 per classroom	1 rack per 40 students above 2nd grade and all employees
Educational Use (public or private)	Pre-school	1 per each 200 sf + 1 stacking lane for at least 4 cars	1 rack per 40 students above 2nd grade and all employees
Educational Use (public or private)	Senior high	1.5 per classroom + 1 per every 5 students	1 rack per 40 students above 2nd grade and all employees
Non-Governmental Utilities	Utility facility, major	See Schedule "C"	N/A
Non-Governmental Utilities	Transportation facility	See Schedule "C"	N/A
Non-Governmental Utilities	Utility substation, minor	See Schedule "C"	N/A
COMMERCIAL USES (NOTE: Motor vehicle spaces listed for commercial uses are maximums. Refer to Section 7.8.2[C][4] for exceptions to this requirement.)			
Agricultural Uses	Farming, general	None	N/A
Agricultural Uses	Forestry	None	N/A
Agricultural Uses	Produce stand	See Schedule "C"	N/A
Animal Service	Veterinary hospital/office with indoor kennels	1 per each 300 sf	1 rack
Animal Service	Kennel, indoor only	1 per each 400 sf	1 rack
Animal Service	Kennel, indoor/outdoor	1 per each 400 sf of indoor space	1 rack

TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"			
("du" = dwelling unit; "sf" = square feet)			
	Land Use	Number of Motor Vehicle Spaces	Number of Bike Spaces
COMMERCIAL USES (Cont.)			
Animal Service	Veterinary hospital/office with outdoor kennels	1 per each 300 sf	1 rack
Assembly	General assembly	1 per every 3 persons of maximum fire-rated capacity	1 rack, or 1 rack per 100 auto spaces*
Assembly	Special Event Center	1 per each 50 sf of indoor and outdoor assembly space	1 rack, or 1 rack per 100 auto spaces*
Assembly	Dance, Rental	1 per each 50 sf or 1 per every 4 persons of maximum fire-rated capacity*	1 rack, or 1 rack per 100 auto spaces*
Assembly	Club or lodge	1 per every 3 persons of maximum fire-rated capacity + parking required for other uses as may be necessary.	1 rack, or 1 rack per 100 auto spaces*
Financial Institution	Bank, without drive-through service	1 per each 200 sf	1 rack, or 1 rack per 100 auto spaces*
Financial Institution	Bank, with drive-through service	1 per each 200 sf + one lane per each drive-up window and/or ATM with stacking spaces per Table 7.8-3	1 rack, or 1 rack per 100 auto spaces*
Financial Institution	Stand alone ATM	2 per machine	N/A
Food and Beverage Service	Nightclub, bar indoor operation	1 per each 50 sf or 1 per every 4 persons of maximum fire-rated capacity*	1 rack, or 1 rack per 100 auto spaces*
Food and Beverage Service	Nightclub, bar with outdoor operation	1 per each 50 sf, including outdoor waiting/seating/dining areas, or 1 per every 4 persons of maximum fire-rated capacity*	1 rack, or 1 rack per 100 auto spaces*
Food and Beverage Service	Restaurant, indoor operation	1 per each 150 sf, including outdoor waiting/seating/dining areas, or 1 per every 3 persons of maximum fire-rated capacity*	1 rack, or 1 rack per 100 auto spaces*

- (C) Establishing Specialized Urban Transition Buffers
 - (D) Overlap or Conflict between Urban Transition Buffers established by the Town and buffers established by State of North Carolina or Federal Regulations
 - (E) Activities Prohibited and Permitted in Urban Transition Buffers
 - (F) Description of Buffers on Development Plans
 - (G) Exclusion of Urban Transition Buffer and Riparian Buffer from Lots
 - (H) Exemption when Existing Uses are Present and Ongoing
 - (I) Determinations of No Practical Alternatives/Request for Authorization Certificate
 - (J) Modification of Urban Transition Buffers as part of Approving Development Plans
 - (K) Variances
 - (L) Mitigation
 - (M) Site Inspections
 - (N) Violations; Fines; Enforcement
 - (O) Delegation of Authority
 - (P) Definitions
- 7.2.15 Highway Corridor Buffer
- (A) Purpose and Intent
 - (B) Applicability
 - (C) Buffer Requirements
 - (D) Variances
 - (E) Actions of Government or Public Utilities

7.3 STORMWATER MANAGEMENT

- 7.3.1 Purpose and Definitions
- 7.3.2 Nutrient Reduction Requirements
- (A) Nitrogen and Phosphorus Control Plan Required
 - (B) Exemptions
 - (C) Calculation of Nitrogen and Phosphorus Export
 - (D) Nitrogen and Phosphorus Export Standards
- 7.3.3 Peak Runoff Control
- (A) Calculation of Peak Flow
 - (B) Exceptions to Peak Flow Control
- 7.3.4 Allowable Best Management Practices
- 7.3.5 Maintenance of Best Management Practices
- 7.3.6 Illegal Discharges to the Storm Sewer System
- (A) Purpose
 - (B) Applicability
 - (C) Responsibility for Administration
 - (D) Compatibility with other Regulations
 - (E) Severability
 - (F) Ultimate Responsibility
 - (G) Discharge Prohibitions
 - (H) Watercourse Protection
 - (I) Industrial or Construction Activity Discharges
 - (J) Compliance Monitoring
 - (K) Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices
 - (L) Notification of Spills
 - (M) Violations, Enforcement, and Penalties
 - (N) Appeal of Notice of Violation
 - (O) Enforcement Measures After Appeal
 - (P) Cost of Abatement of the Violation
 - (Q) Violations Deemed a Public Nuisance
 - (R) Remedies Not Exclusive

7.3.7 Town of Cary NPDES Phase II Post Construction Runoff Controls

7.3.8 Variance

7.4 SOIL EROSION AND SEDIMENTATION CONTROL

7.4.1 Purposes

7.4.2 Permit and Approval Requirements

7.4.3 General Erosion and Sedimentation Control Standards

- (A) Conveyance Channels
- (B) Slopes Left Exposed
- (C) Design Requirements
- (D) Protective Cover Required
- (E) Activity Near Watercourse
- (F) Protection During Construction
- (G) Limits on Single-Unit Residential Lot Grading
- (H) Limit on Grading Area for Medium Density Residential Developments
- (I) Installation of Required Landscape After Grading
- (J) Compliance with Town Manual

7.4.4 Basic Control Objectives for Erosion Control Plans

- (A) Identify Especially Vulnerable Areas
- (B) Limit Time of Exposure
- (C) Limit Exposed Area
- (D) Control Surface Water
- (E) Control Sedimentation
- (F) Manage Stormwater Runoff

7.4.5 Borrow and Waste Areas

7.4.6 Access and Haul Roads

7.4.7 Operations in Lakes or Natural Watercourses

7.5 FLOOD DAMAGE PREVENTION

7.5.1 Purpose; Enforcement

7.5.2 Applicability

- (A) Applicability
- (B) Exemptions
- (C) Study Required

7.5.3 Development Restrictions and Related Standards In and Near Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

- (A) Establishment of Floodplain Development Permit
- (B) Development Restrictions
- (C) Development Standards
- (D) Additional Development Standards and Restrictions for Areas with Established Base Flood Elevation Data
- (E) Application Requirements
- (F) Additions/Improvements
- (G) Additions/Improvements to Existing Structures
- (H) Accessory Structures

7.5.4 Limitations on Encroachments in Floodways and Non-Encroachment Areas

7.5.5 Standards for Streams without Established Base Flood Elevations

7.5.6 Cross Drainage Area Standards and Restrictions

7.5.7 Special Requirements for Manufactured Homes

7.5.8 Special Requirements for Development Proposals Requiring Development Plan Approval

7.5.9 Downstream Impact Analysis

TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"			
("du" = dwelling unit; "sf" = square feet)			
	Land Use	Number of Motor Vehicle Spaces	Number of Bike Spaces
COMMERCIAL USES (Cont.)			
Retail Sales and Service	Postal center, private	1 per each 300 sf + 1 per employee + 1 additional space for each delivery vehicle generally maintained on the premises	1 rack, or 1 rack per 100 auto spaces*
Retail Sales and Service	Personal service establishment	1 per each 200 sf	1 rack, or 1 rack per 100 auto spaces*
Retail Sales and Service	Retail store	1 per each 250 sf	1 rack, or 1 rack per 100 auto spaces*
Retail Sales and Service	Adult business	1 per each 200 sf	1 rack, or 1 rack per 100 auto spaces*
Retail Sales and Service	Shopping center, general	1 per each 250 sf	1 rack per building, or 1 rack per 50,000 sf *
Retail Sales and Service	Shopping center, small	based on each tenant, except in the Town Center District, where parking is 1 per each 250 sf	1 rack per building, or 1 rack per 50,000 sf *
Retail Sales and Service	Trade school	2 per classroom + 1 per every 2 students	1 rack, or 1 rack per 100 auto spaces*
Vehicles and Equipment	Automobile sales/rental	1 per each 300 sf of enclosed floor area + 1 per each 5,000 sf of outdoor display area	1 rack
Vehicles and Equipment	Vehicle filling station	1 per each 250 sf of retail + 4 per service bay + 0.5 per pump + 2 lanes per pump island with stacking spaces per Table 7.8-3	1 rack
Vehicles and Equipment	Car wash, self service and automatic	2 per bay + 1 lane per each bay with stacking spaces per Table 7.8-3	N/A
Vehicles and Equipment	Car wash, full service	1 per each 150 sf + 1 lane per each bay with stacking spaces per Table 7.8-3	N/A
Vehicles and Equipment	Heavy equipment sales/rental	1 per each 400 sf of enclosed floor area + 1 per each 5,000 sf of outdoor display area	N/A
Vehicles and Equipment	Towing and storage	1 per each 300 sf + storage area	N/A

TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"			
("du" = dwelling unit; "sf" = square feet)			
	Land Use	Number of Motor Vehicle Spaces	Number of Bike Spaces
COMMERCIAL USES (Cont.)			
Vehicles and Equipment	Vehicle service, light	1 per each 300 sf + 2 per bay	N/A
Vehicles and Equipment	Vehicle repair, heavy	1 per each 200 sf + 4 per bay	N/A
INDUSTRIAL USES			
Industrial Service	General industrial services	See Schedule "B"	1 rack
Industrial Service	Research laboratory	1 per each 500 sf	1 rack
Manufacturing and Production	Manufacturing, heavy	See Schedule "B"	1 rack
Manufacturing and Production	Manufacturing, light	See Schedule "B"	1 rack
Manufacturing and Production	Prototype process and production plants	1 per each 500 sf	1 rack
Manufacturing and Production	Brewery, distillery, or winery with a tasting room or restaurant	1 per 100 SF for indoor and outdoor tasting room or restaurant areas.	1 rack, or 1 rack per 100 auto spaces*
Manufacturing and Production	Brewery, distillery, or winery without a tasting room or restaurant	1 per 5000 SF for production areas and indoor storage area.	1 rack, or 1 rack per 100 auto spaces*
Manufacturing and Production	Resource extraction	See Schedule "C"	N/A
Telecommunications Facilities	Antenna, co-location on existing tower	None	N/A
Telecommunications Facilities	Concealed (stealth) antennae and towers	None	N/A
Telecommunications Facilities	Other building mounted antennae and towers	None	N/A
Telecommunications Facilities	Other freestanding towers	See Schedule "C"	N/A
Warehouse and Freight Movement	Mini-storage	1 per each 5,000 sf + 2 loading spaces	N/A
Warehouse and Freight Movement	Outdoor storage	See Schedule "B"	N/A
Warehouse and Freight Movement	Railroad stations and yards	See Schedule "C"	N/A
Warehouse and Freight Movement	Warehousing and distribution establishment	See Schedule "B"	N/A
Warehouse and Freight Movement	Wholesale establishment	See Schedule "B"	N/A
Waste-Related Uses	Recycling and salvage operations	1 per each 300 sf + 1 per each 10,000 sf of gross yard area	N/A

*whichever number is greater

(2) Schedule "B"

Uses subject to off-street parking schedule "B" shall provide the following minimum number of off-street parking spaces:

TABLE 7.8-2: OFF-STREET PARKING SCHEDULE "B"	
Activity	Number of Spaces Required
Office or administrative area	1 per 300 square feet
Indoor sales area	1 per 200 square feet
Outdoor sales or display area (3,000 square feet or less)	1 per 750 square feet
Outdoor sales or display area (over 3,000 square feet)	1 per 1,000 square feet
Cluster box unit - mailbox	
0-20 mailboxes	0
21-60 mailboxes	2
61-80 mailboxes	3
81-100 mailboxes	4
101 mailboxes or more	4 plus 1 per each additional 50 mailboxes or portion thereof above 100
Indoor storage/warehousing/vehicle service/manufacturing area:	
1-3,000 square feet	1 per 250 square feet
3,001-5,000 square feet	1 per 500 square feet
5,001-10,000 square feet	1 per 750 square feet
10,001+ square feet	1 per 1,250 square feet

(3) Schedule "C"

Uses that reference Schedule "C" have widely varying parking and loading demand characteristics, making it impossible to specify a single off-street parking or loading standard. Upon receiving a development application for a use subject to "Schedule C" standards, the Planning Director shall apply the off-street parking and loading standard specified for the listed use that is deemed most similar to the proposed use or establish minimum off-street parking requirements on the basis of a parking and loading study prepared by the applicant. Such a study shall include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the Planning Director, and should include other reliable data collected from uses or combinations of uses that are the same as or comparable with the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study shall document the source of data used to develop the recommendations.

(4) Standards for Bicycle Parking

Consistent with the recommendations of the Comprehensive Transportation Plan, developments shall provide appropriate bicycle amenities to encourage cycling. Acceptable rack elements, rack location and access, rack area and site conditions such as protection from the elements and visibility shall conform to the Association of Pedestrian and Bicycle Professionals Bicycle Parking Guidelines adopted in spring of 2002. The guidelines are available at <http://www.bicyclinginfo.org/de/parkguide.htm>. Should a topographical or other site constraint create a situation in which the bicycle parking requirements require reduction, modification, or deletion, the Planning Department Director will have the ability to approve such changes.

(5) Bicycle Related Signage

Signs restricting bicycle travel in vehicular areas at retail sites will be prohibited.

(E) Stacking Spaces for Drive-Through Uses

- (1) In addition to meeting the off-street parking requirements of this section, drive-through facilities specified in Table 7.8-3 shall comply with the following minimum stacking space standards:

TABLE 7.8-3: SCHEDULE OF STACKING SPACES		
Type of Use	Minimum Stacking Spaces	Measured From
Bank, teller lane	4	Teller window
Bank, ATM	3	Teller machine
Restaurant, with drive through	8	Order box*
Car Wash, automatic	6	Bay entrance
Car Wash, self-service	3	Bay entrance
Car Wash, full service	4	Bay entrance
Auto Service Station, gas pump island	30 feet from each end of island	
Unlisted	**	

*A minimum 4-vehicle queue shall be provided from the order box to the pick-up window.

**Requirements for uses not specifically listed may be determined by the Planning Director based upon the requirements for comparable uses and upon the particular characteristics of the use. Alternately, the applicant may submit a parking demand study per 7.8.2 (C)(9).

(F) Handicapped Parking Requirements**(1) Residential Uses**

Handicapped-accessible parking for residential uses shall be provided at the rate of one (1) space per each dwelling unit that is designed for occupancy by the handicapped.

(2) Non-Residential Uses

Handicapped-accessible parking spaces shall be provided for uses other than residential, at the rate shown in Table 7.8-4 below:

TABLE 7.8-4: HANDICAPPED PARKING FOR NON-RESIDENTIAL USES	
Total Number of Required Parking Spaces	Number of Required Handicapped Spaces
1-25	1
26-50	2
51-75	3
76-100	4
101-150	5
151-200	6
201-300	7
301-400	8
401-500	9
501-1,000	2 percent of total spaces
Above 1,000	20 spaces, plus one space for each 100 over 1,000 spaces or fraction thereof.

(3) Relationship to General Off-Street Parking Requirements

Handicapped parking required by this section shall count towards the fulfillment of the general off-street parking requirements of this section.

(4) Compliance with North Carolina Building Code

In addition to meeting the requirements of this Section, all handicapped parking shall comply with the NC State Building Code Volume 1C (as amended); but the more restrictive of the two (2) shall apply.

(G) Design and Location of Parking Areas/Stacking Spaces

- (1)** All parking areas shall be located and designed so as to avoid undue interference with the use of public streets and alleys. Parking areas shall provide suitable maneuvering room so that all vehicles may enter an abutting street in a forward direction. The backing of a motor vehicle onto a public street from a parking area shall be prohibited, except for residential parking. The Director of Transportation and Facilities may allow parking on public streets within the Town Center and Mixed Use Overlay Districts provided that the design is consistent with the Site Design Standards or other applicable policies and plans and does not create a safety issue. Pedestrian pathways shall be provided within parking areas in accordance with Section 7.10.4 of this ordinance and consistent with the Site Design Standards.
- (2)** All parking areas shall be designed, constructed, and drained in accordance with the Town's Standard Specifications and Details Manual.

- (3) Parking facilities shall be continually maintained in compliance with the approved development plan and shall be free of litter and debris at all times.
- (4) Each parking area shall meet all applicable landscaping, screening, and buffering requirements set forth in Section 7.2 of this Ordinance.
- (5) All parking areas shall be separated at least ten (10) feet from buildings, in order to allow room for sidewalks, landscaping, and other plantings between the building and the parking area. This separation may be eliminated in the rear of buildings in areas designed for unloading and loading of materials; this applies primarily to industrial and warehousing buildings.
- (6) The visibility of parking areas shall be reduced by placing at least thirty (30) percent of the parking to the rear or side of buildings for all non-residential developments greater than five (5) acres. An alternative to this requirement is to screen the parking from the public roadway with a Type A streetscape and/or berm. No parking is allowed between non-residential buildings and the right-of-way for individual buildings located on sites at the intersection of thoroughfares and/or collectors designated on the Cary Comprehensive Transportation Plan unless the building floor elevation is ten (10) feet or more below the grade of the adjacent roadway.
- (7) [Reserved]
- (8) For residential uses requiring designated visitor parking and consisting of more than one (1) building, the total number of required visitor parking spaces shall be provided in small groups evenly dispersed throughout the entire site.
- (9) Each parking pod/bay shall not exceed two hundred (200) spaces without being separated by streets, primary travel ways, and/or pedestrian plazas (see Site Design Standards for examples and additional guidance). Exceptions can be made by the Planning Director for single tenant spaces forty thousand (40,000) square feet and over.
- (10) Parking in front of main building entrances along private streets and/or primary travel ways is required with the exception of those areas used for loading and unloading, fire lanes, outdoor display of merchandise, and pedestrian access from the main entrance to parking areas. Parking on public streets may be provided if approved by the Transportation and Facilities and Planning Directors, and depending on anticipated vehicular speeds, traffic volumes, pedestrian conflicts, and the particular design and geometry of parking. The intent of these streets is to provide the primary circulation network through and within a development.

(H) Reduction in Number of Required Off-Street Parking Spaces

- (1) As part of the review and approval of any procedure set forth in Chapter 3, the Planning Director may approve a reduction of up to fifteen (15) percent in the number of designated parking spaces only if the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.

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- (2) As part of the review and approval of any procedure set forth in Chapter 3, the Zoning Board of Adjustment may allow the following reductions. Review of a parking reduction request does not change the applicable approval authority for the development plan as a whole. Any request for parking reduction in excess of the reductions permitted here shall be processed as a variance request (Section 3.20).
- (a) The Zoning Board of Adjustment may allow a reduction of up to thirty (30) percent in the number of designated parking spaces upon holding a quasi-judicial hearing and finding that the such reduced number advances the goals and purposes of the Ordinance and will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.
- (b) The Zoning Board of Adjustment may allow a reduction of up to fifty (50) percent in the number of designated parking spaces for a development in the Town Center (TC) zoning district upon holding a quasi-judicial hearing and finding that such reduced number advances the goals and purposes of the Ordinance and will be sufficient to satisfy the demand for parking expected for the use, based on the following:
1. Nature of the use;
 2. The number of trips generated;
 3. The times of day when the use generates the most trips;
 4. The extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments; and
 5. The availability of nearby on-street spaces or public parking facilities.

- (3) In cases where no development plan is required, or where a previously approved plan remains in effect for the property, the Planning Director may grant a reduction of up to fifteen (15) percent of the requirements of subsection 7.8.2(D) above only if the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.

(I) Violation Resolution

In cases where no plan previously approved remains in effect for the property, the Planning Director may grant reductions from the requirements of subsection 7.8.2(D) above only upon finding that the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments. This section shall apply only when reducing the required number of parking spaces is necessary to resolve a violation of this Ordinance or of the previously approved plan.

7.8.3 Parking Alternatives

The Planning Director shall be authorized to approve alternatives to providing the number of off-street parking spaces required by Table 7.8-1 in accordance with the following standards:

(A) Shared Parking

The Planning Director may approve shared parking facilities for developments or uses with different operating hours or different peak business periods if the shared parking complies with all of the following standards:

(1) Location

- (a) Where the principal use is located in the Town Center Zoning District, shared parking facilities shall be located within one thousand two hundred (1,200) feet of the main entrance of the principal use for uses classified as Public/Institutional in Table 5.1-2, and eight hundred (800) feet from the main entrance of the principal use for all other uses in the Town Center unless remote parking shuttle bus service is provided.
- (b) Where the principal use is located in any zoning district other than the Town Center District, shared parking facilities shall be located within five hundred (500) feet of the main entrance of the principal use unless remote parking shuttle bus service is provided. In addition, adequate and safe pedestrian access must be provided from and to the shared parking areas.

(2) Zoning Classification

Shared parking areas must be located on a site with the same or a more intensive zoning classification than required for the primary uses served.

(3) Shared Parking Study

Those wishing to use shared parking as a means of satisfying off-street parking requirements must submit a shared parking request to staff that justifies the feasibility of shared parking. Justification should include information on the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover, and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.

- (a)** The maximum reduction in the number of parking spaces required for all uses sharing the parking area shall be thirty-five (35) percent.
- (b)** Directional signage which meets the requirements of this Ordinance must be added to direct the public to the shared parking spaces. It is preferable for the employees of an establishment to utilize these spaces.

(4) Agreement for Shared Parking

A shared parking plan will be enforced through written agreement among all owners of record. An attested copy of the agreement between the owners of record must be submitted to the Planning Director for recordation. Recordation of the agreement must take place before issuance of a building permit for any use to be served by the shared parking area. A shared parking agreement may be revoked only if all required off-street parking spaces will be provided in accordance with the requirements of Table 7.8-1.

(B) Off-Site Parking

If some or all of the off-street parking spaces required by this section cannot reasonably be located on the same lot as the principal use, then such spaces may be located on a separate parcel(s) as follows:

(1) Location

- (a)** Where the principal use is located in the Town Center Zoning District, off-site parking shall be located within one thousand two hundred (1,200) feet of the main entrance of the principal use for uses classified as Public/Institutional in Table 5.1-2, and eight hundred (800) feet from the main entrance of the principal use for all other uses in the Town Center.
- (b)** Where the principal use is located in any zoning district other than the Town Center District, off-site parking shall be located within five hundred (500) feet of the main entrance of the principal use.

(2) Measurement

The separation of the use from the parking shall be measured from the main entrance to the nearest parking lot space following a reasonable and safe walking route.

(3) Approval Criteria

- (a)** The land on which the parking facilities are provided shall be owned by the same person or persons as the principal use.

- (b) Such land shall not be separated from the principal use by a thoroughfare or collector street unless both the use and the parking area shall be located within the Town Center District or are specifically approved by Council based on safe pedestrian crosswalks linking the parking with the principal use.
- (c) Such land shall be located in a zoning district within which the principal use would be allowed as a permitted or special use.
- (d) Such land shall be used for no other purpose than to provide parking for the principal use, unless a shared parking study is submitted per Section 7.8.3(A)(3) and a shared parking plan is approved and recorded per Section 7.8.3(A)(4).
- (e) There shall be a pedestrian walkway or sidewalk connecting the parking area to the use it serves.
- (f) The provision for off-site parking, whether the spaces are new or existing, shall be indicated and reviewed as part of the development plan approval process.

(C) Parking Structures

The off-street parking required by or provided under this section may be located in a parking structure, whether on the same or on a different lot than the uses which it serves. Ground floor parking provided in a parking structure shall be screened, insofar as practicable, from surrounding uses and from public view. In addition, for uses located on the same lot as the structure, the conditions required under subsection 7.8.3(A) above shall apply. For uses located on a different lot as the structure, the conditions required under subsection 7.8.3(B) shall apply.

(D) Valet and Tandem Parking

- (1) The Planning Director may approve an off-street parking program utilizing limited tandem parking for commercial and industrial uses provided that the development requires seventy-five (75) or more parking spaces. No more than thirty (30) percent of the total number of spaces shall be designated as tandem. In addition, a valet parking attendant must be on duty during business hours.
- (2) Tandem parking may be utilized for up to twenty (20) percent of the on-site or off-site fleet-parking component of a private transportation service use. Provisions of (D)(1) above shall not apply to such fleet-parking component.

(E) Other Eligible Alternatives

The Planning Director may approve any other alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates that the proposed plan will protect surrounding neighborhoods, maintain traffic circulation patterns, and promote quality urban design to at least the same extent as would strict compliance with otherwise applicable off-street parking standards. The Planning Director may approve different parking requirements for mixed use projects. The different parking requirement must be based on studies and documentation validated by national studies and/or research and recommendations from nationally accredited institutions.

7.8.4 Dimensional Requirements for Parking Spaces and Aisles

- (A) All parking spaces, aisles between parking spaces, and parking space modules shall meet the minimum dimensional requirements set forth in the Town's Standard Specifications and Details Manual.
- (B) Compact parking spaces may be provided in addition to the required minimum number of spaces on a case-by-case basis. The design of such spaces shall be consistent with the requirements of the Town's Standard Specifications and Details Manual.
- (C) Parking structures may be subject to dimensional adjustments based on utilization, but in no case shall the standard space width be less than eight and one-half (8 1/2) feet. Reduction in design standards shall be subject to approval by the Planning Director.

7.8.5 Use and Identification of Parking Areas

Where parking lots for more than five (5) cars are permitted or required under this Ordinance, the following requirements shall apply:

- (A) The parking lot may be used only for parking and not for any type of loading, sales, dead storage, repair work, dismantling, or service of vehicles. Notwithstanding the above, the Planning Director may allow the use of a portion or portions of a parking lot for such uses on a case-by-case basis, provided that such spaces are not part of areas required for site ingress or egress.
- (B) All entrances, exits, and drainage plans shall be reviewed and approved by the Town Director of Transportation and Facilities in accordance with the Town's Standard Specifications and Details Manual and shall be constructed before occupancy of the use.

7.8.6 Loading Space Requirements

(A) Number of Required Off-Street Loading Berths

At least the number of berths specified in Table 7.8-5 below, depending on the gross floor area of the land use, shall be provided on the property. The developer shall evaluate his or her own needs to determine if the use requires a greater number of spaces than those required by this section.

TABLE 7.8-5: REQUIRED OFF-STREET LOADING BERTHS	
Gross Floor Area (in square feet)	Minimum Number of Berths
Less than 40,000	1
40,000-100,000	2
100,000-160,000	3
160,000-240,000	4
240,000-320,000	5
320,000-400,000	6
Above 400,000	1 per each 90,000 above 400,000 gsf of area

(B) Minimum Dimensions

Each loading berth required by this section shall be at least twelve (12) feet wide by twenty-five (25) feet long, with at least fourteen (14) feet of overhead clearance. Each required loading berth shall have adequate, unobstructed means for the ingress and egress of vehicles.

(C) Waiver or Modification of Requirements

As part of the review and approval of a development plan, the Planning Director may waive or modify the requirements of this section if the use does not require loading spaces of a number or size required by this section, given the particular operational characteristics of the use and its need or lack thereof for the delivery or shipments of goods to and from the site.

(D) Location and Screening of Loading Areas

To the maximum extent possible, all loading berths shall be located between the building and the rear lot line of the property, and/or shall be screened from the view of the street and adjacent properties. All loading areas shall meet the applicable landscaping, screening, and buffering requirements set forth in Section 7.2. The details of such location and screening shall be reviewed and approved as part of the development plan.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-009, adopted 4-27-06; eff. 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-02, 1-28-10; Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-01A, 2-24-22; Ord. No. 2022-LDO-02, 4-28-22)

7.9 EXTERIOR LIGHTING**7.9.1 General Requirement**

Detail standards and requirements for lighting are included within the Community Appearance Manual. All exterior lighting, such as that used in and around buildings, recreation areas, parking lots, and signs, shall be designed to meet the following general requirements:

- (A)** Protect against the spillover of light to adjacent properties;
- (B)** Protect against glare onto public rights-of-way thereby impairing the vision of motorists and adjoining properties;
- (C)** Shield adjacent properties by thick evergreen vegetated buffers, berms, walls, or fences, and/or the use of directional lighting, lighting shields, special fixtures, timing devices, appropriate light intensities, luminaries, and mountings at appropriate heights, in accordance with the Town's Community Appearance Manual.

Single-unit-attached and -detached development is exempt from the requirements of this Section 7.9.

7.9.2 Lighting Plan Required

- (A)** A point-by-point lighting plan is required for development plan approval that indicates the foot-candles at grade grid points that cover the site. The Planning Director may waive this

requirement for projects on less than an acre if the fixture types are specified on the plan and will comply with the Community Appearance Manual.

- (B) Any changes to the lighting plan must be approved by the Planning Director through a development plan revision.

7.9.3 Standards

All outdoor lighting shall conform to the standards and provisions found in the Community Appearance Manual as well as the standards listed below:

(A) Maximum Lighting Height

Outdoor lighting shall be designed, located and mounted at heights no greater than:

- (1) Eighteen (18) feet above grade for non-cut-off lights;
- (2) Thirty-five (35) feet above grade for cut-off lights, unless a raised foundation is required to protect the poles, in which case the maximum height shall not exceed thirty-seven (37) feet above grade.

(B) Maximum Light Levels at the Property Line

All outdoor lighting and/or indoor lighting visible from outside shall be designed and located such that the maximum illumination measured in foot-candles at a property line shall not exceed the standards in the following table. Cut-off lighting shall be designed to direct light downward (e.g., shoe box style).

TABLE 7.8-6: MAXIMUM ILLUMINATION VALUES* (REGARDLESS OF LIGHT TYPE)	
Property Line	Maximum Illumination (in Foot-Candles)
Residential	0.5
Commercial	2.5
Industrial/Edge of right-of-way	2.5
*These standards may be modified only by the Town Council.	

(C) Parking Lot Lighting Standards

For parking lots the minimum light level shall be no less than two-tenths (0.2) foot-candles. The average foot-candle maintained to the minimum foot-candles ratio shall be no greater than four to one (4:1) (upper to lower limits). All foot-candles are to be measured at ground level.

(D) Location and Separation Requirements

All outdoor lighting fixtures shall be located a minimum of ten (10) feet from a property or five (5) feet from a right-of-way line and should not be located within a required perimeter buffer or streetscape unless it is located at the interior edge. Where located within a streetscape or buffer, light poles shall be placed a minimum of twenty (20) feet from existing or proposed canopy trees.

(E) Lighting for Canopies

- (1) Lighting for canopies shall be restricted to lighting fixtures (including lenses) that do not project below the bottom of the canopy. Lighting for canopies for service stations and other similar uses shall not exceed an average of twelve (12) foot-candles as measured at ground level at the inside of the outside edge of the canopy.
- (2) Canopies used for building accents over doors, windows, etc. shall not be internally lit (i.e., from underneath or behind the canopy).

(F) Floodlights and Spotlights

Lighting fixtures shall be selected, located, aimed, and shielded so that direct illumination is focused exclusively on a portion of the building facade or other intended site feature and away from adjoining properties or the right-of-way. On-site lighting may be used to accent architectural elements but shall not be used to illuminate entire portions of building(s). Such lighting shall be installed in a fixture that is shielded such that no portion of the light bulb extends below the bottom edge of the shield, and that the main beam from the light source is not visible from adjacent properties or the adjacent right-of-way. Floodlights or other type of lighting attached to light poles that illuminate the site and/or building(s) are prohibited.

(G) Wall Pack Lights

Wall packs on buildings may be used at entrances to a building to light unsafe areas. They are not intended to draw attention to the building or provide general building or site lighting. "Wall Packs" on the exterior of the building shall be fully shielded (true cut-off type bulb or light source not visible from off-site) to direct the light vertically downward and be of low wattage (preferably one hundred (100) watts or lower).

(H) Illumination of Outdoor Sports Fields and Performance Areas

Lighting of outdoor sports fields and performance areas shall be installed in accordance with the Town's Community Appearance Manual and the following requirements:

- (1) All such lighting fixtures shall be equipped with a glare control package (e.g., louvers, shields, or similar devices), and the fixtures shall be aimed so that their beams are directed and fall within the primary playing or performance area; and
- (2) The hours of operation for the lighting system for any game or event shall not exceed one (1) hour after the end of the game or event.

(I) Sign Lighting

Lighting fixtures illuminating signs shall comply with the requirements of Chapter 9 of this Ordinance, and such fixtures shall be aimed and shielded so that direct illumination is focused exclusively on the sign face.

(J) Lights in Landscaping and Around Open Sales Area

Within the Town Center and Mixed Use Overlay Zoning Districts, strings or strands of non-blinking single-point white lights may be installed in landscaping. Perimeter down-lighting that is shielded to illuminate open sales areas, but no land outside those areas is also permitted.

(Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-03, 6-13-13; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2023-LDO-03, 6-22-23)

7.10 CONNECTIVITY

7.10.1 Purpose and Scope

The purpose of this section is to support the creation of a highly connected transportation system within the Town in order to provide choices for drivers, bicyclists, public transit passengers, and pedestrians; promote walking, bicycling and public transit; connect neighborhoods to each other and to local destinations such as schools, parks, and shopping centers; reduce vehicle miles of travel and travel times; improve air quality; reduce emergency response times; increase effectiveness of municipal service delivery; and free up arterial capacity to better serve regional long distance travel needs. Any additional pedestrian connections required under this section do not have to address handicap accessibility standards.

7.10.2 Consistency with Other Documents

The design and evaluation of vehicular, bicycle, and pedestrian circulation systems built in conjunction with new residential and non-residential development shall adhere to applicable provisions of the plans, ordinances and manuals listed in Section 1.4, in addition to meeting the requirements of this section.

7.10.3 Standards for Streets/On-Site Vehicular Circulation

The following standards shall be met for all development plans and for redevelopment of sites.

(A) Street Connectivity

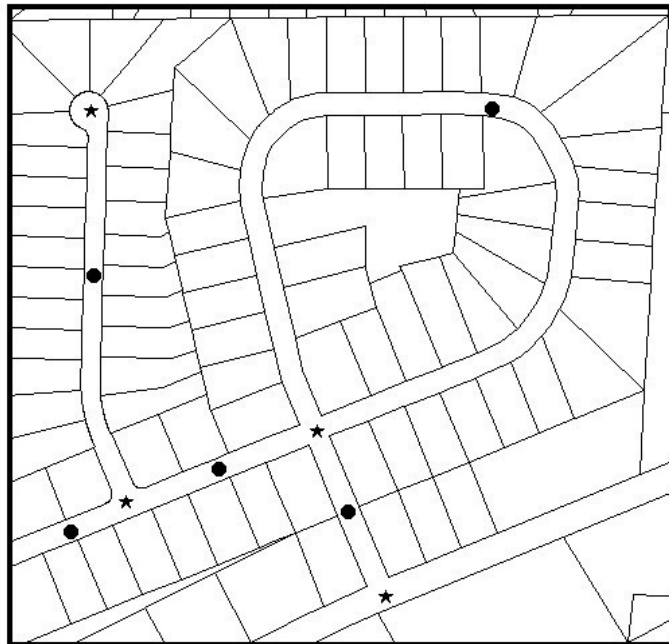
- (1)** Any residential development shall be required to achieve a connectivity index of 1.2 or greater. In the event that this requirement is modified pursuant to Section 7.10.3(D)(2), a six (6)-foot pedestrian trail shall be provided to link any cul-de-sacs within a residential development in which the required connectivity index has been modified. A connectivity index is a ratio of the number of street links (road sections between intersections and cul-de-sacs) divided by the number of street nodes (intersections and cul-de-sac heads). The following illustration provides an example of how to calculate the index. Street links on existing adjacent streets that are not part of the proposed subdivision are not included in the connectivity index calculation.
- (2)** For non-residential, multi-family, or mixed used developments of greater than five (5) acres, an organized and complete street network must be provided with an emphasis on connectivity throughout the development and for future adjacent development. Sites, five (5) acres or less, must provide street connections with adjacent properties (i.e., taking into account the future development/redevelopment of these properties).

 - (a)** All access points from public thoroughfares and collectors shown on the Comprehensive Transportation Plan shall be connected with each other through a continuous network of public or private streets. (Non-residential private streets are not required to meet public street standards.) Connections between thoroughfares and collectors shall be direct while maintaining a functional and

organized street network. Limited parking in front of buildings along these streets may be provided.

Primary circulation through a development shall meet the following standards:

1. Vehicular access spacing on the street is limited to no less than one hundred fifty (150) feet;
2. Intersections, driveway, or drive aisle connections with the streets shall be substantially perpendicular to the street;
3. Access points shall align with opposing access points on the street or shall be offset by at least one hundred fifty (150) feet; and
4. Adjacent lots or outparcels must share access drives.



Street Connectivity

Note: The measure of connectivity is the number of street links divided by the number of nodes. Nodes exist at street intersections as well as cul-de-sac heads. Links are the stretches of road that connect nodes. Stub outs shall also be considered as links. In this example, there are five (5) links (circles) and four (4) nodes (stars); therefore, the connectivity index is 1.25.

(B) Street Arrangement

- (1) The proposed public or private street system shall be designed to provide vehicular and pedestrian interconnections to facilitate internal and external traffic movements in the area. In addition to the specific connectivity requirements described above, roadway interconnections shall be provided during the initial phase of any development

plan between the development site and its adjacent properties with one (1) roadway interconnection every one thousand two hundred fifty (1,250) to one thousand five hundred (1,500) linear feet for each direction (north, south, east, west) in which the subject property abuts. If the common property boundary in any direction is less than one thousand two hundred fifty (1,250) linear feet, the subject property will be required to provide an interconnection if it is determined by the Planning Director that the interconnection in that direction can best be accomplished through the subject property due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure, on the subject property or other properties in the area. When the Planning Director deems a vehicular connection not practicable due to topographical and/or environmental constraints, he/she may increase the length requirement and/or require pedestrian connections. The Planning Director may delay the interconnection if such interconnection requires state approval. The intent of this standard is to improve access/egress for Town neighborhoods, provide faster response time for emergency vehicles, and improve the vehicular and pedestrian connections between neighborhoods.

- (2) Any development of more than one hundred (100) residential units or additions to existing developments such that the total number of units exceeds one hundred (100) shall be required to provide for vehicular and pedestrian access to at least two (2) public streets unless such provision is modified pursuant to Section 3.19.1.
- (3) Where new development is adjacent to vacant land likely to be developed in the future, or adjacent to property that is likely to be redeveloped in the future, all streets, bicycle paths, sidewalks or pedestrian pathways, and access ways in the new development's proposed street system shall continue through to the boundary lines of the new development and any area under the same ownership as the new development, as determined by the Planning Director or the Director of Transportation and Facilities, to provide for the orderly development of such adjacent land and/or the transportation and access needs of the community. In addition, all redevelopment and street improvement projects shall take advantage of opportunities for retrofitting existing streets to provide increased vehicular and pedestrian connectivity, such as sidewalks, crosswalks, and pedestrian signals.
- (4) In general, permanent cul-de-sacs are discouraged in the design of street systems, and should only be used when topography, the presence of natural features, and/or vehicular safety factors make a vehicular connection impractical. Where cul-de-sacs are unavoidable, development plans shall incorporate provisions for future vehicular and pedestrian connections to adjacent, undeveloped properties, and to existing adjacent development where existing connections are poor.
- (5) Permanent cul-de-sacs shall comply with the length limits and design standards set forth in the Town's Standard Specifications and Details Manual, and shall be provided with a turnaround at the closed street end.

(C) Cross Access

All non-residential development shall be designed to allow for both vehicular and pedestrian cross-access to adjacent properties to encourage shared parking and shared access points on public or private streets. A minimum distance of one hundred (100) feet shall be required between a cross-access way and an intersection or driveway entrance. This requirement may be modified pursuant to Section 3.19.1 provided that appropriate bicycle and pedestrian connections are provided between adjacent developments or land uses. A cross access easement must be recorded prior to issuance of a Certificate of Occupancy for the development.

(D) Exceptions

New developments adjacent to existing neighborhoods classified as Tier 2 or Tier 3 Neighborhoods are exempt from portions of Section 7.10.3(A) - (C), as provided below:

(1) Classification of Existing Neighborhood Adjacent to Proposed Development**(a) Tier 1 Neighborhood**

A Tier 1 neighborhood is defined as any residential neighborhood not otherwise classified as Tier 2 or Tier 3.

(b) Tier 2 Neighborhood

A Tier 2 neighborhood is defined as a residential neighborhood that meets all of the following criteria:

1. The neighborhood was developed pursuant to a development plan approved at any time by a jurisdiction other than the Town of Cary, or approved by the Town of Cary prior to January 14, 1999; and
2. The neighborhood meets the following criteria:
 - a) A public street right-of-way in the existing neighborhood extends to the common property line, however the street itself does not extend to the common property line; or, no existing right-of-way or street extends to the common property line; and
 - b) There are no factors present to indicate the intent, at the time of approval or construction of the Tier 2 neighborhood, that a street would be connected at a later time, such as recordation of construction easements; or physical constraints such as stream buffers or topographic issues are present that would have made extension of the street to the property line infeasible at the time of construction of the neighborhood and
3. Potential public safety issues such as inadequate fire and police protection, are present, or are likely to be created in the future, if a proposed new development does not connect to the adjacent existing development. Potential safety issues may be indicated by factors including but not limited to, a single vehicular access point, and/or the major street serving the neighborhood exceeding one thousand (1,000) feet in length.

(c) Tier 3 Neighborhood

A Tier 3 neighborhood is defined as a residential neighborhood that meets all of the following criteria:

1. The neighborhood was developed pursuant to a development plan approved at any time by a jurisdiction other than the Town of Cary, or approved by the Town of Cary prior to January 14, 1999; and
2. The neighborhood meets the following criteria:

- a) A public street right-of-way in the existing neighborhood extends to the common property line, however the street itself does not extend to the common property line; or, no existing right-of-way or street extends to the common property line; and
 - b) There are no factors present to indicate the intent, at the time of approval or construction of the Tier 3 neighborhood, that a street would be connected at a later time, such as recordation of construction easements; or physical constraints such as stream buffers or topographic issues are present that would have made extension of the road to the property line infeasible at the time of construction of the neighborhood, and
3. There are no apparent public safety issues such as inadequate fire and police protection or response capability present, or likely to be created in the future, if a proposed new development does not connect to the adjacent existing development.

(d) *Neighborhood Classification*

The Director of the Transportation and Facilities Department shall determine the classification of existing neighborhoods.

(2) *Exceptions to Connectivity Requirements for New Development*

- (a) Adjacent to a Tier 1 Neighborhood, all requirements of Section 7.10.3(A) - (C) shall apply.
- (b) Adjacent to a Tier 2 Neighborhood, all requirements of Section 7.10.3(A) - (C) shall apply, with the following exceptions or modifications:
 - 1. Construction of a road connection to the property line of the Tier 2 Neighborhood is allowed but not required. If no connection is made, a connectivity index less than 1.2 may be approved by the Planning Director if such reduction results from the lack of connection to the Tier 2 Neighborhood.
 - 2. If no road connection is made, an emergency access connection to the Tier 2 neighborhood must be provided. Such connection may include a paved street connection with removable obstructions to prevent non-emergency access, raised curb treatment, turf stone with grass, or other methods approved by the Director of Transportation and Facilities and the Fire Chief.
 - 3. Pedestrian and bicycle connections, and utility stubs and connections shall continue to be required.
- (c) Adjacent to a Tier 3 Neighborhood, all requirements of Section 7.10.3(A) - (C) shall apply, with the following exceptions or modifications:
 - 1. Construction of a road connection to the property line of the Tier 3 Neighborhood is allowed but not required. If no connection is made, a connectivity index less than 1.2 may be approved by the Planning Director if such reduction results from the lack of connection to the Tier 3 Neighborhood.

2. Pedestrian and bicycle connections, and utility stubs and connections shall continue to be required.

7.10.4 Standards for Pedestrian Facilities

All sidewalks, greenways and street-side trails shall be designed to comply with the standards provided in plans, ordinances and manuals listed in Section 1.4. In addition to the general provisions of Section 7.10.3 above, the following specific standards shall be met in designing and achieving a pedestrian circulation system:

(A) Sidewalks

- (1) Sidewalks shall be installed on both sides of all thoroughfares and collector streets. In non-residential developments and property located within Mixed Use Overlay Districts, sidewalk shall also be provided on both sides of all local and private streets as well as along one (1) side of all primary travelways. Shifting the sidewalk to an adjacent linear island is permitted if it creates better pedestrian connectivity. The Planning Director may approve sidewalk on one (1) side of the street in cases where a street is single-loaded and the opposite side of the street is not expected to develop in the future. Sidewalk shall be required on one (1) side of all local and private streets in residential developments outside of a mixed-use center.
- (2) Site design techniques such as shortening crosswalk distances with curb extensions, reducing sidewalk curb radii, and eliminating free right-turn lanes shall be used to improve pedestrian safety at pedestrian roadway crossings. Signals that allow longer crossing times in Mixed Use Overlay Districts, raised crosswalks, and pedestrian refuges in medians shall be provided as appropriate.
- (3) Pedestrian access from the public right-of-way into a site shall be every nine hundred (900) feet along long block frontages.
- (4) Within a development, sidewalks and/or greenways shall form an on-site circulation system that provides pedestrian access to all public building entrances, on-site amenities, and adjacent parks and greenways, minimizing conflict between pedestrians and vehicular traffic. Where building frontages exceed six hundred (600) feet in length, a building break or pedestrian pass-thru shall be provided to facilitate pedestrian circulation between areas in front of and behind the building mass. Such a break shall not be required if there is no current, proposed, or future development, pedestrian destination, or point of interest (e.g., a parking lot, greenway, plaza, etc.) located to the rear of the building. Sidewalks and/or greenways shall connect building entrances to one another and from building entrances to public sidewalk connections and existing or planned transit stops, street-side trails and/or greenways. Non-residential buildings located more than one hundred (100) feet from the public right-of-way shall provide for direct pedestrian access to buildings located on adjacent lots.
- (5) Cul-de-sacs and dead-end streets shall be connected to the closest local or collector street and/or to cul-de-sacs in adjoining residential subdivisions, commercial development, or similar compatible land uses including schools, parks, recreation facilities, libraries, and greenways, via a sidewalk or street-side trail.

- (6) A linear parking lot island containing a sidewalk shall be provided to align directly with the principal entrance. Additional sidewalk shall be provided in linear islands as necessary to provide adequate and convenient pedestrian access, but shall not be required in all such islands. Linear islands containing sidewalks shall be a minimum of fifteen (15) feet in width to allow adequate space for the sidewalk and plantings.

(B) Greenways

The Town of Cary's greenway trail system consists of a series of interconnected pedestrian trails located off-road and tied together by on-road street-side trails and sidewalk connectors. The plan for the townwide trail system is outlined, and trail types are defined, in the Parks, Recreation and Cultural Resources Facilities Master Plan.

- (1) All public greenways shall be located based upon the Parks, Recreation and Cultural Resources Facilities Master Plan with final alignments to be determined during the development plan review process.
- (2) Construction of all public greenway trails shall meet Town of Cary standards and specifications as provided by the Parks, Recreation and Cultural Resources Department.
- (3) A Greenway Easement shall be dedicated to the Town of Cary in accordance with LDO Section 8.2.1(D)(3). The developer shall demonstrate that the easement to be conveyed is usable for trail construction to Town standards (in terms of topography, wetlands, buffers, etc. The width of easements may be reduced to twenty (20) feet where the developer is constructing the greenway trail.
- (4) Development plans shall provide private, paved trail connections to existing and planned public greenways located within or adjacent to the development. Such private trail connections shall be constructed at least every nine hundred (900) feet along the adjacent greenway corridor with the details being determined by Town staff during the development plan review process. These connections shall meet the Town of Cary standards and specification as provided by the Parks, Recreation and Cultural Resources Department.
- (5) Public greenways and dedication of easements shall be credited towards park land dedication and payment-in-lieu requirements in accordance with LDO Section 8.2.1.
- (6) All trails shall be constructed as development occurs, and phasing must be approved by Parks, Recreation and Cultural Resources staff.
- (7) Greenway trails located within required perimeter buffers shall meet the requirements of LDO Section 7.2.3(H)(3). Greenway easements may be required outside of the perimeter buffer in order to meet Town standards for both the buffer and greenway.
- (8) In those cases where the Comprehensive Plan requires the use of greenways instead of sidewalks, the greenways shall be constructed in accordance with Town of Cary standards and specifications as provided by the Parks, Recreation and Cultural Resources Department, and shall meet the following criteria:
 - (a) these trail systems shall be designed to provide adequate pedestrian circulation internal to the development, as well as connections to existing or planned adjacent pedestrian systems and other developments, and alignments shall be approved by Town staff;

- (b) these trails shall be privately maintained by the Homeowners' Association (HOA) and shall be open to the public, and this must be noted on the approved development plans, as well as recorded plats;
- (c) trails shall be eight (8) feet wide asphalt;
- (d) a private pedestrian trail easement, minimum fourteen (14) feet in width, centered on the trail, shall be recorded on the subdivision plat.

(C) Street-side Trails

Street-side trails are pedestrian trails located adjacent to roadways (on-road) and provide supporting linkage to the off-road greenway system.

- (1) Where the Parks, Recreation and Cultural Resources Facilities Master Plan calls for a street-side trail, a street-side trail shall be constructed in lieu of sidewalk required in the same location. No park land dedication or payment-in-lieu credit will be granted for street-side trail construction or easements.
- (2) All street-side trails shall be designed and constructed according to Town of Cary standards and specifications as provided by the Transportation and Facilities Department.
- (3) A Town of Cary Greenway Easement, centered on the trail (easement width to be determined by Transportation and Facilities staff), shall be recorded. Street-side trail locations and the location of the required Town of Cary Greenway Easements relative to current road widths and rights-of-way, shall be determined by the Transportation and Facilities staff.

(D) Community Gathering Spaces and Plazas

Provide at least one (1) public gathering space such as a pedestrian plaza or park-like space for new development and redevelopment sites that are two (2) acres or greater in size. These spaces shall be centrally located and/or located so to encourage its use by pedestrians and patrons of the development. Minimum sizes for the community gathering space are as follows:

- (1) 2 to 5 acre site - 600 square feet
- (2) 5.1 to 10 acre site - 1,200 square feet
- (3) 10.1 to 15 acre site - 2,400 square feet
- (4) 15.1 to 20 acre site - 4,000 square feet
- (5) Greater than 20.1 acre site - 5,000 square feet
- (6) For developments fifteen (15) acres or greater, community gathering space shall include such things as a central plaza/green, outdoor dining areas, fountains/water features, and/or public art.

7.10.5 Standards for Bicycle Facilities

- (A) Wide outside lanes shall be incorporated into the design of all new and/or improved arterial streets. Bicycle lanes and/or wide outside lanes shall be incorporated in the design of all minor collectors. On local streets low traffic speeds and volumes allow bicyclists and motorists to safely share the road. Sidewalks are not acceptable as substitutes for bike lanes. Bike lanes shall be a minimum of four (4) feet in width (excluding adjacent curb and gutter).
- (B) Consistent with the recommendations of the Cary Comprehensive Transportation Plan, development shall provide appropriate bicycle amenities to encourage cyclists. Signage indicating the presence and location of such amenities shall be scaled for easy reading by bicyclists and pedestrians as well as motorists. Bicycle parking shall be provided as part of all high density residential, commercial, retail, office, industrial, and mixed use development where appropriate (see bicycle parking requirements sections 7.8.2(D)).

7.10.6 Standards for Public Transit Access and Infrastructure**(A) Applicability**

The requirements of this Section 7.10.6 apply to all development plans and reuse/redevelopment plans for sites with frontage along corridors identified in the Comprehensive Transportation Plan, Cary Community Plan, or Wake Transit Plan for current or planned transit service. Previously developed sites are exempt from these requirements unless the proposed redevelopment of the site consists of alterations of existing transit access locations. Regardless of whether the LDO requires transit improvements, all development must comply with Americans with Disabilities Act (ADA) requirements and other applicable federal, state and local regulations.

(B) Requirements**(1) Transit Infrastructure**

All sites subject to the requirements of this Section shall install at least one (1) transit access location. All transit access locations shall meet the requirements of the Town's Standard Specifications and Details Manual. When the transit access location is located outside of the right-of-way, a permanent transit easement is required.

(2) Exemption

A new transit access location shall not be required if there is a nearby alternate transit stop or facility that serves the same function as a transit access location and that satisfies a transit stop spacing pattern of approximately one thousand (1,000) feet along the same side of the street on the subject corridor. This exemption shall not apply to major transit trip generators.

(Ord. No. 06-009, adopted 4-27-06; eff. 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-005, 11-19-15; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2018-LDO-03, 11-15-18; Ord. No. 2021-LDO-01, 6-24-21)

7.11 TRANSPORTATION DEVELOPMENT FEES

7.11.1 Purpose

The purpose of this section is to establish a procedure to impose and collect fees to finance additional road improvements within the Town limits and extraterritorial jurisdiction as authorized by NC Session Law 1987-801. This road project fee, or transportation development fee, shall be imposed on all new construction within the Town limits and extraterritorial jurisdiction. It is not the intent of this section to require the developer to pay for all new road construction.

7.11.2 Authority

This section is adopted pursuant to the powers conferred by the General Assembly of North Carolina and set forth in NC Session Law 1987-801 and incorporated in Section 7.4 of the Charter of the Town of Cary.

7.11.3 Findings

- (A)** The Town continues to experience rapid population and employment growth, in part, because of its proximity to regional employment facilities such as the Research Triangle Park and Raleigh Durham International Airport.
- (B)** The anticipated population and employment growth in the Town creates demand for additional capital improvement funds for roadway facilities, which include but are not limited to, streets, intersection improvements, culverts and road-related drainage improvements, turn lanes, and signalization.
- (C)** The Town is committed to the provision of such road-related improvements at a level of service necessary to support anticipated residential and employment growth.
- (D)** The Town has adopted a Comprehensive Transportation Plan (CTP), which addresses long-term road improvements. The Planned Roadway Widths map of the CTP identifies additional road capital improvements necessary to serve new construction.

- (E) The General Assembly of North Carolina has authorized the Town to impose a regulatory or development fee defined as a road project fee, and known within the Town as a transportation development fee, on new construction within the Town limits and extraterritorial jurisdiction.
- (F) The transportation development fee herein established is roughly proportional to the need for new capacity-related road improvements generated by new construction and reasonably benefits the construction that pays the fee.

7.11.4 Applicability

This section shall apply to all new construction within the Town's corporate limits and extraterritorial jurisdiction.

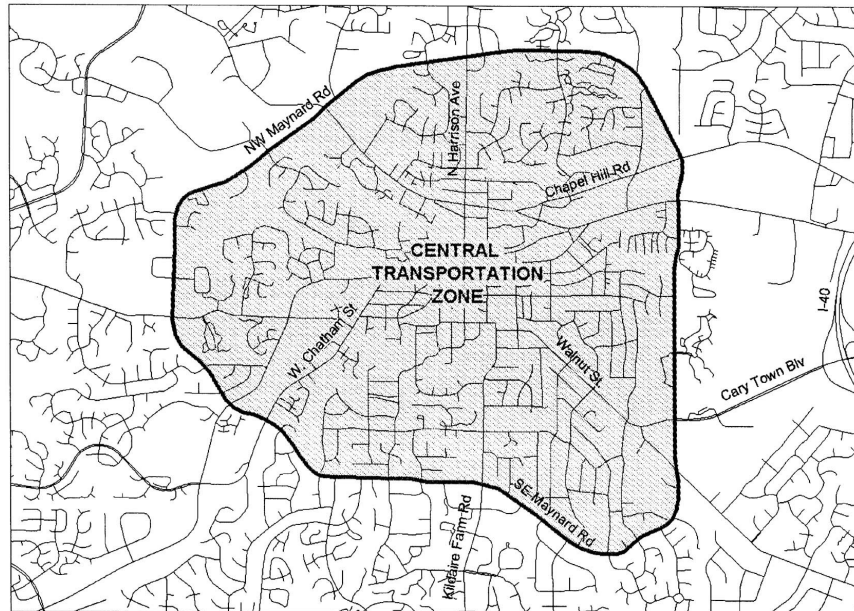
7.11.5 Condition of Approval

No building permit shall be issued for construction within the Town's jurisdiction unless and until the required transportation development fee has been paid in full.

7.11.6 Transportation Zones

Two Transportation Zones have been established for the purpose of assessing transportation development fees. The purposes of the transportation zones are to help ensure that adequate funding is available in different areas of the Town to pay for road improvements needed to maintain adequate levels of service appropriate to each area. The transportation fees paid by new development in each zone represent the cost of replacing the roadway capacity that traffic from the new development will consume on the major roadway system. Fees collected must be used for road improvements within Cary's town limits and extraterritorial jurisdiction.

The Central Zone encompasses all land within the innermost right-of-way boundary of Maynard Loop and excluding Maynard Road itself. This includes all of the downtown area. This zone's primary focus is to encourage redevelopment and infill. The Level of Service standard is "F" based upon a ninety (90)-minute average peak. The Base Zone contains the remainder of the Town's corporate limits and extraterritorial jurisdiction not within the Central Zone. The Level of Service standard is "D" based upon the standard Institute for Transportation Engineers (ITE) average peak hour. Boundaries of the central zone are shown on the following map.



Central Transportation Zone

7.11.7 Fees

- (A) Every person seeking a building permit for construction for which a transportation development fee is due but has not been paid shall pay such transportation development fee prior to the issuance of the building permit.
- (B) The transportation development fee shall be computed by proposed building use and based on the construction plans submitted for approval, according to the schedule set forth in the annual Town of Cary operating budget (TDF Schedule), except for fees computed by an individual assessment in accordance with Section 7.11.8, Individual Assessments, below.
- (C) The transportation development fee for proposed new commercial or industrial construction that is speculative construction shall be computed in conjunction with the application for a building permit for the expected use. An additional transportation development fee may be due for the fit-up to be constructed within the shell; however, no refunds will be given. This additional fee will be calculated as the difference in fees between what was paid at the time of speculative construction and what the new use would pay under the TDF Schedule, and shall be paid prior to issuance of the building permit for the fit-up.
- (D) If the proposed new construction contains a mix of building uses, the transportation development fee shall be calculated separately for each use according to the TDF Schedule. If the building has a single primary use, the transportation development fee shall be calculated for a single use, according to the TDF Schedule.

- (E) The transportation development fee shall be collected for additions to and remodeling of existing structures and shall be calculated based on that portion of the structure that represents an increase above the number of dwelling units or the floor area of the building, as it exists prior to the addition or remodeling. If the addition or remodeling results in a use change that increases trip generation, the transportation development fee will be calculated as the difference in fees between what the existing and new use would pay under the TDF Schedule. If the addition or remodeling results in a use change that decreases trip generation, no transportation development fee will be charged. No refunds will be given.
- (F) The following shall be exempt from the terms of this Section 7.11.
 - (1) Alteration or expansion of an existing building where no additional dwelling units are created, the use is not changed, and where no additional vehicle trips will be produced over and above that produced by the existing use.
 - (2) The construction of accessory buildings or structures that will not produce additional vehicle trips over and above that produced by the principal building or use of the land.
 - (3) The replacement of a destroyed or partially destroyed building or structure with a new building or structure of the same size and use, provided that no additional trips will be produced over and above that produced by the original use of the land.
 - (4) Private recreational facilities provided that such facilities are restricted for use by residents and their guests without charge and no additional vehicle trips will be produced over and above that produced by the principal residential use.

7.11.8 Individual Assessments

- (A) If any person believes that his or her proposed construction is unique in the traffic impacts that it will generate, such person may request that the Town perform an individual assessment of the traffic impacts of the proposed construction. Such person shall pay to the Town, in escrow, a sufficient fee to pay the cost of obtaining such assessment from a professional engineer selected and hired by the Town. The Town shall then obtain the services of the professional engineer to perform the assessment, paying the engineer from the escrow account and remitting the balance, if any, to the person requesting the assessment. The Zoning Board of Adjustment shall, at a quasi-judicial public hearing, consider the request of the applicant to pay the transportation development fee based on the individual assessment. The Town shall assess the transportation development fee based on the individual assessment if the Board finds that:
 - (1) The proposed construction is in fact so unique that the application of the TDF Schedule adopted by the Town would result in the collection of a fee that is not proportionate to the traffic impact of the proposed construction; and
 - (2) There is a difference between the fees computed under the TDF Schedule and the fees computed in accordance with the individual assessment of at least five thousand dollars (\$5,000.00) or five (5) percent of the total fees, whichever amount is greater.
- (B) The professional engineer to perform each individual assessment shall be selected by the Transportation and Facilities Director from a list of qualified engineers maintained by the Town. The list shall contain the names of at least three (3) engineers or engineering firms, and shall be updated regularly. The Zoning Board of Adjustment reserves the right to dispute

the assumptions, methodology, or conclusions of individual assessments. An individual assessment may take into consideration such factors as internal capture of trips in mixed use projects and higher rates of pass by trips than indicated by ITE if supported by reliable local data.

- (C) Transportation development fees computed under this section shall be computed in dollars per dwelling unit (for residential uses) or typically dollars per one thousand (1,000) square feet of non-residential floor area (for non-residential uses), using the following consumption based system formula(e):

TRANSPORTATION DEVELOPMENT FEE FORMULA

$$\begin{aligned} \text{FEE} &= \text{VMT} \times \text{NET COST/VMT} \\ \text{VMT} &= \text{TRIPS} \times \% \text{ NEW} \times \text{LENGTH} \div 2 \\ \text{NET COST/VMT} &= \text{COST/VMT} - \text{CREDIT/VMT} \\ \text{COST/VMT} &= \text{COST/VMC} \times \text{VMC/VMT} \times \text{TDF SHARE} \\ \text{CREDIT/VMT} &= \text{Revenue credit per VMT} \end{aligned}$$

Where:

$$\begin{aligned} \text{TRIPS} &= \text{Trip ends during the evening peak-hour on a weekday} \\ \% \text{ NEW} &= \text{Percent of trips that are primary, as opposed to pass-by or diverted-link trips} \\ \text{LENGTH} &= \text{Average length of a trip on the major roadway system} \\ \div 2 &= \text{Avoids double-counting trips for origin and destination} \\ \text{COST/VMC} &= \text{Average cost to add a new peak hour vehicle-mile of capacity} \\ \text{VMC/VMT} &= \text{System-wide ratio of vehicle-miles of capacity to vehicle-miles of travel on major roadway system (assumed 1:1)} \\ \text{TDF SHARE} &= \% \text{ of cost not covered by developer frontage improvement requirements} \end{aligned}$$

7.11.9 [Reserved]

7.11.10 Fund Accounting

- (A) The Town shall establish an account into which the transportation development fees collected shall be credited. Interest at the actual rate of return on invested funds of the Town shall be credited in accordance with the accounting policies of the Town.

7.11.11 Use of Funds

- (A) The revenues from transportation development fees and accrued interest on such revenues shall be spent on qualifying road improvements.
- (B) Qualifying road improvements include improvements to thoroughfares shown on the Planned Roadway Widths map of the Comprehensive Transportation Plan anywhere within the Town's corporate limits or extraterritorial jurisdiction.
- (C) Transportation development fees may be used to finance direct project costs of qualifying road improvements, including:
 - (1) The acquisition cost of rights-of-way;
 - (2) The construction cost of improvements, and drainage improvements (excluding pedestrian facilities);
 - (3) Signalization and intersection improvements at major thoroughfare intersections; and
 - (4) The principal sum and interest and other financing costs on bonds, notes, or other obligations issued by or on behalf of the Town to finance qualifying road improvements.
- (D) Transportation development fees shall not be used to pay for any of the following:
 - (1) Construction, acquisition, or expansion of public facilities other than road improvements;
 - (2) Repair, operation, or maintenance of existing or new road improvements.
- (E) Up to thirty (30) percent of all transportation development fees collected shall be reserved for payment of eligible cash reimbursement to developers for qualifying road improvements established through an approved TDF agreement entered into prior to November 17, 2022.

7.11.12 Refunds

- (A) Any transportation development fee or portion thereof which has not been expended within ten (10) years from the last day of the fiscal year in which it was paid, shall be refunded to the record owner of the property for which the transportation development fee was paid, upon written application by the record owner, with accrued interest at the rate of return on investments earned by the Town on such amount.
- (B) The Town may charge a reasonable administrative fee, not to exceed five (5) percent of the refund due, for verifying and computing the refund.

7.11.13 Updates and Revisions

The Town shall evaluate the TDF Schedule as part of the annual budget process. The frequency of any updates to the TDF Schedule may be influenced based upon growth in residential and non-residential construction, road improvements actually constructed, changing levels of service, inflation, revised cost estimates for road improvements, changes in the availability of other funding sources, and such other factors as may be relevant.

7.11.14 Offsets; TDF Agreements

The Town shall grant offsets to transportation development fees for eligible qualifying road improvements that exceed the requirements for a collector road in accordance with this section. There shall be no other offsets to transportation development fees.

- (A) Where a development includes an eligible qualifying road improvement, the Town and the developer, by mutual consent, may enter into a TDF Agreement regarding the terms of the participation of the developer in the construction or financing of such improvement. Such agreement may provide for offsets to the developer for his or her participation in the financing and/or construction of the road. Offsets granted for qualifying road improvements shall be eligible up to the maximum amount of TDF fees for the development or eligible construction costs, whichever is least. Offsets shall be granted for a development only after a TDF agreement has been executed, and the offsets may not be transferred to another development project.
- (B) The TDF Agreement shall be on a form approved by the Town Council and shall include:
 - (1) The estimated eligible excess costs of right-of-way acquisition and the estimated eligible excess construction costs;
 - (2) An estimated offset amount;
 - (3) The land development project for which the offset may be used;
 - (4) A requirement that the developer must solicit bids in accordance with Article 8 of Chapter 143 of the N.C. General Statutes;
 - (5) A requirement that the qualifying road improvement be designed and completed to Town standards; and
 - (6) Such other terms and conditions as deemed necessary by the Town Council.
- (C) The amount of any offset is calculated by adding the eligible excess costs of right-of-way acquisition and the eligible excess construction costs.
 - (1) Eligible excess costs of right-of-way means the value of the road right-of-way dedicated by the developer to the Town that is required by the Comprehensive Transportation Plan in excess of a collector street for a qualifying road improvement. The value of the road right-of-way to be used in this calculation shall be the actual sale value of the land, if the land has been sold within the last three (3) years before dedication; if the land has not sold within the last three (3) years before the dedication, the applicable value shall be determined by professional appraisal. The appraisal shall be performed in accordance with the Town's Standard Procedures.
 - (2) Eligible excess construction costs means the actual construction costs in excess of those for a collector street and equal to the lowest responsible, responsive bid amount plus or minus the cost of any change orders approved by the Town. Final eligible excess construction cost may not be determined until after acceptance of the qualifying road improvements by the Town.

- (D) Offsets will not be credited for any road construction that exceeds the standards of the Town's Standard Specifications and Details Manual.

7.11.15 Use of Offset

- (A) The Transportation and Facilities Director shall compute the final amount of the offset credited to a developer.
- (B) Any offset may be used by the registered owner of such offset against a transportation development fee imposed on construction of a building in the designated land development project. Offsets may not be used for payment of any other fees, taxes, or amounts due the Town, and shall not have any intrinsic value. The Town shall have no obligation to the holder of any offset who, for any reason, owes no development fees during the life of the offset and thus has no use for the offset.
- (C) Each offset shall be valid from the date of issuance until ten (10) years after the effective date of the TDF Agreement, unless an extension not to exceed ten (10) years is granted by the Town Council prior to the termination of the earlier of these periods.
- (D) An offset shall be credited in dollars against the applicable transportation development fees in effect on the date when such fees become due under this Section 7.11.
- (E) When the TDF Schedule is revised, holders of active offsets may apply to the Transportation and Facilities Director for recalculation within one (1) year from the effective date of fee changes. The amount eligible for offset will be determined under the revised offset provisions in effect when the fees are modified. The applicant requesting recalculation shall be responsible for providing the information needed to recalculate the offset.

7.11.16 Reserved

7.11.17 Other Financing Methods

The Town may finance road improvements through the issuance of bonds, through the formation of assessment districts, or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of transportation development fees. Except as otherwise provided herein, the collection of a transportation development fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge, or assessment which is imposed on and due against the property under the authority granted by the State of North Carolina.

7.11.18 Fee as Supplemental Regulation

The transportation development fee established by this chapter is additional and supplemental to, and not in substitution of, any other requirements imposed by the Town on the development of land or the issuance of building permits or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of the Town's comprehensive plan, capital improvements plan, other chapters of this Ordinance, and other policies, ordinances, and resolutions.

7.11.19 Reserved

7.11.20 Relief Procedures

- (A) The developer or owner of property for which a transportation development fee is owed may appeal the assessment of the fee to the Zoning Board of Adjustment. After a quasi-judicial hearing, the Board shall take one of the following actions:
- (1) If the Board finds that there has been an error by the Town in assessing the transportation development fee, then the Board shall correct the error;
 - (2) The Board may modify or waive the requirements of this Section 7.11, but only upon finding that a strict application of such requirement would result in confiscation of the property, taken as a whole;
 - (3) The Board may, upon recommendation of the Town Manager, authorize the Town to pay, on behalf of the developer, the transportation development fee for a project of public interest, where the Board finds that such is in the best interest of the Town.
- (B) Unless the Zoning Board of Adjustment makes one of the findings set forth in subsection (A) above, the Board shall confirm the transportation development fee assessed.
- (C) If the Zoning Board of Adjustment modifies or waives the amount of the transportation development fee, the Town shall cause to be appropriated from other Town funds the amount of the reduction in the transportation development fee.

7.11.21 Hearings

- (A) The hearings described in Sections 7.11.8 and 7.11.20 shall be governed by the procedure of this section.
- (B) The date of the hearing may be set by the Town Manager or his or her designee without prior action by Council.
- (C) The hearing shall not take place without prior notice, given in accordance with LDO Section 3.1.6(A), (B), (C)(2), and (D).

(Ord. No. 05-006, adopted 5-12-05, eff. 7-1-05; Ord. No. 2008-07, adopted 5-8-08, eff. 7-1-08; Ord. No. 2009-LDO-05, adopted 7-23-09, eff. 7-23-09; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-002, 6-25-15; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2022-LDO-04, 11-17-22)

CHAPTER 8: STANDARDS FOR USES REQUIRING DEVELOPMENT PLANS

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Chapter 8: STANDARDS FOR USES REQUIRING DEVELOPMENT PLANS**8.1 GENERAL PROVISIONS**

TABLE 8.1-1: REQUIRED DEDICATIONS AND IMPROVEMENTS FOR DEVELOPMENT PLANS	
Requirement or Improvement	See Section
Land, easements, or fees in lieu thereof, for parks, greenways, recreation, and open space purposes	8.2.1: Dedication Land for Parks and Greenways 8.2.2: Payment in Lieu of Dedication 8.3.1: Private Open Space
Monuments and markers	8.1.9(A)
Streets	8.1.4(A)
Curbs and gutters	8.1.4(B)
Storm drainage	8.1.4(C)
Sidewalks	8.1.4(D)
Utilities	8.1.4(E)
Street signs	8.1.4(F)
Street lights	8.1.4(H)
Easements	8.1.4(K)
Streetscapes and landscaped buffers around the perimeter of the subdivision	7.2

8.1.1 General Design Standards

All development plans submitted under Section 3.9 of this Ordinance shall meet the following standards before they may be approved:

- (A) The proposed development shall comply with the lot area, width, front yard, side yard, rear yard, height, lot coverage requirements and other development standards for the zoning district in which it is located, as set forth in Chapter 6;
- (B) The proposed development shall comply with the off-street parking and loading requirements set forth in 7.8 of this Ordinance;
- (C) The proposed development shall comply with the appearance, landscaping, and buffer requirements set forth in Sections 7.2 and 7.7 of this Ordinance;
- (D) Traffic circulation and control patterns within the site shall be adequate to provide access to adjoining properties and streets;

- (E) Walkways shall be located so that pedestrians may walk from store to store or building to building on the site and on adjacent properties, with the minimum possible conflicts with vehicular traffic and the maximum possible efficiency or pedestrian circulation;
- (F) Wherever possible, all walkways, travel lanes, and driveways shall be connected with related facilities in adjacent properties;
- (G) Where on-site travel lanes and/or driveways connect to adjacent properties and allow traffic movement between adjacent properties, such lanes and driveways shall be constructed with curbs and gutters meeting the requirements of the Town's Standard Specifications and Details Manual;
- (H) Parking shall not be allowed along the travel lanes and driveways and adequate no-parking signs shall be installed along all such travel lanes and driveways;
- (I) Water supplies, fire protection, facilities, and sanitary sewer facilities shall be adequate to serve the type and amount of development proposed;
- (J) Drainage systems shall be adequate for the disposition and treatment of stormwater;
- (K) The proposed development shall meet all other applicable requirements of this Ordinance, and, unless otherwise specified, shall comply with applicable provisions in supplemental documents such as, but not limited to, those listed in Section 1.4;
- (L) All non-residential development shall be designed to allow for cross access to compatible adjacent properties to encourage shared access points on public or private streets. This requirement may be waived if the Planning Director determines that cross access is impractical due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure on the proposed site or an adjacent site.
- (M) The proposed development, if required by Section 3.9.2 to submit a Traffic Management Plan, shall comply with the requirements of the Traffic Management Plan. The Traffic Management Plan must demonstrate that adequate on-site circulation and safety for vehicles, pedestrians, and bicycles can be provided. Sufficient on-site vehicular storage must be provided for anticipated volumes of vehicles and buses such that vehicular queues do not enter the public right of way or cause other traffic-related safety issues.

8.1.2 Phasing Plan Requirements

- (A) If requested in the original application, a large development plan may be considered for approval for phased development.
- (B) Phasing plans shall be included in the first submittal and shall be reviewed by the Development Review Committee and/or other Town staff and evaluated as part of the overall development plan.
- (C) Each phase of a development shall be "stand alone" in regard to utilities, fire protection, streets, pedestrian connections, greenways, and stormwater management. Phase lines must follow reasonable and logical boundaries, such as terminating at intersections or following topographical breaks.

- (D) For residential subdivisions, phases shall be created so that each phase consists of no less than twenty (20) lots. Exceptions to this twenty (20)-lot minimum may be considered if the following criteria are met, provided that phase also meets the "stand-alone" criteria of Section 8.1.2(C):
- (1) a phase of twenty (20) lots is not practicable due to physical site conditions or the presence of existing development or infrastructure; or
 - (2) a model or sales home is planned, and the phase is the initial phase of the development.
- (E) Phases shall be constructed in the approved manner to ensure orderly and planned development. Phases shall be planned to ensure the efficient construction of adjacent future phases (those phases immediately next to the subject phase, sharing a common boundary line), and to ensure that phased development is contiguous.
- (F) Lot numbers shall not be duplicated within different phases of the same subdivision.
- (G) Each proposed phase must, at a minimum, include the transportation, utility, and other public/private infrastructure shown on the proposed phasing plans, such that each phase is independent of subsequent phases.
- (H) All dedications for public infrastructure servicing the respective phase must be recorded with the first plat for a subdivision or prior to the issuance of the first certificate of occupancy for a phased plan that does not require subdivision.
- (I) Water and sewer extension permit applications for each individual phase of the project are required prior to development plan approval for that phase.

8.1.3 Required Improvements

(A) General Requirements

The developer or applicant shall be required to do the following unless specified otherwise in this Ordinance:

- (1) Dedicate any additional right-of-way necessary to achieve the width required by the Town's Comprehensive Transportation Plan, Parks, Recreation & Cultural Resources Facilities Master Plan, and public utility plans for all streets adjoining the property;
- (2) Reserve, but not dedicate, right-of-way for controlled access highways;
- (3) Install curbs and gutters along all streets adjoining the property and to pave all streets adjoining the property, in accordance with the requirements set out in the Town's Standard Specifications and Details Manual and the Town's Comprehensive Transportation Plan;
- (4) Install sidewalks and pedestrian pathways in accordance with the requirements set out in the Town's Comprehensive Transportation Plan and Standard Specifications and Details Manual where warranted for the public safety and convenience in view of existing and expected pedestrian traffic;

- (5) Install street signs in accordance with Section 8.1.4(F) below;
- (6) Install street lighting in accordance with Section 8.1.4(G) below;
- (7) For residential development, provide open space and recreational facilities;
- (8) Install public utilities in accordance with Section 8.1.4(E); and
- (9) Install transit amenities in accordance with Section 8.1.4(J).

(B) Exceptions to General Requirements

Development activities requiring development plan approval that have minimal impact on transportation networks and other infrastructure systems are not required to install or provide the required improvements listed in Section 8.1.3(A), as provided below:

(1) Development Plans Exempt From All General Requirements

Development plans meeting any of the criteria listed below shall not be required to meet the requirements listed in Section 8.1.3(A), with exception of utilities otherwise required per the Town Code of Ordinances, Town Policy 23, the State Building Code or Fire Code, and other applicable state or federal regulations.

- (a) Development activity which requires development plan approval due only to impacts to an Urban Transition Buffer, riparian buffer or wetland, provided that the impact is classified as "exempt" or "allowable" in Table 14.6-2;
- (b) The installation or expansion of components of site infrastructure such as retaining walls, entry features, and site utilities; or
- (c) The addition of new or expanded recreational features such as tot lots, community gardens, playgrounds, trails, gazebos and similar facilities, but not including recreational facilities that function as a destination and generate additional traffic, such as sportfields and swimming pools.

Whereas right-of-way dedication is not required for development plans meeting the criteria listed above, no structure shall be placed in the area necessary to achieve the right-of-way width required by the Town's Comprehensive Transportation Plan, Parks, Recreation & Cultural Resources Facilities Master Plan, and public utility plans for all streets adjoining the property.

(2) Development Plans Exempt From All General Requirements Except Right-of-Way Dedication

Development plans meeting any of the following criteria shall not be required to meet the requirements listed in Section 8.1.3(A)(2) through (9), with exception of utilities otherwise required per the Town Code of Ordinances, Town Policy 23, the State Building Code or Fire Code, and other applicable state or federal regulations.

- (a) A change in use of an existing building or structure that does not generate one hundred (100) or more additional peak hour trips as defined in Section 3.4.1(D)(3);

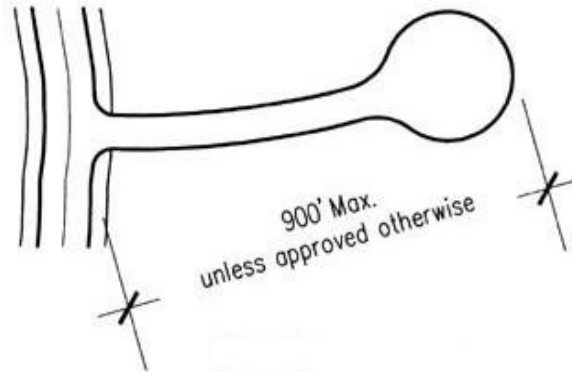
- (b) The cumulative addition of the greater of five thousand (5,000) square feet to an existing structure, or the replacement of a demolished structure or five percent (5%) of the total square footage of the buildings on the site, provided such cumulative addition does not generate one hundred (100) or more additional peak hour trips as defined in Section 3.4.1(D)(3);
- (c) The installation of or expansion of un-manned utility infrastructure facilities that do not generate daily traffic, such as telecommunication facilities, utility substations, and water towers;
- (d) The cumulative addition of up to thirty (30) parking spaces;
- (e) The creation of a one (1)-time subdivision of one (1) additional residential lot from an existing lot located in a previously approved residential subdivision containing more than three (3) lots; or
- (f) A development plan which would otherwise be classified as an “exempt” subdivision as described in Section 12.4, where the applicant has offered dedication of right-of-way.

8.1.4 Improvements

(A) Streets

- (1) All streets within a development shall conform to the requirements of this Section and Policy Statement No. 62 (Collector Streets), as may be amended from time to time by the Town Council. These standards are considered to be minimum standards and may be increased in a particular instance, where necessary to make a proposed street conform to sound traffic engineering standards and principles and the Town's Standard Specifications and Details Manual.
- (2) The street layout in the development shall conform to the arrangement, width, and location indicated on the Comprehensive Transportation Plan Planned Roadway Widths Map. For streets not indicated on that plan, the streets shall be designed and located with regard to existing and proposed streets, to the topography of the area, to such natural features as streams and tree growth, to public convenience and safety, and to the proposed use of land to be served by such streets. The proposed street layout shall be consistent with good land planning practices for the type of development proposed, and shall be coordinated with the street system of surrounding areas. All streets shall provide for the continuation or extension of the principal streets in surrounding areas and shall provide reasonable means of ingress and egress for surrounding properties. The Transportation and Facilities Director may waive construction of the required road improvements identified in the current Comprehensive Transportation Plan where the roadway was previously widened with curb and gutter to dimensional width standards consistent with the 2001 Thoroughfare Plan.
- (3) Street rights-of-way shall meet the minimum widths stated in the Town's Standard Specifications and Details Manual and, if the street is indicated on the Comprehensive Transportation Plan Planned Roadway Widths Map, the minimum width shown on the Comprehensive Transportation Plan Planned Roadway Widths Map.
- (4) The pavement width of each street shall meet the minimum width stated in the Town's Standard Specifications and Details Manual.

- (5) All horizontal curves, vertical curves, grades, and intersections shall conform to the applicable requirements set forth in the Town's Standard Specifications and Details Manual.
- (6) Cul-de-sacs shall comply with the length limits and design standards set forth in the Town's Standard Specifications and Details Manual, and shall be provided with a turnaround at the closed end. Also see Connectivity requirements in Section 7.10.



CUL-DE-SAC

- (7) The names of streets and the addresses of individual lots in the development shall be reviewed and approved as part of the preliminary plat. The names of new streets shall not duplicate or be similar to the names of existing streets anywhere in Wake County or Chatham County, or in portions of Durham County that fall within Cary's corporate limits. Where a new street extends or continues an existing street, the name of the existing street shall be used for the new street. All street names will be submitted to the Planning Department for approval. A change in the suffix (i.e. St., ed. Constructions), when added to the new name, shall not constitute a new name.
- (8) All streets and areas immediately adjacent to the streets shall be cleared and graded to provide adequate drainage, and pedestrian walkways that may be required under Section 7.10, Connectivity, of this Ordinance. Existing vegetation along the right-of-way shall not be negatively affected by such clearing and grading activities. The finished grade, cross-section, and profile shall be approved in conjunction with the final plat.
- (9) The property owner/developer shall install the road base and paving necessary to meet the requirements of this Ordinance and the Town's Standard Specifications and Details Manual.
- (10) Land needed for right-of-way as depicted on the Comprehensive Transportation Plan shall be dedicated at the time of final plat approval (or first certificate of occupancy if no plat is required), unless such dedication is modified pursuant to the standards of LDO Section 3.19.1 Minor Modifications or the development plan is classified as an "exempt" development plan. The amount of land to be dedicated shall be based upon the requirements listed in the Comprehensive Transportation Plan.

- (11) Transportation development fees shall be paid in accordance with the provisions of Section 7.11 of this Ordinance. Developers may request to enter into a TDF Agreement for thoroughfare improvements in accordance with Section 7.11.14 of this Ordinance. Each person entering into such a TDF Agreement shall, prior to final plat approval (or first certificate of occupancy if no plat is required), furnish the Town with a performance guarantee as defined by G.S. 160D-804.1 as now or hereafter amended guaranteeing fulfillment of the person's portion of the thoroughfare improvements agreed upon in the TDF Agreement.

(B) Curbs and Gutters

Curbs and gutters shall be installed prior to final plat approval (or first certificate of occupancy if no plat is required) in accordance with adopted Town policy and the Town's Standard Specifications and Details Manual. Curbs and gutters may be a combination curb and gutter or median curb and gutter.

(C) Storm Drainage

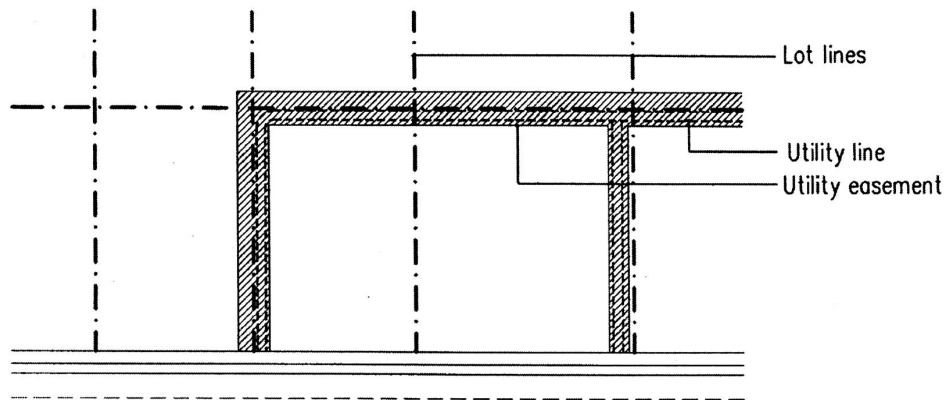
- (1) Developments shall comply with the requirements set forth in Sections 14.4, Soil Erosion and Sedimentation Control, and 14.7, Flood Damage Prevention, of this Ordinance and the following standards:
- (a) No surface water drainage from the site shall empty into a sanitary sewer.
 - (b) The size, design, and construction of drainage structures shall conform to the requirements set forth in the Town's Standard Specifications and Details Manual.
 - (c) Where a development is traversed by a watercourse, drainage way, channel, or stream, a stormwater or drainage easement shall be provided which substantially conforms with the lines of such watercourse, plus additional width that is adequate and necessary to convey expected storm flows and/or stormwater drainage facilities. Streets paralleling such easements may be required in connection therewith. Lakes, ponds, creeks, and similar areas will be accepted for maintenance by the Town only if sufficient land is dedicated as a public recreation areas or park or if such area constitutes part of the stormwater drainage control system.
 - (d) The Town shall neither have nor accept any responsibility to maintain any storm drainage feature or structures, except for those lying within a Town right-of-way or traversing Town-owned property.

(D) Sidewalks

Sidewalks shall be installed along streets prior to issuance of seventy-five (75) percent of the total number of Certificates of Occupancy within the new development boundary as identified on the associated development plan in accordance with Section 7.10, Connectivity, and the requirements set forth in the Town's Standard Specifications and Details Manual. However, sidewalks shall not be required along residential streets where a pedestrian system internal to the block serves, connects, and provides access to each lot along the street.

(E) Utilities

- (1) Water mains, sanitary sewers, and functional fire protection systems shall be installed prior to the final plat approval (or first certificate of occupancy if no plat is required) and in accordance with adopted Town policy and the Town's Standard Specifications and Details Manual. When Town water and sanitary sewer lines are available, or will be made available to within three hundred (300) feet of any site within four (4) months after preliminary plan approval, the site shall connect to Town utilities.

**Utility Easements**

- (2) All utility or other pipes, wiring, conduits, cables, and fixtures, including but not limited to electrical, gas, telephone and telecommunications lines, fiber optic cables and the like, shall be installed underground, except for transmission lines with a voltage of 115kV or greater or in situations where such placement is prohibited or determined to be impractical by the Zoning Board of Adjustment in a quasi-judicial evidentiary hearing.
- (3) Easements shall be provided to the Town for utility activities which shall include, but not be limited to, improving, upgrading, removing, inspecting, replacing, repairing, maintaining, using and operating such pipelines, laterals, interceptors, mains, manholes, conduits, facilities and related appurtenances as may be necessary or convenient for the receipt, conveyance, transmission and distribution of water, reclaimed water, and/or wastewater and for access thereto. Where necessary, easements shall be centered along or adjacent to lot lines to the greatest extent practicable. Easements shall be sized in accordance with the Town's Standard Specifications and Details Manual. No structures or other improvements shall be placed within any Town utility easement. Ground covers or grasses may be planted within an easement. No trees or shrubbery of any size shall be placed within any Town utility easement because of the need for access by utility maintainers and line damage that tree and shrub roots can cause. Any improvements installed within the easement are subject to disturbance or damage and may be removed by the Town.
- (4) All permitted and special uses shall be connected to and served by public water and sanitary sewer facilities; however, uses in the R-80 zoning district may be served by

private wells and/or septic systems. In some cases, the Director of Utilities may grant an exception to allow the use of private wells and/or septic systems for uses within other zoning districts provided that the anticipated water and/or wastewater requirements are minimal and that all County governmental agencies have approved the proposed use to operate with a private well and/or septic system.

- (5) Where connection to public water and sanity sewer systems is required, such systems shall be constructed to Town standards, sizes, and specifications and dedicated to the Town for operation and maintenance, thus allowing for the orderly expansion of the Town, its water systems, fire protection services, and sanity sewer systems which protect the health of the citizens of the Town and its environs.

(F) Street Signs

Street name signs that comply with the standards set forth in the Town's Standard Specifications and Details Manual shall be placed at all street intersections. The subdivider or developer shall install the signs or shall pay the Town to install the signs, prior to the final plat approval. Street signs shall not be included in the improvements described in Section 8.1.5 below for which performance guarantees may be submitted in lieu of the completed improvements. The subdivider or developer shall be required to replace or repair any street sign that is damaged during construction.

(G) Street Lights

The property owner or developer shall install street lighting along all proposed streets, public and/or private, and along all existing streets that adjoin the property, in accordance with Policy Statement No. 13 (Street Lighting), as may be amended from time to time by the Town Council.

(H) Easements

No part of any structure, permanent equipment, private utility line (including water, irrigation, and sewer lines) or impoundment may be placed, and no grading may occur within any Town of Cary easement prior to obtaining full development plan approval, a building permit, or an encroachment agreement from the Town. An encroachment agreement may allow fences to cross easements provided that appropriate access gates have been installed to allow maintenance. Any application for an encroachment agreement must include plans to facilitate access and maintenance of the utility, and must include any documentation which the Town needs to determine that no damage will occur to the utility. The Town will not be held liable for damage to any encroachment during maintenance to the utility.

(I) Greenways, Street-Side Trails and Private Trail Connectors

Greenways, street-side trails and private trail connectors shall be installed prior to issuance of Certificate of Occupancy for the approved phase within the new development as identified on the associated development plan in accordance with Section 7.10, Connectivity, and the requirements set forth in the Town's Standard Specifications and Details Manual.

(J) Public Transit Infrastructure

Transit access locations shall be installed prior to issuance of Certificate of Occupancy for the approved phase within the new development as identified on the associated development plan in accordance with Section 7.10.6 and the requirements set forth in the Town's Standard Specifications and Details Manual.

8.1.5 Payment of Fees in Lieu of Required Improvements

- (A)** Any owner or developer who is required to dedicate or install improvements pursuant to Section 8.1.4 above may make a payment of fees in lieu of such improvements, or part thereof, in accordance with the following:

(1) *Approval by Transportation and Facilities Director*

The Transportation and Facilities Director may approve payment in lieu of required transportation improvements provided that:

- (a)** If constructed, the transportation improvement would not connect with a similar existing or proposed improvement and would not provide any immediate traffic or public safety benefit to motorists, pedestrians, or bicyclists, but will be necessary or desirable to motorists, pedestrians, or bicyclists in the future; and
- (b)** The amount of the payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements (except as provided below), as estimated by a registered professional engineer selected by the applicant and approved by the Transportation and Facilities Director. The amount paid for a given street frontage shall be considered total and complete payment for the improvements considered, and shall preclude the Town from assessing that frontage for additional fees in the event that the Town elects to install such improvements along that frontage at a later date. The Transportation and Facilities Director may approve a payment in lieu of less than one hundred (100) percent of the actual installation and construction costs of such improvements if the required transportation improvements are located on or adjacent to Town-owned property, upon determining that such improvements are not necessary or desirable at the present time.

(2) *Approval by Director of Utilities*

The Director of Utilities may approve payment in lieu of required utility improvements, including reclaimed water lines, provided that:

- (a)** If constructed, the utility improvement would not provide immediate benefit to utility customers, but will be necessary or desirable in the future; and
- (b)** The amount of the payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements (except as provided below), as estimated by a registered professional engineer selected by the applicant and approved by the Director of Utilities. The Director of Utilities may approve a payment in lieu of less than one hundred (100) percent of the actual installation and construction costs of such improvements if the required utility improvements are located on or adjacent to Town-owned property, upon determining that such improvements are not necessary or desirable at the present time.

(3) Approval By Zoning Board of Adjustment

Except where the required improvements are located on or adjacent to Town-owned property, the Zoning Board of Adjustment may approve a payment in lieu of less than one hundred (100) percent of the actual installation and construction costs of such improvements in a quasi-judicial evidentiary hearing, upon determining that such improvements are not necessary or desirable at the present time but will be needed in the future and upon determining that the amount of the payment advances the goals and purposes of the Ordinance. The applicant shall provide an estimate of the actual installation and construction cost of the improvements as estimated by a registered professional engineer selected by the applicant and approved by the Utilities or Transportation and Facilities Director.

- (B)** Full payment shall be made prior to the issuance of any building permit for any use covered by the development plan.

8.1.6 Restrictions on Certificate of Occupancy

In addition to the requirements of Section 8.1.8, a Certificate of Occupancy shall not be issued, and a building or structure shall not be occupied, until and unless all dedications and improvements required by this section have been installed in a satisfactory manner and approved by the Town.

8.1.7 Timing and Inspection of Improvements**(A) Fire Protection**

Functional fire protection shall be provided to the site before any combustible materials are placed on the site.

(B) Level Required for Final Plat Approval or Issuance of Certificate of Occupancy if No Plat is Required

The final plat (or first certificate of occupancy if no plat is required) shall not be approved until and unless either of the following has occurred:

- (1)** The developer or subdivider has installed all improvements intended to be dedicated to and maintained by the Town or another government entity ("Publicly-maintained improvements") in accordance with the requirements of this section and the approved development plan, as evidenced by issuance of a certificate of completion; or
- (2)** The developer or subdivider has installed sufficient improvements to provide functional fire protection (with adequate street access and water supplies for fire-fighting equipment), has provided the Town with a schedule for the completion of the remaining Publicly-maintained improvements, and has provided the Town with a performance guarantee as defined by G.S. 160D-804.1 as now or hereafter amended in an amount equal to one and one-quarter (1 1/4) times the estimated cost of completion of the remaining Publicly-maintained improvements, as determined by the Town, with sureties guaranteeing the completion of the improvements.

(C) Level Required for Certificates of Occupancy

- (1)** The Inspections and Permits Department shall issue no Certificates of Occupancy for development until the Town certifies that the developer or subdivider has installed all

Publicly-maintained improvements in accordance with the requirements of this Section and the approved development plan, as evidenced by a certificate of completion. Certificates of Occupancy may be issued even though minor deficiencies and defects remain to be cured, provided that:

- (a) Such defects or deficiencies do not render the Publicly-maintained improvements dysfunctional;
 - (b) The improvements that have been installed provide the full level of fire protection proposed for the development and the Publicly-maintained improvements are under the one (1)-year corrections period for maintenance; and
 - (c) The developer or subdivider has provided the Town with a performance guarantee as defined by G.S. 160D-804.1 as now or hereafter amended in an amount equal to one and one-quarter (1 1/4) times the estimated cost of completion of the required improvements, as determined by the Town, with sureties guaranteeing the completion of the required Publicly-maintained improvements.
- (2) The Inspections and Permits Department shall issue building permits and/or Certificates of Occupancy for no more than seventy-five (75) percent of the lots within the new development boundary as identified with the associated development plan prior to (i) the issuance of a certificate of completion for Publicly-maintained improvements or (ii) completion of all other required improvements. The Town may waive either of these building permit and/or Certificate of Occupancy limits if this threshold is met during the initial corrections period for Publicly-maintained improvements.

(D) Connection of New Streets to Streets within Existing Developments

The opening of new street connections to existing streets within adjacent developments shall take place in accordance with Section 3.9.3 and this section of this Ordinance. Under certain conditions, such as the impact on an adjacent existing subdivision, the approval authority may delay the connection of the new street until up to seventy-five (75) percent of the total number of Certificates of Occupancy have been issued within the new development boundary as identified with the associated development plan. The decision to delay the connection must consider whether the delay will result in a public safety issue.

(E) Construction Traffic; Use of Alternative Routes

Construction traffic from the new development may be required to use a reasonable alternative route until seventy-five (75) percent of the total Certificates of Occupancy have been issued within the new development boundary as identified with the associated development plan. If no reasonable alternative route exists, existing public streets may be used (e.g., infill projects, etc.).

(F) Completion of Improvements

For purposes of this Section 8.1.7, "completion of the remaining (or required) improvements" means that the improvements have been fully installed and are functional, the one (1)-year corrections period has ended, and any additional work required during the corrections period has been completed to the satisfaction of the Town, as evidenced by a certificate of completion.

8.1.8 Final Acceptance of Improvements for Town Maintenance

- (A) Once all improvements intended to be dedicated to and maintained by the Town or another government entity ("Publicly-maintained improvements") have been installed and are functional, the developer or subdivider may notify the Town and request an inspection. If the Town determines that the installed improvements appear to comply with this Ordinance and all applicable Town standards, including those in the Town's Standard Specifications and Details Manual, then a one (1)-year corrections period begins.
- (B) If the Town determines that the installed Publicly-maintained improvements do not comply with this Ordinance and all applicable Town standards, including those in the Town's Standard Specifications and Details Manual, the Town shall deliver to the applicant a list of defects, deficiencies, and required repairs, in person or by mail, and shall require that the defects and deficiencies stated therein shall be satisfactorily corrected within sixty (60) days of the date the list was mailed. If the applicant fails to correct all defects and deficiencies and to make all required repairs within the sixty (60) day period, then the necessary improvements and repairs may be completed by the Town at the expense of the applicant, using funds from any guarantees provided by the applicant.
- (C) At the end of the one (1)-year corrections period, the applicant shall request the Town to conduct a final inspection of the Publicly-maintained improvements. The Town may provide the applicant with a list of required work to be done to complete construction of the improvements as required by this Ordinance and all applicable Town standards, including those in the Town's Standard Specifications and Details Manual. Once all required work has been completed to the satisfaction of the Town, the Town shall issue a certificate of completion and release the financial guarantee, if any. If the developer or subdivider fails to complete such required work within sixty (60) days, then the Town may draw on the financial guarantee in order to perform the required work itself. In the case of NCDOT roadways (not to be maintained by the Town) the financial guarantee shall stay in place until the improvements are accepted by NCDOT.
- (D) The Town reserves the right to hold or revoke building permits or Certificates of Occupancy and withhold or revoke development plan approvals until the required Publicly-maintained improvements have been completed.
- (E) The installation of improvements shall in no case bind the Town to accept any such improvements for public maintenance or operation thereof. The developer shall maintain all infrastructure until it is accepted by the Town. Failure of the developer to maintain all infrastructure prior to Town acceptance shall be a violation of this ordinance. Final acceptance of Town-maintained improvements occurs when the certificate of completion is issued.

8.1.9 Subdivision Monuments, Blocks, and Lots

The following provisions apply to subdivision of land.

(A) Monuments and Markers

- (1) Permanent concrete monuments four (4) inches in diameter or square, and three (3) feet long, shall be placed at no fewer than two (2) corners of the subdivision. Additional monuments shall be placed where necessary so that no point within the subdivision lies more than five hundred (500) feet from a monument. Two (2) or more of the required monuments shall be designated as control corners. The top of each monument shall

have an indented cross, metal pin, or metal plate to properly identify the location of the point. All monuments shall be shown on the final plat.

- (2) At least one (1) corner of the property surveyed shall be designated by course and distance (or tie) from a readily discernible reference marker. If a corner is within two thousand (2,000) feet of a United States Coast and Geodetic Survey station or a North Carolina grid system coordinated monument, then that corner shall be marked with a monument so designated and shall be accurately tied to this station or monument by computed "X" and "Y" coordinates. These coordinates and the location of the monument shall appear on the subdivision plat, to an accuracy of 1:20,000, along with a statement identifying the reference station or monument. Where such a reference station or monument is not available, the tie shall be made to some pertinent and readily recognizable landmark, point, physical object, or structure.
- (3) All lot corners, all points where street lines intersect the exterior boundaries of the subdivision, all angle points, and all points of curvature in each street shall be marked with galvanized pipe which is no less than three-fourths ($\frac{3}{4}$) of an inch in diameter and no less than thirty (30) inches long, driven so as to be two (2) inches above the finished grade.

(B) Blocks

- (1) Blocks shall be laid out with due regard to the type of use to be established within the subdivision.
- (2) Block lengths for detached dwellings and duplexes shall not exceed one thousand five hundred (1,500) feet. Block lengths for patio dwellings, subdivided attached/semi-attached, and townhouse developments shall not exceed eight hundred (800) feet.
- (3) Blocks shall have sufficient width to provide for two (2) tiers of lots of appropriate depth, except where otherwise required to separate residential development from through-traffic.
- (4) Pedestrian ways or crosswalks, no less than ten (10) feet in width, shall be provided near the center and entirely across any block which is nine hundred (900) feet or more in length where necessary to provide adequate pedestrian circulation or access to schools, churches, retail stores, personal service establishments, or transportation facilities.

(C) Lots

(1) General Requirements

- (a) The size, shape, and location of lots shall be established with due regard to topographic conditions, contemplated uses, and the character of the surrounding area.
- (b) Lot sizes and building setback lines shall conform to the minimum lot area, minimum lot width, and minimum yard requirements set forth in this Ordinance for the zoning district in which the subdivision is located.

- (c) Lots that front on more than one (1) street, other than corner lots, shall be avoided to the maximum extent possible.
- (d) Side lot lines shall be substantially at right angles or radial to street lines.
- (e) Property lines at street intersections shall be rounded, with a radius of at least twenty (20) feet; a greater radius may be required by the Town Council as part of its approval of the preliminary plat.
- (f) The width of the lot at the street right-of-way line shall be a minimum of twenty (20) feet to accommodate all driveways, drainage facilities, and utilities in accordance with the Town's Standard Specifications and Details Manual. The stub end of a street shall not serve as the required twenty (20) feet of right-of-way unless it is configured with an approved turn-around meeting the requirements of the Town's Standard Specifications and Details Manual.
- (g) Detached/attached and townhouse dwelling lots shall be served by publicly-maintained streets and alleys in accordance with the requirements of the Standard Specifications and Details Manual. Attached use types include duplex, patio, and semi-detached dwellings. Within the transportation network connecting the aforementioned lots to a thoroughfare or collector roadway, there shall be no intervening private streets.

(2) **Flag Lots**

The Town of Cary discourages and restricts the creation of flag lots. A flag lot shall be permitted if necessary to allow a property owner reasonable use and benefit of a parcel of land or to alleviate situations, which would otherwise cause extreme hardship for the owner. Flag lots are prohibited except:

- (a) Where necessary to eliminate access onto thoroughfares;
- (b) To reasonably utilize irregularly-shaped land;
- (c) To reasonably utilize land with severe topography;
- (d) To reasonably utilize land with limited sites suitable for septic tank nitrification fields and/or;
- (e) To provide for the protection of significant natural or cultural resources.
- (f) To enable subdivision of lots containing recognized historic structures within the Downtown Historic District.

Except within the Downtown Historic District, no flag lot will be allowed if it increases the number of access points onto a major thoroughfare. Existing subdivisions shall not be re-subdivided to create flag lots.

A note must be placed on any plat for recording flag lots noting that no public rear-yard garbage pickup will be provided for houses located more than one hundred twenty-five (125) feet from a public street.

Use of a single driveway, granted through an easement to serve adjoining flag lots or to serve a flag lot and an adjoining conventional lot, is permitted and encouraged to reduce access points on public streets.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-03, 5-14-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-04, 9-30-10; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2012-LDO-02, 3-7-12; Ord. No. 13-LDO-01, 2-13-13; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2018-LDO-03, 11-15-18; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22; Ord. No. 2022-LDO-04, 11-17-22)

8.2 RECREATION AREAS

8.2.1 Dedication Land for Parks and Greenways

(A) General Provisions

The subdivider of land shall be required to dedicate land or make a payment in lieu thereof, for public park and/or greenway development, to serve the recreational needs of the residents of the subdivision or development and/or provide connectivity. The dedication of land shall consist of two (2) categories: parks and greenways.

(1) *Park Dedication*

A portion of land being subdivided for residential purposes shall be dedicated to serve the recreational needs of residents of the immediate neighborhood, except where payment of funds in lieu of land dedication is approved pursuant to Section 8.2.2 of this Ordinance. Developers of multi-family dwelling units not requiring subdivision plan approval shall provide funds whereby the town may acquire recreational land or areas to serve the development or more than one (1) multifamily development or residential subdivision, except where dedication of land is approved, pursuant to Section 8.2.2 of this Ordinance.

(2) *Greenway Dedication*

Lands granted for public greenway development will be required for both residential and non-residential development for those locations recommended in the most recently approved Town of Cary's Parks, Recreation and Cultural Resources Facilities Master Plan for park and greenway development (or any proceeding plan addendums).

(B) Amount of Park Land to be Dedicated

(1) *General Requirement*

At least one-thirty-fifth (1/35) of an acre shall be dedicated for each single-unit dwelling unit planned or proposed on the Planned Development master plan, Mixed Use District preliminary development plan, or reflected on a subdivision plat, except that any land to be so dedicated that lies within the FEMA one hundred (100)-year floodplain,

wetlands, regulated stream buffers, or that has slopes greater than fifteen (15) percent shall be dedicated at a rate of at least one-twentieth (1/20) of an acre per dwelling unit; such areas shall be reflected on the subdivision plat for the dedicated parcel.

(2) *Planned Developments*

- (a)** For planned developments, the lands dedicated under this section may be credited toward the park and recreation land requirements set forth in Section 8.2 of this Ordinance. The parkland dedication requirement shall be capped at twenty (20) acres for Planned Developments.

- (b) Innovative combinations of land dedication and actual development of public recreation facilities for dedication may be proposed for consideration and are subject to the approval of the Town Council. The Town must receive at least equal value in facilities and land as the value of the land required for dedication as specified above.
- (c) The Town will review the proposed dedication to assure compliance with the park type(s) recommended by the currently approved master plan for the geographic area of the planned development.
- (d) If existing Town of Cary park land exists adjacent to the development, the Town may determine that a smaller tract of land than that which meets the standards above may be dedicated adjacent to the existing park land, in order to create a larger single Town park site. In situations where such adjacent dedications are made, the developer will be required to pay a fee in lieu or any remaining dedication requirement in accordance with this section. The improvements must conform to Town standards, specifications and time of dedication as identified in the approved planned development master plan map and application.
- (e) If additional residential development is proposed for a previously approved planned development, the following provisions shall apply:
 - 1. Planned Developments (PDs) approved prior to October 28, 1993: Any land added to the Planned Development shall be treated as a new PD for the purposes of calculating the land dedication requirements.
 - 2. PDs approved on or after October 28, 1993, will not be required to dedicate any additional land.

(C) Nature of Park Land to be Dedicated

Except as otherwise required or approved by the Town Council at the time of Planned Development master plan approval, development plan approval, or Mixed Use District preliminary development plan approval, all dedications of land shall meet the following criteria. These criteria should be considered general guidelines to ensure that the dedication of land is suitable for park development.

(1) *Unity*

The dedicated park land shall form a single parcel of land, except where the Town Council determines that two (2) or more parcels would be in the best interest of the public, given the type and distribution of open spaces needed to adequately serve the proposed development. In such cases, the Town Council may require that such parcels be connected by a dedicated strip of land at least thirty (30) feet in width.

(2) *Usability*

At least fifty (50) percent of the total park land dedicated, which is intended primarily for active recreational use, shall be located outside the Flood Hazard Area, alluvial soils, lakes, or other water bodies, and areas with slopes greater than fifteen (15) percent, and at least seventy-five (75) percent of the total land dedicated shall be located outside of wetlands subject to Federal or State regulatory jurisdiction. Lakes,

ponds, creeks, or other water bodies, and wetlands falling under the jurisdiction of state or federal agencies as indicated in Section 14.4, *Soil Erosion and Sedimentation Control*, and Section 14.7, *Flood Damage Prevention*, of this Ordinance, may be dedicated only if sufficient abutting land is dedicated as a public recreation area or park or if such area constitutes a necessary part of the drainage control system. Land dedicated only for greenways need not follow the requirements of this subsection.

(3) Shape

The shape of the portion of the dedicated park land that is deemed suitable for active recreation shall be sufficiently square or round to be usable for any or all recreational facilities and activities, such as athletic fields and tennis courts, when a sufficient amount of land is dedicated to accommodate such facilities. Land dedicated only for greenways need not follow the requirements of this subsection.

(4) Location

The dedicated park land shall be located so as to reasonably serve the recreation and open space needs of residents of the subdivision or planned development, and to comply with the Town's Parks , Recreation and Cultural Resources Facilities Master Plan, where applicable. The dedicated park land may be located outside of the residential development in order to comply with the currently approved Town's Parks, Recreation and Cultural Resources Facilities Master Plan, to add property to existing park land, or to combine land dedication efforts with those of other developments.

(5) Access

Public access to the dedicated park land shall be provided either by adjoining public street frontage or by a dedicated public easement, at least sixty (60) feet wide, which connects the dedicated land to a public street or right-of-way. Gradients adjacent to existing and proposed streets shall allow for reasonable access to the dedicated land. Where the dedicated land is located adjacent to a street, the developer or subdivider shall remain responsible for the installation of utilities, sidewalks, and other improvements required along that street segment. Public access to greenway dedications only shall be at least twenty (20) feet wide.

(6) Topography

The average slope of the portion of dedicated land deemed usable for active recreation shall not exceed the average slope of the entire subdivision or planned development to be developed. In no case shall a slope on the usable portion of dedicated land exceed fifteen (15) percent.

(7) Dedication of Lakes

The subdivider or developer may propose to include an existing or proposed lake as part of a park dedication. The dedication of such lake shall meet the following criteria, and will be subject to the approval of the Town Council. Evidence that the lake meets the following criteria shall be provided to Town Council at the time of Council review and approval of acceptance of the lake:

- (a) It shall be a minimum of ten (10) acres in size. The average width of the lake should be not less than one-third (1/3) of its average length.
- (b) Dam construction shall comply with the latest versions of Dam Safety Rules by the North Carolina Department of Environment and Natural Resources, and shall comply with the rules appropriate to the class of the dam, except all dams shall meet the lowest threshold criteria. All lakes shall include a primary spillway, emergency spillway, and drain, and all materials shall meet Town specifications. Lake and dam construction shall also comply with the latest version of the Stormwater Best Management Practices Manual by the North Carolina Department of Environment and Natural Resources, if lake will function as a stormwater best management practice.
- (c) The land surrounding and adjacent to the lake shall be dedicated to the Town, at a minimum width of one hundred (100) feet measured from top of bank.
- (d) The lake dam shall not be utilized to support a public or private street.

(D) Dedication of Greenway Land

- (1) Easement dedication for greenway purposes is a separate requirement from parkland dedication, though the land dedicated for greenway purposes may be counted towards park land dedication requirements, except for easements dedicated for street-side trails [as indicated in Section 7.10.4 (C)].
- (2) Locations of proposed greenways will be based on the currently approved Town's Parks, Recreation and Cultural Resources Facilities Master Plan.
- (3) If the Town of Cary's Parks, Recreation and Cultural Resources Facilities Master Plan indicates a future greenway through a proposed development, whether residential or non-residential, a strip of greenway land through this area shall be dedicated to the Town, at a minimum of thirty (30) feet, but not to exceed fifty (50) feet in width; widths of easements may be reduced to twenty (20) feet in those cases where the developer is constructing the greenway trail. Widths of greenway easements for street-side trails [see Section 7.10.4 (C)] shall be determined by the Parks, Recreation and Cultural Resources Director.

(E) Procedure for Dedication of Park Land and Greenway Land

The dedication of such land shall be reviewed and approved at the time of Planned Development master plan approval, development plan approval, or Mixed Use District preliminary development plan approval as applicable. The applicant shall designate on the applicable plan, if any, the area or areas of land to be dedicated pursuant to this section. Where FEMA one hundred (100)-year floodplain, regulated stream buffers, slopes greater than fifteen percent (15%), or wetlands falling under the jurisdiction of State or Federal agencies have been certified to exist on the property, the applicable plan shall also identify the boundaries of such areas. Upon receipt of the applicable plan, the Planning Director shall submit a copy thereof to the Director of Parks, Recreation and Cultural Resources for review by the Parks, Recreation and Cultural Resources Advisory Board. If the development in consideration is to be approved administratively, the recommendation of the Director of Parks, Recreation and Cultural Resources shall be submitted to the Planning Department.

(F) Submission of Deed and Survey

Unless otherwise stipulated in a planned development master plan or Mixed Use District preliminary development plan, or required by law, an executed general warranty deed, free and clear of all liens, encumbrances and restrictive covenants, conveying the land to the Town of Cary, and a reproducible paper boundary survey indicating the location and area of all wetlands, alluvial soils, regulated riparian buffers, floodplain, waterbodies, and slopes greater than fifteen percent (15%), shall be submitted no later than two (2) years after the approval of the development plan, Planned Development master plan, Mixed Use District preliminary development plan, or prior to the issuance of fifty percent (50%) of the Certificates of Occupancy for the development (based on approved development plans and approved master plan), whichever is earlier. The Town Council may grant an extension of time.

8.2.2 Payments of Funds, or Funds in Lieu of Land Dedication, For Acquisition or Development of Recreation, Park or Open Space Sites**(A) Funds for Dwelling Units Requiring Subdivision Plan Approval**

If land to be dedicated does not meet the requirements of Section 8.2.1 of this Ordinance, or is not suitable for public recreation purposes, or if the recreational needs of the proposed development can be met by other park, greenway, or recreational facilities planned or constructed by the Town within reasonable proximity to the development, or if existing park land is adequate to serve the development, a payment or partial payment of funds ("subdivision recreation fund payment") in lieu of a land dedication shall be made. Recommendations regarding payment of funds in lieu of a dedication of land will be made by the Town at the time of development plan approval, or master land use plan approval in the case of a Planned Development, or as part of the preliminary development plan for a Mixed Use District.

(1) Amount of Payment

- (a)** Where the payment of funds to the Town is to be made in lieu of dedication of land as permitted by this section, the amount of such subdivision recreation fund payment shall be based on the value of the development or subdivision for property tax purposes pursuant to G.S. 160D-804(d). For the purpose of determining such value of the development or subdivision, the Town shall obtain a current written appraisal of the fair market value of the land to be developed or subdivided. For the purpose of this Section 8.2.2, "fair market value" means the value of the development or subdivision for property tax purposes.
- (b)** Each appraisal shall be performed by a North Carolina licensed real estate appraiser.
- (c)** The Parks, Recreation and Cultural Resources Director may waive the requirement of an appraisal where the subdivider/developer provides to the Town documentation evidencing the fair market value of the subject property, which in the opinion of the Parks, Recreation and Cultural Resources Director, reasonably estimates the fair market value.
- (d)** The appraisal or documentation of the land's fair market value, along with other evidence that, in the Town's opinion, aids in the determination of fair market value, may be used in the determination of the amount of any payment in lieu of land dedication permitted by this section.

- (e) The Director of Parks, Recreation, and Cultural Resources shall make the final determination of the payment amount.

(2) *Procedure for Approval*

The payment of subdivision recreation funds, in lieu of land dedication, shall be approved as part of, or prior to, approval of the development plan or, in the case of Planned Development, the master land use plan or, in the case of a Mixed Use District, the preliminary development plan. Upon receipt of the application to make a subdivision recreation fund payment, the Planning Director shall submit a copy thereof to the Director of Parks, Recreation and Cultural Resources for review by the Parks, Recreation and Cultural Resources Advisory Board. In the event of a dispute between an applicant who wants to make a subdivision recreation fund payment and a recommendation by the Parks, Recreation and Cultural Resources Advisory Board that land shall be dedicated, the Town Council shall make the final determination. A combination of partial payment of funds and partial dedication of land (pursuant to Section 8.2.1(C) through (F), as applicable), may be required if the Town Council determines that this combination is in the best interest of the citizens of the area to be served.

(3) *Time of Payment*

The subdivision recreation fund payment shall be made prior to recording any lot(s) in the subdivision to which the fees relate. Payment may be phased in accordance with a phasing plan approved as part of the approved development plan.

(4) *Appeal of Payment Amount*

Appeal of the subdivision recreation fund payment amount shall be made to the Zoning Board of Adjustment in accordance with Section 3.21 of this Ordinance.

(B) *Funds for Multi-Family Dwelling Units Not Requiring Subdivision Plan Approval*

Pursuant to N.C. Session Law 2007-321, developers of multi-family dwelling units not requiring subdivision plan approval shall provide funds ("multi-family recreation fund payment") whereby the town may acquire recreational land or areas to serve the development or more than one (1) multifamily development or residential subdivision, except where dedication of land is approved pursuant to this Section 8.2.2(B). Such funds may be combined with funds received from residential subdivisions pursuant to Section 8.2.2(A) of this Ordinance and used for the acquisition or development of recreation, park or open space sites.

(1) *Amount of Payment*

- (a) The developer shall pay a multi-family recreation fund payment for each dwelling unit. The multi-family recreation fund payment shall be equal to sixty-five percent (65%) of the five (5)-year rolling average subdivision recreation fund payment per dwelling unit. The five (5)-year rolling average subdivision recreation fund payment per dwelling unit shall be calculated by (1) determining the subdivision recreation fund payments assessed for the previous five (5) calendar years; (2) for each subdivision that was assessed a payment during that time period, determining the cost per dwelling unit of such payment; and (3) calculating the average of each such per dwelling unit payment.

- (b) A combination of partial payment of funds and partial dedication of land pursuant to Section 8.2.1 (C) through (F) of this Ordinance, as applicable, may be required if the Town Council determines that this combination is in the best interest of the citizens of the area to be served. Land to be dedicated to the Town in lieu of payment of funds shall be in an amount equal to one-fifty-fifth (1/55) of an acre for each dwelling unit for which dedication is to be made in lieu of fund payment, except that land that lies within a FEMA one hundred (100) year floodplain, wetlands, regulated stream buffers or that has slopes greater than fifteen (15) percent shall be dedicated at a rate of at least one-fortieth (1/40) of an acre per dwelling unit.

(2) *Time of Payment*

The multi-family recreation fund payment shall be made in accordance with an approved phasing plan, or prior to the issuance of the first Building Permit if there is no approved phasing plan.

(3) *Appeal of Payment Amount*

Appeal of the multifamily recreation fund payment amount shall be made to the Zoning Board of Adjustment in accordance with Section 3.21 of this Ordinance.

(Ord. No. 04-001, 1-8-04; Ord. No. 05-001, 1-13-05; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2012-LDO-05, 6-14-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22)

8.3 PRIVATE OPEN SPACE

8.3.1 Private Open Space

The developer of each residential development requiring development approval shall set aside at least five hundred (500) square feet of open space for each dwelling unit. Such open space shall meet the standards of this section:

(1) *Locational Criteria*

To the maximum extent feasible, where significant natural and scenic resource assets exist on a property, the developer shall give priority to their preservation through public park or greenway dedication or as private open space. In reviewing the location of private open areas, the Planning Director shall use all applicable plans, maps, and reports to determine whether significant resources exist on a proposed site that should be protected, with priority being given to the following areas (which are not listed in a particular order):

- (a) Wetlands;
- (b) Flood Hazard Area;

- (c) Lakes, rivers, and stream/UTB corridors;
- (d) Wildlife migration corridors; and
- (e) Steep slope areas.

(2) *The Following Shall Not Be Counted Towards Private Open Space Areas:*

- (a) Private yards;
- (b) Public or private streets or rights-of-way;
- (c) Open parking areas and driveways for dwellings;
- (d) Land covered by structures; and

(3) *Use of Private Open Space*

Private open space shall not be disturbed, developed, or improved, with any structures or buildings, except for the limited purposes allowed below.

- (a) Facilities for active recreation (equipment for such uses shall be indicated on the development plan provided by the developer);
- (b) Private open space may include passive recreational and educational purposes approved by the Planning Director, including but not limited to walking, biking, picnicking, fishing, preservation of natural areas and scenic resources, parks, environmental education, and wildlife habitat protection.
- (c) Private open space shall be distributed throughout the development and located so as to be readily accessible and useable by residents. A portion of the open space should provide focal points for the neighborhood.
- (d) Clearing of underbrush and debris and the provision of walks, fountains, fences, and other similar features are allowed.

(4) *Design Criteria*

Land set aside for private open space shall meet the following design criteria, as relevant:

- (a) The lands shall be compact and contiguous unless the land shall be used as a continuation of an existing trail, or specific topographic features require a different configuration. An example of such topographic features would be the provision of a trail or private open area along a riparian corridor.
- (b) Where private open areas, trails, parks, or other public spaces exist adjacent to the tract to be subdivided or developed, the private open space shall, to the maximum extent feasible, be located to adjoin, extend, and enlarge the presently existing trail, park, or other open area land.

(5) Ownership

All private open space shall be owned jointly or in common by the owners of the development.

(Ord. No. 05-001, 1-13-05; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

8.4 ALTERNATIVE DEVELOPMENT OPTION: CLUSTER RESIDENTIAL SUBDIVISIONS**8.4.1 Purpose**

This Section provides an optional process and standards for cluster housing development. The Section is intended to encourage and allow for new concepts of traditional housing development so that variations of design may be allowed, provided that the net residential density shall be no greater than permitted in the district in which the development is proposed. This shall not be construed as granting variances to relieve hardship.

A conventional subdivision generally covers the entire developable portion of a site with residential lots. These lots are equal to or greater than a required minimum size designed to approximate the maximum permitted development density under the zoning regulations. A cluster subdivision allows for the reduction in the lot square footage minimum and setbacks provided that non-regulatory or bonus open space is provided. This permits greater net densities on portions of the site while permanently preserving additional open space and other important environmental resources such as those identified in the Open Space and Historic Resources Plan.

This type of development is more sensitive to the natural environment by reducing the total amount of disturbance that may occur to the land in comparison to a conventional development while allowing the developer to reduce site improvement costs. The use of clustered subdivisions is not intended to allow increased density for undevelopable or unusable land already protected by other provisions of this Ordinance. The remnant land not designated as building lots is required to be left undeveloped, and must serve the purpose of effective buffering, passive recreation, and protection of significant vegetation, historic resources or scenic qualities.

8.4.2 Applicability

The cluster development option is available for property located within a zoning district that permits single-unit detached dwelling units (e.g., R-20, and R-40), with the exception of property located within the Conservation Residential Overlay District. The development of the property must comply with all zoning conditions when using the cluster option. The size of the tract used under this option must be a minimum of ten (10) acres.

8.4.3 Approval of Cluster Site and/or Subdivision Plans

The approval authority, Staff or Town Council, may allow subdivision development on reduced lot sizes in return for the provision of bonus open space and other design requirements set forth within this Section. In order to approve a development plan using this option, the Town must determine that the benefits of the cluster approach will prevent the loss of natural features without increasing the overall density or impervious surface of the development. Cluster developments follow the same review and approval process that conventional developments follow as required by this Ordinance.

8.4.4 Allowable Density, Lot Size and Open Space Requirements

An increase in the number of lots above the number of lots permitted by the underlying zoning district (base number of lots) is allowed provided the development plan meets open space requirements and other design requirements set forth within Section 8.4. In no case shall the density of the development exceed the maximum permitted density of the site's designated zoning district.

8.4.5 Calculating Base Number of Lots

The base number of lots is defined as the lot yield based on the implementation of the requirements of the underlying zoning district. The base number of lots is the starting point from which extra lots may be permitted if non-regulatory or bonus open space (see Chapter 12 for definition) is provided and other design requirements are met.

The applicant shall choose one (1) of the following methods for calculating the base number of lots:

- (A) The base number of lots may be determined by taking ninety (90) percent of the potential developable area of the site and multiplying by the maximum density (based on lot area requirements) for the underlying zoning district. The purpose of reducing the potential developable acreage by ten (10) percent is to account for the approximate area that would be allocated to roadways within a conventional subdivision. "Potential developable area" within this Section is defined as the total land area of the site excluding all regulatory floodplains, streetscapes and other required areas (see Chapter 7: Development and Design Standards). For sites that contain and/or are adjacent to the American Tobacco Trail, a buffer of at least fifty (50) feet in width is required. This minimum buffer width is considered regulatory/required area, and shall not be included in the calculation of potential developable area.

Example: Site A

Total Acres: One hundred (100)

Acres in regulated/protected areas: Twenty (20)

Potential Developable area including roadways: One hundred (100) - Twenty (20) = Eighty (80)

Calculated Developable area (Eighty (80) acres) x Ninety (90) percent = Seventy-two (72) acres

Seventy-two (72) acres x 1.09 dwelling units per acre (density permitted in R-40) = Seventy-Eight (78) base number of lots

- (B) The base number of lots may be determined based on a yield plan for the site, whereby the applicant presents a rough or sketch conventional subdivision development plan that fully complies with the development requirements of the underlying zoning for the site.

8.4.6 Maximum Density, Minimum Lot Size and Open Space Requirements

An increase in the number of lots (density bonus) is provided in exchange for the permanent preservation of bonus open space and meeting other design requirements. An increase in the number of lots is achieved by allowing a lower minimum lot size (see Table 8.4-1 below).

TABLE 8.4-1: MAXIMUM DENSITY, MINIMUM LOT SIZE AND OPEN SPACE REQUIREMENTS			
District	Maximum Allowable Development Density in District	Minimum Lot Size (sq. ft.)	Bonus Open Space Required Per Additional Lot (sq. ft.)
R- 40	1.09	15,000	14,816 Bonus
R-20	2.17	10,000	14,816 Bonus

Example (continued from 8.4.5 above) :

Size of Site	Base Number of Lots	Bonus Open Space	Additional Lots	Actual Gross Density
100 acres	78	8 acres (10% of potential developable area)	24 (30% more)	1.02

8.4.7 Basic Requirements for Cluster Development

- (A) Cluster developments shall meet all requirements for a development plan and all other applicable Town ordinances except for lot size, which is defined in this Section. Cluster subdivisions within the Jordan Lake watershed may be constructed without the standard curb and gutter required in other areas of Town. Alternative street designs may also be considered if such designs further protect on-site resources.
- (B) R-12 dimensional requirements may be used for lots within cluster subdivisions. However, where lots in a cluster development abut other residential lots within an existing subdivision that is not developed as a cluster development, said lots shall have a side and rear yard setback not less than that of the abutting subdivision or the required side or rear yard setback required within the proposed development's zoning district.
- (C) Cluster subdivisions shall be adequately buffered from adjacent conventional subdivisions in accordance with Chapter 7 based on lot size.
- (D) Once the development is approved and platted, there shall be no further subdivision of land to obtain additional lots. However, easements for public utilities may be permitted.

8.4.8 Provision and Maintenance of Open Space and Facilities

(A) Bonus Open Space Requirements

All bonus open space provided must meet the following standards:

- (1) Bonus open space shall be retained in a natural, undisturbed state, with the exception of those activities allowed by this Section. No more than five percent (5%) of the bonus open space areas may be disturbed and allowed to be planted with grass or other pervious ground cover if the area provides common informal gardens and/or play/open areas for the development. The five percent (5%) does not include disturbed areas due to the installation of required pedestrian systems (e.g., sidewalks, trails). Active recreation facilities (e.g., basketball and tennis courts) are not permitted in the open space used to obtain additional lots.
- (2) The cluster subdivision must, at a minimum, provide an eighty (80) foot deep Type A opaque streetscape buffer along all of the subdivision's thoroughfare and collector road frontage. The amount of the eighty (80) foot deep streetscape buffer that is in excess of the amount of streetscape buffer required for a conventional subdivision under the requirements of Chapter 7 (See Section 7.2.4) qualifies as contributing bonus open space.
- (3) Bonus open space used to obtain additional lots shall be no less than thirty (30) feet in width at any point.
- (4) Pedestrian access trails to the open space areas shall be provided.
- (5) No portion of the bonus open space shall be separated into non-contiguous segments smaller than thirty percent (30%) of the total bonus open space area. Open space divided by a roadway shall be defined as contiguous.
- (6) The bonus open space shall be shown on the development plan, with a notation to indicate that the bonus open space shall not be used for future structures.
- (7) The developer shall establish and incorporate a Homeowner's Association (HOA), which shall have the responsibility for maintaining the bonus open space and associated facilities at its own expense. As an alternative to an HOA, a private, non-profit organization, whose primary purpose is open space conservation or preservation can own and manage the open space within a cluster housing development.
- (8) A portion or all of the bonus open space may be conveyed to the Town for use as greenways and parkland, provided it meets Town standards for such facilities and is agreed to by the Town. Such conveyance would occur at no cost to the Town.

(Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-02, 3-26-09; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2022-LDO-02, 4-28-22)

8.5 ALTERNATIVE DEVELOPMENT OPTION: TRADITIONAL NEIGHBORHOOD DEVELOPMENT

8.5.1 Purpose

The Traditional Neighborhood Development concept is offered as an alternative to conventional development under the Planned Development (PD) district provisions, as well as under the Mixed Use Center Overlay. The purpose of the Traditional Neighborhood development and design standards established in this section is to allow and encourage the development of mixed use, small-lot, pedestrian-oriented communities. Traditional neighborhood development promotes the diversification and integration of land uses within close proximity to each other. As a result, such development provides opportunities to achieve the following objectives:

- (A) To preserve and promote Cary's identity and sense of community through enhancement and reinforcement of the Town's unique character and small-town atmosphere.
- (B) To allow greater design flexibility and cost-efficiency in the siting, provision, and maintenance of services and infrastructure, including the opportunity to reduce the length of roads and utility runs.
- (C) To reduce the potential for adverse impacts of new development on surrounding properties, the natural environment, the general public, and the business economy through the minimization of suburban sprawl.
- (D) To reduce traffic congestion and vehicle miles of travel by minimizing the need for automobile trips, freeing up arterial capacity, and enhancing pedestrian and bicycle mobility.
- (E) To preserve and improve property values and protect private and public investment through the preservation of open space, the protection of existing tree canopy, and planting of new vegetation as deemed appropriate.

8.5.2 Applicability

The Traditional Neighborhood development and design standards contained in this section shall be applied only within the Planned Development (PD) and the Mixed Use Center Overlay districts, providing an alternative to conventional development standards otherwise provided for in this Ordinance. All provisions of this Ordinance shall apply to developments designed according to the traditional neighborhood model, except as specifically provided for in this section. When, in reviewing proposed traditional neighborhood developments, the standards of this section may differ or be less restrictive than other standards of the Development Ordinance, the standards of this section shall apply.

8.5.3 General Principles

A TND has specific characteristics that contribute to a compact, mixed use, pedestrian-oriented development pattern. The following general principles and provisions shall be considered in the design and development of new residential and non-residential developments that follow the traditional neighborhood model.

(A) Neighborhood Size

TND neighborhoods should be limited in size to encourage pedestrian activity. Optimal size is generally measured in terms of the distance from the center to the edge of a neighborhood, which will result in a walk of five (5) to ten (10) minutes to meet most daily needs {an approximate distance between one-quarter (1/4) and one-half (1/2) mile}.

(B) Interconnected Street Pattern

- (1) Streets in traditional neighborhood developments should be designed to accommodate the needs of all modes of transportation and to have a strong pedestrian orientation. Traditional neighborhoods usually consist of an interconnected street pattern with short blocks, which provides multiple routes and short walking distances. To contribute to a more dynamic street environment, streets in TNDs should be narrower than those in conventional developments, with sidewalks at the curb, on-street parallel parking, and, where appropriate, rear lanes for access.

- (2) The design of thoroughfares and collectors shall be consistent with the Cary Comprehensive Transportation Plan.

(C) Mix of Land Uses and Diversity of Housing Types

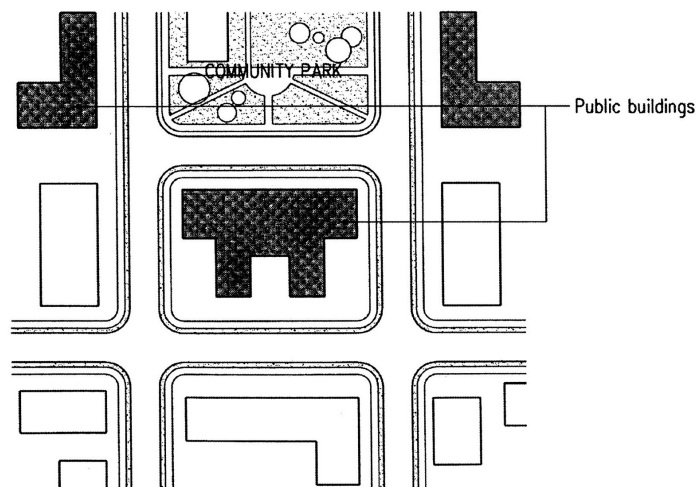
TNDs should be structured to provide a balanced mix of uses, including residential, retail, employment, civic, and recreational uses, all within the same development. The integration of uses allows residents to meet more of their daily needs through shorter trips. In addition, provision of a variety of housing types shall be encouraged to allow a greater diversity of residents within the neighborhood.

(D) Mixed Use Center

TNDs are generally organized around a core, where shopping, offices, and public facilities are located.

(E) Civic Buildings and Uses

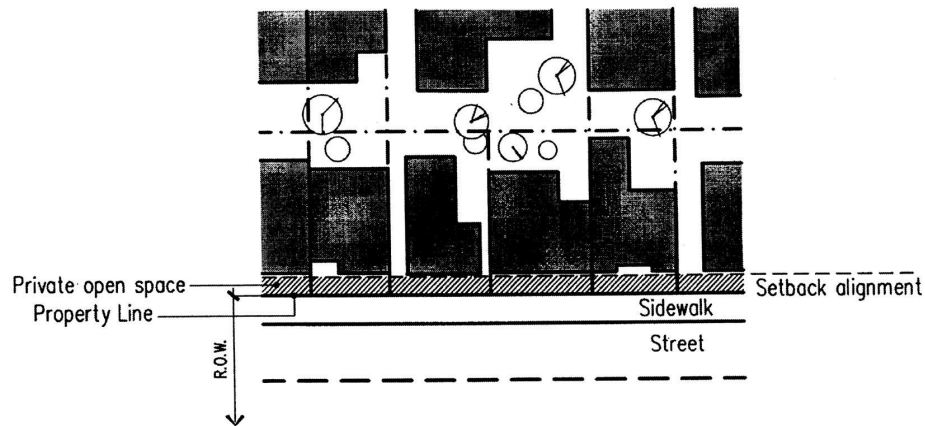
Public buildings and uses, including government offices, museums, schools, and libraries, serve as focal points and landmarks for the community within TNDs and should be located on prominent sites.



Civic Buildings and Uses

(F) Public Spaces

The design of TNDs should give priority to open space, which should be located throughout the development to compensate for the smaller lot sizes normally associated with traditional neighborhood models. Open space should be designed in a hierarchy of formal and informal spaces and used to enhance community activity, identity, and civic pride. The Village Center should include one (1) or more public spaces (e.g., plazas or village greens) as focal points.



Location of Buildings and Relationship between Buildings

(G) Location of Buildings and Relationship Between Buildings

In TNDs, private buildings should be used to define the street edge and the distinction between the public domain of the street and the private space of individual lots. To this end, buildings should have a fairly consistent, narrow setback alignment along the street frontage, but in all cases, building separation distances shall meet the minimum requirements of the NC State Building Code.



Relationship between Building Types

(H) Relationship Between Building Types

Buildings in TNDs should be built on a human scale and designed with a common, harmonious architectural vocabulary and landscaping to lend an intimate and personal feel to the streetscape. The intent should not be to create a uniform appearance, but rather a distinct sense of place.

8.5.4 Development Standards

In addition to adhering to the previous general principles, projects submitted as TNDs shall comply with the following standards.

(A) Minimum Development Size

A TND shall comprise an area of not less than ten (10) contiguous acres. (For the purposes of this section, a property that is split by a public roadway shall be considered contiguous.) Larger TNDs may be designed to include several distinct neighborhoods in order to maintain a pedestrian orientation.

(B) Permitted Types and Mix of Land Uses

- (1)** TNDs, by design, provide opportunities for diversification and integration of land uses in a balanced mix. However, the extent of diversification and integration may be limited by the size of the development, based on use-specific land or population-based needs.
- (2)** Notwithstanding Section 8.5.4(B)(1) above, a minimum of fifteen (15) percent of the land area throughout a TND shall be devoted to non-residential uses, including, but not necessarily limited to open space and civic uses. Such uses shall be located within walking distance of residential uses or areas.
- (3)** Mixed residential and non-residential uses are encouraged within a single project or structure, particularly integrated or vertical mixed use projects, in which uses are located on different floors of a single structure. Residential uses that are part of a vertical-mixed use project located within a TND shall be permitted as-of-right, provided that the project otherwise meets other applicable requirements.
- (4)** To encourage a diversity of residents, while at the same time preventing visual monotony in neighborhoods, no single housing type may comprise more than twenty-five (25) percent of a TND, unless the applicant can demonstrate that a less diverse mix is more appropriate.

(C) Permitted Densities

The specific maximum density that would be appropriate in a given area will depend on the anticipated transportation, environmental, and infrastructure impacts of a specific development. Therefore, the maximum permitted densities and total number of dwelling units shall be established during the development review process. Requests for density increases shall be submitted at the time of development application.

(D) Dimensional Standards

In order to promote flexibility and creativity of design, dimensional requirements are not explicitly defined for TNDs. Bearing in mind that one intent of the TND is to encourage a pedestrian scale and urban level of activity, the determination of appropriate setbacks, building heights, and maximum lot coverage for specific uses within a TND may be made through the Planned Development (PD) and/or site-specific review process. However, the following should be considered as general guidelines in establishing dimensional requirements for development in specific TND projects:

- (1) Build-to/maximum setback lines that establish a strong street edge by bringing buildings to or close to the sidewalk line are encouraged.
- (2) Where setbacks are established they shall apply only to the enclosed portions of a building. Front porches and stoops, canopies, and colonnades shall be allowed to encroach into the setback, where a setback may be required. Balconies may encroach up to five (5) feet beyond the lot line.
- (3) The maximum dwelling footprint shall not exceed fifty (50) percent of the lot, except that attached dwelling structures may exceed this figure if at least thirty (30) percent of the lot area is developed as private, landscaped open space.
- (4) The maximum non-residential structure footprint shall not exceed sixty (60) percent of the lot, unless a minimum of fifteen (15) percent of the lot area is developed as private, landscaped open space.
- (5) In all cases, the building separation distances shall meet the minimum requirements of the NC State Building Code.

(E) Additional Standards

- (1) Generally, similar uses (uses within the same land use category; i.e., residential, institutional, commercial,) shall face each other across streets, whereas dissimilar but adjacent uses shall abut at rear lot lines. Landscape buffers between dissimilar uses shall be provided in accordance with the provisions of Section 7.2.3(B).
- (2) All developments over fifty (50) acres shall preserve/establish, to the maximum extent feasible, a greenbelt around the perimeter of the development, pursuant to Section 7.2.3(B). The perimeter greenbelt provides both a buffer and a definable edge between the TND and adjacent developments. However, the requirement for greenbelts may be waived in infill areas in order to maintain the continuity of the urban fabric.
- (3) The development plan shall designate the general location of publicly or privately owned civic lots for civic buildings and uses, including public monuments or gateways into an ensuing space, as the terminus of street vistas for all major internal streets. In addition, public buildings and uses shall be located fronting on or adjacent to a square, plaza, or village green whenever possible.
- (4) TND developments may utilize Section 9.6 of this Ordinance as it relates to signage.

8.5.5 Design Standards

The design of buildings, streets and streetscapes, landscapes, and open spaces in TND projects shall be consistent with the standards contained in this Ordinance, and the Town's Site Design Standards, Community Appearance Manual, and Standard Specifications and Details Manual, as applicable.

8.5.6 Approval Process

TNDs shall be approved using the process for rezoning to PDD or MXD, set forth in Section 3.4.3 or 4.5.2.

(Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2013-LDO-02, passed 6-13-13; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2023-LDO-03, 6-22-23)

CHAPTER 9: SIGNS

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Chapter 9: SIGNS**9.1 GENERAL PROVISIONS****9.1.1 Purposes and Effects****(A) Purpose, Intent, and Scope**

It is the purpose of this Chapter to promote the public health, safety and general welfare through reasonable, consistent, and non-discriminatory sign regulations. The sign regulations in this chapter are not intended to censor speech or to regulate viewpoints, but instead are intended to regulate the adverse secondary effects of signs. The sign regulations are especially intended to address the secondary effects that may adversely impact aesthetics and traffic and pedestrian safety. The sign regulations are designed to serve substantial governmental interests and, in some cases, compelling governmental interests such as traffic safety and warning signs of threats to bodily injury or death. This article is not intended to extend its regulatory regime to objects that are not traditionally considered signs for purpose of government regulation.

In order to preserve and promote the Town of Cary as a desirable community in which to live, vacation, and do business, a pleasing, visually attractive environment is of foremost importance. The regulation of signs within the Town is a highly contributive means by which to achieve this desired end. Further it continues to be the purpose of this Chapter 9 to promote optimum conditions for serving sign owners' needs and respecting their rights to identification while balancing the aesthetic interests of the community. The regulation of signs within the Town is necessary and in the public interest and these regulations have been prepared with the intent of enhancing the visual environment of the Town and promoting its continued well-being, and are intended more specifically to further the following interests:

(1) Aesthetics

To maintain and enhance the beauty, unique character, aesthetic environment, and quality of the Town of Cary, that will attract commerce, businesses, economic development, residents, and visitors; to preserve, conserve, protect, and enhance the aesthetic quality and scenic beauty of all zoning districts of the Town; to regulate the appearance and design of signs in a manner that promotes and enhances the beautification of the Town and that complements the natural surroundings in recognition of the Town's reliance on its natural surroundings and beautification efforts in retaining economic advantage for its community; and to assure that the benefits derived from the expenditure of public funds for the improvement and beautification of streets, sidewalks, public parks, public rights-of-way, and other public places and spaces, are protected by exercising reasonable controls over the physical characteristics and structural design of signs.

(2) Traffic and Pedestrian Safety

To improve traffic and pedestrian safety through properly located signs; to regulate signs in a manner so as to not interfere with, obstruct the vision of, or distract motorists, bicyclists or pedestrians; to allow for traffic control devices consistent with national standards and whose purpose is to promote highway safety and efficiency by

providing for the orderly movement of road users on streets and highways, and that notify road users of regulations and provide warning and guidance necessary for the safe, uniform, and efficient operation of all elements of the traffic stream.

(3) Economic Development

To promote economic development and the value of commercial and residential properties, through sensitivity to surrounding land uses and maintaining an attractive community appearance.

(4) Effective Communication

To encourage signs which are clear and legible; to encourage the effective use of signs as a means of communication.

(5) Historical Character

To emphasize the Town's historical character by promoting pedestrian oriented and appropriately scaled signage.

(6) Identification of Goods and Services

To aid the public and private sectors in providing signage that could be used to identify the location of goods and services.

(7) Compatibility with Surroundings

To allow signs that are compatible with their surroundings and aid orientation, while precluding the placement of signs that contribute to sign clutter or that conceal or obstruct adjacent land uses or signs; to preclude signs from conflicting with the principal permitted use of the site and adjoining sites; and to minimize the possible adverse effect of signs on nearby public and private property.

(8) Reduction of Visual Clutter

To reduce visual clutter that may otherwise be caused by the proliferation, improper placement, illumination, animation, excessive height, and excessive size (area) of signs which compete for the attention of pedestrian and vehicular traffic.

(9) Use Considerations

To encourage and allow signs that are appropriate to the use of the property on which they are located.

(10) Scale, Integration and Design

To establish sign size in relationship to the scale of the lot and building on which the sign is to be placed or to which it pertains; to foster the integration of signage with architectural and landscape designs; to provide flexibility and encourage variety in signage, and create an incentive to relate signage to the basic principles of good design; and to promote the use of signs that positively contribute to the aesthetics of the community, are appropriate in scale to the surrounding buildings and landscape, and advance the Town's goals of quality development.

(11) Maintenance and Safety

Except to the extent expressly preempted by state or federal law, to ensure that signs are constructed, installed and maintained in a safe and satisfactory manner, and to protect the public from unsafe signs.

(12) Property Values

To protect property values by precluding, to the maximum extent possible, sign types that create a nuisance to the occupancy or use of other properties as a result of their physical characteristics such as their size (area), height, number, illumination, and movement; and to protect property values by ensuring that the number of signs are in harmony with buildings, neighborhoods, and conforming signs in the area.

(13) Enforcement

To enable the fair and consistent enforcement of these sign regulations; and to provide standards regarding the non-communicative aspects of signs, which are consistent with local, state, and federal law.

(B) Relationship to Comprehensive Plan

A major emphasis of the Town's Comprehensive Plan is on the design of the community. In particular, the Comprehensive Plan emphasizes preserving and maintaining Cary's attractive appearance, with attention to the appearance of, and views from, public spaces, while also encouraging high quality and attractive development.

(C) Effect

The effect of this chapter, as more specifically set forth herein, is:

- (1)** to establish a system to allow a variety of types of permanent signs, subject to the standards and the permit procedures of this chapter;
- (2)** to allow certain permanent signs that are small, unobtrusive and incidental to the principal use of the respective lot or parcel on which they are located, subject to the substantive requirements of this chapter, but without a requirement for permits;
- (3)** to provide greater flexibility in special areas of interest and/or higher densities such as the Town Center, Mixed Use Overlay Districts, National Register Historic Districts or traditional neighborhood developments;
- (4)** to provide for temporary signs in limited circumstances; and
- (5)** to provide for the enforcement of the provisions of this chapter.

9.1.2 Rules of Interpretation

(A) Meanings of Words and Phrases

Words and phrases not defined in this chapter but defined elsewhere in the LDO or Town Code shall be given the meanings set forth there. All other words and phrases shall be given their common, ordinary meanings, unless the context clearly requires otherwise. Section headings or captions are for reference purposes only and shall not be used in the interpretation of this chapter. Illustrations included in the code shall be used in interpreting the relevant provisions, but where the text conflicts with an illustration, the text shall control.

(B) Relationship to Land Development Ordinance and Town Code

To the maximum extent practicable, this chapter shall be interpreted in accordance with rules of interpretation and construction and definitions provided in this Ordinance and Town Code. In case of conflict among them, however, this shall be the order of priority in selecting among apparently conflicting provisions:

- (1) Where this chapter directly addresses an issue, it shall control over any conflicts;
- (2) Where this chapter does not directly address an issue or is unclear, the other chapters of this Ordinance shall control over other provisions of the Town Code; and
- (3) Where neither this chapter nor other chapters of this Ordinance directly addresses or resolves an issue of interpretation or construction, then this chapter shall be interpreted in the context of the Town Code.

9.1.3 Definitions

The following terms shall be defined as follows:

Artwork means a two- (2-) or three- (3-) dimensional representation of a creative idea that is expressed in a form and manner as to provide aesthetic enjoyment for the viewer rather than to specifically convey the name of the business or a commercial message about the products or services offered on the property upon which the artwork is displayed.

Banner means a sign made of wind and weather resistant cloth or other lightweight material, intended to hang either with or without frames or in some other manner as not to be wind activated, and possessing characters, letters, illustrations, or ornamentations applied to paper, plastic or fabric of any kind. Flags shall not be considered banners.

Beacon means any light with one (1) or more beams directed into the atmosphere or directed at one (1) or more points not on the same site as the light source; also, any light with one (1) or more beams that rotate or move.

Billboard means a sign structure and/or sign utilized to display a commercial message or provide commercial advertising for an establishment, an activity, a product, service or entertainment, which is sold, produced, manufactured, available or furnished at a place other than on the property on which said sign and/or sign structure is located.

Commercial Message means any sign wording, copy, logo, or other representation or image that directly or indirectly names, advertises, or calls attention to a product, commodity, service, sale, sales event, activity, entertainment, or other commercial activity.

Flag means any fabric or bunting containing distinct colors, patterns, or symbols, used as an ornamental flag or as a symbol that does not contain a commercial message, and that is displayed on a flagpole. (See also Flag, Ornamental).

Flag, Ornamental means any fabric or similar material containing patterns, drawings, or symbols used for decorative purposes and designed to be flown as a flag.

Flagpole means a pole on which to raise or display a flag.

Pennant means any series of small flag-like or streamer-like pieces of cloth, plastic, paper, or similar material attached in a row to any staff, cord, building, or at only one (1) or two (2) edges, the remainder hanging loosely.

Permanent Sign means any sign which, when installed, is intended for permanent use. Any sign with an intended use in excess of twelve (12) months from the date of installation, unless otherwise stated in Section 9.3, shall be deemed a permanent sign.

Sign means any device, fixture, placard, or structure, that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. The following shall not be considered signs subject to the regulations of Chapter 9 of this Ordinance: artwork, cemetery markers, machinery or equipment signs, lighting used to accentuate architectural or landscaping features, and holiday and seasonal decorations.

Sign, A-Frame means a portable sign utilizing an upright, rigid supporting frame in the form of a triangle or an inverted "V" style of framing to support the sign.

Sign, Animated means a sign which includes action, motion, or color changes, or the optical illusion of action, motion, or color changes, including signs set in motion by movement of the atmosphere, or made up of a series of sections that turn.

Sign, Canopy

Any sign that is a part of or attached to a structural protective cover over a door, entrance, window or outdoor service area. A marquee is not a canopy sign.

Sign, Changeable Copy means a sign designed so that letters, numbers, symbols and other similar characters attached to the sign can be changed manually in the field to indicate a different message.

Sign, Digital means a sign capable of displaying words, symbols, or images that can be electronically or mechanically changed by remote, automatic, or electrical means.

Sign, Discontinued means a sign or sign structure whose owner has failed to operate and maintain said sign or sign structure for a period of ninety (90) days or longer. The following conditions shall be considered the failure to operate or maintain a sign or sign structure: (1) a sign displaying advertising for a product or service which is no longer available or displaying advertising for a business which is no longer operating; or (2) a sign which is blank.

Sign, Electronic Changeable Message means an electronically-activated sign or any portion thereof whose message content of display, either whole or in part, may be changed by means of electrical, electronic, or computerized programming; an "electronic changeable message sign" includes a sign or any portion thereof that displays electronic, non-pictorial, text information in which each alphanumeric character, graphic, or symbol is defined by a small number of matrix elements using different combinations of light-emitting diodes (LEDs), fiber optics, light bulbs, or other illumination devices within the display area. An "electronic changeable message sign" includes a digital sign. Drive-through Lane signs shall not be considered electronic changeable message signs.

Sign, Feather means a sign extending in a sleeve-like fashion down a telescoping or fixed pole that is mounted in the ground or on a building or stand. A feather sign is usually shaped like a sail or feather, and attached to the pole support on one (1) vertical side.

Sign, Flashing means a sign which permits light to be turned on or off intermittently more frequently than once per minute, or any illuminated sign on which such illumination is not kept stationary or constant in intensity and color at all times when such sign is in use, including an LED (light emitting diode) or digital sign.

Sign, Holographic Display means an advertising display that creates a three (3)-dimensional image through projection, OLED (organic light emitting diode), or any similar technology.

Sign, Intermittent means a sign which permits light to be turned on or off intermittently more frequently than once every twelve (12) hours or which is operated in a way whereby light is turned off or on intermittently or which varies in intensity or color more frequently than once every twelve (12) hours, including any illuminated sign on which such illumination is not kept stationary or constant in intensity or color at all times when the sign is in use, including but not limited to an LED (light emitting diode) or digital sign.

Sign, Machinery or Equipment means a sign incorporated into machinery or equipment by a manufacturer or distributor, that functions only to identify or advertise the product or service dispensed by the machine or equipment, such as signs customarily affixed to vending machines, newspaper racks, telephone booths, and gasoline pumps.

Sign, Moving means any sign in which the sign itself or any portion of it physically moves or revolves.

Sign, Neon means any electric discharge tubing manufactured into shapes that form letters, parts of letters, skeleton tubing, outline lighting, or other decorative elements, and filled with various inert gases.

Sign, Off-site means any sign that is used to attract attention to an object, person, product, institution, organization, business, service, event, or location that is not located on the premises upon which the sign is located. This shall not include traffic, directional, or regulatory signs or notices erected by a federal, state, county, or municipal government agency.

Sign, Pole means any sign which is mounted on a freestanding pole or poles, or other support structure such that the bottom edge of the sign face is forty-two (42) inches or more above the adjacent grade or roadway crown height.

Sign, Portable means any sign not permanently attached to the ground or other permanent structure or a sign designed to be transported, including, but not limited to, signs designed to be transported by means of wheels; signs made as A-frames or T-frames; balloons used as signs, umbrellas used for commercial messages; and signs attached to or painted on vehicles or trailers parked and visible from the public right-of-way.

Sign, Projecting means a sign attached to a building wall and extending laterally more than eighteen (18) inches from the face of such wall.

Sign, Scrolling means a sign that, by mechanical or electronic means, displays a message that moves up, down, or across a display screen or surface.

Sign, Snipe means a sign made of any material when such sign is tacked, nailed, posted, pasted, glued or otherwise attached to or placed on public property such as but not limited to a public utility pole, a public street sign, a public utility box, a public fire hydrant, a public right-of-way, public street furniture, or other public property; except for A-frame signs that are temporarily placed on public property under such limitations and constraints as may be set forth in this Chapter.

Sign, Suspended means a sign that is suspended from the underside of a horizontal plane surface and supported by such surface.

Sign, Temporary means a sign intended for a use not permanent in nature. For the purposes of this Chapter 9, a sign which is intended for use of one (1) year or less, unless otherwise allowed in this Chapter 9 shall be deemed a temporary sign.

Sign, Vehicular means a sign which is attached to, mounted, pasted, painted, or drawn on a vehicle and covers more than four (4) square feet of the vehicle.

Sign, Verandah means a sign consisting of freestanding letters or numbers and located above the outer fascia of a verandah or balcony which does not exceed the highest point of the building roofline.

Sign, Wall means any sign painted on or attached to and extending not more than six (6) inches from an exterior wall in a parallel manner.

Sign, Windblown means a sign which uses objects or materials fastened in such a manner as to move upon being subjected to pressure by wind, and shall include pennants, ribbons, spinners, streamers, or captive balloons; however, the term windblown sign shall not include flags.

Sign, Window means any sign painted on, attached to, or displayed in a window so as to direct attention of persons outside the building to a product or activity on the premises.

9.1.4 Applicability

(A) General

This Chapter 9 applies to signs on property located in all zoning districts.

A sign may be erected, placed, established, painted, created or maintained in the Town only in conformance with the standards, procedures, exemptions and other requirements of this chapter. Signs exempt from regulation under Section 9.1.4(B) shall not otherwise be subject to this Chapter.

(B) Signs Exempt From Regulations

The following signs shall be exempt from regulation under this Chapter:

- (1) Any official or public notice or warning sign required by a valid and applicable federal, state, or local law, regulation or chapter; by a public utility company; or by order of a court of competent jurisdiction.
- (2) Any sign located within the right-of-way or on private property that is used as a traffic control device. This includes, but is not limited to, any sign that is described and identified in the Manual on Uniform Traffic Control Devices (MUTCD) and approved by the Federal Highway Administrator as the National Standard, regulatory signs (that give notice of traffic laws or regulations), warning signs (that give notice of a situation that might not readily be apparent), and guide signs (that show route designations, directions, distances, services, points of interest, and other geographical, recreational, or cultural information).
- (3) Any sign, other than a window sign, inside a building, that is not visible from off the site on which it is located.
- (4) Any sign inside a breezeway or entranceway, under the roof and within the foundation line of the building but outside the actual entrance door, where such sign cannot be seen by a person of ordinary eyesight who is not under the roof of the building or is otherwise outside the building.
- (5) Any sign inside an athletic field or other enclosed outdoor space, where the sign is not legible from more than three (3) feet beyond the lot line of the site on which it is located.
- (6) Signs erected by or on behalf of a governmental or quasi-governmental agency including, but not limited to, noncommercial signs identifying a government building or service, traffic control signs, street name signs, street address signs, warning signs, safety signs, informational signs, traffic or other directional signs, public notices of events, public notice of government actions, proposed changes of land use, any proposed rezoning, or any other government speech.
- (7) Signs on single-use sites, where the sign is not visible from a public right-of-way or adjacent residential property.
- (8) One (1) building marker or engraved cornerstone per building, containing no logo or commercial message and made of a permanent material that is permanently attached to or incorporated into the building wall.
- (9) A sign on a vehicle, other than a prohibited Vehicular Sign or Signs.

(C) Prohibited Signs

The following signs are specifically prohibited, unless specified otherwise in this Chapter:

- (1) Any sign that copies or imitates an official sign or purports to have official status.
- (2) Beacons.

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- (3) Windblown signs.
 - (4) Pennants.
 - (5) Canopy signs.
 - (6) Animated signs.
 - (7) Portable signs.
 - (8) Any sign that obstructs or substantially interferes with any window, door, fire escape, stairway, ladder, or opening intended to provide light, air, ingress, or egress to any building.
 - (9) Off site signs, billboards, and pole signs.
 - (10) Discontinued signs, including all structural, support, and other related elements.
 - (11) Signs made wholly or partially of highly reflective material, so as to generate a contrast between the sign and adjacent surfaces or the surrounding area.
 - (12) Signs on roofs.
 - (13) Signs located in the clear sight triangle as defined by the Town's Standard Specifications and Details Manual.
 - (14) Signs erected or lighted in such a manner or in such location as to obstruct the view of, or be confused with, any authorized traffic signal, notice or control device.
 - (15) Signs in the public right-of-way, except for the following:
 - (a) Signs on awnings per Section 9.2.5(A);
 - (b) Projecting Signs per Section 9.2.5(I);
 - (c) Suspended Signs per Section 9.2.5(J);
 - (d) Signage on marquees per Section 9.2.5(L); and
 - (e) Principal Ground Signs at the entrance of residential and non-residential subdivisions per Section 9.2.5(F).
 - (16) Neon signs located in such a manner as to attract public attention from outside the building except as permitted in Section 9.2.6(B).
 - (17) Vehicular Signs when the vehicle is parked such that the sign is visible from a right-of-way within one hundred (100) feet of the vehicle, except where there is no reasonable alternative location on the site to park the vehicle.
 - (18) Feather signs.

- (19) Electronic changeable message signs.
- (20) Digital signs.
- (21) Intermittent signs.
- (22) Flashing signs.
- (23) Any freestanding sign, with exception of an entry monument alternative to a principal ground sign, that is more than six (6) feet above the elevation of the normal grade at the base of the sign. The foregoing maximum sign height limitation, which applies under all circumstances except as noted herein, does not preclude the more restrictive sign height limitations as set forth in Section 9.2 or 9.3 of this Chapter.
- (24) Any wall sign that is greater than the lesser of three (3) square feet per linear foot of building frontage, or ten percent (10%) of the wall area to which the sign is affixed. The foregoing maximum sign area limitation, which applies under all circumstances except as noted herein, does not preclude the more restrictive sign area limitations as set forth in Section 9.2 or 9.3 of this Chapter.
- (25) Any sign which emits a sound, odor, or visible matter.
- (26) Snipe signs.
- (27) Holographic Display Signs.
- (28) Moving Signs.
- (29) Scrolling Signs.
- (30) Signs attached or painted on trees, rocks or natural features.
- (31) Ground signage placed on a supporting base for public art or on the actual artwork.

(D) Transitional Provisions

- (1) All permanent signs legally erected prior to December 8, 2016 may remain in place and in use, subject to certain restrictions on modification, replacement and other actions affecting the sign, as set forth in this Ordinance.
- (2) All holders of permits for permanent signs issued legally prior to December 8, 2016 may erect the signs that are the subject of such permits within the times allowed by such permits, and such signs shall then be treated as though they had been erected prior to December 8, 2016. However, such permits may not be extended or amended unless the sign that is the subject of such permit will conform to all of the requirements of this chapter.
- (3) All violations of the sign regulations in effect prior to December 8, 2016 shall remain violations of the Ordinances of the Town and all penalties and enforcement remedies set forth hereunder shall be available to the Town as though the violation were a violation of this chapter. However, if the effect of this chapter is to make a permanent

sign that was formerly nonconforming become conforming, then enforcement action shall cease except to the extent of collecting penalties (other than the removal of the permanent sign) for violations that occurred prior to December 8, 2016.

9.1.5 Calculation and Measurement

(A) Sign Area Calculations

(1) Area Computation of Individual Signs

The allowable sign area for permanent signs shall be calculated as provided below:

(a) General Requirements

The area of a sign face (which is also the sign area of a wall sign or other sign with only one (1) face) shall be computed by encompassing the extreme limits of the writing, representation, emblem or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed, into no more than two (2) abutting rectangles, one (1) of which shall encompass a minimum of seventy-five percent (75%) of the total sign area. The area of sign face of distinct individual signs shall be separately measured in accordance with the above methodology.

(b) Exceptions to General Requirements

- (i)** Suspended and projecting signs shall be calculated separately from other wall signs.
- (ii)** The square footage of wall signs associated with theaters shall be counted against the total wall sign area allotment. However, each sign shall be measured separately rather than placed together inside a rectangle.
- (iii)** Poster boxes shall be measured individually without regard for the spaces between the individual boxes.

(2) Area Computation of Multi-Faced Signs

Where the sign faces of a double-faced sign are parallel or the interior angle formed by the faces is sixty (60) degrees or less, only one (1) display face shall be measured in computing sign area. The areas of all faces of a multi-faced sign shall be added together to compute the area of the sign. Sign area of multi-faced signs is calculated based on the principle that all sign elements that can be seen at one (1) time or from one (1) vantage point should be considered in measuring that side of the sign. Double-faced signs that are displayed on gateway entry monuments within Town approved area plans, may be displayed on walls with an interior angle of up to ninety (90) degrees.

(B) Sign Height Computation

The height of a sign shall be computed as the distance from the base of the sign at normal grade to the top of the highest attached component of the sign. Normal grade shall be construed to be the newly established grade after construction, exclusive of any filling, berming, mounding or excavating solely for the purpose of locating the sign. In cases where the normal grade is below grade at street level, sign height shall be computed on the assumption that the elevation of the normal grade at the base of the sign is equal to the elevation of the nearest point of the crown of a public or private street.

(C) Building Frontage

Building frontage shall mean the horizontal length of a building on the side with its principal entrance. If that side is a straight wall, then the building frontage shall be the length of the wall. If the side is not a straight wall, the building frontage shall be the horizontal distance from the corner at one (1) end of the side of the building with the principal entrance to the other corner on the same side of the building; where that side of the building is concave, then the measurement shall be made in a straight line from corner to corner; where the side of the building is convex or has one (1) or more sections that project in front of the front corners, then the measurement shall be made as the shortest distance between two (2) lines projected from the two (2) front corners of the building, with such lines parallel to each other and as close as practicable to perpendicular to the front of the building.

(D) Roofing Elements

Roofing elements that are within thirty (30) degrees of vertical (sometimes loosely called a "mansard roof") will be considered part of the wall for purposes of sign placement. Signage shall not be located on portions of other architectural design features that extend above the predominate roofline of the building.

9.1.6 Plans and Permits Required

Permits are required for the following sign types: Awning, Vehicle-Oriented Directional, Wall-Mounted Directional, Drive-through Lane, Principal Ground, Entry Monument, New Construction Alternative, Suspended, Verandah, Projecting, Wall (except for signs on property containing a single-unit residence or duplex), Façade Renovation Alternative, and New Business Alternative. No other sign types shall require a sign permit.

(A) Sign Permits

If a sign requiring a permit under this chapter is to be placed, constructed, erected or modified on a site, the owner of the lot or parcel shall secure a sign permit prior to the construction, placement, erection or modification of such a sign in accordance with the requirements of this chapter and the procedure listed in Section 3.16. No sign permit shall be issued for the erection of a prohibited sign. Until a sign permit is obtained from and the appropriate fee paid to the town, no permanent sign shall be erected, altered, relocated, maintained or displayed. The sign permit is in addition to any building permit required to be obtained pursuant to the provisions of the State building code.

No sign permit or permit fee shall be required for changing the copy of a sign, including any change of copy on a changeable copy sign, as long as no changes are made to the sign's height, size, location, or structure. A sign lawfully erected may be repainted or have ordinary and customary repairs performed, including replacement of plastic or glass panels, without a sign permit; however, if such sign is to be structurally altered in any manner, a new sign permit shall be required and the altered sign must meet all requirements of this Chapter and the Land Development Ordinance.

(B) Building Permits

The town has no authority to waive or provide variances to the State building code, therefore all signs shall comply with applicable provisions of the State building code.

(C) Electrical Permits

Electric signs that have internal wiring or lighting equipment, and external lighting equipment that directs light on signs, shall not be erected or installed until an electrical permit has been obtained from the Inspections and Permits Department. All such signs and equipment shall bear the seal of approval of an electrical testing laboratory that is nationally recognized as having the facilities for testing and requires proper installation in accordance with the National Electrical Code. All wiring to electric signs, or to freestanding equipment that lights a sign, shall be installed underground.

9.1.7 Consent of Legal Owner of Property

No sign may be displayed without the consent of the legal owner of the property on which the sign is mounted or displayed. For purposes of this Chapter, "owner" means the holder of the legal title to the property and any party and person holding a present right to possession, control, or use of the property.

9.1.8 Sign Maintenance

All permanent signs shall be maintained in good structural condition, in compliance with all building and electrical codes, and in conformance with this chapter, and shall adhere to the following provisions:

- (A)** A sign shall have no more than twenty (20) percent of its surface area covered with disfigured, cracked, ripped or peeling paint, poster paper or other material for a period of more than thirty (30) days.
- (B)** A sign shall not stand with bent or broken sign facing, with broken supports, with loose appendages or struts, or more than fifteen (15) degrees from vertical for a period of more than ten (10) days.
- (C)** A sign shall not have weeds, trees, vines, or other vegetation growing upon it, or obscuring the view of the sign from the public right-of-way from which it is to be viewed, for a period of more than thirty (30) days.
- (D)** An internally illuminated sign shall be allowed to stand with only partial illumination for a period of no more than thirty (30) days.
- (E)** Flags shall not be faded, tattered, or torn.

9.1.9 Violations; Enforcement; Removal of Certain Signs**(A) General**

Violations of this chapter and enforcement procedures are addressed in Chapter 11.

(B) Removal of Signs Creating Traffic Hazard

Any signs or light sources deemed to create a traffic hazard per Sections 9.1.4(C)(13) or 9.1.4(C)(14) shall be removed at the direction of the Planning Director. If not removed by owners or occupants of the property within ten (10) days of notice, the Director shall cause the signs to be otherwise removed, and the cost of removal shall become a lien against the property until satisfied.

(C) Removal of Unauthorized Signs in Public Right-of-Way

Any sign placed in the public right-of-way in violation of this Chapter 9 shall be deemed a public nuisance and may be seized by the enforcement official or other representative of the Town, and the person owning or placing the sign may be charged both with a violation of this chapter and with the cost of removing and disposing of the sign.

(D) Removal of Discontinued Signs

Within sixty (60) days after a sign on a permanent freestanding sign structure or a permanent wall sign becomes a discontinued sign, it shall be the responsibility of the property owner to remove the discontinued sign and any associated sign structure and to patch and conceal any and all damage to any property resulting from the removal of the discontinued sign and associated sign structure, if any. The removal of a discontinued sign shall include all sign support components, angle irons, poles, and other remnants of the discontinued sign, which are not currently in use, or proposed for immediate reuse as evidenced by a sign permit application for a permitted sign.

(E) Removal of Unsafe Signs

The Planning Director, with or without notice, may secure the immediate removal of an unsafe sign or insecure sign if in his or her judgment and opinion the sign presents an immediate peril to the public health and safety.

9.1.10 Viewpoint Neutrality

Notwithstanding anything in this Chapter 9 or this Land Development Ordinance to the contrary, no sign or sign structure shall be subject to any limitation based upon the viewpoint of the message contained on such sign or displayed on such sign structure.

9.1.11 Substitution of Messages

Notwithstanding anything in this Chapter to the contrary, any sign allowed under this Chapter, without a permit, by sign permit, or by variance, may contain, in lieu of any other message or copy, any lawful noncommercial message so long as said sign complies with the size, height, area and other requirements of this Chapter.

9.1.12 Severability**(A) Generally**

If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter.

(B) Severability where less speech results

Without diminishing or limiting in any way the declaration of severability set forth above in subsection (A), above, or elsewhere in this chapter, the LDO, or any adopting ordinance, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter, even if such severability would result in a situation where there would be less speech, whether by subjecting previously exempt signs to permitting or otherwise.

(C) Severability of provisions pertaining to prohibited signs

Without diminishing or limiting in any way the declaration of severability set forth above in subsection (A), above, or elsewhere in this chapter, the LDO, or any adopting ordinance, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter or any other law is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter that pertains to prohibited signs, including specifically those signs and sign types prohibited and not allowed under Section 9.1.4(C). Furthermore, if any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Section 9.1.4(C) is declared unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect any other part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of Section 9.1.4(C) thereby ensuring that as many prohibited sign types as may be constitutionally prohibited continue to be prohibited.

(D) Severability of prohibition on billboards

If any part, section, subsection, paragraph, subparagraph, sentence, phrase, clause, term, or word of this Chapter and/or any other LDO provisions and/or laws are declared invalid or unconstitutional by the valid judgment or decree of any court of competent jurisdiction, the declaration of such unconstitutionality shall not affect the prohibition on billboards as contained in this Chapter or this LDO.

(Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2022-LDO-02, 4-28-22)

9.2 PERMANENT SIGNS

9.2.1 Applicability

This Section 9.2 applies to permanent signs in all zoning districts.

9.2.2 Sign Materials

- (A) Except for flags permitted per Sections 9.2.5(C) and 9.2.7(A), all permanent signs shall be constructed of permanent materials and shall be attached to the ground, a building or another structure by direct attachment to a wall, frame or structure.
- (B) Unless otherwise specified in a Master Sign Plan, the structural supports and foundation of principal ground signs shall match the principal material found in the principal structure(s) on the site.
- (C) Background material of principal ground signs shall match the primary material found in the principal structure(s) or be architecturally compatible in style and color (e.g., materials such as synthetic wood and other similar materials may be considered).
- (D) Materials such as metal, PVC, and acrylic may be used for individual letters and raceways.
- (E) Changeable copy shall be allowed only on signs permitted in accordance with Section 9.2.5 for theaters, service stations, and for property with an institutional use provided that:
 - (1) A theater with a marquee may display changeable copy on the marquee. A theater without a marquee may display one (1) changeable copy sign on each wall permitted to have wall signs.
 - (2) A service station may use up to one-half ($\frac{1}{2}$) of the area of its principal ground sign or one-half ($\frac{1}{2}$) of the area of any wall sign for changeable copy.
 - (3) A property with an institutional use may have changeable copy on up to fifty percent (50%) of the principal ground sign and/or the entire area of Directional signs. When used on a principal ground sign, the materials must follow the standards for principal ground signs stated in this chapter.

9.2.3 Sign Color

(A) Number of Colors

- (1) Permanent signs may incorporate a maximum of four (4) colors, including background color, and excluding colors found in logos and trademarks allowed per Section 9.2.3(B).
- (2) The text of the primary message shall be a single color, except where a second color is used to create an outline or shadow effect.
- (3) The color of the text of the primary message may be altered up to twelve (12) times per year, provided the following requirements are met:

- (a) The wall sign is located on a single-tenant building five (5) stories or taller; and
- (b) All portions of the primary message display a single color at any given time;
- (c) The frequency of change is no shorter than eight (8) hours; and
- (d) A palette of up to twelve (12) sign colors for the primary message text is approved as a component of the master sign plan for the development. Such palette may not include high intensity or fluorescent colors.

(B) Color Options

- (1) The following sign colors are allowed:
 - (a) black;
 - (b) white;
 - (c) colors found in the approved development plan and present in the same building segment where the sign is displayed;
 - (d) one (1) color found in the approved development plan and present in another building segment of the same development plan;
 - (e) one (1) color option to the Master Sign Plan that is not found in the development plan but is of a similar hue and intensity as the development plan color palette; and
 - (f) other colors in logos or trademarks provided that the size of the logo does not exceed twenty percent (20%) of the allowable sign area. The size of the logo may be increased to seventy-five percent (75%) of the allowable sign area provided the following standards for the logo are met:
 - (i) May not be internally illuminated;
 - (ii) Shall be three (3) dimensional;
 - (iii) Shall be made of carved or simulated carved wood, stone, or metal; and
 - (iv) Colors used shall not be high intensity or fluorescent.

(C) Prohibited Colors

The use of high intensity colors or fluorescent pigments, except as part of a logo or trademark that does not exceed twenty percent (20%) of the allowable sign area, is prohibited on permanent signs.

9.2.4 Illumination**(A) Uniformity**

Lighting on permanent signs shall be consistent throughout a project, and no permanent sign or portion thereof shall be illuminated differently from any other permanent sign, unless provided for with an approved Master Sign Plan and Development Plan in which there is variety in façade design or building type.

(B) External Illumination

Exterior illumination of permitted permanent signs shall be allowed except where prohibited for specific sign types in Section 9.2. Such lighting shall be directed only upon the sign face and architectural elements of the sign structure, and shall be directed to prevent off-site glare.

(C) Internally-illuminated Cabinet Signs

Internally-illuminated cabinet signs shall be allowed as provided below:

- (1) Principal Ground Signs:** A single enclosed internally-illuminated cabinet containing all sign text, logos and symbols may be incorporated into a principal ground sign subject to the following:

- (a)** Only the sign text and logos may be illuminated.
- (b)** The total area of the logo(s) shall not exceed twenty percent (20%) of the allowable sign area.
- (c)** Background material shall be opaque and meet requirements of Section 9.2.2.

(2) Wall Signs:

- (a)** A single enclosed internally-illuminated cabinet containing a logo may be incorporated into a wall sign subject to the following:
 - (i)** The total area of the logo cabinet shall not exceed twenty percent (20%) of the allowable sign area.
- (b)** Internally-illuminated enclosed cabinets (such as pill signs) may be permitted as a component of a wall sign subject to the following:
 - (i)** the principal sign message consists of internally-illuminated channel letters attached directly to the building wall, or on a raceway;
 - (ii)** the background of the cabinet-type sign component is opaque, except where the sign message is a logo or trademark; or the sign is a theatre marquee sign or poster box per Section 9.2.5(L)(4).
 - (iii)** the combined area of such cabinet component shall not exceed one-third (1/3) of the total area of the wall sign;

- (iv) such signs are included in and comply with an approved uniform sign plan, where such plan is applicable; and
 - (v) construction methods and materials are consistent with the associated channel letters.
- (3) Pedestrian-oriented directional ground signs may be internally-illuminated.
- (4) All other internally-illuminated cabinet-style ground and wall signs shall be prohibited.

9.2.5 Permanent Sign Types and Applicable Standards on Property Not Containing a Single-Unit Residence or Duplex

The following sign types are permitted on property located in all zoning districts, except lots or parcels containing a single-unit residence or duplex. Permanent signs shall be permitted in accordance with Table 9.2-1, subject to the applicable standards of this Section 9.2.5 and the provisions of any Master Sign Plan applicable to the site.

TABLE 9.2-1: TABLE OF PERMANENT SIGN TYPES ALLOWED ON PROPERTY NOT CONTAINING A SINGLE-UNIT RESIDENCE OR DUPLEX			
Sign Type		Sign Permit	Conditions
Awning Sign		Required	9.2.5(A)
Directional Sign	Vehicle-oriented Directional Ground Sign	Required	9.2.5 (B)(1)
	Wall-Mounted Directional Sign	Required	9.2.5 (B)(2)
	Pedestrian-oriented Directional Ground Sign	Not Required	9.2.5 (B)(3)
Permanent Flagpoles With Flags		Not Required	9.2.5 (C)
Incidental Sign		Not Required	9.2.5 (D)
Drive-through Lane Sign		Required	9.2.5 (E)
Principal Ground Sign		Required	9.2.5(F)
Entry Monument Alternative to Principal Ground Sign		Required	9.2.5 (G)
New Construction Alternative to Permanent Ground Sign		Required	9.2.5 (H)
Projecting Sign		Required	9.2.5 (I)
Suspended Sign		Required	9.2.5 (J)
Verandah Sign		Required	9.2.5 (K)
Wall Sign	Buildings with 3 or Fewer Floors	Required	9.2.5(L)(1)
	Buildings with More Than 3 Floors	Required	9.2.5(L)(2)
	Multi-family or Institutional Buildings in Residential Districts or PDDs	Required	9.2.5(L)(3)
	Theatres	Required	9.2.5(L)(4)
	Mixed-use Buildings	Required	9.2.5(L)(5)
Façade Renovation Alternative to Permanent Wall Sign		Required	9.2.5(M)
New Business Alternative to Permanent Wall Sign		Required	9.2.5(N)
Window Sign		Not Required	9.2.5(O)
Mailbox Sign		Not Required	9.2.5(P)

(A) Awning Sign

Awning signs shall be allowed, provided that:

- (1) On a single-occupant property, one (1) awning sign may be allowed only in lieu of all other signage otherwise permitted on the wall to which the awning is attached.
- (2) On a multi-occupant property, one (1) awning sign may be allowed over each occupant entrance, in lieu of other wall signs, and if so shown on the Master Sign Plan.
- (3) The maximum area of an awning sign shall not exceed ten percent (10%) of the total awning face front and side area.
- (4) Awning signs may be illuminated only with direct surface lighting and not with any form of backlighting.
- (5) Awning signs may project over a public right-of-way provided that no element of the sign hangs lower than seven (7) feet above the ground or pedestrian walkway.

(B) Directional Sign**(1) Vehicle-oriented Directional Ground Signs**

Vehicle-oriented directional ground signs shall be allowed in addition to Principal Ground Signs near each principal entrance to a parking area or at principal intersections within the parking area of a development project, or as shown on an approved Master Sign Plan. Such signs shall be located at least fifty (50) feet away from any public right-of-way in a manner that drivers can conveniently pull up to and read the sign without impeding traffic on any driveway or entrance serving the development.

(a) Vehicle-oriented directional ground signs shall be allowed as follows:

- (i) Vehicle-oriented directional ground signs may have a maximum height of five (5) feet, a maximum sign area of ten (10) square feet, and a maximum letter height of four (4) inches that shall not be legible from the public right-of-way.

(2) Pedestrian-oriented Directional Ground Signs

Pedestrian-oriented directional ground signs shall be allowed within multi-tenant sites in accordance with the following:

- (a) Such signs shall not be legible from the public right-of-way or private street or drive aisle;
- (b) Such signs shall have a maximum sign area of fifteen (15) square feet;
- (c) The sign structure shall have a maximum height of seven (7) feet; and
- (d) The location and design characteristics of such signs shall be included in the uniform sign plan for the development.

(3) Wall-mounted Directional Signs**(a) General**

Wall-mounted directional signs shall be permitted for buildings with multiple tenants and shall be allowed in addition to Primary Wall Signs provided that the total size of the wall-mounted directional sign does not exceed ten percent (10%) of the total wall area to which the sign is affixed.

(b) Additional Requirements in the Town Center

- (i)** The sign shall be located next to the principal entrance.
- (ii)** The sign shall not project outward from the wall more than six (6) inches.
- (iii)** The sign shall not extend above the parapet, eave or building facade.
- (iv)** All area over three (3) square feet shall be considered as part of the property's overall allowed sign area.
- (v)** The sign shall not be illuminated separately.

(C) Permanent Flagpoles with Flags

Permanent flagpoles with flags shall be allowed in accordance with the following:

(1) Sites Not Showing Flags and Flagpoles on Development Plans

In a non-residential or multi-family residential site not showing flags on an approved development plan, there shall be no more than three (3) flagpoles and two (2) flags per pole. Poles for such flags shall be located on the principal building wall on the site or within twenty (20) feet of the main building entrance.

(2) Sites Showing Flags and Flagpoles on Development Plans and Master Sign Plans

Flags may be included on a development plan and located as shown on that development plan, provided that:

- (a)** Flagpoles shall be limited to three (3) per principal building or multi-family residential complex;
- (b)** Flags are limited to two (2) flags per pole; and
- (c)** Flagpoles shall be located outside of the public street right-of-way.

(3) Flagpole Height and Flag Size

Flagpoles shall not exceed twenty-five (25) feet in height, and flags shall not exceed five (5) feet by eight (8) feet in size, except for:

- (a) Venues for recreational and entertainment uses that provide structured spectator seating to support spectator viewing. Such sites are allowed one (1) flagpole up to fifty (50) feet in height displaying flag(s) no larger than ten (10) feet by fifteen (15) feet, provided that the flagpole meets a setback from the property line of two (2) feet for every one (1) foot of flagpole height.
- (b) Non-residential buildings are allowed two (2) flagpoles extending up to twenty-five (25) feet above the height of the building, displaying flag(s) no larger than eight (8) feet by twelve (12) feet, provided that the building is setback from a thoroughfare by a minimum of three hundred (300) feet or the building contains a minimum of three (3) stories.

(4) Memorial Parks

Public parks that serve as a memorial to a particular event, individual(s) or group(s) may contain more than three (3) flagpoles; however, the total number of flags displayed may not exceed six (6).

(5) Public Athletic Fields/Complexes

A total of two (2) additional flags shall be allowed for each playing field containing permanent seating for spectators; the additional flags may be displayed on separate poles or on the same pole; the additional flags may be displayed at such field(s) only while used for games.

(D) Incidental Sign

Incidental signs shall be allowed provided that they contain no logo or commercial message and do not exceed two (2) square feet in area, except that signs providing notice that cars parked illegally may be towed may comply with provisions of North Carolina statutes that require that such notice be four (4) square feet in area. Incidental ground signs shall not exceed three (3) feet in height.

(E) Drive-through Lane Sign

Drive-through lane signs shall be allowed only as an accessory use to a use having a drive-through window, provided that:

- (1) Such signs shall not exceed forty-two (42) square feet in area and five (5) feet, six (6) inches in height.
- (2) Such signs shall not be legible from a public right-of-way or adjacent residential property.
- (3) There shall be no more than two (2) such signs per drive-through lane.
- (4) The color of the back and side frames of such signs shall have ties to the main building or other signage for the project.
- (5) Businesses within the Town Center may substitute one (1) permitted A-frame sign for a drive-through lane sign but shall not use both.

(F) Principal Ground Sign

Principal ground signs shall be allowed in accordance with the following:

- (1)** Such signs may not exceed thirty-two (32) square feet per side or sixty-four (64) square feet total in area, and fifty-four (54) inches in height. In the Town Center, any sign area in excess of sixteen (16) square feet in total shall be counted as part of the property's total allowed sign area. Where the height of the sign exceeds forty-two (42) inches, one (1) square foot of landscape area for each square foot of sign area shall be provided in the vicinity of the sign. At least fifty percent (50%) of the plant material shall be evergreen. Both sides of a two (2) sided ground sign shall be identical with regard to materials and design.
- (2)** Setbacks shall be adequate to protect the clear sight triangle, in accordance with the Town's Standard Specifications and Details Manual.
- (3)** For a single-occupant property, there shall be only one (1) principal ground sign per entrance to the project, provided that no two (2) ground signs shall be within three hundred (300) feet of each other.
- (4)** For a multi-occupant project, there shall be only one (1) ground sign per entrance from a public street or a private street which meets the Town's Site Design Standards provided that no two (2) ground signs shall be within three hundred (300) feet of each other, except as provided in Section 9.2.5(F)(6) below.
- (5)** Outparcels in shopping centers shall not be allowed principal ground signs.
- (6)** Principal ground signs for residential or non-residential subdivisions, general shopping centers, and multi-family developments may be allowed on one (1) or both sides of each principal entrance. Where placed on both sides of a principal entrance, such signs shall be placed on an entry wall and/or column like features which are identical in design and materials and approved on a development plan.
- (7)** Principal ground sign(s) at the entrance to a residential or non-residential subdivision shall be located:
 - (a)** in common open space, on dedicated sign easements, or, in the absence of an owner's association, on private property within the subdivision; or
 - (b)** in the median strip of a public or private street right-of-way provided that:
 - (i)** the median strip is at least fifty (50) feet in length and ten (10) feet in width, unless this requirement is reduced by the Planning Director; and
 - (ii)** the sign is located at least ten (10) feet from the right-of-way line when projected across the entrance; and
 - (iii)** if in a public right-of-way, the sign location is approved by the Director of Transportation and Facilities based upon traffic safety considerations and the location of utilities.

- (8) A principal ground sign displaced due to road widening projects may be replaced with an interim ground sign located on the same property during the duration of the road widening project. Such interim sign shall be located on private property and shall not be subject to Section 9.2.2 (Materials). After completion, such interim ground sign shall be replaced with a permanent ground sign meeting the provisions of this Chapter 9.

(G) Entry Monument Alternative to Principal Ground Sign

An entry monument meeting requirements of Section 7.2.7 of this Ordinance may be approved in lieu of a permitted principal ground sign for residential subdivisions, non-residential subdivisions and general shopping centers with a minimum of sixty thousand (60,000) square feet of non-residential floor area, and non-residential parcels fifteen (15) acres or greater, with frontage on a road classified as a collector avenue or higher on the Comprehensive Transportation Plan.

- (1) Verification of location must be demonstrated on a survey or development plan.
- (2) A minimum of seventy-five percent (75%) of the monument structure shall be constructed of masonry material that is compatible with materials found in the principal buildings on the site.
- (3) The height of the entry monument structure and the amount of signage visible from any vantage point shall not exceed the following:

HEIGHT AND SIGN AREA LIMITS FOR ENTRY MONUMENT ALTERNATIVE TO PRINCIPAL GROUND SIGN		
	Max. Height of Monument	Max. Sign Area Visible From Any Vantage Point
Non-residential subdivisions and general shopping centers (excluding outparcels) with over 130,000 non-residential square feet of floor area.	16 feet	50 Sq. Ft.
Non-residential subdivisions and general shopping centers (excluding outparcels) with between 100,000 and 130,000 square feet of floor area	14 feet	40 Sq. Ft.
Non-residential subdivisions and general shopping centers (excluding outparcels) with between 60,000 and 99,999 square feet of floor area and non-residential parcels 15 acres or greater	12 feet	32 Sq. Ft.
Residential subdivisions		

- (4) One (1) square foot of landscape area for each square foot of sign area shall be provided in the vicinity of the sign. At least fifty percent (50%) of the plant material shall be evergreen.
- (5) No more than one (1) Entry Monument Alternative to Principal Ground Sign is allowed along each street frontage with the exception of general shopping centers with over one hundred thirty thousand (130,000) square feet of non-residential floor area which may have one (1) additional monument sign along a public street.

(H) New Construction Alternative to Principal Ground Sign

Signs associated with new subdivision development or site construction shall be allowed on sites with a Town-approved development plan provided that:

- (1) Such signs shall be permitted in addition to, and in the same location and subject to the same size and other conditions applicable to, a "principal ground sign," per Section 9.2.5(F) except that limitations on the color shall not apply to this type of sign.
- (2) Such signs shall be removed the earlier of two (2) years from the date of approval of the sign permit, or upon the issuance of Certificates of Occupancy for seventy-five percent (75%) of the development phase or development plan, whichever occurs first.
- (3) In single-unit residential districts, including planned development districts allowing single-unit residences, a single sign shall be permitted as an accessory use to a subdivision real estate sales office, as long as such office is permitted in the LDO and is actually used. Such sign shall not exceed sixteen (16) square feet in area and forty-two (42) inches in height.

(I) Projecting Sign

- (1) Projecting signs shall be allowed under canopies or along pedestrian arcades, provided that:
 - (a) Such signs shall not exceed one (1) per tenant in a multi-tenant building entrance.
 - (b) Such signs shall not be separately illuminated.
 - (c) The height of the top edge of the signboard or bracket shall not exceed the height of the wall from which the sign projects.
 - (d) Projecting signs may project over a public right-of-way provided that no element of the sign hangs lower than seven (7) feet above the ground or pedestrian walkway.
 - (e) Such signs shall be mounted and attached to buildings in a secure manner. The sign, brackets and mounting devices shall be maintained in good repair for both safety and appearance. Such signs shall be mounted so that the method of installation is concealed to the extent practical.
 - (f) The signboard or the bracket shall not project more than thirty-six (36) inches from the wall.
 - (g) In all zoning districts except the Town Center, such signs shall not exceed two (2) square feet per side.
 - (h) In the Town Center Zoning District, such signs shall not exceed six (6) square feet per side.

- (2) Projecting signs shall be allowed as an alternative to a wall sign for vertically mixed-use buildings provided that:
- (a) Such signs shall not exceed forty-five (45) square feet per side.
 - (b) No element of the sign hangs lower than nine (9) feet above grade.
 - (c) The signboard or bracket shall not project more than six (6) feet from the wall.
 - (d) A projecting sign placed on a building corner when the building corner abuts the intersection of two (2) streets may intersect with a forty-five (45) degree angle to the corner of the building.
 - (e) No projecting sign is allowed to extend above the roof line or the parapet wall.
 - (f) No projecting signs may be located higher than the second story or twenty-four (24) feet, whichever is less.
 - (g) Such signs shall be mounted and attached to buildings in a secure manner. The sign, brackets and mounting devices shall be maintained in good repair for both safety and appearance. Such signs shall be mounted so that the method of installation is concealed to the extent practical.

(J) Suspended Signs

- (1) Suspended signs shall be allowed under canopies or along pedestrian arcades, provided that:
- (a) Such signs shall not exceed one (1) per tenant in a multi-tenant building entrance.
 - (b) Such signs shall not be separately illuminated.
 - (c) The height of the top edge of the signboard or bracket shall not exceed the height of the wall from which the sign projects.
 - (d) No element of the sign shall hang lower than seven (7) feet above the ground or pedestrian walkway.
 - (e) Such signs shall be mounted and attached in a secure manner. The sign, brackets and mounting devices shall be maintained in good repair for both safety and appearance. Such signs shall be mounted so that the method of installation is concealed to the extent practical.
 - (f) Where mounted to a wall, the signboard or the bracket shall not project more than thirty-six (36) inches from the wall.
 - (g) In all zoning districts except the Town Center, such signs shall not exceed four (4) square feet in area.
 - (h) In the Town Center zoning district, such signs may be larger than four (4) square feet in total area, but all area over two (2) square feet shall be considered as part of the property's overall allowed sign area.

- (2) In the Town Center, suspended signs shall also be allowed to hang vertically from upright posts that are securely anchored in the ground. Such suspended ground signs are allowed provided that:
- (a) Only one (1) suspended sign is permitted per street frontage.
 - (b) Such signs shall only be permitted if the buildings or structures housing the principal use(s) on the property are set back at least ten (10) feet from the abutting street right-of-way.
 - (c) Such signs shall only be hung from decorative upright posts, and may not be hung from other objects such as trees or be attached to a wall.
 - (d) Such signs shall not exceed sixteen (16) square feet of display area, and may be two (2)-sided.
 - (e) No portion of the sign shall exceed eight (8) feet in height. No portion of the supporting post shall exceed ten (10) feet in height.
 - (f) Suspended ground signs used in lieu of a principal ground sign shall not be deducted from a property's overall allowed sign area. If a suspended ground sign is used in addition to a principal ground sign, then the display area of the suspended ground sign shall count as part of the property's total allowed sign area.
 - (g) Such signs may not extend or protrude into a sidewalk or a pedestrian walkway.

(K) Verandah Sign

Shall be allowed as an alternative to a permitted wall sign when located above the outer fascia of a verandah or balcony as long as the sign face does not project above the highest portion of the facade.

- (1) The combined area of all verandah signs visible from a given vantage point shall not exceed one and one-half (1.5) square feet per linear foot of building frontage.

(L) Wall Sign

Wall Signs are allowed on principal buildings and accessory buildings as provided below:

(1) Buildings with Three or Fewer Floors

(a) General Wall Sign Area Limitations

- (i) One (1) wall sign is allowed for a single-tenant building or a multi-tenant building space with an individual entrance, with additional signs allowed on a second wall facing a street right-of-way that contains a door or a window, except where additional signage is allowed pursuant to Section 9.2.5(L)(1)(b).

- (ii) Except where additional sign area is allowed pursuant to Section 9.2.5(L)(1)(b), the combined area of all wall signs visible from a given vantage point shall not exceed one and one-half (1.5) square feet per linear foot of building frontage.

(b) Wall Sign Limitations for Commercial Buildings Containing Architecturally Distinct Building Segments

Additional signage is allowed for single-tenant buildings or individual tenant spaces in multi-tenant buildings with district architectural segments that incorporate at least three (3) of the following:

- (i) Façade which projects above and outwards from the primary building wall plane;
- (ii) Vertical and horizontal design elements;
- (iii) Different surface materials and textures to distinguish the storefront from the remainder of the building wall;
- (iv) Windows (whether false or otherwise) to give the appearance of an individual storefront; and
- (v) Building side provides functional access to customers and the public.

Signage is allowed on tenant spaces meeting the above requirements as provided below:

- (i) Two (2) wall signs are allowed on each architecturally distinct building segment in a general shopping center. One (1) wall sign is allowed on each architecturally distinct building segment on other commercial buildings or tenant spaces.
- (ii) For general shopping centers, wall signs may not exceed two (2) square feet per linear foot of building frontage.
- (iii) For commercially-used single tenant spaces with a building footprint of at least one hundred thousand (100,000) square feet, the combined area of all wall signs may not exceed three (3) square feet per linear foot of building frontage.
- (iv) No individual sign may exceed sixty percent (60%) of the available wall area on the architecturally-distinct building segment to which it is attached.
- (v) The amount of sign area visible from any given vantage point may not exceed the allowable sign area.

(c) Office Buildings

Multi-tenant buildings serving primarily office uses are allowed signs on two (2) separate walls of the building, and more than one (1) sign per façade may be permitted provided the facade is divided into architecturally distinct segments with more than one (1) principal entrance serving interior offices or businesses.

(2) Buildings With More than Three Floors

- (a)** Multi-story buildings with more than three (3) floors shall be allowed a maximum of one and one-half (1.5) square feet in area for each linear foot of building frontage and may have a maximum of four (4) signs across the building facade provided that the total square feet of all signs combined does not exceed the maximum of one and one-half (1.5) square feet in area for each linear foot of building frontage and all signs are arranged so they share a common horizontal centerline along the facade.
- (b)** For buildings displaying more than one (1) sign, one (1) of the following criteria shall be met:
 - (i)** Signs shall be spaced evenly across the building facade; or
 - (ii)** Signs shall be separated from all other signs a minimum of two times (2X) the length of the longest sign by facade.

(3) Multi-family or Institutional Buildings in Residential Zoning Districts and PDDs

Multi-family residential or institutional uses located in residential zoning districts, including planned developments designated for such use, shall be permitted one (1) wall sign per public entrance, provided that:

- (a)** Such sign shall not exceed six (6) square feet in area; and
- (b)** Each such sign may be illuminated only by direct, external illumination.

(4) Theatres

In addition to other permitted walls signs, marquee signs with internally-illuminated or back-lit changeable copy, and internally-illuminated or back-lit poster boxes may be allowed on theatres subject to the following:

- (a)** Changeable copy on marquee signs shall be limited to three (3) lines of text, and shall not be subject to total wall sign area limits.
- (b)** Poster boxes shall not exceed thirty-six (36) by fifty-four (54) inches each in size, shall not extend more than ten (10) feet above ground, and shall be permanently mounted to the building wall.

(5) Vertically Mixed-Use Buildings - Upper Story Signage

In lieu of the signs permitted by Section 9.2.5(L)(1)-(4), wall signs are allowed on the second floor and above of vertically mixed-use buildings as provided below:

- (a)** Vertically mixed-use buildings shall be allowed a maximum of one and one-half (1.5) square feet in area for each linear foot of building frontage.
- (b)** A maximum of one (1) sign is permitted per façade.
- (c)** Such signs must be located on the second floor or higher.

- (d) Sign area for ground floor tenants is permitted in addition to the signage defined in this section and shall be calculated separately based on the individual tenant frontage pursuant to Section 9.2.5(L)(1).

(M) Façade Renovation Alternative to Permanent Wall Sign

One (1) banner shall be allowed for a business undergoing a façade change or exterior renovation, as an alternative to a permitted permanent wall sign allowed pursuant to Section 9.2.5(L), provided that:

- (1) Such signs for businesses undergoing a façade change or exterior renovation shall be limited to a maximum of ninety (90) days. The Planning Director shall have the authority to extend the duration of the temporary sign permit for businesses undergoing exterior renovation for up to a maximum of sixty (60) additional days.
- (2) Such signs shall be attached to and parallel with a wall of the building on which wall signs are permitted and shall not exceed thirty-two (32) square feet or half ($\frac{1}{2}$) the size of a previously-permitted sign removed in order to construct the façade replacement, whichever is greater.

(N) New Business Alternative to Permanent Wall Sign

- (1) One (1) banner shall be allowed for a new business provided that:
 - (a) Such banner for new businesses shall be limited to a duration of thirty (30) days within the first sixty (60) days after issuance of a Certificate of Occupancy for that location.
 - (b) Such banner shall be attached to and parallel with a wall of the building on which wall signs are permitted and shall not exceed thirty-two (32) square feet in surface area.
- (2) A second banner meeting requirements of Section 9.2.5(N)(1) shall be allowed provided that:
 - (a) only one (1) of the two (2) banners is visible from any given vantage point; and
 - (b) both banners are approved for display during the same time period.

(O) Window Sign

Signs shall be allowed on the inside or outside of window glass provided that they cover no more than twenty-five (25) percent of the glass area of each individual window pane and they are not separately illuminated. Signs permanently affixed to the external side of windows shall be a medium or premium grade vinyl, digital image using solvent coloring, or other similar type material and shall be maintained in good order.

(P) Mailbox Sign

Signage on mailboxes shall be limited to individual name(s) and the address of the property served by the mailbox, as allowed by the US Postal Service.

9.2.6 Permanent Sign Types and Applicable Standards Allowed Only in Town Center and Mixed Use Overlay Districts, on Property Not Containing a Single-Unit Residence or Duplex

The following sign types are permitted on property located in the Town Center and Mixed Use Overlay Districts, except lots or parcels containing a single-unit residence or duplex. Permanent signs shall be permitted in accordance with Table 9.2-2, subject to the applicable standards of this Section and the provisions of any Master Sign Plan applicable to the site.

TABLE 9.2-2: TABLE OF PERMANENT SIGN TYPES ALLOWED ONLY IN TOWN CENTER AND MIXED USE OVERLAY DISTRICTS, ON PROPERTY NOT CONTAINING A SINGLE-UNIT RESIDENCE OR DUPLEX		
Wall Sign at Entrance to Restaurant or Café	Not Required	9A.3.2(A)
Neon Sign	Not Required	9A.3.2(B)

(A) Wall Sign at Entrance to Restaurant or Café

In addition to other signage, restaurants and cafés in the Town Center and MUOD shall be allowed one (1) wall-mounted display. The sign shall be located at or near the main entrance, and shall not exceed two (2) square feet in size. These additional signs shall not be calculated as part of the site's overall allowed sign area.

(B) Neon Signs

One (1) neon sign may be permitted for each business in the Town Center and MUOD based upon the following:

- (1) The sign shall not exceed two (2) square feet in area.
- (2) The sign shall be illuminated only during business hours.
- (3) The sign shall be located on the interior side of a window.
- (4) The sign shall meet safety requirements by having a backing and self-contained transformers. All components shall be UL approved.
- (5) Text, logos and color are not restricted.

9.2.7 Permanent Sign Types and Applicable Standards on Property Containing a Single-Unit Residence or Duplex

The following sign types are permitted in all zoning districts on property containing a single-family residence or duplex. Permanent signs shall be permitted in accordance with Table 9.2-3, subject to the applicable standards of this Section and the provisions of any Master Sign Plan applicable to the site.

TABLE 9.2-3: TABLE OF PERMANENT SIGN TYPES ALLOWED ON PROPERTY CONTAINING A SINGLE-UNIT RESIDENCE OR DUPLEX		
Sign Type	Sign Permit	Conditions
Permanent Flagpoles With Flags	Not Required	9.2.7(A)
Wall Signs	Not Required	9.2.7(B)
Incidental Signs	Not Required	9.2.7(C)
Window Sign	Not Required	9.2.7(D)

(A) Permanent Flagpoles with Flags

There shall be no more than three (3) flagpoles and two (2) flags per pole. Flagpoles shall not exceed twenty-five (25) feet in height, and flags shall not exceed five (5) feet by eight (8) feet in size. Flags shall contain no commercial message.

(B) Wall Signs

One wall sign is allowed on a single-unit residential unit (whether unit is attached or detached). The wall sign shall not exceed two (2) square feet in area, shall not be separately illuminated, and shall not contain any commercial message.

(C) Incidental Sign

Incidental signs shall be allowed provided that they contain no logo or commercial message and not exceed two (2) square feet in area.

(D) Window Signs

Signs shall be allowed on the inside or outside of window glass provided that they cover no more than twenty-five (25) percent of the glass area of each individual window pane, are not separately illuminated, and contain no commercial message. Signs permanently affixed to the external side of windows shall be a medium or premium grade vinyl, digital image using solvent coloring, or other similar type material and shall be maintained in good order.

9.2.8 Master Sign Plans

(A) Required

A Master Sign Plan approved by the Planning Director is required for all residential subdivisions, multi-family and townhouse developments, planned developments, non-residential subdivisions, and all multi-building or multi-occupant commercial developments before any permanent signs for such development may be erected.

All owners, tenants, subtenants and purchasers of individual units within the development shall comply with the approved Master Sign Plan.

Residential developments that only have one (1) entrance monument and have no other signage requests shall not be required to submit a Master Sign Plan.

(B) Relation to Other Sections of This Ordinance

Requirements of the Master Sign Plan may be more restrictive, but not less restrictive, than the applicable requirements of Chapter 9.

(C) Elements

The master sign plan shall at a minimum address sign location, materials, size, color, and illumination.

- (1) The Master Sign Plan may include any type of wall sign permitted by Chapter 9.
- (2) Consistent sign types, color patterns, and materials shall be used on buildings with a uniform façade. Font styles may vary, subject to property owner's approval.
- (3) Two (2) sign style and/or color options may be introduced on buildings with architecturally-distinct building segments. Signs within each sign style shall be constructed of similar materials.
- (4) Principal Ground Signs and other ground signs within a multi-occupant development plan project shall incorporate one (1) or more unifying elements, including, but not limited to, features such as style, illumination, colors, and materials.

(D) Allocation of Sign Area in Multi-tenant Developments

Unless specified otherwise in the Master Sign Plan, permanent sign area for a multi-tenant development shall be allocated in proportion to the frontage each tenant controls on the applicable wall.

(E) Amendment Procedures

A Master Sign Plan may be amended by filing a new master plan and application with the Planning Director.

- (1) The application may be filed only by the owner of the land affected by the proposed change, or an agent, lessee or contract purchaser specifically authorized by the owner. Before filing the application, all land owners affected by the proposed change must give written authorization. If a governing board for the property affected exists, then the governing board may provide written authorization for all landowners affected.
- (2) Any new or amended Master Sign Plan for non-residential developments (including those for planned developments) shall include a schedule that requires bringing all permanent signs not conforming to the proposed plan into conformance within ninety (90) days. This shall apply to all properties governed by said plan.
- (3) Unless restricted by a zoning condition PDD master plan, residential neighborhoods or institutions within PDDs may submit an application to amend the Master Sign Plan for their individual subdivision entry feature or principal ground signs by proposing new criteria that calls for masonry material for structural supports, foundations and/or background material or by proposing criteria that meets the requirement for architectural compatibility between the principal ground sign and the principal building.

(F) Effect

After approval of an amendment to a Master Sign Plan, no permanent sign shall be erected, placed, painted, or maintained except in accordance with such plan, and such plan may be enforced in the same way as any provision of this chapter. In the case of any conflict between a provision of a lawfully-approved Master Sign Plan and one (1) or more provisions of this chapter, the Master Sign Plan shall control.

9.2.9 Non-Conformities**(A) Non-conforming Signs****(1) General**

Nonconforming permanent signs, including signs indicated for amortization, shall comply with the provisions of Section 10.5.

(2) Signs in National Register Historic Districts

Existing permanent signs which are attached to, painted on, or an integral part of contributing historic structures within a National Register Historic District, and which retain the content, dimensions, location, and lighting that the sign possessed when the National Register District was designated shall enjoy the following privileges:

- (a)** May remain on roofs or exceed height limits found elsewhere in this chapter.
- (b)** May exceed dimensional limits found elsewhere in this chapter.
- (c)** May reference a product or business which is not related to the existing business on the property.
- (d)** Shall not, if the sign is not related to an existing business, have the sign area deducted from the total amount of square feet of the sign area granted by other standards of this chapter.
- (e)** May remain in a right-of-way unless they become a hazard to traffic.
- (f)** May retain their original lighting pattern and materials.
- (g)** May be restored to one hundred percent (100%) of the original design if damaged or destroyed.

(B) Signs for Non-conforming Uses

Owners of non-conforming uses located in residential districts may erect non-illuminated wall signs only. Such signs shall conform in all other ways with the size, placement, and other standards set forth for such signs in this Chapter 9.

(Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2023-LDO-01, 2-9-23)

9.3 TEMPORARY SIGNS

9.3.1 Applicability

This Section 9.3 applies to temporary signs in all zoning districts.

9.3.2 General Design Requirements

Temporary signs are not subject to limitations regarding color and material, but may not be internally or externally illuminated.

9.3.3 Permitted Temporary Signs

Temporary signs shall be permitted as provided herein:

(A) A-Frame Signs

One (1) A-Frame sign per street frontage per business shall be allowed, with approval of a sign permit only where such sign is associated with a business located within twelve (12) feet of Town property or a public right-of-way, provided that:

- (1) Such signs shall be allowed only in the Town Center and Mixed Use Overlay District.
- (2) The total area of the signboard shall not exceed ten (10) square feet per side.
- (3) Any A-Frame sign shall not exceed two (2) linear feet in width, with a maximum height of sixty (60) inches.
- (4) The sign must be constructed of materials that present a finished appearance. Rough-cut plywood is not acceptable.
- (5) The sign shall be located on the same parcel and within ten (10) feet of the building exterior of the business installing the sign and its location shall not interfere with pedestrian or vehicular circulation, including, but not limited to driveways, parking lots, rights-of-way, and public sidewalks.
- (6) The sign shall be removed at the end of the business day.
- (7) Any person erecting an A-Frame sign shall indemnify and hold harmless the Town and its officers, agents, and employees from any claim arising out of the presence of the sign on Town property or a public right-of-way.

(B) All Other Temporary Signs

The Town shall allow all other temporary signs that meet the criteria and limitations set forth in Table 9.3-1.

Table 9.3-1 TEMPORARY SIGNS ALLOWED		
Requirement	Land Use ¹	
	Single-Unit Dwellings and Duplexes	All Other Uses
Maximum Number of Temporary Signs Per Parcel ²	8	4
Maximum Area of Individual Sign ³	5 square feet	3 signs: 5 square feet 1 sign: 16 square feet
Maximum Sign Height	42 inches	42 inches
Minimum Setback from Side Property Line ⁴	5 feet	5 feet
1	Uses may be permitted in zoning district or may be legal non-conforming uses.	
2	A maximum of two temporary commercial signs are allowed on a single parcel. Off-site commercial signs are prohibited.	
3	The maximum sign area applies to the size of the sign itself. Signs may be double-sided and contain messages on both sides.	
4	Signs in the right-of-way are prohibited except as allowed by state or federal law. See also Town Code Section 28-12.	

(Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2022-LDO-02, 4-28-22)

CHAPTER 10: NONCONFORMITIES

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Chapter 10: NONCONFORMITIES**10.1 GENERAL PROVISIONS****10.1.1 Purpose**

The purpose of this chapter is to regulate and limit the development and continued existence of legal uses, structures, lots, and signs established either prior to the effective date of this Ordinance or the effective date of future amendments to this Ordinance that no longer conform to the requirements of this Ordinance. All such situations are collectively referred to as "nonconformities."

10.1.2 General Policy

While nonconformities may continue, the provisions of this chapter are designed to curtail substantial investment in nonconformities to bring about their eventual improvement or elimination in order to preserve the integrity of this Ordinance and the character of the Town and its extraterritorial jurisdiction. Any nonconforming use, structure, lot, or sign that lawfully existed as of the effective date of this Ordinance and that remains nonconforming, and any use, structure, lot, or sign that becomes nonconforming as a result of any subsequent rezoning or amendment to the text of this Ordinance, may be continued or maintained only in accordance with the terms of this chapter. This chapter also is intended to reduce vacancies, promote appropriate redevelopment and re-use of existing structures and lots, and set forth requirements.

10.1.3 Determination of Nonconformity Status

In all cases, the burden of establishing that any nonconformity is a legal nonconformity shall be solely upon the owner of such nonconformity, not the Town.

10.1.4 Change of Ownership or Tenancy

Changes of ownership, tenancy, or management of an existing nonconformity are permitted but such nonconformities shall continue to be subject to the provisions of this chapter.

10.1.5 Exception Due to Variance or Modification

This chapter shall not apply, however, to any development standard or feature that is the subject of a variance or modification granted by the Zoning Board of Adjustment or Town Council. Where a variance or modification has been granted for a development standard that does not otherwise conform to the requirements of this Ordinance, that development standard shall be deemed conforming.

10.1.6 Damage or Destruction

If a nonconforming use, structure containing a nonconforming use, nonconforming structure, or nonconforming sign is destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at the time of destruction, then such use, structure, or sign shall not be re-established unless it is made to conform to the requirements of this Ordinance, except as provided below.

(A) Exception for Setbacks for Detached Dwellings

If destroyed by any means to an extent greater than fifty (50) percent of its replacement cost at the time of destruction, detached dwellings with setbacks made nonconforming by either

of the following shall be required to meet the lesser of current required building setbacks or building setbacks that were required at the time of development plan approval:

- (a) the installation of roadways or other easements/property line adjustments created or enacted by a governmental entity,
- (b) a change to the street classification in the Comprehensive Transportation Plan that increases the width of the right-of-way from which the setback is measured.

10.1.7 Continuation, Maintenance, and Minor Repair

The continuation of a nonconforming use or structure and the maintenance or minor repair of a structure containing a nonconforming use or of a nonconforming structure are permitted, provided that the continuation, maintenance, or minor repair does not extend or expand the nonconforming use or structure. For the purposes of this section, "maintenance or minor repair" shall mean:

- (A) Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure;
- (B) Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and
- (C) Repairs that are required to remedy unsafe conditions that cause a threat to public safety.

10.1.8 Enlargement, Expansion, Alteration, or Major Repair

(A) Applicability

- (1) Enlargement, expansion, alteration, or major repair of a nonconforming structure or nonconforming use shall be deemed a "special use" and shall occur only if approved by the Zoning Board of Adjustment in accordance with the procedures and standards set forth in Section 3.8 of this Ordinance and also the requirements of this section.
- (2) However, the re-use or redevelopment of a nonconforming structure or nonconforming site that houses a conforming use shall not be required to obtain a special use permit or undergo development plan review if the requirements of Section 3.11 are met.

(B) Development Plans

Development plans, which shall be reviewed concurrently with the application for a special use, shall be required for the following activities under this section:

- (1) Re-establishment of a nonconforming use following abandonment of a previous non-conforming use.
- (2) Any enlargement, expansion, alteration or major repair of a nonconforming structure or a conforming structure on a nonconforming site when such structure houses a nonconforming use, or when such structure houses a conforming use and the provisions of Section 3.11 are not applicable.

- (3) Establishment of a nonconforming use with a greater intensity (based on the Tables of Permitted Uses in Section 5.1 of this Ordinance) subsequent to an existing non-conforming use, whether cessation occurred or not.

(C) Findings

After holding the hearing on the special use, the Zoning Board of Adjustment shall determine whether to approve the proposed enlargement, expansion, alteration, or major repair. The Zoning Board of Adjustment shall not approve the proposed activity unless and until it finds, based on the evidence and testimony received at the hearing or otherwise appearing in the record of the case, that the proposed enlargement, expansion, alteration, or major repair meets the standards of review set forth in Section 3.8.3, *Approval Criteria*, of this Ordinance, as well as the following:

- (1) The nonconforming use allowed to continue remains compatible with adjacent land uses and the Comprehensive Plan;
- (2) That all access roads and entrance or exit drives to the nonconformity will be adequate with respect to automotive and pedestrian safety and convenience, traffic flow, and control and access in the case of fire or other emergency;
- (3) That all off-street parking, loading, refuse collection, and other service areas will be adequate with respect to automotive and pedestrian safety and convenience, traffic flow, and economic, noise, glare, odor, and other impacts on adjoining properties;
- (4) That all water, wastewater treatment, schools, fire and police protection, and other necessary public and private utilities and services will be adequate with respect to their location, availability, and compatibility with adjoining properties;
- (5) That all landscaping, screening, and fencing will be adequate, with respect to the effectiveness of their type, dimensions, and character, will be adequate with respect to minimizing the economic, noise, glare, odor, and other impacts of the nonconformity on adjoining properties and other properties in the neighborhood;
- (6) That the type, size, and intensity of the proposed special use, including such considerations as storage of items and arrangement, the size of the site and the location of the use upon it, and the hours of operation and numbers of people who are likely to utilize or be attached to the use, will be adequate with respect to minimizing the impact of the nonconformity upon adjoining properties, other properties in the neighborhood, and the purposes of the zoning district in which the property is located; and
- (7) Surface drainage will be adequate with respect to on-site and off-site erosion, siltation, pollution, flooding, or other detrimental effects of the nonconformity.

(D) Other Considerations

In determining whether the proposed extension, alteration, or major repair will substantially injure the value, use, and enjoyment of other properties, the Zoning Board of Adjustment shall also consider and balance:

- (1) The possible detriment or benefit to the owner of the nonconformity resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request;

- (2) The possible detriment or benefit to the owners of nearby properties resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request; and
- (3) The possible detriment or benefit to the general public resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request.

(E) Conditions

The Zoning Board of Adjustment may impose any conditions on approval of the request, including appropriate time limits for meeting those conditions, as it deems necessary to mitigate any potential hazards or problems, or to bring the nonconformity into compliance to the extent necessary to protect the rights and interests of nearby property owners and the general public.

(F) Limits on Expansion

If the Zoning Board of Adjustment permits a non-conforming use to expand, then the following shall apply:

- (1) The area of such expansion shall not exceed twenty-five (25) percent of the area of the existing non-conforming use, unless otherwise allowable in this Section;
- (2) Radio, TV, and telecommunication towers may be expanded by more than twenty-five (25) percent to permit the co-location of a second or subsequent user or communications sending or receiving device so that the need for an additional tower is eliminated. Only the Zoning Board of Adjustment may permit the expansion of a non-conforming communication tower in a residential or non-residential zoning district, and then only by approving a Special Use Permit (see Section 3.8);
- (3) Land uses listed in Table 5.1-2 in a use category of "Vehicles and Equipment" or "Warehouse and Freight Movement" legally-established prior to July 1, 2003 located on parcels within the HMXD (High Intensity Mixed Use) and MXD (Mixed Use) subdistricts of the Town Center (TC) District (see Section 4.2) shall not be considered as nonconforming uses, and as such may be allowed to expand beyond twenty-five (25) percent without a Special Use Permit (see Section 3.8).

(G) Limits on Requirements

In acting upon applications for such special uses, the Zoning Board of Adjustment shall not order the discontinuation or termination of nonconformity. If an application is denied, then the continuation, maintenance, and minor repair of the nonconformity shall still be allowed in accordance with the terms of this chapter.

(H) Exception for Setbacks for Detached Dwellings

- (1) Detached dwellings with nonconforming setbacks are exempt from the requirements of this section if the following findings can be made:
 - (a) The proposed addition or alteration will either meet current setback requirements or will not encroach any further into the required setback than the existing structure; and

- (b) If the proposed alteration or addition is located on the side of the existing dwelling, there is a minimum distance of fifteen (15) feet between the side of the existing structure and the nearest dwelling on the adjoining property.
 - (2) Detached dwellings with setbacks made nonconforming by the installation of roadways or other easements/property line adjustments created or enacted by a governmental entity are also exempt from the requirements of this Section, and shall not be required to address the findings in (H)(1) above.
- (I) **Nonconforming Buffers or Streetscapes**
- (1) In situations where existing buffers or streetscapes are made nonconforming through the actions of a governmental entity (i.e. road-widening projects) such actions shall not render an existing lot nonconforming.
 - (2) In certain situations, the Planning Director may require the governmental entity whose actions affected an existing buffer or streetscape to mitigate for the removal of existing vegetation on a case-by-case basis.

10.1.9 Enforcement of Requirements

The Town may withhold necessary permits, inspections, or other approvals to ensure compliance with this chapter.

(Ord. No. 2009-LDO-04, 7-23-09; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2023-LDO-03, 6-22-23)

10.2 NONCONFORMING STRUCTURES AND/OR SITES

10.2.1 Re-Use or Redevelopment of Existing Nonconforming Structures and/or Sites

Re-use or redevelopment of certain vacant existing nonconforming structures and/or sites can be accomplished through the Re-Use/Redevelopment Plan provisions in Section 3.11.

(Ord. No. 04-001, 1-8-04; Ord. No. 06-009, 4-27-06; Ord. No. 2009-LDO-04, 7-23-09)

10.3 NONCONFORMING USES

10.3.1 Abandonment or Cessation of Use

Except as modified elsewhere in this Ordinance, if a nonconforming use is discontinued for one hundred eighty (180) calendar days or more, then the property shall thereafter be occupied and used only for a conforming use. If a nonconforming use of property is discontinued, but re-established within one hundred eighty (180) calendar days, then the nonconforming use may continue, if the nature and degree of the nonconformity will not be changed or increased from that which existed before the nonconforming use was discontinued.

10.3.2 Abandonment or Cessation of Use; Town Center (TC) District

The following provisions apply to nonconforming uses within the Town Center (TC) District:

- (A) The requirements of Section 10.3.1 shall not apply to nonconforming single-unit dwellings located in any subdistrict within the Town Center district.

- (B) If a nonconforming use listed in Table 5.1-2 in a use category of "vehicles and equipment" or "warehouse and freight movement" within the HMXD (High Intensity Mixed Use) and MXD (Mixed Use) subdistricts of the Town Center (TC) zoning district is discontinued for one hundred eighty (180) calendar days or more, then such uses may not be re-established.

10.3.3 Manufactured Homes on Individual Lots

Non-conforming manufactured homes in place prior to July 1, 2003 which are removed from an individual lot may be removed and replaced with a manufactured home; and may be moved around or relocated within the boundaries of the lot upon which they were located provided the manufactured home and the lot were lawfully permitted as of July 1, 2003. However, if active use or operation of the non-conforming manufactured home is discontinued for one hundred eighty (180) calendar days or more, then the use of the non-conforming manufactured home shall thereafter conform to the requirements of this Ordinance.

10.3.4 Change of Use

- (A) Any nonconforming use may be changed to a conforming use by securing all approvals and permits that this Ordinance requires for the intended or resulting use. No nonconforming use may be changed to another nonconforming use.
- (B) However, the establishment or replacement of residentially used structures on land zoned for non-residential use shall be prohibited unless a rezoning to an appropriate residential district is approved first.

10.3.5 Signs for Nonconforming Uses

Nonconforming uses located in residential districts may erect non-illuminated wall signs only. Such signs shall conform in all ways with the standards set forth in Chapter 9.

10.3.6 Nonconforming Adult Businesses

Such uses shall not be rendered non-conforming in situations where any of the following apply:

- (A) Any adult business that fails to comply with the location requirements of this Ordinance (see Section 5.2.3(M)) but that was lawfully operating before December 9, 1993 shall not be deemed to be in violation of this Ordinance.
- (B) An adult business operating lawfully is not rendered in violation of this Ordinance by the subsequent location of a church, public or private elementary school, child day care or nursery school, public park, residential district, or an establishment having a North Carolina ABC license within one thousand (1,000) feet of the sexually oriented business.
- (C) If a nonconforming adult business is discontinued for a period of thirty (30) consecutive days or more, then the property shall be thereafter occupied and used only for a conforming use. If a nonconforming use of property is discontinued, but re-established within thirty (30) days, then the nonconforming use may continue, provided that the nature and degree of the nonconformity will not be changed or increased from that which existed before the nonconforming use was discontinued.

(Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2022-LDO-02, 4-28-22)

10.4 NONCONFORMING LOTS OF RECORD

10.4.1 Nonconformity Related to Lots of Record

- (A) No use or structure shall be established on a lot of record that does not conform to the lot area and lot width requirements established in this Ordinance for the zoning district in which it is located, except as otherwise set forth in this Section 10.4.
- (B) The prohibition on development in paragraph (A) shall not apply to lots that are rendered nonconforming by government action (such as by identification of right-of-way), or by other action outside the control of the property owner. In cases where the Town approved a recombination plat that increases the size of one (1) residential lot while reducing another below the minimum lot size and such error is not discovered until after plat recordation and conveyance of the non-conforming lot to an innocent purchaser, such non-conforming lot shall be deemed to be conforming for the purposes of maintaining its pre-existing status as a buildable lot, subject to other provisions of this Ordinance.
- (C) If the nonconformity is due to failure to meet streetscape or buffer standards, the party whose actions rendered the streetscape or buffer non-conforming shall be responsible for bringing the streetscape back into compliance to the maximum extent practicable if required by the Planning Director.

10.4.2 Exception for Single-Unit Dwelling

Notwithstanding the limitation in subsection 10.4.1 above, a nonconforming lot that exists prior to the effective date of this Ordinance or was approved by Wake County as a buildable lot prior to annexation in to the Town of Cary, may be used for a single-unit dwelling, provided that:

- (A) The lot is located in a residential district in which dwellings are permitted; and
- (B) The proposed dwelling can meet all the required setbacks for the district; and
- (C) No new dwelling unit may be added to a nonconforming lot that already has one (1) or more individual dwelling units.

10.4.3 Adjacent Lots in Single Ownership

If two or more adjacent and vacant nonconforming lots are in single ownership at any time, and such lots individually have less frontage or area than the minimum requirements of the district in which such lots are located, then such lots shall be considered and treated as a single lot or several lots that meet the minimum requirements of this Ordinance for the district in which such lots are located. Any construction, replacement, or enlargement of a single-unit dwelling shall require a recombination of all necessary lots in order to achieve compliance with the provisions of this section.

(Ord. No. 2007-21, 12-13-07; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2022-LDO-02, 4-28-22)

10.5 NONCONFORMING SIGNS

It is the policy of the Town to encourage and, to the maximum extent practicable, require that all signs within the Town be brought into compliance with the requirements of this Ordinance.

10.5.1 Nonconforming Signs Protected

A sign that was lawfully erected prior to January 13, 2000 but which does not conform to one (1) or more aspects of the requirements of this chapter, may remain in use subject to the requirements of this section and other applicable requirements of LDO Chapters, with the exception of nonconforming pole signs or billboards. Further, any nonconforming sign or any new sign that is part of a Master Sign Plan (formerly known as a Uniform Sign Plan) within a Planned Development may be installed, replaced, maintained and repaired provided that the Master Sign Plan was approved prior to January 13, 2000, and the sign is installed in accordance with the Master Sign Plan or in accordance with Chapter 9, whichever is applicable.

10.5.2 Nonconforming Pole Signs

Signs or signage which meet the definition of a pole sign (including billboards) in this Ordinance are considered to be nonconforming, and shall be removed or replaced with signage which conforms to the requirements of this Ordinance no later than July 1, 2006. Existing lawfully-placed signs associated with an approved Master Sign Plan shall be exempt from this provision. Owners of record for such signs shall be notified of the nonconformity via mailed notice.

10.5.3 Limitations on Nonconforming Signs**(A) Discontinued Sign**

A discontinued sign related to a use or business that ceases to exist or operate for a continuous period of ninety (90) days shall be considered nonconforming and shall not be reused for sign purposes unless and until it is in full conformity with the provisions of this chapter, subject to issuance of a new sign permit.

(B) Routine Repairs and Maintenance

Repairs and maintenance of nonconforming signs, such as repainting and electrical repairs, shall be permitted, provided that repainting shall not include a change of copy or color, and provided further that no repairs shall be permitted where the cost of the repairs exceeds one thousand dollars (\$1,000.00) or fifty percent (50%) of the replacement cost of the sign.

(C) Change of Copy

No change of copy shall be permitted without bringing the sign into full conformance with Chapter 9 and with the applicable Master Sign Plan or Uniform Sign Plan, except as provided below:

- (1)** Sign panels or sign blades in existing non-conforming cabinet signs may be replaced, and copy may be changed on non-conforming changeable copy signs, provided that:
 - (a)** the sign was constructed or installed in conformance with standards applicable at the time of construction or installation;

- (b) for illuminated cabinet signs, the background of the sign panel is opaque; and
- (c) colors used in the sign area comply with the applicable Section of Chapter 9 of this Ordinance.

(D) Other Sign Permits on Premises

For single-occupant properties, the issuance of a sign permit for a new or replacement sign shall be subject to the condition that all nonconforming signs on that property shall be removed or brought into conformance as part of the work of installing the new or replacement sign. For multi-occupant properties, the issuance of a sign permit for a new or replacement sign for any individual occupant shall be subject to the condition that all nonconforming signs for that occupant shall be removed or brought into conformance as part of the work of installing the new or replacement sign. This section shall not apply to the issuance of a permit for a temporary sign.

(E) Required Removal

Where an amendment to a previously approved development plan is proposed, approval of such plan shall be contingent upon removal of all nonconforming signs on the site. For example, if an existing retail establishment proposes a building addition or parking expansion, then any nonconforming signs on the property must be brought into compliance as a condition of approval of the amended development plan.

PRINCIPLES OF INTERPRETATION

- If a hotel were the sole occupant of a property, then replacement of a wall sign would mean that a nonconforming ground sign would also have to be replaced.
- If a shopping center replaced a nonconforming ground sign, then all nonconforming ground signs would need to be replaced, provided such ground signs were not located on a separate parcel.
- If a video store within a shopping center replaced a wall sign, then no other tenants within the shopping center would have to replace their nonconforming signs.
- If an insurance office within a multi-tenant office building replaced its wall sign, then no other tenant within the office building would have to replace its nonconforming signs.

(Ord. No. 2009-LDO-3, 5-14-09; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2021-LDO-01, 6-24-21)

CHAPTER 11: ENFORCEMENT

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Chapter 11: ENFORCEMENT**11.1 GENERAL PROVISIONS****11.1.1 Purpose**

This chapter establishes procedures through which the Town seeks to ensure compliance with the provisions of this Ordinance and obtain corrections for Ordinance violations. The provisions of this chapter are intended to encourage, to the greatest degree possible, the voluntary correction of violations.

11.1.2 Compliance Required

Within the Town or its ETJ, it shall be a violation of this Ordinance to erect, construct, reconstruct, remodel, alter, demolish (in part or whole), maintain, expand, move, or use any land, building, structure, or sign, or engage in development or subdivision of land in violation of the zoning, subdivision, historic preservation, erosion control, sign, and other development regulations contained in this Ordinance.

11.1.3 Liability for Violations

Any person who erects, constructs, reconstructs, alters, repairs, converts, or maintains any building, structure, or sign or part thereof in violation of this Ordinance, and any person who uses any building, structure, or land in violation of the Ordinance, shall be subject to civil penalties and enforcement action in accordance with this Chapter.

11.1.4 Each Day a Separate Violation

Each day that a violation continues shall constitute a separate and distinct violation or offense. (Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2021-LDO-01, 6-24-21)

11.2 RESPONSIBILITY FOR ENFORCEMENT AND APPEALS**11.2.1 Enforcement Responsibility**

The Directors of Planning, Development Services, Transportation and Facilities, Public Safety, and/or Inspections and Permits or their designees shall have responsibility for enforcing the provisions of this Ordinance.

11.2.2 Appeals**(A) Appeals of Building Permit Issues**

Any appeals of North Carolina State Building Code issues (including revocation of building permits) must be made to the North Carolina Building Code Council.

(B) Appeals of Soil Erosion and Sedimentation Control Decisions Pursuant to Section 14.4**(1) Civil Penalties**

Civil penalty assessments related to soil erosion and sedimentation control may be contested within thirty (30) calendar days of the assessment by filing an appeal with the Zoning Board of Adjustment in accordance with Section 3.21.

(2) Other Decisions

Other decisions rendered pursuant to Section 14.4 of this Ordinance may be appealed to the North Carolina Sedimentation Control Commission in accordance with G.S. 113A-61.

(C) Appeal of Stop Work Orders

Appeals of stop work orders involving violation of the North Carolina State Building code shall be made to the Commissioner of Insurance pursuant to G.S. 160D-1114. Appeals of all other stop work orders except those issued pursuant to Section 14.4 of this Ordinance shall be made to the Zoning Board of Adjustment in accordance with Section 3.21.

(D) Appeal of Notice of Violation Civil Penalties and Fines (Except Pursuant to Section 14.4)

Appeal of a Notice of Violation issued pursuant to Section 11.6 of this Ordinance, or appeal of a civil penalty or fine (except those issued pursuant to Section 14.4), shall be made to the Zoning Board of Adjustment pursuant to Section 3.21 of this Ordinance. Appeals of civil penalties must be made within thirty (30) days of receipt of the first citation issued for the violation.

11.2.3 Inspections

The Directors of Planning, Development Services, Transportation and Facilities, Public Safety, and/or Inspections and Permits or their designees shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this Ordinance. In exercising this power, staff are authorized to enter any premises within the jurisdiction of the local government at all reasonable hours for the purposes of inspection or other enforcement action, upon presentation of proper credentials; provided, however, that the appropriate consent has been given for inspection of areas not open to the public or that an appropriate inspection warrant has been secured.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 05-001, 1-13-05; Ord. No. 2007-21, 12-13-07; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-03, 10-27-22)

11.3 SPECIFIC VIOLATIONS**11.3.1 Land Disturbing Activities Inconsistent with Ordinance**

It shall be a violation of this Ordinance to excavate, grade, cut, clear, or undertake any other land-disturbing activity contrary to the provisions of this Ordinance, including, but not limited to:

- (A)** Failure to install or maintain protection measures; or
- (B)** Initiating or continuing a land-disturbing activity for which an erosion control plan is required either in violation of the erosion control plan or by failing to obtain a valid erosion control plan.

11.3.2 Nonconformities Inconsistent with Ordinance

It shall be a violation of this Ordinance to create, expand, replace, or change any nonconformity except in compliance with this Ordinance.

11.3.3 Increasing Intensity or Density of Use

It shall be a violation of this Ordinance to increase the intensity or density of use of any land or structure except in compliance with this Ordinance.

11.3.4 Making Lots, Setbacks, Buffers, or Open Space Nonconforming

It shall be a violation of this Ordinance to reduce or diminish the lot area, setbacks, buffers, or required open space to a size, proportion or amount which is smaller than required under this Ordinance.

11.3.5 Activities Inconsistent with Conditions of Plan Approval or Permit

It shall be a violation of this Ordinance to engage in any development, use of land, construction, remodeling, or other activity contrary to the terms and conditions of any plan approval, permit, or other form of authorization required to engage in such an activity.

11.3.6 Failure to Remove Signs

It shall be a violation of this Ordinance to fail to remove any sign installed, created, erected, or maintained in violation of this Ordinance, or for which the sign permit has lapsed.

11.3.7 Removal of, Damage to, Disturbance of and Pruning of Vegetation Inconsistent with Ordinance

It shall be a violation of this Ordinance to remove, damage, disturb or prune vegetation contrary to the provisions of this Ordinance, including, but not limited to the following. For the purposes of this Section 11.3.7, "disturbance" shall be defined as any action that results in injury or harm to required trees, shrubbery or other vegetation.

- (A) Disturbance of existing grade beyond the proposed limits of grading as indicated on the approved landscaping plan so as to disturb the root zone within the drip line of any significant vegetation indicated for preservation;
- (B) Exposure of plants to severe hydrologic changes, damaging fumes or chemicals, or excessive temperatures, such as from fire;
- (C) Cutting or wounding of plants, including severe pruning;
- (D) Damaging and/or destroying the interior significant vegetation, interior specimen significant vegetation, buffers or tree save areas that are required to be protected based upon an approved site/subdivision plan.

(Ord. No. 2015-LDO-003, 7-23-15)

11.4 REMEDIES AND PENALTIES FOR EROSION AND SEDIMENTATION CONTROL VIOLATIONS PURSUANT TO SECTION 14.4

The Town shall have the following remedies and enforcement powers to prevent, correct, stop, abate, or penalize a violation of Section 14.4 of this Ordinance. The remedies provided for violations of Section 14.4 of this Ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

11.4.1 Deny or Withhold Development Approval

The Director may deny or withhold development approvals to use or develop any land, structure, or improvements until an alleged violation and associated civil penalty related to such property, use, or development is corrected. This provision shall apply whether or not the current owner or applicant for development approval is responsible for the violation.

11.4.2 Revoke Development Approval

Any development approval required under this Ordinance may be revoked when the Director determines that:

- (1) There is a substantial departure from the approved application, plans, specifications, or conditions as required under the development approval;
- (2) The development approval was procured by false statements or misrepresentations;
- (3) The development approval was mistakenly issued in violation of an applicable State law or this Ordinance; or
- (4) There is a refusal or failure to comply with the requirements of this Ordinance or any State law delegated to the Town for enforcement purposes in lieu of the State.

In accordance with Section 3.1.16, the Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

Written notice of revocation shall be served upon the holder of the development approval, the property owner, and the agent, applicant, or other person to whom the development approval was issued, by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application if holder of the development approval is different from the owner. Such notice may also be posted in a prominent location at the place of violation. No work or construction shall proceed after service of the revocation notice.

11.4.3 Issue Stop Work Order

A stop work order may be issued in accordance with Section 11.5.1(D) of this Ordinance.

11.4.4 Notice of Violation Civil Penalties

Any person who knowingly or willfully violates Section 14.4 of this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, is subject to a civil penalty as provided in G.S. 113A-64, as amended, the provisions of which are incorporated herein by reference.

(A) Process

If the Director determines that a person engaged in a land-disturbing activity has failed to comply with Section 14.4, the Director shall serve a notice of violation upon that person. The notice may be served by any means authorized under G.S. 1A-1, Rule 4, and shall specify

a date by which the person must come into compliance and shall inform the violator of the actions that need to be taken to comply. Any person who fails to comply within the time specified is subject to additional civil and criminal penalties of a continuing violation. The Director shall notify the person who is assessed the civil penalty of the amount of the penalty and the reason for assessing the penalty. The notice of assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 and shall direct the violator to either pay the assessment or contest the assessment within thirty (30) days by filing an appeal with the Zoning Board of Adjustment. An assessment that is not contested is due when the violator is served with a notice of assessment. If a violator does not pay the penalty assessed within thirty (30) days after it is due the town may institute a civil action to recover the amount of the assessment. Civil penalties collected under the authority of G.S. 113A-64(a) shall be accredited to the general fund of the Town as non-tax revenue as provided in G.S. 113A-64.

(B) Amount

The Stormwater Services Manager may assess civil penalties as provided in Table 11.4-1. Each day of a continuing violation shall constitute a separate violation which may be assessed from the date the notice of violation is served, except where specified as a one-time-only penalty. In determining the amount of the penalty, the Director shall consider the maximum penalty allowed per Table 11.4-1, as well as the following: the degree and extent of harm caused by the violation; the cost of rectifying the damage; the amount of money the violator saved by noncompliance; whether the violation was committed willfully; and the prior record of the violator in complying or failing to comply with Section 14.4.

TABLE 11.4-1 CIVIL PENALTIES FOR VIOLATION OF SEDIMENTATION AND EROSION CONTROL REQUIREMENTS OF SECTION 14.4		
ACTION	DESCRIPTION	MAXIMUM PENALTY
Penalty for Willful Violation	One-time-only civil penalty for the day a willful violation of the requirements of Section 14.4 is detected, based upon whether the violation has resulted in off-site sedimentation.	\$5,000
Penalty for Violation of Stop Work Order	One-time civil penalty for violation of a stop-work order issued pursuant to the authority contained in G.S. 113A-65.1	\$5,000
Grading Without a Plan	Failure to secure a valid required grading permit prior to conducting a land disturbing activity	\$5,000 per day
Failure to Protect	Failure to take all reasonable measures to protect public property or private property from damage caused by failure to retain sediment on site.	\$5,000 per day
Failure to Follow Plan	Failure to conduct a land disturbing activity in accordance with the provisions of an approved erosion and sedimentation control plan.	\$2,500 per day
Failure to Install Devices	Failure, when twelve thousand (12,000) sq. ft. or more is disturbed, to install erosion and sedimentation control devices sufficient to retain the sediment generated by the land disturbing activity within the boundaries of the tract(s) and prevent off-site sedimentation.	\$5,000 per day
Failure to Maintain Permanent and/or Temporary Measures	Failure to maintain adequate erosion control measures.	\$2,500 per day
Failure to Protect Exposed Slopes	Failure, within fifteen (15) calendar days of completion of any phase of grading, whichever period is shorter, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.	\$2,500 per day
Failures to Provide Adequate Cover	Failure on a tract where more than twelve thousand (12,000) sq. ft. is disturbed, to plant or otherwise provide ground cover sufficient to restrain erosion within fifteen (15) working days or sixty (60) calendar days, whichever period is shorter, following completion of construction of development.	\$2,500 per day
Failure to Revise Plan	Failure to file an acceptable, revised erosion and sedimentation control plan within the established deadline after being notified of the need to do so	\$2,500 per day
Failure to Keep Dirt and Mud Off Public Streets	Failure to prevent the accumulation of more than an inch of dirt or mud on public streets, plus	\$1,000 per day plus \$1.00 per every six linear feet of street cleaned by the city, its employees, or its contractor.
Failure to Maintain Slopes	Failure on cut, graded, or fill slopes to maintain an angle sufficient to prevent slump, creep or other slope failures.	\$2,500 per day
Any Other Action or Failure to Act That Constitutes a Violation of This Chapter		\$2,500 per day

11.4.5 Assess Criminal Penalties

Any person who knowingly or willfully violates the soil erosion and sedimentation control provisions in Section 14.4 of this Ordinance, or who initiates or continues a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, shall be guilty of a misdemeanor, pursuant to G.S. 113A-64(b), as amended, punishable for each day the violation continues by a fine of up to five thousand dollars (\$5,000.00).

11.4.6 Require Restoration of Disturbed Areas

The Town may require a person who engaged in a land-disturbing activity regulated under Section 14.4 and failed to retain sediment generated by the activity as required by G.S. 113A-57(3) to restore the waters and lands affected by the failure so as to minimize the detrimental effects of the resulting pollution by sedimentation. This authority is in addition to any other civil or criminal penalty or injunctive relief authorized under this chapter or the General Statutes.

11.4.7 Private Civil Relief

- (A) Any person who is injured by a violation of the soil erosion and sedimentation control provisions in Section 14.4 of this Ordinance, or who is injured by the initiation or continuation of a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, may bring a civil action against the person alleged to be in violation. The action may seek:
- (1) Injunctive relief;
 - (2) An order enforcing the regulation, order or erosion control plan which is being violated;
 - (3) Compensation for damages caused by the violation;
 - (4) Both damages and injunctive relief;
 - (5) Both damages and an enforcement order.
- (B) If the amount of actual damages, as found by the court or jury in suits brought under this section, is five hundred dollars (\$500.00) or less, then the plaintiff shall be awarded double the amount of actual damages. If the amount of actual damages, as found by the court or jury, is greater than five hundred dollars (\$500.00), then the plaintiff shall receive damages in the amount so found.
- (C) Civil actions brought under this section shall be brought in the Superior Court of Wake County. In issuing a final order in such an action, the court may award litigation costs to any party, including reasonable attorney fees and expert witness fees, whenever it determines that such an award is appropriate. Where the plaintiff seeks a temporary restraining order or

preliminary injunction, the court may require the filing of a bond or other security as determined by the court in its discretion.

- (D) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek injunctive or other relief.

(Ord. 2015-LDO-003, 7-23-15; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22)

11.5 REMEDIES AND PENALTIES APPLICABLE TO OTHER SECTIONS OF THE LDO

The Town shall have the following remedies and enforcement powers to prevent, correct, stop, abate, or penalize a violation of this Ordinance other than Section 14.4. The remedies provided for violations of this Ordinance shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

11.5.1 General Remedies and Penalties

(A) Deny or Withhold Development Approval

The Director may deny or withhold development approval to use or develop any land, structure, or improvements until an alleged violation and associated civil penalty related to such property, use, or development is corrected. This provision shall apply whether or not the current owner or applicant for development approval is responsible for the violation.

(B) Revoke Development Approval

Any development approval required under this Ordinance may be revoked when the Director determines that:

- (1) There is a substantial departure from the approved application, plans, specifications, or conditions as required under the development approval;
- (2) The development approval was procured by false statements or misrepresentations;
- (3) The development approval was mistakenly issued in violation of an applicable State law or this Ordinance; or
- (4) There is a refusal or failure to comply with the requirements of this Ordinance or any State law delegated to the Town for enforcement purposes in lieu of the State.

In accordance with Section 3.1.16, the Town shall follow the same development review and approval process required for issuance of the development approval, including any required notice or hearing, in the review and approval of any revocation of that approval.

Written notice of revocation shall be served upon the holder of the development approval, the property owner, and the agent, applicant, or other person to whom the development approval was issued, by personal delivery, electronic mail, or by first-class mail. The notice shall be delivered to the last address listed for the owner of the affected property on the county tax abstract and to the address provided in the application if holder of the development approval is different from the owner. Such notice may also be posted in a prominent location at the place of violation. No work or construction shall proceed after service of the revocation notice.

(C) Assess Civil Penalties

Except where otherwise specified, violations of this Ordinance shall subject the offender to the following civil penalties:

1st day of violation	\$100
2nd day of violation	\$200
3rd day of violation	\$300
Each day thereafter that violation continues	\$400

Such penalties may be recovered by the Town in a civil action in the nature of debt if the offender does not pay the penalty within the prescribed period of time after he or she has been cited for violation. Proceeds from civil penalties collected under this Section 11.5 shall go to the State of North Carolina's school system.

(D) Issue Stop Work Orders

Whenever any work or activity subject to this Ordinance is undertaken in substantial violation of any state or local law or this Ordinance (including violations of approved development plans or permits or failures to secure necessary approvals or permits); or in a manner that endangers life or property, the Director, or the appropriate inspector, has the authority to issue a stop work order for the specific part of the work or activity that is in violation or presents the hazard. Violation of a stop work order shall constitute a Class I misdemeanor. The following is the procedure for issuing a stop work order.

- (1) A stop work order may be issued by the Director or appropriate staff member (e.g., erosion control officer, site inspector, zoning compliance officer, building inspector, code enforcement officer) for the site on which the violation has occurred.
- (2) The stop work order shall be in writing, directed to the person doing the work or activity, and shall state the specific work or activity to be stopped, the reasons therefor, and the conditions under which the work or activity may be resumed.
- (3) A copy of the order shall be delivered to the holder of the development approval and the owner of the property (if that person is not the holder of the development approval) by personal delivery, electronic delivery, or first-class mail. The person delivering the stop work order shall certify that the order was delivered.
- (4) Upon receipt of such an order on site, the person shall immediately stop that work described in the stop work order.
- (5) The Director shall monitor compliance with the stop work order and shall determine if the conditions for resumption of the work have been met.
- (6) Once conditions for resumption of the work have been met, the Director shall rescind the stop work order.

- (7) Except for stop work orders involving alleged violations of the State Building Code or any approved local modification, a stop work order may be appealed pursuant to LDO Section 3.21.

11.5.2 Additional Remedies and Penalties For Certain Violations

(A) Clear Cutting of Trees

Failure to comply with the provisions of Section 14.5 shall constitute a violation of this Ordinance, and shall subject an offending party to a series of actions, including the payment of fines, delay in development plan approval or building permit issuance, and the requirement to double the amount of required vegetation as would typically be required during the development plan review and approval process. Table 11.5-1 below describes the penalties for non-compliance with this section. An "X" in a particular cell indicates the associated penalty which applies:

TABLE 11.5-1: PENALTIES FOR NON-COMPLIANCE				
Type of Violation	Payment of Fines	Review of All Subsequent Development Plans by Zoning Board of Adjustment	Five Year Delay in Approval of a Building Permit or Development Plan*	Landscaping Requirements Doubled During Development Plan Review
Property is exempt from Tree Clearing Certificate requirements, but all or substantially all** vegetation within required buffers and/or vegetation protection areas is removed		X	X	X
Property owner obtains a Tree Clearing Certificate, but removes some of the vegetation within a required buffer and/or tree protection area	X			X
Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes some of the vegetation within a required buffer and/or tree protection area	X	X		X
Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes all or substantially all** of the vegetation within a required buffer and/or tree protection area	X	X	X	X
* In determining penalties for noncompliance of tree removal, the Zoning Board of Adjustment may consider, after conducting a quasi-judicial hearing, reducing the five (5) year delay in permit/plan approval. Consideration should be given to how much vegetation was illegally removed, was the vegetation specimen size or greater, what was the proximity of the disturbed area to existing residential dwellings, was the buffer willfully disturbed, etc. The Zoning Board of Adjustment may uphold the entire five (5) year delay, reduce, or remove this enforcement measure based on the criteria mentioned above.				
** "All or substantially all" shall mean 75 percent or more of the existing trees with a caliper of four inches or greater.				

(B) Removal or Disturbance of or Damage to Existing Vegetation

The property owner and/or any person, including the developer, responsible for the removal or disturbance of or damage to vegetation in any required landscape areas as prohibited in Section 7.2.13(B) shall also be responsible for replacement of vegetation and payment of fines as provided below.

(1) Replacement of Vegetation

- (a) The disturbed area shall be revegetated as provided below. For purposes of this Section 11.5.2(B), "disturbed area" shall be defined as land that has been subjected to:

1. the removal of trees, shrubs, or vegetative cover;
2. any action that results in injury or harm to required trees, shrubbery, or other vegetation;
3. any action that reduces the size of a required buffer or degrades or reduces the required level of screening; and/or
4. earthmoving activities, including the addition of fill or installation of impervious surface.

(b) Replacement Planting Plan Required

Prior to replacement of damaged or removed vegetation, a replacement planting plan shall be submitted for review and approval by the Planning Director. The site shall be revegetated in conformance with the approved replacement planting plan.

(c) Maintenance Plan Required

Where existing vegetation is in poor health or has died as a result of neglect or of poor maintenance practices, a landscape maintenance plan shall be submitted and approved in accordance with this Section 11.5.2(B)(1) in order to remedy the violation. In cases where there is an existing landscape maintenance plan, such plan shall be reviewed and modified as necessary to address specific issues that may have created the violation. In addition, the responsible party shall provide such documentation as is available (e.g. invoices, contracts, etc.) to provide proof that the landscape maintenance plan will be implemented as approved.

(d) Baseline Replacement Standards

Where vegetation has been damaged or removed in violation of this Ordinance, replacement vegetation shall be installed in an amount that meets or exceeds the requirements of subsection 1) and/or 2) below. Where both individual trees and area of disturbance can be documented for all or part of the affected area, the calculation of required plant material may include a combination of the two (2) calculation methods, provided that the combination used results in the maximum amount of required plan material.

1) Individual Trees Documented

Where the caliper and quantity of damaged, removed or disturbed vegetation can be documented, an equal amount of new vegetation ("inch for inch") shall be installed to replace the damaged vegetation.

2) Area of Disturbance Documented

The following plantings shall be installed for each two thousand (2,000) square feet of disturbed area:

TABLE 11.5-2 BASELINE REPLANTING REQUIREMENTS PER 2,000 SQ. FT. OF DISTURBED AREA					
Plant Type		Number	Minimum Caliper	Container Size	Minimum Height
Trees	Upperstory	2	2"	--	8'
	Understory	2	2"	--	8'
	Evergreen ¹	6	2"	--	8'
Shrubs	Evergreen	7	2"	--	18"
	Deciduous	8	--	--	18"
Groundcover Plants (applicable only where slope is 2.5:1 or greater)		22	--	1 gal.	--
1 Where an opaque performance standard is required, evergreen trees shall provide foliage from ground level up, and shall be planted in staggered double rows.					

(e) Adjustments to Baseline Replacement Standards**1) Intent**

Natural forested areas, or certain planted areas that have reached maturity, form a balanced system where screening may be achieved through a variety of tree and shrub types and sizes. Trees and shrubs within such systems naturally compete for sunlight and nutrients. While individual plants do not typically achieve an ideal symmetrical canopy or form, the overall performance standard of the buffer is achieved as available gaps are filled in with plant material suitable for the specific site conditions.

In recognition of challenges encountered in recreating a buffer, streetscape, or other landscape area that has been totally or partially removed or damaged, the intent of this Section 11.5.2(B)(1)(d) is to allow modification, by the Planning Director, of baseline replacement standards and other related standards of this Ordinance where appropriate, taking into account site-specific conditions and other factors affecting plant growth and health, so as to achieve and maintain to the extent possible the greater of the required performance standard of the LDO or the actual performance standard of the buffer area prior to its unauthorized disturbance.

2) Factors for Consideration

The following factors shall be taken into account in making adjustments to baseline replacement standards and related landscape planting requirements to maximize the potential for the re-vegetated buffer, streetscape or other landscape area to achieve the required performance standard and meet the intent expressed in Section 11.5.2(B)(1)(d)(1) above:

- (a) type and conditions of significant vegetation remaining within the landscape area or buffer,
- (b) availability of sunlight;
- (c) dimension of required planting area;
- (d) separation between plants;
- (e) impact of installation of new plant material on root zones of any remaining material;
- (f) topography;
- (g) proximity of man-made features such as utilities, buildings, sidewalks and retaining walls; and
- (h) other unique site factors or conditions affecting plan growth and long-term health of the buffer, streetscape or landscape area.

Such adjustment may include either reduction or increase in the minimum number or caliper of trees or shrubs and/or the total number of caliper inches of tree replacement otherwise required by this Ordinance.

In the case of a reduction in the number of replacement tree or shrubs, and/or the number of caliper inches of replacement trees, fines and/or off-site installation of plant material shall be required in accordance with Section 11.5.2(B)(2)(d). The applicant or owner must coordinate with Town staff to design and implement a plan to plant the balance of the required vegetation on town properties, town-maintained properties, and/or other public property within the Town's jurisdiction.

Features such as fences and berms may be approved where appropriate to achieve the required performance standard.

(f) Standard Replanting Requirement for Perimeter Buffers on Individual Residential Lots

Perimeter buffers within the boundaries of individual residential lots shall be planted and/or installed to a Type "B" buffer standard.

(2) Fines

Fines shall be imposed concurrently, and in addition to revegetation requirements of Section 11.5.2(B)(1), as provided below:

(a) Applicability

Fines imposed by this Section shall not apply to disturbance of required landscape areas, buffers, and/or streetscapes located on individual residential lots.

(b) Base Fine for Unauthorized Disturbance

A fine of two thousand dollars (\$2,000) shall be imposed for any unauthorized disturbance, excluding excessive pruning, within the boundaries of a tree protection area.

(c) Calculated Fine Based on Area Disturbed

A fine of four dollars (\$4.00) shall be imposed for every square foot of area disturbed or from which vegetation was removed or damaged within a required landscape area.

(d) Fine for Caliper Inches Not Replaced

Where it is determined in accordance with Section 11.5.2(B)(1)(d) that the required number of caliper inches cannot be accommodated on the site with replacement vegetation, then a fine shall be imposed in the amount of one hundred dollars (\$100) per caliper inch that is not replaced. The applicant or owner may coordinate with Town staff to design and implement a plan to plant the balance of the required vegetation on town properties, town-maintained properties, and/or other public property within the Town's jurisdiction in lieu of the fine. If the Town determines that replanting on Town or public properties is not feasible or desirable, then the fine shall not be abated.

(3) Civil Penalties

Civil penalties shall be imposed for failure to comply with requirements of this Section 11.5.2(B).

(C) Severe Pruning

- (1)** If the planning staff determines that plants have been pruned in violation of Section 7.2.13(B), then the property owner shall be required to replace the damaged plant material in accordance with Section 11.5.2(B)(1).
- (2)** If the planning staff determines that the severe pruning has not compromised the lifespan or structural integrity of the plants, then the severely pruned material shall remain in place and supplemental plant material may be required by the planning staff to compensate for the reduced screening.

(3) In addition, fines shall be assessed as follows:

Violation	Amount of Fines
1st violation	\$50 per shrub; and \$50 per caliper inch for trees
Subsequent violations	\$1,000 base fine plus: \$100 per shrub; and \$100 per caliper inch for trees

(D) Violation of Historic Preservation Ordinance

Failure to comply with the provisions of Section 3.27 shall constitute a violation of this Ordinance, and shall subject an offending party to the following:

- (a) In addition to any other authorized remedies, in case any building, structure, site, area or object designated as a historic landmark or located within a historic district is about to be demolished, materially altered, remodeled, removed or destroyed, except in compliance with this Ordinance, the Town or county, the Historic Preservation Commission, or other party aggrieved by such action may institute any appropriate action or proceedings to prevent such unlawful demolition, destruction, material alteration, remodeling or removal, to restrain, correct or abate such violation, or to prevent any illegal act or conduct with respect to such building, structure, site, area or object.
- (b) In addition to any other authorized remedies, in case any building, structure, site, area or object designated as a historic landmark or located within a historic district is demolished, materially altered, remodeled, removed or destroyed, except in compliance with this Ordinance, no redevelopment plans may be submitted for the property for forty-eight (48) months from the date of notice of the violation. The waiting period required by this section may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the Town Council. The decision of the Historic Preservation Commission may be appealed by following the procedure set forth in Section 3.21, but the appeal shall be to the Town Council, not the Zoning Board of Adjustment.
- (c) The Town Council may consider amending or repealing an ordinance designating a historic landmark.

(Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2019-LDO-01, 9-26-19; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22)

11.6 ENFORCEMENT PROCEDURES

11.6.1 Notice of Violation Procedure

Except as otherwise provided, the following notice procedure shall be used to enforce the provisions of this Ordinance. The notice of violation and assessment procedure for violations of the soil erosion and sedimentation control provisions in Section 14.4 of this Ordinance are set forth in Section 11.4.4.

(A) Notice Required Before Penalty

No penalty shall be assessed pursuant to this chapter unless and until the person alleged to be in violation has been notified of the violation in accordance with this section, with the exception of a violation of a stop work order, illegal placement of a temporary sign, violation of the soil erosion and sedimentation control provisions in Section 14.4, or violations subject to Section 11.5.2. In the case of stop work orders, violations shall subject the violator to immediate imposition of a penalty. In the case of an illegal temporary sign, the Director shall be authorized to remove such sign immediately without notice.

(B) Notice of Violation and Opportunity to Cure

Whenever the Director has reasonable cause to believe there exists a violation of any provision(s) of this Ordinance or any plan, order, condition, or other development approval (collectively, "development approval") which has been approved, issued, or imposed pursuant to this Ordinance, the Director shall notify the holder of the development approval and the owner of the property involved (if not the holder of the development approval). Notice may also be sent to the occupant of the property and/or the person(s) undertaking the work or activity causing the violation.

(C) Written Notice

Such notice of violation shall be in writing and shall be served by personal delivery, electronic delivery, or first-class mail. A copy of the notice may also be sent by certified or registered mail, return receipt requested, with a copy also sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, and the regular mail is not returned by the post office within ten (10) days after the mailing. The person providing the notice of violation shall certify that the notice was provided.

(D) Content of Written Notice

The notice of violation shall describe the violation, shall identify the provision or provisions of this Ordinance that are being violated, shall specify what actions must be taken to correct the violation (including an order to stop any and all work which violates this Ordinance), shall direct the person to correct the violation within a specified reasonable time period (beginning on the date such notice is received), and shall warn that more severe measures (such as a civil penalty) may be assessed or brought against the person if he or she fails to take appropriate action to cure or correct the violation.

(E) Extension of Time to Cure

Upon receipt of a written request from a person who received a notice of violation for an extension of time to cure or correct the violation, the Director may grant a single extension of time, not to exceed a period of thirty (30) days, in which the person may cure or correct the violation before the Director issues a citation pursuant to Section 11.6.2. Such extension of time shall not be granted unless the person can demonstrate to the Director that the violation cannot be cured or corrected within the time period specified in the notice of violation because the labor or materials needed to take appropriate action are unavailable due to circumstances beyond the control of the person making the request.

(F) Corrective Action Taken

If the violation is cured or corrected within the time period specified in the notice of violation, or extension of time granted in Section 11.6.1(E), then the Town shall take no further action against the person.

11.6.2 Citation Procedure

Any person who, after being given a notice of violation pursuant to Section 11.6.1, does not comply with this Ordinance within the time period set forth in the notice of violation, and who continues such violation, or who violates a stop work order, shall be subject to the penalties and remedies set forth in Section 11.6. The following citation procedure shall be used to enforce the provisions of this Ordinance except that the assessment procedure for violations of Section 14.4 are set forth in Section 11.4.3.

(A) Citation for Violation

The Director shall serve a written citation by any of the methods specified in Section 11.6.1.

(B) Content of Citation

The citation shall again describe the nature of the violation and any actions that must be taken to cure or correct the violation, and shall specify the amount of any civil penalty that shall be levied.

(C) Corrective Action Required

The civil penalty shall be paid and the violation shall be cured or corrected, within seventy-two (72) hours of receipt of the citation, or such other time period, not to exceed thirty (30) days, as the citation may specify.

(D) Action for Recovery of Penalty

If payment is not made, or the violation is not cured or corrected, within that time, then the matter shall be referred to the Town Attorney for institution of a civil action in the name of the Town, in a court of competent jurisdiction, for recovery of the penalty. Any sums recovered in such actions shall be used to carry out the purposes and requirements of this Ordinance. Additionally, if any person against whom a civil penalty has been finally assessed under this Ordinance seeks a Certificate of Occupancy; an environmental, grading or building permit; a special use permit; or final approval of any plat, development plan or erosion control plan, such Certificate of Occupancy, permit or final approval may not be granted until such time as the civil penalty has been paid or arrangements satisfactory to the Town have been made providing for its payment.

11.6.3 Summary Removal of Dangerous Signs or Structures

In the case of a sign or sign structure that the Director reasonably deems to be in danger of falling or otherwise creating an immediate safety hazard, the Director is hereby authorized to immediately remove such sign or sign structure, at the expense of the property owner.

11.6.4 Injunctive Relief and Other Remedies

- (A) This Ordinance also may be enforced by revocation of permits or by any appropriate equitable remedy issuing from a court of competent jurisdiction. In any event where a building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure, or land is used in violation of the Ordinance, any appropriate agency of the Town, or any adjacent or nearby property owner who would be affected by such violation, in addition to other remedies, may institute an injunction action, mandamus action, or other appropriate proceeding to prevent the completion or occupation of such building, structure, or land and/or to stop any development or other activity that violates this Ordinance. Such actions shall be brought in a court of competent jurisdiction.
- (B) Upon determining that an alleged violation is occurring or is threatened, the court shall enter such orders and/or judgments as are necessary to abate or prevent the violation.
- (C) The institution of an action for injunctive or other relief under this section shall not relieve any party to such proceeding from any other penalty prescribed by this chapter for violations of this Ordinance.

11.6.5 Private Civil Relief for Violation of Sedimentation and Erosion Control Standards

- (A) Any person who is injured by a violation of the soil erosion and sedimentation control provisions in Section 14.4 of this Ordinance, or who is injured by the initiation or continuation of a land-disturbing activity for which an erosion control plan is required other than in accordance with the terms, conditions and provisions of an approved erosion control plan, may bring a civil action against the person alleged to be in violation. The action may seek:
 - (1) Injunctive relief;
 - (2) An order enforcing the regulation, order or erosion control plan which is being violated;
 - (3) Compensation for damages caused by the violation;
 - (4) Both damages and injunctive relief;
 - (5) Both damages and an enforcement order.
- (B) If the amount of actual damages, as found by the court or jury in suits brought under this section, is five hundred dollars (\$500.00) or less, then the plaintiff shall be awarded double the amount of actual damages. If the amount of actual damages, as found by the court or jury, is greater than five hundred dollars (\$500.00), then the plaintiff shall receive damages in the amount so found.
- (C) Civil actions brought under this section shall be brought in the Superior Court of Wake County. In issuing a final order in such an action, the court may award litigation costs to any party, including reasonable attorney fees and expert witness fees, whenever it determines that such an award is appropriate. Where the plaintiff seeks a temporary restraining order or preliminary injunction, the court may require the filing of a bond or other security as determined by the court in its discretion.

- (D) Nothing in this section shall restrict any right which any person or class of persons may have under any statute or common law to seek injunctive or other relief.

(Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22)

11.7 ENFORCEMENT OF SIGN REGULATIONS

11.7.1 Informal Remedial Procedures

(A) For Temporary Signs

(1) *Process*

For temporary or portable signs erected in violation of Chapter 9, the enforcement official may proceed directly to formal enforcement and remedies or may give up to three (3) days' written notice of violation, in accordance with the procedures outlined below, before beginning formal enforcement.

(2) *Removal*

Where it is practicable to do so without disturbing the peace, the enforcement official may physically remove any temporary or portable sign placed in violation of this chapter outside a building. Physical removal of the sign shall relieve the property owner or other person placing the sign of liability for fines or other remedies after the removal but not before. Removal of a sign located within the right-of-way allows the Department to charge the owner with a violation, and charge a fine at the discretion of the Planning Director.

(B) For Other Signs

- (1) Procedures set forth in this paragraph shall apply to violations of Chapter 9 involving any sign other than a temporary or portable sign, erected or placed in violation of Chapter 9.
- (2) The enforcement official shall, where practicable, upon finding a violation of Chapter 9 on an occupied site, inform the owner, manager or other responsible person on the site of the existence and nature of the violation. The enforcement official shall note in his or her logbook or other record book the time and place of such contact or, where such contact was not practicable, the reason that it was not.
- (3) When the enforcement official has not been successful in making contact with a responsible individual on the premises at the time of discovery or inspection of the violation, or where the enforcement official has made such contact and the violation has not been cured within three (3) business days, the enforcement official shall give formal notice of violation to the holder of the sign permit and to the landowner of the property involved, if the landowner is not the holder of the sign permit, by personal delivery, electronic delivery, or first-class mail and may be provided by similar means to the occupant of the property. The person providing the notice of violation shall certify that the notice was provided. The enforcement official may also give such notice to the individual or company that placed such sign on the property, such as the sign contractor or the real estate agent. Such notice shall give the property owner or occupant at least seven (7) but not more than thirty (30) days to cure the violation

before formal enforcement action begins; the length of time shall be based on the enforcement official's best judgment regarding the physical difficulty of eliminating the violation.

- (4) If, at the expiration of the period given for cure, the property owner or permit holder has eliminated the violation, there shall be no formal enforcement action regarding that violation.
- (5) If, at the expiration of the period given for cure, the property owner or permit holder has not eliminated the violation but has begun diligent and good faith efforts to do so, the enforcement official may, but shall not be required to, give one (1) additional period of not more than thirty (30) days to complete the elimination of the violation.
- (6) If, at the expiration of the last available period for cure, the violation has not been eliminated, the enforcement official shall begin formal enforcement proceedings. The period allowed for cure shall be computed in the period of violation for purposes of determining the applicable fine.

(C) For Signs on Sites with Continuing Construction

Where the violation is on a site with continuing construction, the enforcement official may issue a stop-work order, in accordance with Section 11.4.6 of this section, without following the informal remedial procedures set forth in this subsection.

(D) For Signs on Sites with Recent Violations

Where the violation is on a site on which there have been one (1) or more formal notices of violation or formal enforcement actions for violations of this chapter within the previous year, the enforcement official may proceed with all formal enforcement procedures without following the informal remedial procedures set forth in this subsection, or, in her or his sole discretion, the enforcement official may follow these informal remedial procedures, provided that the period of cure shall be not more than seven (7) days.

11.7.2 Formal Enforcement and Remedies

Any violation or attempted violation of Chapter 9 or of any conditions or requirement adopted pursuant hereto may be restrained, corrected, or abated, as the case may be, by injunction or other appropriate proceedings pursuant to state law. A violation of this chapter shall be considered a violation of the Town code. The remedies of the Town shall include the following:

- (A) Issuing a stop work order for any and all work on any signs on the same site;
- (B) Seeking an injunction or other order of restraint or abatement that requires the removal of the sign or the correction of the nonconformity;
- (C) Imposing civil penalties in accordance with the following schedule:
 - (1) \$100 for each offense for the first day of violation; and
 - (2) \$250 for each offense for the second day of violation; and
 - (3) \$500 for each offense for each day thereafter that the violation continues.

- (D) Civil penalties may be enforced and appealed in accordance with the civil penalty provisions of the LDO or other sections of the Town code; on appeal, the appellate body may sustain, reverse or modify penalties imposed under this section;
- (E) Seeking in court the imposition of any penalties that can be imposed by such court under this chapter; and
- (F) In the case of a sign that poses an immediate danger to the public health or safety, taking such measures as are available to the Town under applicable provisions of the building and zoning portions of this chapter for such circumstances.

11.7.3 Revoke Sign Permit Approval

Any sign permit required under this Ordinance may be revoked in accordance with 11.5.1(B). (Ord. No. 06-009, 4-27-06; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2015-LDO-006, 12-10-15; Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2021-LDO-01, 6-24-21)

CHAPTER 12: RULES OF CONSTRUCTION, USE CLASSIFICATIONS, AND DEFINITIONS

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12.4 OTHER KEY TERMS DEFINED

Chapter 12: RULES OF CONSTRUCTION, USE CLASSIFICATIONS, AND DEFINITIONS**12.1 INTERPRETATIONS**

The Planning Director has final authority to determine the interpretation or usage of terms used in this Ordinance. Any person may request an interpretation of any term by submitting a written request to the Director who shall respond in writing within 30 days.

12.2 RULES OF CONSTRUCTION AND INTERPRETATION

The following rules shall apply for construing or interpreting the terms and provisions of this Ordinance.

12.2.1 Meanings and Intent

All provisions, terms, phrases, and expressions contained in this Ordinance shall be construed according to the general purposes set forth in Section 1.3 and the specific purpose statements set forth throughout this Ordinance. When, in a specific section of this Ordinance, a different meaning is given for a term defined for general purposes in this Chapter 12, the specific section's meaning and application of the term shall control.

12.2.2 Headings, Illustrations, and Text

In the event of a conflict or inconsistency between the text of this Ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

12.2.3 Lists and Examples

Unless otherwise specifically indicated, lists of items or examples that use terms such as "for example," "including," and "such as," or similar language are intended to provide examples and are not exhaustive lists of all possibilities.

12.2.4 Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town, the deadline or required date of action shall be the next day that is not a Saturday, Sunday, or holiday observed by the Town. References to days are calendar days unless otherwise stated.

12.2.5 Computation of Density

Net available density is determined by dividing the gross parcel size by the minimum lot size of the zoning district where the parcel is located, and then rounding down to the whole number. This operation yields a certain number of units per acre with no decimals.

12.2.6 References to Other Regulations/Publications

Whenever reference is made to a resolution, ordinance, statute, regulation, or document, it shall be construed as a reference to the most recent edition of such regulation, resolution, ordinance, statute, regulation, or document, unless otherwise specifically stated.

12.2.7 Delegation of Authority

Any act authorized by this Ordinance to be carried out by a specific official of the Town may be carried out by a designee of such official.

12.2.8 Technical and Non-Technical Terms

Words and phrases shall be construed according to the common and approved usage of the language, but technical words and phrases that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

12.2.9 Public Officials and Agencies

All public officials, bodies, and agencies to which references are made are those of the Town of Cary, unless otherwise indicated.

12.2.10 Mandatory and Discretionary Terms

The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

12.2.11 Conjunctions

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

- (A) "And" indicates that all connected items, conditions, provisions or events apply; and
- (B) "Or" indicates that one or more of the connected items, conditions, provisions or events apply.

12.2.12 Tenses, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

12.3 USE CLASSIFICATIONS**12.3.1 General**

Use classifications are used to denote a group of similar and commonly-recognized uses which are grouped together under a single type or "classification" for the purposes of administration of Chapter 5 of this Ordinance. This Ordinance contains five types of use classifications: Residential, Public/Institutional, Commercial, Industrial, and Accessory uses in addition to Unlisted uses. Proposed developments within the Planned Development District, Major designation shall only be required to list general use classifications to denote the types of proposed uses.

(A) Purpose

Use classifications organize land uses and activities into general "use categories" and specific "use types" based on common functional, product, or physical characteristics, such as the type and amount of activity, the type of customers or residents, how goods or services are sold or delivered, and site conditions. The use classifications provide a systematic basis for assigning present and future land uses into appropriate zoning districts. Use classifications describe one or more uses having similar characteristics, but do not list every use or activity that may appropriately be within the classification.

(B) Structure of This Section

- (1) Each subsection below first describes common characteristics of the use category. Principal uses are assigned to the category that most closely describes the nature of the principal use. Also listed are examples of common accessory uses, which generally are allowed in conjunction with a principal use unless otherwise stated in the regulations. Unless otherwise stated, accessory uses are subject to the same regulations as the principal use.
- (2) Each subsection also lists specific use types that are included in the respective use category. If there are no specific use types or if the list of specific use types is not all-inclusive, this subsection also lists common examples of other uses included in the respective category.

(C) Unlisted Uses

(1) *Procedure for Approving Unlisted Uses*

Where a particular use category or use type is not specifically allowed under this Ordinance and is also not prohibited or restricted by this Ordinance, the Planning Director may permit the use category or type if the criteria of subsection (2) below are met. The Planning Director shall give due consideration to the intent of this Ordinance concerning the district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question.

(2) *Criteria for Approving Unlisted Uses*

In order to determine that the proposed use(s) has a impact that is similar in nature, function, and duration to the other uses allowed in a specific zoning district, the Planning Director shall assess all relevant characteristics of the proposed use, including but not limited to the following:

- (a) The volume and type of sales, retail, wholesale; size and type of items sold and nature of inventory on the premises;
- (b) Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution; any dangerous, hazardous, toxic, or explosive materials used in the processing; and

- (c) The nature and location of storage and outdoor display of merchandise; enclosed, open, inside or outside the principal building; and predominant types of items stored (such as business vehicles, work-in-process, inventory, and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders); and
- (d) The type, size and nature of buildings and structures; and
- (e) The number and density of employees and customers per unit area of site in relation to business hours and employment shifts; and
- (f) Transportation requirements, including the modal split for people and freight, by volume type and characteristic of traffic generation to and from the site, trip purposes and whether trip purposes can be shared by other uses on the site; and
- (g) Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses; and
- (h) The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes; and
- (i) Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water output, pre-treatment of wastes and emissions required or recommended, and any significant power structures and communications towers or facilities; and
- (j) The impact on adjacent properties created by the proposed use will not be greater than that of other uses in the zoning district.

(3) *Determination by the Planning Director; Effects*

All determinations by the Planning Director made pursuant to subsection (2) above shall be in writing. In making the determination described in subsection (2) above, the Planning Director shall initiate an amendment to this Ordinance if the particular use or category of use(s) is likely to be common or to recur frequently, or that omission of specific inclusion and reference to this Ordinance is likely to lead to public uncertainty and confusion. Until final action has been taken on such proposed amendment, the determination of the Planning Director shall be binding on all officers and departments of the Town. If no amendment is initiated, the Planning Director's determination shall thereafter be binding on all officers and departments of the Town, without further action or amendment of this Ordinance.

(4) *Appeal of Determination of the Planning Director*

The determination of the Planning Director may be appealed to the Zoning Board of Adjustment pursuant to the procedures set forth in Section 3.21 of this Ordinance.

12.3.2 Residential Uses**(A) Group Living**

This category is characterized by residential occupancy of a structure by a group of people who do not meet the definition of "Household Living." Tenancy is arranged on a monthly or longer basis. Generally, Group Living structures have a common eating area for residents. The residents may receive care, training, or treatment, and caregivers may or may not also reside at the site. Accessory uses commonly include recreational facilities and vehicle parking for occupants and staff. Specific use types include:

(1) Dormitory

A building used principally to provide rooms for sleeping accommodations at an educational, public, or religious institution. Common kitchen, sanitary, and social gathering rooms may also be provided.

(2) [Reserved]**(3) Life Care Community**

A building or group of buildings that contains dwelling units where the occupancy is restricted to persons who are at least sixty-two (62) years of age, or married couples in which one of the persons is at least sixty-two (62) years of age, and which provides nursing and/or medical care as well as support services, such as common dining facilities, retail stores, and personal service establishments, which are operated by the owner of the life care community or lessees of the owner. Life care communities are designed to meet the residents' basic needs for shelter, food, and health care, regardless of the level of independence of the individual resident and regardless of how these needs may change over time.

(4) Nursing Home

A licensed facility where three (3) or more elderly, chronically ill, infirm, or incurable persons are provided with food, lodging, and medical care for compensation. This definition includes congregate care facilities but not hospitals, clinics, or life care communities (even though a life care community may include a nursing home as one (1) of its components).

(5) Boarding House

A building arranged or used for lodging as compensation, as further defined in the NC Building Code, section 202.

(B) Household Living

This use category is characterized by residential occupancy of a dwelling unit, including occupancy by persons with handicaps, as such term is defined in the Federal Fair Housing Act, 42 U.S.C. § 3602, or persons with disabilities, as such term is defined in G.S. Chapter 168, Article 3. Tenancy is arranged on a month-to-month or longer basis (lodging where tenancy may be arranged for a period of less than thirty (30) days is classified under the "Visitor Accommodation" category). Common accessory uses include recreational activities, raising of pets, gardens, personal storage buildings, hobbies, and parking of the occupants' vehicles. Home Occupations, Accessory Dwelling Units, and Caretaker's Residence are accessory uses that are subject to additional regulations (see Section 5.3.4). Specific use types include, but are not limited to:

(1) Accessory Dwelling Unit

A structure used for the purposes of an individual house-keeping unit established on the same building lot as a principal detached dwelling. Such accessory dwelling units may not be attached to the principal dwelling unit.

(2) Bed and Breakfast

An operator-occupied single-unit residence where eight (8) or fewer rooms are rented on an overnight basis, for a period of no more than fourteen (14) consecutive days per guest stay.

(3) Caretaker's Residence

A dwelling unit on the site of a non-residential use and occupied only by a guard or the person who oversees the operation of the non-residential facility.

(4) Detached Dwelling

A building that is developed with open yards on all sides, contains one (1) dwelling unit not attached to any other building or dwelling unit, and is not on the same lot as any other dwelling unit.

(5) Duplex Dwelling

A building on one (1) lot that has open yards on all sides and contains two (2) dwelling units that share a common wall or ceiling/floor and have separate access from the outside.

(6) Family Care Home

A dwelling unit in which room and board, personal care and habilitation services, with the assistance of support and supervisory personnel, are provided for not more than six (6) persons with disabilities, as such term is defined in the Federal Fair Housing Act, 42 U.S.C. § 3602, or persons with handicaps, as such term is defined in G.S. Chapter 168, Article 3.

(7) Group Home

A dwelling unit in which persons with handicaps, as such term is defined in the Federal Fair Housing Act, 42 U.S.C. § 3602, or persons with disabilities, as such term is defined in G.S. Chapter 168, Article 3, live together as a single housekeeping unit without the assistance of support and supervisory personnel.

(8) Live/Work Unit

A type of structure combining residential (living) and non-residential (working) activities.

(9) Manufactured Home

A structure as defined in G.S. 143-145(7). (*Note: In 1985, the State of North Carolina officially changed the term "mobile home" to manufactured home.*)

(10) Manufactured Home Park

A parcel (or contiguous parcels) of land which has been so designed and improved on or before July 1, 2003 so that it contains two (2) or more manufactured home spaces available to the general public for the placement thereon of manufactured homes for occupancy; and such use was established prior to July 1, 2003. This use may include service buildings, areas, and customary accessory uses necessary to provide laundry, recreation, sanitation, storage, vending machines, and other similar services provided by the facility operator primarily for the use and convenience of occupants of the manufactured home park.

(11) Mid-Rise Multi-Family Dwelling

A building containing individual residential dwelling units (whether condominiums or apartments) stacked one over another. Such structures may include non-residential uses, and are generally more than two (2) stories, but less than six (6) stories in height.

(12) Modular Home

A manufactured building designed to be used as a single-unit dwelling which has been constructed in accordance with the North Carolina State Building Code and bears the North Carolina State Approved label. For the purposes of regulation, these types of dwellings are treated as site-built dwellings.

(13) Multi-Family Dwelling

A building, other than a townhouse, that contains three (3) or more individual dwelling units attached along and sharing one (1) or more common walls between any two (2) units and/or stacked one above the other, or one (1) or more dwelling units located in the same building as a non-residential use in a non-residential zoning district. None of the individual dwelling units within a multi-family dwelling are separated by property lines. This type of structure shall include any such building, regardless of the form of ownership (condominium or rental) of the individual dwelling units therein.

(14) Patio Dwelling

A single-unit detached or semi-detached dwelling built in groups of two (2) or more. Each dwelling unit is built on a small lot owned in fee simple by the owner of the dwelling unit. Each group of two (2) or more dwelling units with their appurtenant lots are located on a larger lot that is owned in common by the owners of dwelling units and fee simple lots. Some or all of this larger lot is common area used for private open space.

(15) Semi-Detached/Attached Dwelling

A building that contains two (2) to four (4) dwelling units that share one (1) or more common walls for no less than twenty-five (25) percent and no more than fifty (50) percent of the depth of the dwelling unit, with each dwelling unit located on a separate lot.

(16) Townhouse

A single-unit dwelling on its own lot owned in fee simple by the owner of the dwelling, with a private entrance that is part of a structure where the dwelling units are all joined side-by-side and separated by party walls, with no unit being located above or below another unit, and having totally exposed front and rear walls for access, light, and ventilation. This shall include any such dwelling, regardless of the form of ownership (condominium or rental) of the individual dwelling units therein.

(17) Utility Dwelling Unit

An individual house-keeping unit located entirely within a principal single-unit detached dwelling, but which has separate and individual cooking and bathroom facilities as well as a separate and individual entrance from the outside.

(18) Detached Multi-Family Dwellings

Dwelling units, not including a manufactured home, located on a single lot that contains three (3) or more dwelling units, each developed with open yards on all sides, where none of the individual dwelling units are separated by property lines.

12.3.3 Public/Institutional Uses**(A) Aviation**

Improved or unimproved facilities for the landing and takeoff of flying vehicles, including loading and unloading areas and passenger terminals for aircraft. Accessory uses include freight handling areas, concessions, offices, parking and maintenance, and fueling facilities. Specific use types include:

(1) Airport/Landing Strip

An area designed, used, or intended for use for the landing and take-off of aircraft, and any supporting operations facilities, such as maintenance, loading and unloading, storage, fueling, or terminal facilities.

(2) Heliport

An area designed, used, or intended for use for the landing and take-off of helicopters, and any supporting operations facilities, such as maintenance, loading and unloading, storage, fueling, or terminal facilities.

(B) Cemetery

Land used or dedicated to the interment of human or animal remains, including columbarium, mausoleums, and maintenance facilities. May include crematorium as an accessory use.

(C) Cultural Facilities

Public or nonprofit facilities that display or preserve objects of interest or providing facilities for one (1) or more of the arts or sciences or provision of government services. Accessory uses may include parking, offices, storage areas, and gift shops. Specific use types include:

(1) Library

A public facility for the use, but not sale, of literary, musical, artistic, or reference materials.

(2) Museum

A building having public significance by reason of its architecture or former use or occupancy or a building serving as a repository for a collection of natural, scientific, or literary curiosities or objects of interest, or works of art, and designed to be used by members of the public for loaning or viewing, with or without an admission charge.

(D) Day Care

This use category includes facilities licensed by the North Carolina Department of Health and Human Services, Division of Child Development that provide care, protection, and supervision for children or adults on a regular basis away from their primary residence for less than twenty-four (24) hours per day. This category does not include public or private

schools or facilities operated in connection with an employment use, shopping center, or other principal use, where children are cared for while parents or guardians are occupied on the premises or in the immediate vicinity. Accessory uses include offices, recreation areas, and parking. Specific use types include:

(1) Day Care Center

A "stand-alone" commercial day care facility intended for the care of three (3) or more children of any age or more than six (6) adults.

(2) Day Care Home, Large

A day care facility established in a residential dwelling in which the occupant of the dwelling provides for the care and keeping of seven (7) to twelve (12) children not related to the care provider by birth, marriage or adoption or between four (4) and six (6) adults.

(3) Day Care Home, Small

A day care facility established in a residential dwelling for the care and keeping of up to six (6) children not related to the care provider by birth, marriage, or adoption or up to three (3) adults.

(E) Government Services

A building, structure, or facility owned, operated, or occupied by a governmental agency to provide a governmental service to the public. Specific use types include:

(1) Governmental Office

A building occupied by a governmental agency that provides direct services to the public such as employment, public assistance, motor vehicle licensing and registration, and similar activities.

(2) Public Safety Station

A use designed to protect public safety and provide emergency response services, often located in or near the area where the service is provided. Employees are regularly present on-site. Accessory uses include offices and parking. Examples include fire stations, police stations, and emergency medical and ambulance stations.

(3) Public Utility Facility

Buildings, structures, or other facilities used or intended to be used by any public agency or utility. (Private or non-governmental utility facilities are included under "non-governmental utility facilities," below.) This category includes buildings or structures that house or contain facilities for the operation of publicly-owned or publicly-licensed water, wastewater, waste disposal, or electricity services. This use also includes water storage tanks; radio, television, and microwave transmission or relay towers; and electric or gas substations, water or wastewater pumping stations,

or similar structures used as an intermediary switching, boosting, distribution, or transfer station of electricity, natural gas, water, wastewater, cable television, or telephone services. This category includes passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, water, sewage, communication signals, or other similar services on a local level. Additionally, a public utility facility means any energy device and/or system that generates energy from renewable energy resources including solar, hydro, wind, biofuels, wood, geothermal, or similar sources. Accessory uses may include control, monitoring, data, or transmission equipment.

(4) *Town Owned and/or Operated Facilities and Services*

Land, government offices, public safety stations, utility facilities, buildings, structures and other facilities owned and/or operated by the Town for providing typical and customary governmental services to citizens and owners of property within the corporate limits of the Town and its urban services area. This includes, but is not limited to, administration, recreation, public safety and protection, social and transportation services. Such services may or may not be delivered directly at the same site on which the buildings and facilities are located. Related activities and structures (above or below ground) typically associated with these uses and accessory to their operation include, but are not limited to, offices, utility facilities, indoor/outdoor storage and parking.

(F) *Hospital*

A licensed public or private institution that provides in-patient primary health services and medical or surgical care to persons suffering from illness, disease, injury, deformity, or other physical or mental conditions, and including related facilities such as laboratories, outpatient, or training facilities.

(G) *Park and Open Space*

Uses of land focusing on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens, or public squares. Lands tend to have few structures. Accessory uses may include clubhouses, playgrounds, maintenance facilities, concessions, caretaker's quarters, and parking. Specific use types include:

(1) *Athletic Field, Public*

Land, often requiring equipment, owned by a unit of government and designed for outdoor games and sports such as baseball, football, and soccer.

(2) *Community Garden*

A private or public facility for cultivation of fruits, flowers, vegetables, or ornamental plants by more than one (1) person.

(3) *Neighborhood Recreation Center, Public*

A common building or area, open to the public, that provides a focus for recreational, neighborhood, educational and cultural activities for the residents of that immediate neighborhood.

(4) Outdoor Amphitheater, Public

An outdoor stadium, theater, amphitheater or similar structure operated by and/or in conjunction with a school, college, university, or by the Town or other unit of government.

(5) Park, Public

A noncommercial, non-profit facility or land owned by the Town, the State of North Carolina, or another unit of government which is used or intended to be used by for recreation, education, or cultural use, including both active and/or passive recreation.

(6) Resource Conservation Facility

Fish hatcheries and fish ponds; game preserves; botanical and zoological gardens; water reservoirs and dams.

(H) Religious Assembly

Facilities used primarily for non-profit purposes by a recognized and legally established sect to provide assembly and meeting areas for religious activities. Accessory uses include Sunday school facilities, parking, caretaker's housing, pastor's housing, and group living facilities such as convents. Examples include churches, temples, synagogues, and mosques, but not associated schools, day care facilities, or other facilities not devoted to religious activity.

(I) Educational Use

Public, private, and parochial institutions at the primary, elementary, middle, high school, or post-secondary level, other than trade or business schools, which provide educational instruction to students. Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums, and before- or after-school day care.

(1) College or University

A degree-granting institution, other than a trade school, which provides education beyond the high-school level, and which may provide lodging or dwelling units for students or faculty, and typically has programs resulting in an Associate's, Bachelor's, or Master's degree. In addition to classroom buildings, it may include offices, laboratories, lecture halls, athletic facilities, dormitories, and similar buildings.

(2) School

An elementary school, middle school, junior high school, or high school that does not provide lodging for students, including any accessory athletic fields and recreational facilities.

(3) Pre-School

A non-residential use operated for the purposes of care of pre-school-aged children. Employees of such uses are not teachers, and the primary purpose of the facility is not for education, though such uses may include educational aspects or activities.

(J) Non-Governmental Utility

Buildings, structures, or other facilities used or intended to be used by any private or non-governmental utility. (Public utility facilities are included under "public utility facilities," above.) This category includes buildings or structures that house or contain facilities for the operation of privately owned water, wastewater, waste disposal, or electricity services. This use also includes water storage tanks; radio, television, and microwave transmission or relay towers; and electric or gas substations, water or wastewater pumping stations, or similar structures used as an intermediary switching, boosting, distribution, or transfer station of electricity, natural gas, water, wastewater, cable television, or telephone services. This category includes passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, water, sewage, communication signals, or other similar services on a local level. Additionally, a private utility facility means any energy device and/or system that generates energy from renewable energy resources including solar, hydro, wind, biofuels, wood, geothermal, or similar sources. Accessory uses may include control, monitoring, data, or transmission equipment.

(1) Utility Facility, Major

A service of a regional nature that normally entails the construction of new buildings or structures, and that typically has employees at the site. Examples include water works, reservoirs, power or heating plants, or steam generating plants.

(2) Transportation Facility

A facility or location that receives and discharges passenger and at which facilities and equipment required for their operation are provided. Examples include terminals for bus, trolley, taxi, commuter/passenger railroad, shuttle van, or other similar vehicular services.

(3) Utility Substation, Minor

A service that is necessary to support development within the immediate vicinity and that involves only minor structures. Employees typically are not located at the site. Examples include electric transformer stations, gas regulator stations, telephone exchange buildings, and well, water, and sewer pumping stations.

12.3.4 Commercial Uses

(A) Agricultural Uses

Activities that primarily involve raising, producing, or keeping plants or animals, or cultivation and management of other natural resources. Accessory uses may include dwellings for proprietors and employees, barns, storage of grain, animal raising, feed preparation, and wholesale sales of products produced on-site. Specific use types include:

(1) Agri-Tourism

An area of land used for the purpose of education and participation in an agricultural related business operation.

(2) Farming, General

An area of land used for the commercial production of agricultural products such as crops, dairy products, livestock, poultry, and beekeeping products.

(3) Forestry

The science, business, and art of creating, conserving, and managing forests or forestlands for the continuing uses of commodity and noncommodity benefits.

(4) Produce Stand

A structure and/or area devoted to the small scale retail and/or wholesale sales of agricultural goods or products which have been grown on the same site or property as the stand.

(B) Animal Service

Uses that involve the selling, boarding, or care of animals on a commercial basis. Accessory uses may include confinement facilities for animals, parking, and storage areas. Specific use types include:

(1) Kennel

An establishment where domesticated animals are kept, sold, boarded, or bred, typically with fenced or enclosed spaces, areas, or runs for individual animals. Kennels may be indoor only, or indoor/outdoor, depending on the zoning district in which they are located; see Table 5.1-1. Ancillary services may include pet grooming.

(2) Veterinary Hospital/Office

An establishment for the care and treatment of animals that are admitted for daytime and/or overnight stay in order to obtain veterinary treatment for illnesses, diseases, or injuries. Such facilities may be indoor only, or may have both indoor and outdoor facilities, depending on the zoning district in which they are located; see Table 5.1-1.

(C) Assembly

Buildings, facilities owned or operated by associations, corporations, or other persons for social, educational, or recreational purposes primarily for members and their guests as well as out-patient rehabilitation and counseling services. Accessory uses may include offices, meeting areas, food preparation areas, concessions, parking, and maintenance facilities. Specific use types include, but are not limited to:

(1) Club, Lodge, or Hall

An organization and its premises catering exclusively to members and guests for social, intellectual, recreational, or athletic purposes not intended for profit.

(2) *Special Event Center*

A facility or building used by individuals or groups for the purpose of hosting private assemblies and/or functions such as parties, weddings, banquets, business conferences and other similar types of events. Such facilities may include an on-site kitchen and/or food preparation areas. Food and beverages may be served to event guests, but are not served to the general public. This use does not include facilities that are part of a club, lodge or hall use as defined in this Ordinance.

Special event centers may include outdoor space for tables and/or seating to accommodate event guests.

(D) *Financial Institution*

Establishments that provide retail banking services, mortgage lending, and similar financial services to individuals and businesses. This classification includes those institutions engaged in the on-site circulation of cash money and check-cashing facilities. Accessory uses may include automatic teller machines, offices, and parking. Financial institutions may or may not have drive-through service depending on the zoning district in which they are located; see Table 5.1-1.

(1) *Bank, with Drive-Through Service*

A financial institution with a drive-through window that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities.

(2) *Bank, without Drive-Through Service*

A financial institution without a drive-through window that is open to the public and engaged in deposit banking, and that performs closely related functions, such as making loans, investments, and fiduciary activities.

(E) *Reserved*

(F) *Food and Beverage Service*

Businesses serving prepared food or beverages for consumption on or off the premises. Accessory uses may include food preparation areas, offices, and parking.

(1) *Nightclub/Bar*

An establishment where alcoholic beverages are sold at retail for consumption on the premises and where minors are usually excluded and where dancing and musical entertainment may also be provided. This shall include taverns, lounges, eating establishments and private clubs where gross receipts from alcoholic beverages exceed gross receipts from food, but shall not include restaurants as defined by G.S. 18B-1000(6). Nightclubs/bars may be indoor only, or may also have outdoor operations, depending on the zoning district in which the use is located; see Table 5.1-1.

(2) Restaurant

A commercial establishment whose principal purpose is the preparation and sale of food and beverages in a state that is ready to eat, either on the premises or off the premises. Restaurants may be indoor only, or may also have outdoor operations, depending on the zoning district in which the use is located; see Table 5.1-1.

(G) Office

Office uses are characterized by activities generally focusing on business, professional, health care, insurance, or financial services. Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building. Specific use types include:

(1) Office, Business, or Professional

A use or building where business is conducted that does not primarily involve the sale or transfer of goods by the business to the customer at that location. This includes, but is not limited to, general business offices, health care offices, insurance offices, law offices, and real estate sales and management offices. (Government offices are classified under "Government Services," above.)

(2) Radio or TV Broadcasting Studio

A programming origination studio of a television station, radio station, or cable television provider.

(3) Wellness Center

An establishment containing customized health services that may include fitness, personal training and nutrition consulting, incorporating an individualized program with specific goals. Clients are generally under the supervision of licensed staff which may include health care providers, nutritionists, personal trainers, and practitioners of medical and other specialties such as chiropractic, acupuncture and biofeedback. Clients may be enrolled in an individualized nutritional and fitness program and may exercise independently or in small group settings. Amenities often include limited weights and cardio machines.

(H) Parking**(1) Parking Lot**

An off-street, surfaced, ground level area where motor vehicles are stored for temporary, daily, or overnight parking.

(2) Parking Structure

A structure or facility designed with one (1) or more levels or floors partially or fully enclosed and used exclusively for the parking or storage of motor vehicles. The facility may be above, below, or partially below ground. Includes parking garages and parking decks.

(I) Public Accommodation

For-profit facilities where lodging, meals, and the like are provided to transient visitors and guests for a defined period. Specific use types include:

(1) *Hotel or Motel*

A building or a group of buildings primarily containing guest rooms for sleeping purposes, but also including accessory dining areas, meeting rooms, and recreational facilities.

(2) *Hotel or Motel, Extended Stay*

A hotel or motel typically rented or hired out for periods of one (1) week or more that also provides kitchen facilities with refrigerators, stoves, and ovens for food preparation in individual rooms.

(J) Recreation/Entertainment, Indoor

Uses that provide primarily indoor recreation or entertainment activities but may include associated outdoor activities. Accessory uses may include concessions, snack bars, parking, and maintenance facilities. Specific use types include, but are not limited to:

(1) *Amusement Establishment*

An establishment offering sports, game playing, or similar amusements to the public within a fully enclosed building. This shall include bowling alleys, billiard parlors, and skating rinks. This shall not include neighborhood recreation centers or such amusements that are accessory to churches, schools, or colleges.

(2) *Neighborhood Recreation Center (Indoor/Outdoor)*

A building, structure, or facility available for recreational clubs and activities. Such uses commonly include clubhouses, restaurants, tennis courts and swimming pools for members and guests only, and gymnasiums. Such uses may be either public or private, but typically are intended only for the residents and guests of a particular residential development or neighborhood.

(3) *Commercial Recreational Facilities (Indoor/Outdoor)*

A recreational facility operated as a business, and which is open to members of the general public for a fee and provides instructional classes and/or equipment and practice area for sports-related or physical fitness activities. Such uses generally include, but are not limited to: gyms, health clubs, courts, pools, and group instruction classes such as dance, yoga, and martial arts.

(4) *Pool or Billiard Hall*

A business establishment with more than two (2) pool or billiard tables for the use of patrons, and whose primary use is for billiards, not a nightclub/bar.

(5) Theater

An indoor or outdoor structure or establishment used for showing motion pictures or for dramatic, operatic, dance, musical, or other live performances. May include food and beverage sales and similar concessions. Theaters may be small (up to two hundred (200) seats) or large (two hundred one (201) seats or more).

(K) Recreation/Entertainment, Outdoor

Uses that provide primarily outdoor recreation or entertainment activities but may include associated indoor activities. Accessory uses may include concessions, snack bars, parking, and maintenance facilities. Specific use types include, but are not limited to:

(1) Athletic Field, Private

Privately owned land, often requiring equipment, designed for outdoor games and sports such as baseball, football, and soccer.

(2) Commercial Outdoor Recreation Facility

Includes intensely developed, for-profit recreational uses such as amusement parks, miniature golf courses, batting cages, skateboard or skate courses, bicycle motocross courses, go-cart tracks, water slides, drive-in movie theaters, and courses for paramilitary games.

(3) Golf Course, Privately-Owned

A tract of land laid out with a course having nine (9) or more holes for playing the game of golf, including any accessory clubhouse, driving range, office, restaurant, concession stand, picnic tables, pro shop, maintenance building, restroom facility, or similar accessory use or structure. This term shall not include miniature golf courses as a principal or accessory use, nor shall it include driving ranges that are not accessory to a golf course.

(4) Golf Driving Range

A sports facility equipped with tee areas, distance markers, and related features for practicing golf, and which may include a pro shop, snack bar, but excludes miniature golf courses.

(5) Motor Vehicle Raceway

A for-profit facility designed or operated for racing trucks, tractors, automobiles, motorcycles or any other motorized vehicle.

(6) Outdoor Amphitheater, Commercial

An outdoor, for-profit facility or structure with tiers of spectator seats around a stage, court, or field not constructed or operated in conjunction with a bar, nightclub, lounge, restaurant, school, college, university, or the Town.

(L) Retail Sales and Service

Retail sales firms are involved in the sale, lease or rent of new or used products, or the provision of certain services, to the general public. No outdoor display is permitted unless specifically authorized by this Ordinance. Accessory uses may include offices, parking, storage of goods, and assembly, repackaging or repair of goods for on-site sale. Specific use types include, but are not limited to:

(1) ABC Store

A store, licensed by the North Carolina Alcoholic Beverage Control Commission, for the retail sale of alcoholic beverages.

(2) Convenience Store

A retail establishment with a floor area of less than five thousand (5,000) square feet, which sells a limited line of groceries and household items, gasoline, and/or beer and wine generally intended for the convenience of the neighborhood, but not including an automobile service station.

(3) Farm Market

An area that is used by one (1) or more operators of bona fide farms for the direct sale to consumers of agricultural products that are not grown or raised on the same premises as the market.

(4) Funeral Home

A building, or portion thereof, used for funeral services in preparation of the dead for burial. Such uses may include a chapel or gathering area, facilities needed for cremation, storage of required materials, vehicles, or supplies, but not for the interment of remains.

(5) Crematorium

An establishment for the burning of human or animal remains.

(6) Postal Center, Private

A business not operated by the US Postal Service that provides facilities for mailing packages and letters, receiving packages and letters in post office boxes, and similar activities.

(7) Personal Service Establishment

A business that provides individual services related to personal needs directly to customers at the site of the business, or that receives goods from or returns goods to the customer which have been treated or processed at that location or another location. This includes businesses such as travel agencies, dry-cleaners, laundries, tailors, hair and nail salons, massage business and spa services, cosmeticians, toning or tanning salons, photocopy centers, shoe repair shops, appliance repair shops, interior design studios, tutoring services, one-on-one fitness instruction and pet

grooming establishments. This shall not include automobile service stations, wellness centers, or Commercial Indoor/Outdoor Recreation uses.

(8) *Retail Store*

A commercial enterprise that provides goods, products, or materials directly to the consumer. This includes clothing stores, appliance stores, bakeries, food stores, grocers, caterers, pharmacies, bookstores, florists, furniture stores, hardware stores, pet stores, toy stores, and variety stores. It does not include restaurants, personal service establishments, convenience stores, or amusement establishments.

(9) *Adult Business*

Any business or enterprise that has as one (1) of its principal business purposes or as a significant portion of its business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. The term "Adult Business" does not include "Massage Business" as defined in LDO Section 12.4.

(10) *Shopping Center, General*

A building or group of buildings, with common parking, pedestrian circulation, ingress and egress, either freestanding or connected and under unified or multiple ownership of land parcels, which contains two (2) or more commercial or retail uses, one (1) or more of which is a primary or anchor retail tenant occupying a minimum of twenty-five thousand (25,000) square feet of floor area. No more than forty percent (40%) of the cumulative building square footage (existing and/or proposed) of the center shall be allocated for uses other than retail sales and services (12.3.4(L)) and/or Food and Beverage Services (12.3.4(F)).

(11) *Shopping Center, Small*

A building or group of buildings, with common parking, pedestrian circulation, ingress and egress, which are typically one (1) story tall and one (1) store deep, either freestanding or connected and under unified or multiple ownership of land parcels, which contains two (2) or more commercial or retail uses, with no individual use occupying more than twenty-five thousand (25,000) square feet of floor area. No more than forty percent (40%) of the cumulative building square footage (existing and/or proposed) of the center shall be allocated for uses other than retail sales and services (12.3.4(L)) and/or Food and Beverage Services (12.3.4(F)).

(12) *Trade School*

A school, other than a college, which provides specialized training and education beyond the high school level, principally in the business, commercial, or vocational arts, and does not provide lodging or dwelling units for students or faculty, and has programs which typically result in the awarding of a certificate.

(13) *Moped Sales/Rental*

A business establishment offering the sale and/or rental of mopeds as defined by G.S. 105-164.3.

(M) Vehicles and Equipment

Vehicle and Equipment facilities include a broad range of uses for the sale, rental, and/or maintenance of motor vehicles and related equipment. Large parking areas and outdoor storage areas may be included with these uses. Accessory uses may include incidental repair and storage, offices, and sales of parts and/or tires. Specific use types include:

(1) Motor Vehicle Sales/Rental

The storage, display, sale, lease or rental of motor vehicles as defined by G.S. 20-4.01, including automobiles, vans, and light trucks. Such businesses may also include sales and/or rental of mopeds. This shall not include salvage operation or scrap operations.

(2) Car Wash

A commercial establishment that washes, cleans, and/or waxes automobiles or other motor vehicles, whether or not in conjunction with other goods or services provided to customers.

(3) Heavy Equipment Sales/Rental

The storage, display, sale, lease or rental of vehicles or other apparatus commonly used in commercial, industrial, or construction enterprises, including trucks, trailers, bulldozers, cranes, backhoes, rollers, lifts, and loaders. This shall not include salvage operations or scrap operations.

(4) Towing/Storage Facility

A commercial establishment engaged in towing of vehicles or equipment from one (1) location to another. Such facilities may also include an indoor or outdoor storage component for such vehicles or equipment, but may not include junked, salvage or permanently inoperable vehicles or equipment.

(5) Vehicle Filling Station

A facility limited to retail sales of vehicle fuels, oils, and accessories where repair service, if any, is incidental to the activities on the site.

(6) Vehicle Repair, Heavy

The use of a site for the repair and maintenance of trucks, trailers, commercial and/or construction vehicles.

(7) Vehicle Service, Light

Any building, structure, or lot used for one or more of the following: (1) dispensing, selling, or offering for retail sale items such as gasoline, kerosene, lubricating oil, or grease for the operation and maintenance of automobiles, including the sale and installation of tires, batteries and other minor accessories and services for automobiles; or (2) the business of repairing automobiles. This shall not include car washes, the retreading and/or recapping of tires, or convenience stores which sell gasoline or lubricating oil, but not other automotive accessories or services.

(8) Private Transportation Service

A business that provides transportation services to move people from one (1) location to another location using passenger vehicles such as sedans, special utility vehicles, limousines, vans or buses. The business may include both an office component and a parking component, with the opportunity for the parking component to occur independently of the office component if certain conditions are met. This use does not include taxis or medical transportation vehicles.

(N) Electronic Gaming Operation

Any business or enterprise where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance or sweepstakes, and where cash, merchandise or anything else of value is redeemed or otherwise distributed or placed on an account or other record, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Electronic gaming operations may include, but are not limited to, internet cafes, internet sweepstakes, electronic gaming machines/operations, cybercafés, business centers, or by whatever other terminology such establishment might be known. Electronic gaming operation does not include any lottery approved by the State of North Carolina.

12.3.5 Industrial Uses**(A) Industrial Service**

Industrial Service firms are engaged in the repair or servicing of agricultural, industrial, business, or consumer machinery, equipment, products, or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site. Accessory activities may include retail sales, offices, parking and storage. Hotels, restaurants, and other services that are part of a truck stop are considered accessory to the truck stop. Specific use types include:

(1) General Industrial Service

Manufacturing of finished parts or products, or storage and handling of such products and materials. Examples include, without limitation: welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; sales, repair, storage, salvage or wrecking of heavy machinery, metal, and building materials; building, heating, plumbing or electrical contractors with on-site storage; publishing and lithography; exterminators; janitorial and building maintenance services with on-site storage; fuel oil distributors; sawmills; solid fuel yards; laundry, dry-cleaning and carpet cleaning plants; and photo-finishing laboratories.

(2) Research Laboratory

A facility that is designed or equipped for basic or applied research or experimental study, testing, or analysis in the natural sciences or engineering, including any educational activities associated with and accessory to such research.

(B) Manufacturing and Production

This use category includes firms involved in the manufacturing, processing, fabrication, packaging, or assembly of goods. Natural, man-made, raw, secondary, or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Custom industry is included (i.e., establishments primarily engaged in the on-site production of goods by hand manufacturing involving the use of hand tools and small-scale equipment). Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Accessory activities may include retail sales, offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, repair facilities, truck fleets and caretaker's quarters. Specific use types include:

(1) *Manufacturing, Heavy*

The assembly, fabrication, or processing of goods and materials using processes that ordinarily have greater than average impacts on the environment, or that ordinarily have significant impacts on the use and enjoyment of other properties in terms of noise, smoke, fumes, odors, glare, or health or safety hazards, or that otherwise do not constitute "light manufacturing," or any use where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, or processing exceeds twenty-five (25) percent of the floor area of all buildings on the lot. "Heavy manufacturing" shall include, but not be limited to, the following: enameling, lacquering, or the plating or galvanizing of metals; industrial chemical manufacture; mixing plants for concrete or paving materials, and manufacture of concrete products; pressure treating of wood; stonecutting. This shall not include resource extraction or recycling and salvage operations.

(2) *Manufacturing, Light*

The assembly, fabrication, or processing of goods and materials using processes that ordinarily do not create noise, smoke, fumes, odors, glare, or health or safety hazards outside of the building or lot where such assembly, fabrication, or processing takes place, where such processes are housed entirely within a building, or where the area occupied by outdoor storage of goods and materials used in the assembly, fabrication, or processing does not exceed twenty-five (25) percent of the floor area of all buildings on the lot. This shall not include uses that constitute "heavy manufacturing," resource extraction, or recycling and salvage operations.

(3) *Prototype Process and Production Plants*

A building or operation in which processes planned for use in production elsewhere can be tested, or in which goods are produced only in a quantity necessary for full investigation of the merits of a product, but not including the production of any goods on the premises primarily or customarily for sale or for use in production operations off the premises.

(4) *Resource Extraction*

Extraction of minerals, including solids like coal and other ores, including but not limited to quarrying, open-pit mining, drilling, tunneling, strip mining and any other such activities as defined in G.S. 74-49(7).

(5) Brewery

A facility for the production of beer that may include a restaurant, tasting room, or retail space on the site.

(6) Distillery

A facility for the distillation of spirituous liquor (as defined in G.S. ch. 18B) that may include a restaurant, tasting room, or retail space on the site.

(7) Winery

A facility for the production of wine that may include a restaurant, tasting room, or retail space on the site.

(C) Telecommunications Facilities

Telecommunications facilities enable Federal Communications Commission licensed or authorized wireless communications between user equipment and a communications network. A telecommunications facility consists of a base station and accessory equipment, and the wireless support structure, if any, associated with the facility. Specific use types include:

(1) Concealed (Stealth) Telecommunications Facility

Any antenna or wireless support structure that is camouflaged or concealed to look like something else (e.g., man-made trees, clock towers, bell steeples, light poles, water towers and similar alternative design) so that the purpose of the antenna or wireless support structure is not readily apparent to a casual observer.

(2) Non-Stealth Telecommunications Facility on Existing Building or Structure

Any antennae or wireless support structure not defined in LDO Section 12.3.5(C)(1) that is mounted or attached to a structure.

(3) Freestanding Non-Stealth Wireless Support Structure

Any non-stealth wireless support structure that is not mounted or attached to a building or structure.

(4) Collocation of Small Wireless Facility

Any small wireless facility placed or installed on an existing structure capable of structurally supporting the attachment of wireless facilities in compliance with the North Carolina State Building Code or other applicable codes as defined in G.S. Chapter 160A, Article 3C.

(5) Utility Poles Associated with Small Wireless Facility

Any utility pole upon which a small wireless facility is collocated.

(D) Warehouse and Freight Movement

Firms involved in the storage or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present. Accessory uses may include offices, truck fleet parking, and maintenance areas. Specific use types include:

(1) Mini-Storage

A building or group of buildings divided into separate spaces or compartments leased to individuals, organizations, or businesses on an individual basis for self-service storage of personal property. Also known as self-storage.

(2) Outdoor Storage

The keeping, in an unroofed area of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours. This shall not include the display of vehicles for sale in a new or used car sales lot.

(3) Railroad Stations and Yards

Heavy rail facilities for freight pick-up or distribution; may include intermodal distribution facilities for truck or shipping transport.

(4) Warehousing and Distribution Establishment

A use engaged in (1) the storage of goods, materials, vehicles, trailers, or boats, or (2) the distribution of goods and materials to another location for the purposes of resale or use at the place distributed to. At least fifty (50) percent of the gross floor area of the use shall be used for warehouse and distribution purposes. This shall include offices located on the same property in conjunction with such uses. This shall not include heavy manufacturing, resource extraction, scrap operations, or salvage operations.

(5) Wholesale Establishment

An establishment primarily engaged in the sale or distribution of goods and materials in large quantity to retailers or other businesses for resale to individual or business customers. This shall not include heavy manufacturing, resource extraction, scrap operations, or salvage operations.

(E) Waste-Related Uses

This category includes uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses that collect sanitary wastes, or uses that manufacture or produce goods or energy from the composting of organic material or processing of scrap or waste material. Waste-Related uses also include uses that receive hazardous wastes from others. Accessory uses may include recycling of materials, offices, and repackaging and shipment of by-products. Specific use types include:

(1) *Recycling and Salvage Operation*

A facility, other than a recycling drop-off station, for the collection, handling, sorting, storage, processing, compaction, purchase, and/or resale of scrap or discarded material like paper, metal, rubber, plastic, glass, or cloth. The term includes facilities for separating trash and debris from recoverable materials such as paper products, glass, and metal cans which can be returned to a condition in which they may again be used for production.

(2) *Recycling Drop-Off Station*

A center or collection point with containers or facilities designed and intended for the depositing of clean, separated, and recyclable paper, cardboard, metal, glass, or plastic materials and the collection of such materials for processing at another location, but itself having no mechanical facilities for the processing of such materials.

(3) *Junkyard*

Any establishment or land used, in whole or in part, for commercial or industrial storage, dismantling, and/or sale of waste paper, rags, scrap metal, motor vehicles, machinery, tires, or other junk outside of an enclosed building. This shall not include a landfill, solid waste transfer facility, other public utility facility, or a recycling and salvage operation.

(4) *Landfill*

A facility for the disposal of solid waste in a sanitary manner in accordance with G.S. Chapter 130A Article 9. For the purpose of this Ordinance, this term does not include composting facilities.

(Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 05-001, 1-13-05; Ord. No. 2007-04, 3-22-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-02, 1-28-10; Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-05, 12-15-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, passed 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-01, 1-9-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2017-ACT-01, 10-26-17; Ord. No. 2017-ACT-02, 12-14-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-02, 4-28-22)

12.4 OTHER KEY TERMS DEFINED

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

ACCELERATED EROSION

Any increase over the rate of natural erosion resulting from land-disturbing activities.

ACCESSORY USE

A use that is on the same lot as, and of a nature customarily incidental and subordinate to the principal use, structure, or building on the property.

ACTIVE CONSTRUCTION

On-site activities such as installation, erection, fabrication, alteration, demolition or removal of structures, facilities, or additions that contribute directly to the completion of improvements contemplated or shown on construction plans.

ADDITION (to an existing building)

An extension or increase in the floor area or height of a building or structure.

ADJACENT

Lying near or close to; sometimes, contiguous; neighboring. Adjacent implies that the two (2) objects are not widely separated, though they may not actually touch.

ADMINISTRATIVE DECISION

Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this Ordinance. These are sometimes referred to as ministerial decisions or administrative determinations.

AESTHETIC NUISANCE

A junked motor vehicle on private or public property that has been determined to be so offensive to the sight as to damage the community, neighborhood or area appearance. Aesthetic benefits must outweigh the burdens imposed on the private property owner. Other factors include the protection of property values, promotion of tourism, indirect protection of health and safety, community preservation, or promotion of the comfort, happiness and stability of area residents.

AFFORESTATION

The conversion of land lacking trees into forest land.

AGRICULTURAL PRODUCTS

Products obtained primarily through farming or agricultural activities, including, but not necessarily limited to: pumpkins; grains and seed crops; fruits of all kinds; vegetables; nursery, floral, ornamental, and greenhouse products; trees and forest products, including Christmas trees, firewood, and pine straw; bees and beekeeping products; seafood; and dairy products. For the purposes of this section, processed or prepared food products of any kind shall not be considered as agricultural products.

ALLEYS

Provide utility and vehicular access to developments as an alternative to local streets. They are narrower than local streets, provide access to the rear of a property, and are generally associated with residential areas.

AGRI-TOURISM

The act of visiting a working farm or any agricultural, horticultural or agri-business operation for the purpose of enjoyment, education or active involvement in the activities of the farm or operation.

ALTERATION OF A WATERCOURSE

A dam, impoundment, channel relocation, change in channel alignment, channelization, or change in cross-sectional area of the channel or the channel capacity, or any other form of modification which may alter, impede, retard or change the direction and/or velocity of the riverine flow of water during conditions of the base flood.

ANTENNA

Any structure or device used to collect, receive, transmit, or radiate radio or electromagnetic waves, including but not limited to both directional antennas (such as panels, microwave dishes, satellite earth station antennas over two (2) meters in diameter) and omni-directional antennas (such as whips).

APARTMENT

One (1) or more rooms with a private bath and kitchen facilities comprising an independent dwelling unit which is not located upon its own piece of property.

APPROVED ACCOUNTING TOOL

The most recent version of the accounting tool for calculating nutrient loading and reduction approved by the North Carolina Division of Energy, Mineral, and Land Resources for the relevant geography and development type under review.

ARCADE

A walkway or passageway adjacent to a building that is covered by a roof but open to the outside air.

AREA OF SHALLOW FLOODING

An "AO" or "AH" zone designated on a Flood Insurance Rate Map (FIRM) issued by the Federal Emergency Management Agency (FEMA) with base flood depths from one (1) to three (3) feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

AREA OF SPECIAL FLOOD HAZARD

The land in the floodplain subject to a one (1) percent or greater chance of flooding in any given year. See "Special Flood Hazard Area (SFHA)"

ARTIFICIAL OBSTRUCTION

Any obstruction to the flow of water in a stream that is not a natural obstruction, including any that, while not a significant obstruction in itself, is capable of accumulating debris and thereby reducing the flood-carrying capacity of the stream.

ASSISTED LIVING

A living arrangement where the elderly or other persons are provided assistance with daily activities such as dressing, grooming, and bathing.

ATTENTION-ATTRACTING DEVICE

Any device or object visible from any public right-of-way that is primarily designed to attract the attention of the public to a business, institution, sign or activity through such means, including but not limited to illumination, color, size, or location. Attention-attracting devices or objects oftentimes incorporate illumination, which may be stationary, moving, turning, blinking (including animation), flashing or laser. Attention-attracting devices may or may not convey a message and can include, but are not limited to, search lights, beacons, strobe lights, strings of lights, barber poles, internally illuminated translucent canopies or panels, electronically controlled message boards (time/temperature signs, gas price signs, public service announcements, etc.) banners, streamers, pennants, propellers and inflatable objects (including strings of balloons) or other device designed to attract attention. Any sign, which emits a sound, odor, or visible matter, is considered an attention-attracting device. Approved traffic-control devices are not considered to be attention-attracting devices.

AWNING

Any non-rigid material, such as fabric or flexible plastic, which extends from the exterior wall of a building and is supported by or attached to a frame.

BANNER

Any sign, except an awning sign, applied to or made of cloth, paper, fabric, flexible plastic or other fabric-like material that only uses such non-rigid material for backing or background.

BASE FLOOD

The flood having a one percent (1%) chance of being equaled or exceeded in any given year based on current conditions hydrology. Also known as the "100-year flood."

BASE FLOOD ELEVATION (BFE)

A determination of the water surface elevations of the base flood based on current conditions hydrology as published in the Flood Insurance Study. When the BFE has not been provided in a Special Flood Hazard Area, it may be obtained from engineering studies available from a federal, state, or other source using FEMA approved engineering methodologies. This elevation, when combined with the Freeboard, establishes the Regulatory Flood Protection Elevation in Special Flood Hazard Areas.

BASEMENT

Any area of the building having its floor subgrade (below ground level) on all sides.

BEDROOM

A room designated as a sleeping or bedroom on the plan and permit application.

BERM

Any elongated earthen mound designed or constructed on a site to separate, screen or buffer adjacent land uses.

BEST MANAGEMENT PRACTICES (BMP)

Schedules of activities, prohibitions of practices, general good house keeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to storm water, receiving waters, or storm water conveyance systems. BMPs also include treatment practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

BILLBOARD

Any outdoor advertising sign erected and maintained by an advertising business or service, upon which advertising matter may be displayed and that generally advertises firms and organizations that, along with their goods and services, are not located on the same premises as the sign; and whose surface is sold, rented or leased for display of advertising material.

BONA FIDE FARM

A parcel of land used for agricultural activities as set forth in G.S. 160D-903.

BORROW MATERIAL

Fill material required for on-site construction that is obtained from other locations.

BREAKAWAY WALL

Any type of wall, whether solid or lattice, and whether constructed of concrete, masonry, wood, metal, plastic, or any other suitable building material, which is not part of the structural support of a building and which is designed to break away during floods without damage to the structural integrity of the building on which it is used or any buildings to which they might be carried by flood waters.

BUFFER, INTERIOR

Buffers required within the interior of the overall development (for example, buffers along property lines of an outparcel interior to a shopping center).

BUFFER, PERIMETER

A unit of land and any plants and structures (i.e., walls, fences) thereon which is used to separate land uses from each other as required by this Ordinance, including but not limited to the Type A Opaque, Type B Semi-Opaque, and Type C Aesthetic described in Section 7.2.3. These buffers are typically undisturbed buffers; however, they may be supplemented to meet the performance objectives of each buffer type.

BUFFER, STREAM

The area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants (see Section 7.3). The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams, rivers, or lakes.

BUFFER, UNDISTURBED

A unit of land containing existing healthy vegetation that shall be left in its natural state excluding noxious weeds and plants. Such buffer shall not be graded, nor shall any development occur within such buffer unless otherwise allowed in this Ordinance.

BUILDING

Any structure used or intended for supporting or sheltering any use or occupancy.

BUILDING, ACCESSORY

A building or structure that is on the same lot as, and of a nature customarily incidental and subordinate to, another building or structure, and the use of which is clearly incidental and subordinate to that of the other building or structure.

BUILDING, EXISTING

For purposes of Sections 3.12 and 14.7 only, any building for which the "start of construction" commenced before May 10, 2001, the initial effective date of the floodplain management regulations adopted by Cary.

BUILDING, PRINCIPAL

A building in which is conducted the principal use of the lot on which it is situated. A multi-occupant property may have more than one principal building, but only structures regularly used for human occupancy may be considered principal buildings. Not an accessory building.

BUILDING FOOTPRINT

The outline of the total area of a lot or site that is surrounded by the exterior walls of a building or portion of a building, exclusive of courtyards. In the absence of surrounding exterior walls, the building footprint shall be the area under the horizontal projection of the roof.

BUILDING PERMIT

An official document issued by Cary pursuant to this Ordinance and the State building code authorizing the erection, construction, reconstruction, restoration, alteration, enlargement, conversion, remodeling, demolition, moving, or repair of a building or structure.

BUILDING SETBACK LINE

A line establishing the minimum allowable distance between the nearest portion of any building and a property line, measured perpendicularly between the building and the property line.

BUILDING WALL

An exterior load-bearing or non-load-bearing vertical structure, which encompasses the area between the final grade elevation and the eaves of the building, and used to enclose the space within the building. A porch, balcony, or stoop is part of the building structure and may be considered as a building wall.

BUILT-UPON AREA

See "Impervious Surface Area".

CALIPER

A horticultural method of measuring the diameter of a tree trunk for the purpose of size grading. The caliper of the trunk is measured six (6) inches above the ground for trees up to and including four (4) inches in diameter, twelve (12) inches above the ground for trees greater than four (4) inches up to twelve (12) inches in diameter, and at breast height (four and one-half (4.5) feet) for trees greater than twelve (12) inches in diameter. The following measurements of caliper may be used when appropriate: vertically growing tree on a slope - measure diameter four and one-half (4.5) feet from the ground on the upper side of the slope; tree leans - measure four and one-half (4.5) feet up the stem in the direction of the lean; tree forks below DBH - measure at the narrowest part of the main stem below the fork (if the circumference measurement below the lowest fork places the measurement on the ground, the trees shall be considered separately).

CANOPY

A roof structure constructed of rigid materials, including but not limited to, metal, wood, concrete, plastic, canvas or glass, which is attached to and supported by a building, or which is freestanding and supported by columns, poles, or braces extended to the ground. Unlike a marquee, a canopy generally has very limited vertical surface area; and unlike an awning, a canopy is generally supported by vertical elements rising from the ground at two (2) or more corners.

CERTIFICATE OF EROSION CONTROL COMPLIANCE

A certificate issued by the Stormwater Manager following inspection of sedimentation and erosion control measures installed at a construction site following issuance of a grading permit.

CHAMPION TREE

Any single tree other than a sweet gum that measures: (a) forty (40) caliper inches or greater for pines; (b) thirty-two (32) caliper inches or greater for all upper story trees other than pines; or twelve (12) caliper inches or greater for dogwood, horticultural cherry, redbud, silverbell, and serviceberry. A tree that meets the indicated size above but is dead or dying from a disease, or has an abnormal form that is not characteristic of its species (for example the habit is one-sided, or the crown is significantly misshapen or missing) as determined by a certified arborist, shall not be considered to be a Champion Tree.

CHEMICAL STORAGE FACILITY

A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

CHICKEN COOP

An enclosed structure for housing or sheltering chickens which contains nesting boxes for the chickens to sit in while laying their eggs as well as perches for the chickens to use while sleeping. Sometimes called a "henhouse."

CHICKEN PEN

An open-air, outdoor area connected to or surrounding the coop which is surrounded with wire or mesh screening to cage and protect chickens from predators as they range outside the coop.

CHICKEN TRACTOR

A small, movable chicken coop used to allow chickens to forage on fresh grass daily.

CLEAN WATER ACT

The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

CLUSTER DEVELOPMENT

A development technique that concentrates or groups buildings in specific areas on a development site to conserve land resources and provide for innovation in the design of the project.

COMMERCIAL MESSAGE

Any sign, wording, logo or other representation that, directly or indirectly, names, advertises, or calls attention to a business, product, service or other commercial activity.

COMMISSARY

A permitted food establishment where a food truck returns daily for such things as discharging liquid or solid wastes, refilling water tanks and ice bins, and loading of food ingredients or prepared food.

COMPATIBLE

A term used to describe how the visual aspects of a structure (including signage) are similar to or consistent with the other structures on the same parcel, site, or in the immediate vicinity. Visual aspects include, but are not limited to: color, texture, materials, scale, size, form and aspect.

COMPREHENSIVE TRANSPORTATION PLAN

The official plan, as adopted by the Town of Cary, which identifies major road, pedestrian, bicycle, and transit improvements necessary to serve projected growth. The Town's Comprehensive Transportation Plan consists of Chapter 7, "Move," and its associated appendices from the Cary Community Plan, together with the 2012 Greenways Master Plan Map and Chapter 6, "Greenways & Trails," from the 2012 Parks, Recreation and Cultural Resources Master Plan and any associated appendices and updates.

CONDOMINIUM

A development containing individually owned dwelling units and jointly owned and shared areas and facilities that is subject to the North Carolina Unit Ownership Act (G.S. Ch. 47A) and/or the North Carolina Condominium Act (G.S. Ch. 47C).

CONSERVATION EASEMENT

The voluntary granting of a right or interest in real property by a property's owner which stipulates that the described land will remain in its natural state, and which precludes any future or additional development on a parcel or portion of a parcel.

CONSTRUCTION

Any act or process that requires a building permit for on-site fabrication, building, reconstruction, erection, extension, betterment, or improvement of land providing a building or structure or any part thereof, which provides, adds to, repairs, or increases the floor area of a residential or non-residential use.

CONSTRUCTION ACTIVITY (for purposes of NPDES PhII Permit)

Activities subject to NPDES Construction Permits. These include construction projects resulting in land disturbance of one (1) acre or more. Such activities include but are not limited to clearing and grubbing, grading, excavating, and demolition.

CONSTRUCTION DRAWINGS

A set of drawings that depict design and implementation of improvements required for development plans under this Ordinance.

CONTIGUOUS

Next to, abutting directly, adjoining, or touching and having a common boundary or portion on the boundary of, or separated by a street, railroad, public utility right-of-way, or body of water.

CONTROLLED-ACCESS HIGHWAY

A roadway which, in accordance with State and Federal guidelines, is designed to give preference to through traffic by providing access connections at interchanges or selected public roads only, with no

direct access from private roads or driveways and with no crossings at grade, including any interstate, State, U.S. Route.

COPING

The finished edge of a roof.

COSMETIC AMENDMENT TO THE COMPREHENSIVE PLAN

A cosmetic amendment to the Comprehensive Plan is an amendment that affects the appearance, style, wording, or presentation of the Plan, but that does not alter its meaning, interpretation, or recommendations. Examples of cosmetic amendments include, but are not limited to: revising map or document style, format, or layout to enhance clarity; revising map or text content to accurately reflect additions to Town facilities or revisions to adjoining jurisdictions' adopted plans; adding explanatory text or labels; and correcting spelling or grammar. All other amendments to the Comprehensive Plan shall be considered substantive.

CRITICAL ROOT ZONE

An underground circular area extending from the base of a tree's trunk a distance of at least one and one-quarter (1.25) feet from the tree for each inch of caliper.

CUL-DE-SAC

A local street in which accessibility is limited to only one (1) means of ingress and egress and with a vehicular turnaround at the end.

CURRENT CONDITIONS HYDROLOGY

The flood discharges associated with the land-use conditions existing within the drainage area of a watercourse at the time a flood study of the watercourse was conducted. Current conditions flood discharges and historical flood study information are published in the Flood Insurance Study.

DEAD END STREET

A street in which accessibility is limited to only one (1) means of ingress and egress.

DECK

A structure without a roof, either freestanding or attached to a building, which is supported by posts or pillars.

DENSITY, GROSS

The total number of dwelling units theoretically allowed on a particular parcel based upon its size and zoning designation while not taking into account the portions of unbuildable land.

DENSITY, NET

The total number of dwelling units on a particular tract or parcel of land, not taking into account portions of the tract or parcel which contain rights-of-way for collector or larger streets, Flood Hazard Area, lakes, other water bodies, or wetlands falling under the regulatory jurisdiction of the U.S. Army Corps of Engineers.

DESIGN FLOOD

See “Regulatory Flood Protection Elevation.”

DETACHED

Not physically connected to another building or structure.

DETENTION

The temporary, on-site restraining of stormwater.

DETENTION FACILITY

A natural or artificial facility that provides temporary storage of excess stormwater runoff for the purpose of releasing it at a controlled rate. A detention facility normally drains completely between storm events. May also be known as a detention basin.

DETERMINATION

A written, final, and binding order, requirement, or determination regarding an administrative decision.

DEVELOPER

A person, including a governmental agency or redevelopment authority, who undertakes any development and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.

DEVELOPMENT

Any of the following:

- a. The construction, erection, alteration, enlargement, renovation, substantial repair, movement to another site, or demolition of any structure.
- b. The excavation, grading, filling, clearing, or alteration of land.
- c. The subdivision of land as defined in G.S. 160D-802.
- d. The initiation or substantial change in the use of land or the intensity of use of land. This definition does not alter the scope of regulatory authority granted by G.S. Chapter 160D.

DEVELOPMENT, EXISTING

For the purposes of Sections 4.4.6 and 7.3 only, existing development includes those projects meeting at least one (1) of the following criteria:

- Development having a common law vested right, which is a substantial expenditure of resources (e.g., time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project;
- Having a current building permit issued by the Town;

- Having an approved development plan issued by the Town as authorized by the G.S. 160D-108; 108.1; or
- In Watershed Protection Overlay district only, conforming single-unit lots of record that received final plat approval before July 1, 1993.
- Development in the Neuse River Basin prior to March 1, 2001.

DEVELOPMENT ACTIVITY

For purposes of Sections 3.12 and 14.7 only, any activity defined as Development which will necessitate a Floodplain Development Permit. This includes buildings, structures, and non-structural items, including (but not limited to) fill, bulkheads, piers, pools, docks, landings, ramps, and erosion control/stabilization measures.

DEVELOPMENT AGREEMENT

A contract or legally-binding arrangement between one (1) or more private entities and the Town which specifies the rights and obligations of all parties with respect to a single development, project, or proposal.

DEVELOPMENT APPROVAL

An administrative or quasi-judicial approval made pursuant to G.S. 160D that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning permits, development plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations adopted pursuant to G.S. 160D, including plat approvals, permits issued, development agreements entered into, and building permits issued.

DEVELOPMENT PLAN

A scaled drawing and supporting text showing the relationship between lot lines and the existing or proposed uses, buildings, or structures on the lot. The development plan may include site-specific details such as building areas, building height and floor area, setbacks from lot lines and street rights-of-way, intensities, densities, utility lines and locations, parking, access points, roads, and stormwater control facilities that are depicted to show compliance with all legally required development regulations that are applicable to the project and the development plan review. "Development Plan" is synonymous with "site plan" as defined in G.S. 160D-102. Unless the context clearly indicates otherwise, any reference to a "site plan" or "subdivision plan" in this Ordinance is a reference to a development plan.

DEVELOPMENT REGULATION

A unified development ordinance, zoning regulation, subdivision regulation, erosion and sedimentation control regulation, floodplain or flood damage prevention regulation, stormwater control regulation, wireless telecommunication facility regulation, historic preservation or landmark regulation, housing code, State Building Code enforcement, or any other Town regulation, act or charter that regulates land use or development.

DIAMETER AT BREAST HEIGHT (DBH)

The measurement of the diameter of a tree trunk taken at a height of four and one-half (4.5) feet above the ground.

DIGITAL FLOOD INSURANCE RATE MAP (DFIRM)

The digital official map of a community, issued by the Federal Emergency Management Agency (FEMA), on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

DIRECTOR OF PARKS, RECREATION, AND CULTURAL RESOURCES

The Director of the Town of Cary Department of Parks, Recreation, and Cultural Resources.

DISPOSAL

As defined in G.S. 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

DRIVE AISLE

An area in a parking lot in between parking spaces so that vehicles can drive into and out of the spaces.

DRIVE-THROUGH FACILITY

A business or facility which is designed or intended to enable a customer to transact business without exiting a motor vehicle parked on or moving through the premises.

DWELLING

Any building, structure, manufactured home, or mobile home, or part thereof, used and occupied for human habitation or intended to be so used, and includes any outhouses and appurtenances belonging thereto or usually enjoyed therewith.

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 a property owner to the public, a corporation, or other person or persons of the right to use an identifiable piece of land for specified purposes, such as for access or utilities.

ELECTRONIC GAMING MACHINE

An electronic machine, including but not limited to computers and gaming terminals, used to conduct games of chance or sweepstakes in which cash, merchandise or anything else of value is redeemed or otherwise distributed or placed on an account or other record, whether or not the value of such distribution is determined by electronic games played or by predetermined odds.

ELEVATED BUILDING

A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

ENCROACHMENT

The projection or intrusion of a building, structure, or other land-disturbing activity into an area where such projections are typically prohibited.

ENCROACHMENT (for the purposes of floodplain management)

The advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

ENERGY DISSIPATOR

A structure or a shaped channel section with mechanical armoring placed at the outlet of pipes or conduits to receive and break down the energy from high velocity flow of water.

ENFORCEMENT OFFICIAL

A person charged by the Town Manager or Manager's designee with enforcement of the provisions of this Ordinance. May also be referred to as a Zoning Compliance Officer.

ENGINEER

A professional engineer registered by the State of North Carolina.

ENGINEERED STORMWATER CONTROL MEASURE

A physical device designed to trap, settle out, filter, or otherwise remove pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Engineered stormwater control measures include physical practices such as constructed wetlands, vegetative practices, vegetated conveyances, filter strips, grassed swales, and other methods installed or created on real property. "Engineered stormwater control measure" is synonymous with "structural practice," "Primary SCM", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measure," "structural stormwater treatment system," and similar terms used in this ordinance. It is a broad term that may include practices that do not require design by a professionally licensed engineer.

EROSION

The wearing away of land surface by the action of wind, water, gravity, or any combination thereof.

EROSION CONTROL MEASURE, STRUCTURE, OR DEVICE

A measure, structure, or device that controls the soil material within the land area under responsible control of the person conducting the land-disturbing activity.

EVIDENTIARY HEARING

A hearing to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by a development regulation adopted under this Ordinance.

EXTRATERRITORIAL JURISDICTION

The area adjacent to and beyond the municipal limits of the Town over which Cary has been granted an exercise of municipal governmental powers, including but not limited to the power to regulate development, in accordance with G.S. 160D-202.

FARM MARKET

An area that is used by one (1) or more operators of bona fide farms for the sale of agricultural products not grown on the same premises as the market.

FENCE

A structure used to delineate a boundary or act as a barrier or means of protection, confinement, or screening.

FENESTRATION

Architectural treatment over, around, or near a window, door, or other feature of relief on the elevation of a building.

FLAG

Any fabric or bunting containing distinctive colors, patterns or symbols, used as a symbol of a government, political subdivision, corporation, lodge, fraternity or sorority, political party, nonprofit organization, charity, club, association or other entity.

FLAG LOT

An irregularly shaped lot in which the buildable section is connected with an arm that fronts a street and the width of the arm does not meet the minimum lot width standards in the zoning district in which it is located.

FLOOD OR FLOODING

A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland waters or the unusual and rapid accumulation of runoff of surface waters from any source.

FLOOD BOUNDARY AND FLOODWAY MAP (FBFM)

An official map of a community, issued by the FEMA, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

FLOOD FRINGE

That part of an area of special flood hazard that is not located in the floodway.

FLOOD HAZARD AREA

The flood hazard area is comprised of the special flood hazard area and the future conditions flood hazard area.

FLOOD HAZARD BOUNDARY MAP (FHBM)

An official map of a community, issued by the Federal Emergency Management Agency (FEMA), where the boundaries of the areas of special flood hazard have been designated as zone "A."

FLOOD INSURANCE

The insurance coverage provided under the National Flood Insurance Program.

FLOOD INSURANCE RATE MAP (FIRM)

The most recent officially adopted map of a community, issued by the Federal Emergency Management Agency, on which the special flood hazard areas, the future conditions flood hazard areas, and the risk premium zones applicable to the community are delineated. (see also DFIRM)

FLOOD INSURANCE STUDY

The most recent officially adopted report, provided by the Federal Emergency Management Agency, which contains an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

FLOODPLAIN

Any land area susceptible to being inundated by water from any source.

FLOODPLAIN ADMINISTRATOR

The individual appointed to administer and enforce the floodplain management regulations.

FLOODPLAIN DEVELOPMENT PERMIT

Any type of permit that is required in conformance with the provisions of the floodplain management regulations of this ordinance, prior to the commencement of any development activity.

FLOODPLAIN MANAGEMENT

The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

FLOODPLAIN MANAGEMENT REGULATIONS

This ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

FLOODPLAIN, ONE PERCENT (1%) ANNUAL CHANCE OR BASE FLOODPLAIN

The special flood hazard area.

FLOODPROOFING

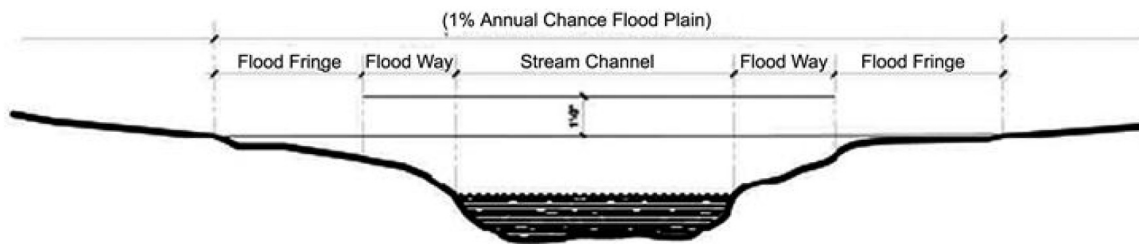
Any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

FLOOD-RESISTANT MATERIAL

Any building product [material, component, or system] capable of withstanding direct and prolonged contact (minimum 72 hours) with floodwaters without sustaining damage that requires more than low-cost cosmetic repair. Any material that is water-soluble or is not resistant to alkali or acid in water, including normal adhesives for above-grade use, is not flood-resistant. Pressure-treated lumber or naturally decay-resistant lumbars are flood resistant flooring materials. Sheet-type flooring coverings that restrict evaporation from below and materials that are impervious, but dimensionally unstable are not flood-resistant. Materials that absorb or retain water excessively after submergence are not flood-resistant. Please refer to Technical Bulletin 2, Flood Damage-Resistant Materials Requirements, and available from the FEMA. Class 4 and 5 materials, referenced therein, are acceptable flood-resistant materials.

FLOODWAY

The channel of a river, stream, or other watercourse including the area above a bridge or culvert when applicable, and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation by more than one (1) foot.

**FLOODWAY ENCROACHMENT ANALYSIS**

An engineering analysis of the impact that a proposed encroachment into a floodway or non-encroachment area is expected to have on the floodway boundaries and flood levels during the occurrence of the base flood discharge. The evaluation shall be prepared by a qualified North Carolina licensed engineer using standard engineering methods and models.

FLOOD ZONE

A geographical area shown on a Flood Hazard Boundary Map, Flood Insurance Rate Map, or Digital Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

FLOOR AREA

The gross total horizontal area of all floors including:

- (a) usable basements and cellars;
- (b) the portion of attics accessible by fixed stairs where the distance between floor and ceiling is at least five (5) feet; and

- (c) below the roof and within the outer surface of the main walls of principal or accessory buildings, or the centerlines of a party wall separating such buildings or portions thereof, or within lines drawn parallel to and two (2) feet within the roofline of any building or portions thereof without walls.

In the case of non-residential facilities, floor area calculations shall not include arcades, porticos, and similar areas open to the outside air which are accessible to the general public and which are not designed or used as areas for sales, display, storage, service, or production.

FLOOR AREA RATIO (FAR)

The ratio of the gross floor area on a lot to the area of such lot.

FOOD TRUCK

A specialized unit mounted on, or pulled by, a self-propelled vehicle where food or beverage, including prepackaged food, is prepared, cooked, served, or dispensed, for individual portion service. Such vehicle is self-contained with its own drinking water tank and waste water tank; is designed to be readily movable; is located on an allowed site for more than thirty (30) minutes; and is moved daily to return to its commissary. May also be referred to as a "mobile food vending unit." This definition shall include a mobile farmers market for the sale of locally grown fresh produce which is in its original form and not altered or processed. This definition shall not include mobile canteen, coffee, or ice cream trucks that move from place to place and remain stationary in the same location for no more than thirty (30) minutes at a time, or food vending push carts that are allowed at the front of retail establishments in accordance with Section 5.4.6(C).

FOOT-CANDLES

The amount of light that falls onto a surface.

FOOT-CANDLES, AVERAGE

The average of a number of points of foot-candle calculations or foot-candle readings in a given area.

FOOT-CANDLES, INITIAL

Foot-candles that are calculated with no adjustment for dirt build-up in the fixture of lamp lumen depreciation. Initial foot-candles should be measured when a lighting system is new and after one hundred (100) hours of lamp burn-in time.

FOOT-CANDLES, MAINTAINED

Foot-candles that are calculated with an adjustment for a maintenance factor to include dirt build-up in the luminaire (fixture) and lamp lumen depreciation. The system is in effect over designed initially and then over time allowed to reach a maintained foot-candle level.

FOR GOOD CAUSE SHOWN

For the purposes of considering a request for an extension of time to perform a certain action or requirement, the phrase "for good cause shown" shall generally refer to situations or circumstances in which the time to perform the act has not expired and in which the entity seeking the extension does not have direct and/or complete control of a related aspect of the project that is essential, and contributes, to performance of the particular action or requirement that is the subject of such request. Examples of such situations shall include, but are not limited to:

- Appeal of an approval, permit or other similar decisions brought about by an entity other than the applicant and filed in accordance with all applicable procedures and requirements; and
- Inaction or delay by another governmental agency or approval authority with respect to the review/approval of a related or component aspect of the project.

For the purposes of considering a request to waive the minimum required waiting period for submitting subsequent application for a property following certain actions (as further described in this Ordinance) on the initial request, the phrase "for good cause shown" shall generally refer to situations or circumstances in which there has been substantial/significant change to one or more aspects of the project at the time of initial application or request.

FOREST OR FOREST STAND

Areas or stands of trees, the majority of which are greater than ten (10) inches caliper, covering an area greater than one-quarter (0.25) acre; or groves of mature trees without regard to minimum area consisting of substantial numbers of individual specimens (Substantial numbers represents more of a visual impression as opposed to a specific number).

FOUNDATION PLANTINGS

Vegetative material typically consisting of shrubs and/or ground cover which is planted proximate to the exterior wall or walls of a structure.

FREEBOARD

The height added to the Base Flood Elevation (BFE) or the Future Conditions Flood Elevation to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the Regulatory Flood Protection Elevation.

FUTURE CONDITIONS FLOOD

The flood having a one percent (1%) chance of being equaled or exceeded in any given year based on future conditions hydrology.

FUTURE CONDITIONS FLOOD ELEVATION

A determination of the water surface elevations of the one percent (1%) annual chance flood based on future conditions hydrology as published in the Flood Insurance Study. This elevation, when combined with the freeboard, establishes the Regulatory Flood Protection Elevation in Future Conditions Flood Hazard Areas.

FUTURE CONDITIONS FLOOD HAZARD AREA

The land area that would be inundated by the one percent (1%) annual chance flood based on future conditions hydrology.

FUTURE CONDITIONS HYDROLOGY

The flood discharges associated with projected land-use conditions based on Cary's comprehensive land-use plans and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway such as bridge and culvert construction, fill, and excavation. Future conditions flood discharges are published in the Flood Insurance Study.

GLARE

The reflection or harsh, bright light and the physical effect resulting from high luminances or insufficiently shielded light sources to cause annoyance, discomfort, or loss in visual performance and visibility.

GREENWAY

A linear open space, either privately-owned or owned by the Town or another unit of government, which contains trails for activities such as walking, bicycling, or horseback riding, or provides areas for passive recreation, but not for use by vehicles for purposes other than maintenance.

GREENWAY EASEMENT

A permanent easement dedicated to the Town for the purpose of providing public greenway access at a greenway access location. The greenway easement provides public access to the greenway access location; and allows construction, installation, operation, and maintenance of greenway amenities by the Town.

GROUND COVER

Any natural vegetative growth or other material that renders the soil surface stable against accelerated erosion.

HAZARDOUS MATERIAL

Any substance that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant present or potential hazard to human health and safety or the environment. Such materials are listed SARA Section 302, Extremely Hazardous Substances, CERCLA Hazardous Substances, or Section 311 of CWA (oil and hazardous substances).

HAZARDOUS WASTE FACILITY

As defined in NCGS Article 9 of Chapter 130A, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

HEALTH CARE OFFICE

Offices and laboratory facilities for the use of physicians, health care providers, and other support personnel. Such use typically involves the dispensing of medical or health-related advice and prescriptions and performance of minor medical procedures.

HIGH DENSITY DEVELOPMENT

For purposes of the Watershed Protection Overlay district, development that contains an amount of impervious surface area that requires engineered stormwater control measures.

HIGHEST ADJACENT GRADE (HAG)

The highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

HISTORIC BUILDING OR STRUCTURE

Any building or structure that is: (a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; (b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; (c) individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or (d) certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program". Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980. For purposes related to Session Law 2007-66, historic building or structure also includes those individually listed on the North Carolina inventory of historic places or individually listed on a Wake County, Cary or other local inventory of historic places in communities with historic preservation programs that have been certified by an approved state program as determined by the Secretary of Interior.

HOLIDAY DECORATIONS

Displays erected on a seasonal basis in observance of religious, national, or state holidays which are not intended to be permanent in nature and which contain no advertising material.

HOME OCCUPATION

An occupation or profession that involves the rendering of a service in exchange for monetary fees or other remuneration or administrative support for a business where services are rendered off-site, is conducted wholly within a dwelling unit, does not change the character of the dwelling unit, and is limited in extent and clearly incidental and secondary to the use of the dwelling unit for residential purposes. Home occupation businesses do not exchange goods or products on site though services may be delivered on site.

ILLEGAL DISCHARGE

Any direct or indirect non-storm water discharge to the storm drain system.

ILLICIT CONNECTION

An illicit connection is defined as either of the following:

- (a) Any drain or conveyance, whether on the surface or subsurface that allows an illegal discharge to enter the storm drain system including but not limited to any conveyances that

allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

- (b) Any drain or conveyance connected from a commercial or industrial land use to the storm drain system that has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

IMPERVIOUS SURFACE AREA

Any hard-surfaced, man-made area that allows little or no infiltration of precipitation into the soil. Impervious surface areas include that portion of a development project that is covered by buildings; areas paved with concrete, asphalt or brick; gravel road; recreation facilities such as tennis courts; patios, driveways, and streets. "Impervious surface area" does not include slatted decks; the water surface area of a swimming pool; a surface of number 57 stone, as designated by the American Society for Testing and Materials, laid at least four inches thick over a geotextile fabric; a trail as defined in G.S. 113A-85 that is either unpaved or paved as long as the pavement is porous with a hydraulic conductivity greater than 0.001 centimeters per second (1.41 inches per hour); or landscaping material, including, but not limited to, gravel, mulch, sand, and vegetation, placed on areas that receive pedestrian or bicycle traffic or on portions of driveways and parking areas that will not be compacted by the weight of a vehicle, such as the area between sections of pavement that support the weight of a vehicle.

IMPROVEMENT

Any building, structure, bridge, work of art, area, parking facility, public facility, fence, gate, wall, landscaping, or other object, or any part thereof, constituting physical addition to real property.

INACTIVE APPLICATION

Any application for an entitlement, procedure, or approval outlined in Chapter 3 of this Ordinance which has not been withdrawn, approved, or tabled; and which has not maintained the associated review schedule and/or which lacks any written correspondence between the applicant and the Town for a period of ninety (90) days or more.

INDEPENDENT LIVING UNIT

A dwelling unit that is part of a life care community that includes complete facilities for independent living, including cooking and sanitary facilities. The occupants are presumed to be able to function independently of the support facilities of the life care community.

INDUSTRIAL DEVELOPMENT

For the purposes of stormwater management, any non-residential development that requires an NPDES permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product or commodity.

INDUSTRIAL DISCHARGE

The discharge of industrial process treated wastewater or wastewater other than sewage and includes:

Wastewater resulting from any process of industry or manufacture, or from development of any natural resource;

Wastewater resulting from processes of trade or business, including wastewater from laundromats and car washes, but not wastewater from restaurants;

Stormwater will not be considered to be industrial wastewater unless it is contaminated with industrial wastewater; or

Wastewater discharged from a municipal wastewater treatment plant requiring a pre-treatment program.

INOPERABLE VEHICLE

Any motorized vehicle incapable of immediately being driven and not properly licensed or inspected for safety in accordance with state law.

INSTITUTIONAL USE

For the purpose of determining allowable signage, a school, religious institution, or other use operated by a public agency or non-profit organization and permitted as a use in one (1) or more residential zoning districts in the Town. A day-care facility shall be considered an institution regardless of ownership or operation.

INTERSTATE HIGHWAY

A controlled access highway that is part of the federal interstate highway system.

JUNKED MOTOR VEHICLE

A motor vehicle that does not display a current license plate lawfully upon the vehicle and: is partially dismantled or wrecked; or cannot be self-propelled or moved in the manner in which it was originally intended to move; or is more than (5) five years old and appears to be worth less than one hundred dollars (\$100).

LAKE OR NATURAL WATERCOURSE

Any stream, river, swamp, canal, or other waterway, and any reservoir, lake, or pond, natural or impounded.

LAND-DISTURBING ACTIVITY

Any use of the land by any person for residential, industrial, educational, institutional, or commercial development, or for highway and road construction and maintenance, that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. Within watershed management areas, land-disturbing activity shall include the clear cutting of trees unless specifically exempted by this Ordinance.

LANDOWNER

The holder of the title in fee simple. Absent evidence to the contrary, a local government may rely on the county tax records to determine who is a landowner. The landowner may authorize a person holding a valid option, lease, or contract to purchase to act as his or her agent or representative for the purpose of making applications for development approvals.

LANDSCAPED AREA

A portion of a site or property containing vegetation to exist after construction is completed. Landscaped areas primarily include natural areas, buffers, streetscapes, lawns, and plantings; but may also include organic and inorganic mulch, decorative planters, irrigation systems, and elements of ornamentation such as lamps, sculptures, and the like.

LEGISLATIVE HEARING

A hearing to solicit public comment on a proposed legislative decision.

LETTER OF MAP CHANGE (LOMC)

An official determination issued by FEMA that amends or revises an effective Flood Insurance Rate Map or Flood Insurance Study. LOMC include:

- (a) Letter of Map Amendment (LOMA): An official amendment, by letter, to an effective National Flood Insurance Program map. A LOMA is based on technical data showing that a property had been inadvertently mapped as being in the floodplain but is actually on natural high ground above the base flood elevation. A LOMA amends the current effective Flood Insurance Rate Map and establishes that a specific property, portion of a property, or structure is not located in a special flood hazard area.
- (b) Letter of Map Revision (LOMR): A revision based on technical data that may show changes to flood zones, flood elevations, special flood hazard area boundaries and floodway delineations, and other planimetric features.
- (c) Letter of Map Revision Based on Fill (LOMR-F): A determination that a structure or parcel of land has been elevated by fill above the base flood elevation and is, therefore, no longer located within the special flood hazard area. In order to qualify for this determination, the fill must have been permitted and placed in accordance with the community's floodplain management regulations.
- (d) Conditional Letter of Map Revision (CLOMR): A formal review and comment as to whether a proposed project complies with the minimum NFIP requirements for such projects with respect to delineation of special flood hazard areas. A CLOMR does not revise the effective Flood Insurance Rate Map or Flood Insurance Study; upon submission and approval of certified as-built documentation, a Letter of Map Revision may be issued by FEMA to revise the effective FIRM.

LIGHT, CUTOFF

An artificial outdoor lighting fixture designed to ensure that no light is directly emitted above a horizontal line parallel to the ground.

LIGHT, NONCUTOFF

An artificial outdoor lighting fixture designed to allow light to be directly emitted above a horizontal line parallel to the ground.

LOAD

Means the mass quantity of a nutrient or pollutant released into surface waters over a given time period. Load in this ordinance refers to pounds of nitrogen or phosphorus per year.

LOADING RATE

Means the mass quantity of a nutrient or pollutant released from a given area into surface waters over a given time period. Loading rate in this ordinance refers to pounds of nitrogen or phosphorus per acre per year.

LOCAL STREETS

Provide the highest degree of access and the least mobility. They are generally associated with residential areas and permit direct access to abutting land (examples include cul-de-sacs, loop streets, residential local streets, non-residential local streets).

LOGO

The graphic or pictorial presentation of a message, including, but not limited to, the use of shapes, designs, decorations, emblems, trademarks, symbols, or illustrations, or the superimposition of letters or numbers or any other use of graphics or images other than the sequential use of letters and numbers.

LOT

A portion of a subdivision established by some legal instrument, such as a recorded deed or plat, and which is recognized as a separate legal entity for purposes of transferring title.

LOT, CORNER

A lot located at the intersection and abutting two (2) or more streets.

LOT, NONCONFORMING

A lot that met all legal requirements when it was platted or otherwise recorded but which does not comply with the minimum lot area or minimum lot width requirements of this Ordinance, or a subsequent amendment hereto, for the zoning district in which it is located.

LOT OF RECORD

A lot that is recorded by the county register of deeds.

LOW DENSITY DEVELOPMENT

For purposes of the Watershed Protection Overlay district, development that contains less than the amount of impervious surface area that is allowed without the requirement for engineered stormwater control measures.

LOWEST ADJACENT GRADE (LAG)

The elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

LOWEST FLOOR

The lowest floor of the lowest enclosed (including the basement). An unfinished or flood resistant enclosure, useable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a structure's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this Ordinance.

MAJOR TRANSIT TRIP GENERATORS

Sites that consist of any of the following uses: Mixed use or activity centers, large commercial centers, midrise multi-family, hospitals, college or universities, outdoor amphitheatres.

MANUFACTURED HOME OR MOBILE HOME

A structure as defined in G.S. 143-145(7). The term "manufactured home" or "mobile home" does not include a "recreational vehicle."

MANUFACTURED HOME PARK OR MANUFACTURED HOME SUBDIVISION, EXISTING

For purposes of Sections 3.12 and 14.7 only, a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before May 10, 2001, the initial effective date of the floodplain management regulations adopted by Cary.

MANUFACTURED HOME PARK OR SUBDIVISION

A parcel (or contiguous parcels) of land divided into two (2) or more manufactured home spaces for rent or sale.

MANUFACTURED HOME SPACE

A portion of a manufactured home park which is rented or leased for the permitted placement of one (1) manufactured home and permitted accessory structures or buildings for use by the occupant.

MAP REPOSITORY

For purposes of Sections 3.12 and 14.7 only, the location of the official flood hazard data to be applied for floodplain management. It is a central location in which flood data is stored and managed; in North Carolina, FEMA has recognized that the application of digital flood hazard data products has the same authority as hard copy products. Therefore, the NCEM's Floodplain Mapping Program websites house current and historical flood hazard data. For effective flood hazard data the NC FRIS website (<http://FRIS.NC.GOV/FRIS>) is the map repository, and for historical flood hazard data the FloodNC website (<http://FLOODNC.GOV/NCFLOOD>) is the map repository.

MARKET VALUE

The building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

MARQUEE

A roof-like structure that cantilevers from the wall of a building over its principal entrance, that has no vertical supports other than the wall from which it cantilevers, and that provides a wall surface at least four (4) feet high.

MASSAGE BUSINESS

A commercial establishment where massage or similar treatment is administered by a person licensed by the State and meeting the ethical and educational requirements specified by the American Massage Therapy Association, or equivalent national or state standards.

MASTER SIGN PLAN (formerly known as a Uniform Sign Plan)

A plan establishing requirements for the size, location and design of signs on a property that was part of a planned development or is being constructed and/or managed as a single development.

MECHANICAL AND UTILITY EQUIPMENT

Heating, ventilation, air conditioning, and other mechanical and utility equipment, including but not limited to, hoses, pipes, vents, fans, compressors, pumps, and heating and cooling units associated with buildings and accessory structures.

MINIMUM DESIGN CRITERIA OR "MDC"

The requirements for siting, site preparation, design and construction, and post-construction monitoring and evaluation necessary for the issuance of stormwater permits that comply with State water quality standards adopted pursuant to G.S. 143-214. As defined in 15A NCAC 02H.1002(24).

MINOR ENTRANCE

A street entrance or entrances leading from collector streets or marginal access streets to subdivisions, multifamily developments, industrial, commercial, office and institutional uses, and planned unit developments.

MODEL SALES HOME

A permanent building intended for ultimate use as a residential dwelling unit that is typical of the dwellings in the residential development where it is located and which is temporarily used by the builder for the purpose of display and sales associated with residential property where the builder has other homes for sale in the same development or subdivision.

MULTI-OCCUPANT NON-RESIDENTIAL DEVELOPMENT

A building or group of buildings under unified ownership or management that contains more than one (1) non-residential establishment or occupant.

MUNICIPAL SEPARATE STORM SEWER SYSTEM (MS4)

The system of conveyances (including sidewalks, roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, man-made channels, or storm drains) owned and operated by the Town of Cary and designed or used for collecting or conveying stormwater, and that is not used for collecting or conveying sewage.

NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM (NPDES) STORMWATER DISCHARGE PERMIT

A permit issued by EPA (or by a State under authority delegated pursuant to 33 USC § 1342(b)) that authorizes the discharge of pollutants to waters of the United States, whether the permit is applicable on an individual, group, or general area-wide basis.

NATURAL EROSION

The wearing away of the earth's surface by water, wind, or other agents under natural environmental conditions undisturbed by man.

NATURAL OBSTRUCTION

Any rock, tree, gravel, or other natural matter that is an obstruction and has been located within the one percent (1%) annual chance floodplain by a nonhuman cause.

NET RESIDENTIAL ACREAGE

As used in the Cluster Subdivision development option, the amount of land which can be utilized for the placement of dwelling units and associated appurtenances.

NEW CONSTRUCTION

For purposes of Sections 3.12 and 14.7 only, structures for which the "start of construction" commenced on or after May 10, 2001, the effective date of Cary's initial floodplain management regulations and includes any subsequent improvements to such structures.

NONCONFORMITY

Any use, building, structure, lot, or sign that was lawful at the time it was constructed or established but which fails to comply with one or more of the applicable regulations or standards of this Ordinance.

NON-ENCROACHMENT AREA

The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

NON-EROSIVE

The ability of a ground cover to withstand the velocity of stormwater runoff during the design storm.

NON-RESIDENTIAL

Used or intended for purposes other than as a dwelling unit.

NON-RESIDENTIAL CENTERS

Shopping centers and other non-residential developments where buildings are arranged in close proximity to each other.

NON-STORMWATER DISCHARGE

Any discharge to the storm drain system that is not composed entirely of stormwater.

NORTH AMERICAN VERTICAL DATUM 1988 (NAVD 1988)

For purposes of Sections 3.12 and 14.7 only, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

NOT-FOR-PROFIT BUSINESS

A business or corporation whose activities and endeavors are not motivated by or funded by profit-making motives.

NUISANCE VEHICLE

A motor vehicle on public or private property that is determined and declared to be a health or safety hazard, a public nuisance or unlawful, including a vehicle found to be any of the following: A breeding ground or harbor for mosquitoes, other insect, rats or other pests; a point of heavy growth of weeds or other noxious vegetation over eight inches (8") in height; a point of collection of pools or ponds of water; a point of concentration of quantities of gasoline, oil or other flammable or explosive materials as evidenced by odor; one which has areas of confinement which cannot be operated from the inside, such as hoods, trunks, etc.; so situated or located that there is a danger of it falling or turning over; used by children in play activities; one which is a point of collection of garbage, food waste, animal waste, or any other rotten or putrescible matter of any kind; one which has sharp parts which are jagged or contain sharp edges of metal or glass; and other vehicle specifically declared a health and safety hazard or a public nuisance by the Town Council.

OFF-SITE

For the purpose of Sections 5.2.4(D) and (H), "off-site" location shall mean any site not owned or leased by the owner or operator of the telecommunications facility. However, this definition shall not include any property contiguous to the property on which the telecommunications facility is physically located if said property is:

- Owned or leased by the owner or operator of the telecommunications facility; or
- Directly associated with the operation, maintenance or ownership of the telecommunications facility; or
- Owned by the lessor of the property on which the telecommunications facility is located.

OFFICE PARK

A development containing more than one (1) office building and supporting ancillary uses designed, planned, constructed, and managed on an integrated and coordinated basis.

OFFSET

A reduction in transportation development fees in accordance with this Ordinance.

ONE YEAR, TWENTY FOUR HOUR STORM

The surface runoff resulting from a twenty-four (24)-hour rainfall of an intensity expected to be equaled or exceeded, on average, once every twelve (12) months and with a duration of twenty-four (24) hours.

OPEN SPACE

Any portion of a parcel or area of land or water which is maintained in a natural and undisturbed character. However, open space may include recreational facilities such as swimming pools, golf courses, greenways and tennis courts.

OPEN SPACE, BONUS

As used in Section 4.4.3 Conservation Residential Overlay District and Section 8.4 Alternative Development: Cluster Residential Subdivisions, is defined as non-regulatory open space that is voluntarily provided within a cluster subdivision or conservation residential overlay subdivision that meets the requirements set forth in the relevant sections of this ordinance.

OPEN SPACE, COMMON

Open space owned by a homeowner's association as part of a development, with its use limited by private covenant or other deed restriction.

OPEN SPACE, REGULATORY

As used in Section 4.4.3 Conservation Residential Overlay District and Section 8.4 Alternative Development: Cluster Residential Subdivisions, is defined as open space that is required to be preserved pursuant to other provisions of the Land Development Ordinance, and includes, but is not limited to, regulatory floodplains, Urban Transition Buffers/stream buffers, streetscapes, American Tobacco Trail buffer, and other required areas.

OUTDOOR DISPLAY OF GOODS

The display and sale of products outside of a building or structure including garden supplies, clothing, toys, play equipment, agricultural products, building and landscape materials, food and beverages.

OUTDOOR DISPLAY/SALES AREA

A specific area located adjacent to the principal entrance of a retail structure which is intended for the sales and/or display of goods and products.

OUTFALL

A point at which stormwater enters surface water or exits the property of a particular owner.

OUTPARCEL

A portion of land in a subdivision, shopping center, or other development which does not contain the primary building or buildings associated with the development, and which is intended for development of one (1) or more smaller independent buildings usually located adjacent to a development's street frontage. Such outparcels are typically smaller than the parent parcel and may not be contiguous to the parcel containing the primary building or buildings.

OVERLAY DISTRICT

A zoning district that includes supplementary or replacement regulations to the requirements of the underlying, base zoning district.

PARAPET WALL

That portion of a building wall that extends above the level of the roofline.

PARCEL

A piece of property that has not been approved as a portion of a subdivision of land.

PARENT

As used in Section 7.3, Stormwater Management, "parent" is an affiliate that directly or indirectly, through one (1) or more intermediaries, controls another person.

PARKING SPACE, OFF-STREET

A space which is designed for the parking or temporary storage of one (1) motor vehicle located outside of a dedicated street right-of-way.

PARKING SPACE, TANDEM

A parking space within a group of two (2) or more parking spaces arranged one behind the other.

PEAK HOUR TRIPS

The greatest number of vehicle trips generated by a unit of new development during any sixty (60) minute period in a given day.

PEAK STORMWATER RUNOFF

The maximum amount of stormwater runoff passing over a designated point or area during or after a storm event.

PENNANT

Any lightweight plastic, fabric, or other material, whether or not containing a message of any kind, which is suspended from a rope, wire, string, or pole, usually in series, and which is designed to move in the wind.

PERSON

Any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, interstate body, or other legal entity.

PET GROOMING ESTABLISHMENT

A personal service establishment at which domesticated animals are bathed, clipped, trimmed or shorn, or other such non-medical treatment is administered indoors, and no animals are kept on the premises overnight.

PHASE OF GRADING

One (1) of two (2) types of grading: rough or fine.

PHOTOVOLTAIC SYSTEM

The components and subsystems required to convert solar energy into electric or thermal energy suitable for use. The term applies, but is not limited to, solar photovoltaic (PV) systems, solar thermal systems, and solar hot water systems that are accessory to a principal use. Such systems include, but are not limited to, ground-mounted, roof-mounted, building-mounted, and building-integrated photovoltaic systems.

PLAN, AS-BUILT

A reproducible mylar plan showing the true and actual location and nature of buildings, structures, plant materials, underground utility lines, and other features or improvements that have been installed on or

off the property pursuant to a development plan approved under this Ordinance, to be used to determine compliance with the requirements of this Ordinance.

PLAN, CONCEPT

A graphical depiction of one (1) or more potential development alternatives for one (1) or more parcels of land which includes less detail than a development plan, but which is intended to convey information such as, but not limited to: various general types of land uses or use classifications, their general arrangement, and their general appearance within the plan's boundary.

PLAN, LANDSCAPING

A plan, drawn to scale, showing dimensions and details of the portion of a site devoted to planting materials and their maintenance.

PLAN, MASTER

The maps, illustrations, and supporting text associated with a planned development which conveys the allowable uses, densities, non-residential intensities, and arrangement of uses within the boundaries of the planned development along with any associated conditions, phasing schedules, and other agreements.

PLAN, PLOT

A map identifying the outer extents of a single unit or parcel of land which can be referenced to a recorded plat or map.

PLAN, SKETCH

A preliminary development plan that represents a concept of a proposed project of sufficient accuracy and details to receive preliminary approval under this Ordinance. Such plan must be followed by construction drawings to receive final approval before actual development may commence.

PLANNED DEVELOPMENT

A tract of land that is planned and developed as an integral unit in accordance with a master plan, detailed engineering and design plans, and flexible development standards that illustrate and address land uses, circulation, utilities, parking, setbacks, housing densities, land coverage, landscaping and buffers, open space, and similar features of the project.

PLANNED TRANSIT ROUTE

A transit route identified in the Town's adopted Comprehensive Plan, the Wake County Transit Plan, or any other local or regional plan applicable to the Town.

PLANNING AND DEVELOPMENT REGULATION JURISDICTION

The geographic area within which the Town of Cary may undertake planning and apply the development regulations authorized by G.S. 160D.

PLAT

A map document prepared by a registered surveyor or engineer representing a tract of land showing the boundaries and location of individual properties, streets, and other related items for identifying property.

PLAT, FINAL

A map indicating the final layout of a residential or non-residential subdivision which illustrates lots, easements, dedications, and other similar aspects, which have been approved by the Town, and is intended for recording with the Register of Deeds.

PLAT, RECOMBINATION

A map which depicts the joining of two or more individual units of land into a new configuration which complies with the required standards and which is intended for recording with the Register of Deeds.

POD

As used in planned developments, smaller areas inside a planned development boundary intended to contain similar and/or complimentary uses typically accessed by the same primary roadways, and generally intended for development at or around the same time.

POLLUTANT

Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard

wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coliform and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

PORCH

An unenclosed exterior appendage to a building, forming a covered or uncovered approach to a doorway.

PORTICO

A porch or walkway, open to the outside air, which is covered by a roof that is supported by columns or pillars, typically leading to the entrance of a building. A portico is considered a "canopy" for purposes of determining signage.

POST-FIRM

Construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

POSTER BOX

A box installed on a wall for the purpose of displaying posters of shows at a theater.

PRE-FIRM

Construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map for the area.

PREMISES

Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

PRESENT USE VALUE STANDARD

A designation used by a County Property Appraiser to denote land which is being used for agricultural purposes.

PRIMARY SCM

A wet pond, stormwater wetland, infiltration system, sand filter, bioretention cell, permeable pavement, green roof, rainwater harvesting, or an approved new stormwater technology that is designed, constructed and maintained in accordance with the MDC.

PRIMARY TRAVEL WAY

Vehicular route that connects a street (public and/or private) to a drive aisle. Vehicles access drive aisles from primary travel ways.

PRINCIPAL ENTRANCE

An entrance or entrances leading from collector streets, major thoroughfares, or highways to subdivisions, multi-family uses, planned developments, industrial, commercial, or office and institutional subdivisions.

PRINCIPALLY ABOVE GROUND

At least fifty-one percent (51%) of the actual cash value of the structure is above ground.

PROJECT

For the purposes of Sections 4.4.6 and 7.3 only, the proposed development activity for which an applicant is seeking a stormwater permit from the state or other entity in accordance with this Section. "Project" shall exclude any land adjacent to the area disturbed by the project that has been counted as pervious by any other development regulated under a federal, State, or local stormwater regulation. Owners and developers of large developments consisting of many linked projects may consider developing a master plan that illustrates how each project fits into the design of the large development.

PROPERTY

All real property subject to the provisions of this Ordinance. The term includes any improvements or structures customarily regarded as a part of real property.

PUBLIC ART

Items expressing creative skill or imagination in a visual form, such as painting or sculpture which are intended to beautify or provide aesthetic influences to public areas or areas which are visible from the public realm.

PUBLIC SAFETY and/or NUISANCE

For the purposes of Illegal Discharges to the storm sewer system, anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, river, bay, stream, canal, or basin.

PUBLIC UTILITIES

Any Town-approved water and/or sanitary sewer system, including collection and distribution lines, which is constructed to Town standards, sizes, and specifications, conforms to the requirements of this Ordinance, and has been dedicated to and accepted by the Town for operation and maintenance.

PUBLIC VEHICULAR AREA

Privately owned or maintained drives, driveways, roads, roadways, streets and alleys ("non-public streets"):

- Upon the grounds and premises of any public or private institution;
- Upon the grounds and premises of any business establishment providing access and parking space for customers, patrons, or the public; and
- Within a subdivision that has been offered for dedication to the public by the filing of a map, plat or written instrument in the office of the register of deeds; provided, however, a public authority has not accepted the dedication of the street or assumed control over the street.

QUALIFIED PROFESSIONAL

A person licensed by the State of North Carolina in the fields of engineering, architecture, landscape architecture, or land surveying who is allowed by the qualifications of their professional certification to perform the prescribed duties of this Ordinance.

QUASI-JUDICIAL DECISION

A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations.

RADIO AND T.V. TRANSMISSION TOWERS

A structure of wires, poles, rods, reflecting discs or similar devices used for transmitting or receiving television, radio, telephone communication and/or telecommunications, excluding satellite dish antennas.

REAL ESTATE SALES OFFICE

A building or structure that is located on the site of a development or subdivision and temporarily used for the purpose of selling or leasing properties located within that development or subdivision.

RECREATION LAND, ACTIVE

An area located within an existing or proposed residential or mixed use development which is intended for utilization by residents as an area for organized or unorganized team sports, and/or higher intensity outdoor activities including running, swimming, or other forms of play.

RECREATION LAND, PASSIVE

An area located within an existing or proposed residential or mixed use development which is intended for utilization by residents as an area for owner intensity enjoyment of the outdoors including walking, seating, or other low impact recreational uses.

RECREATIONAL VEHICLE (RV)

A vehicle which is:

1. built on a single chassis;
2. four hundred (400) square feet or less when measured at the largest horizontal projection;
3. designed to be self-propelled or permanently towable by a light duty truck ; and
4. designed primarily not for use as permanent dwelling, but temporary living quarters for recreational, camping, travel or seasonal use.

REFERENCE LEVEL

The top of the lowest floor for structures within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas designated as Zone AE, A, A99 or X (Future).

REGULATORY FLOOD PROTECTION ELEVATION

The elevation to which the reference level of all structures and other development located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas must be protected.

- (a) In Special Flood Hazard Areas where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard.
- (b) In Special Flood Hazard Areas where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.
- (c) In Future Conditions Flood Hazard Areas this elevation shall be the Future Conditions Flood Elevation plus two (2) feet of freeboard.

REMEDY A VIOLATION

For the purposes of flood damage prevention, to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

RESERVOIR WATERSHED

A drainage basin that is tributary to a reservoir intended as a source for public water supply.

RESIDENTIAL

Used or intended for use as a dwelling unit.

RETENTION FACILITY

Any type of detention facility that is not provided with a positive outlet.

RIGHT-OF-WAY

An area owned or maintained by the Town, the State of North Carolina, a public utility, a railroad, or a private concern for the placement of such utilities and/or facilities for the passage of vehicles or pedestrians, including roads, pedestrian walkways, utilities, or railroads.

RIVERINE

Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

ROOF DECK

The flat portion of a roof.

ROOF DECK, ACTIVATED

Functional roof deck used to support sustainability features, such as, green roofs and solar panels, and/or to provide outdoor amenity, entertaining or hospitality facilities as an accessory use to the building.

ROUGHLY PROPORTIONAL

A close relationship between the impacts from a proposed use or designation and the various conditions or other limiting factors considered necessary by a decision-making body to ensure that these impacts do not negatively affect other properties, goals, or Town policies.

SALVAGE YARD

Any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

SANDWICH BOARD

A temporary A-frame sign, not secured or attached to the ground or any building or structure, composed of a sign panel and supporting structure or one or more panels that form both the structure and sign face, and that is intended to be placed in a sidewalk or pedestrian way.

SECURED

Placed in a concrete footing, holes with compacted earth or gravel, or other approved support, so as to be adequately affixed to the ground as a permanent structure.

SEDIMENT

Solid particulate matter, both mineral and organic, that has been or is being transported by water, air, gravity, or ice from its site of origin.

SEDIMENTATION

The process by which sediment resulting from accelerated erosion has been or is being transported away from a land-disturbing activity or into a lake or natural watercourse.

SETBACK

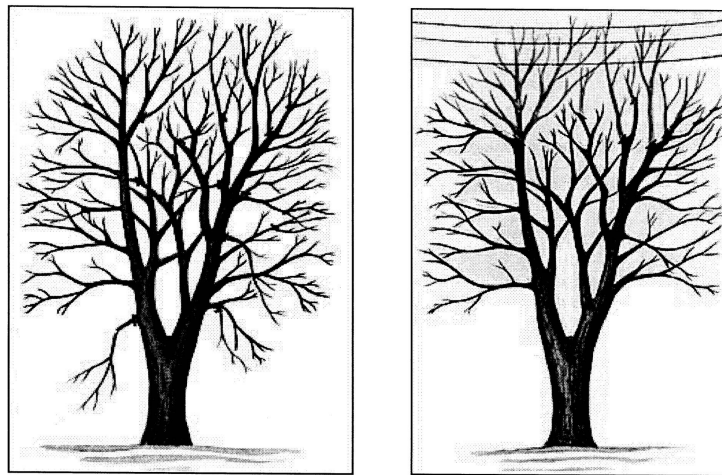
The minimum distance required between any building or structure and a street right-of-way or lot line.

SETBACK, BUFFER

An area adjacent to a required buffer where encroachments by structures are prohibited.

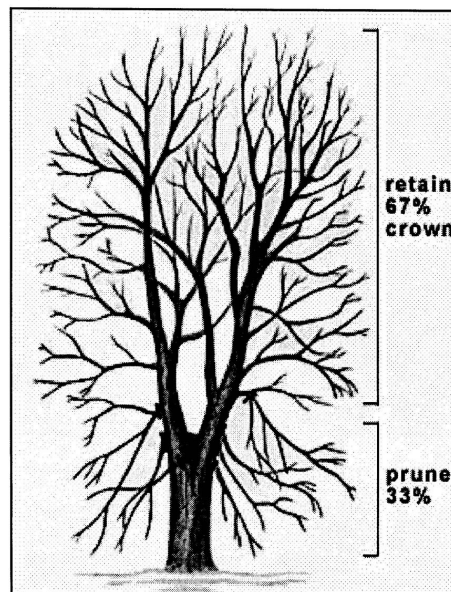
SETBACK, ROADWAY

The minimum distance required between the ultimate street right-of-way boundary and the closest portion or side of a building or improvement adjacent to that right-of-way.



Removing diseased or storm-damaged branches

Reducing the height of a tree



Removing obstructing lower branches

SEVERE PRUNING

Severe pruning of trees shall be defined as the removal of more than one-third of the tree canopy or cutting back limbs to a point which prevents the natural growth of the tree. Severe pruning of shrubs shall be defined as the cutting back of branches to the point where the shrub does not meet the intent of the streetscape or buffer requirements. See examples below.

SIGHT TRIANGLE

The horizontal and vertical areas at the intersections of streets and/or driveways which must remain unobstructed, as set forth in the Town's *Standard Specifications and Details Manual*, in order to ensure that drivers can see traffic and pedestrians around the corner of the intersection, entrance or driveway.

SIGN

Any device, fixture, placard or structure, that uses any color, form, graphic, illumination, symbol, or writing to advertise, attract attention, announce the purpose of, or identify the purpose of a person or entity, or to communicate information of any kind to the public. The following shall not be considered signs subject to the regulations of Chapter 9 of this Ordinance: artwork, cemetery markers, machinery or equipment signs, lighting used to accentuate architectural or landscaping features, and holiday and seasonal decorations. See *Chapter 9 for additional definitions related to signs*.

SIGN, POLE

A sign which is mounted on a freestanding pole or poles, or other support structure such that the bottom edge of the sign face is forty-two (42) inches or more above the adjacent grade or roadway crown height.

SIGNIFICANT RESOURCE

A type of land attribute on a piece of land which has been identified as a historic or natural feature which should be protected and preserved from a proposed development or redevelopment.

SIGNIFICANT TREES/VEGETATION

Any upper-story tree, greater than ten (10) inches in diameter at breast height (DBH) or understory tree greater than two (2) inches in caliper, which displays a root zone, canopy and limb structure characteristic of the particular species, and is in good health and vigor.

SIGNIFICANT WORK

In reference to vesting rights under the provisions of Section 3.17 of this Ordinance, the placement of permanent evidence of an improvement on a site pursuant to a duly issued building or environmental permit, such as the pouring of slabs or footings, the cost for which represents a major part of the total cost of construction of the project.

SILTATION

Sediment which results from accelerated erosion, which has been deposited or is in suspension in water, which may be settled or removed by properly designed, constructed, and maintained control measures, and which has been transported from its point of origin within the site of a land-disturbing activity.

SINGLE-UNIT DWELLING

A building containing one (1) dwelling unit and not located on the same lot as any other principal use.

SINGLE-UNIT RESIDENTIAL DEVELOPMENT

Any development where: (1) no building contains more than one principal dwelling unit, (2) every principal dwelling unit is on a separate lot, and (3) where no lot contains more than one principal dwelling unit.

SITE

A lot, tract or parcel of land considered as one (1) land unit for the purposes of this Ordinance. For a single-unit residence, the site shall be the subdivided lot on which it is located. For multi-family projects, the site shall be all land occupied by the buildings in the project and adjoining such property and under common ownership with it. For vacant land, the site shall be all of the adjoining vacant land under single ownership. For single-occupancy, non-residential properties, the site shall be the subdivided lot that is occupied. For multiple-occupancy properties, the site shall be all land included under the original development plan approval under the LDO or all land included under the original "master sign plan" approval under this Ordinance or its predecessor, whichever land area is larger.

SITE DESIGN GUIDELINES

A policy document that provides specifications, criteria, and guidance relating to issues typically addressed in a development plan, potentially including but not limited to items such as: building placement and orientation; dimensional standards; the roadway circulation network; roadway cross-sections, driveways, and parking lots; landscaping treatments and themes; sidewalks and pedestrian ways; streetscape treatments including elements such as upper-story trees, street lights, and street furniture; signage and site entryway features; locations for public art; public spaces such as public squares, village greens, and pedestrian plazas; minimum or maximum individual building or tenant space sizes; minimum or maximum block lengths; connectivity principles or requirements; and block frontage coverage.

SLOPE

A term used to express the amount of change in vertical elevation of the land over a given horizontal distance.

SOLID WASTE DISPOSAL FACILITY

As defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

SOLID WASTE DISPOSAL SITE

As defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

SPECIAL EVENT

Any organized event, specifically including, but not limited to, a temporary sales event accessory to a principal use, or a circus, carnival, cultural event, fair, party, communal camping, or celebration, which reasonably may be expected to attract more than one hundred (100) persons at any one (1) time, or which otherwise may reasonably be expected to increase the risk of:

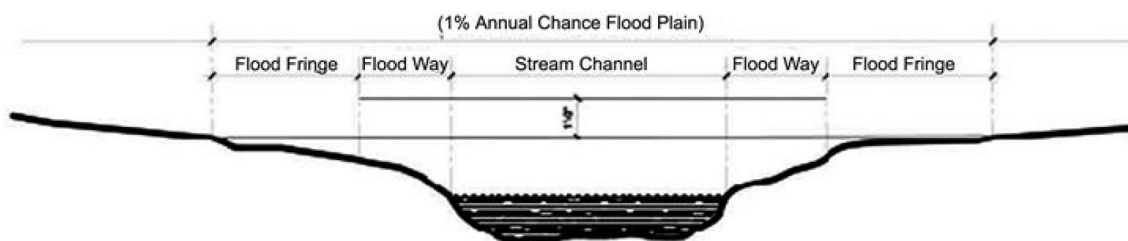
- Damage to public or private property, beyond normal wear and tear;
- Injury to persons;
- Public or private disturbances or nuisances;
- Unsafe impediments or distractions to, or congestion of, vehicular or pedestrian travel;
- Significant additional police, fire, trash removal, maintenance, or other public services demands;
or
- Other significant adverse effects upon the public health, safety, or welfare.

The term "special event" shall not include any organized activities conducted at sites and facilities that are legal uses and structures under this Ordinance and that are typically intended and used for such activities. Examples of such activities include, but are not necessarily limited to, sporting events such as 10K runs not held on public rights-of way, golf, soccer, softball, and baseball tournaments conducted on courses or fields intended and used for such activities; wedding services conducted at reception halls or similar facilities; funeral services conducted at funeral homes or cemeteries; religious services, wedding services, and funeral services conducted at places of worship; or noncommercial activities occurring within, or upon the grounds of, a private residence or upon the common areas of a multi-family residential development.

SPECIAL FLOOD HAZARD AREA (SFHA)

The land in the floodplain subject to a one percent (1%) or greater chance of being flooded in any given year based on current conditions hydrology. The SFHA is identified by the Federal Emergency Management Agency (FEMA) or produced under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Hazard Boundary Map (FHBM) or Flood Insurance Study (FIS) and its accompanying flood maps such as the Flood Insurance Rate Map(s) (FIRM) associated Flood Insurance Rate Map (FIRM) or DFIRM panels and/or the Flood Boundary Floodway Map(s) (FBFM) for Wake, Chatham, and Durham Counties dated July 19, 2022 and any revision thereto, which are adopted by reference and declared to be a part of this ordinance.

The SFHA also includes those areas defined as SFHA or floodplain through standard engineering analysis for private developments or by governmental agencies, including those studies required by LDO Section 14.7.2(C).



SPECIAL USE

A land use listed in Chapter 5 of this Ordinance as a "special use" in the zoning district in which it is located, and which is subject to the approval procedures set forth in Section 3.8 of this Ordinance.

SPECIAL USE PERMIT

A permit issued to authorize development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards.

SPECIMEN TREES

Any upper-story tree, greater than eighteen (18) inches in diameter at breast height (DBH) or understory tree greater than four (4) inches in caliper, which displays a root zone, canopy and limb structure characteristic of the particular species, and is in good health and vigor.

START OF CONSTRUCTION

The date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition, placement, or other improvement including substantial improvement was within one hundred and eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation, or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filing; nor does it include the installation of streets and/or walkways; nor does it include the excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration effects the external dimensions of the building.

STATEMENT OF ARCHITECTURAL COMPATIBILITY (SAC)

A legal document which depicts how the features of a proposed or existing development addresses or will address the compatibility requirements with adjacent and surrounding buildings or structures.

STOOP

A covered or uncovered porch, platform, or entrance stairway at a house door.

STOP PAD

A concrete pad located adjacent to a roadway required at transit access locations to allow passengers to board a bus and onto which passengers alight a bus.

STORM DRAINAGE FACILITIES

The system of inlets, conduits, channels, ditches, and appurtenances which serve to collect and convey stormwater through and from a given drainage area.

STORM DRAINAGE SYSTEM

Publicly-owned facilities by which stormwater is collected and/or conveyed, including but not limited to any roads with drainage systems, municipal streets, gutters, curbs, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures.

STORM SEWER SYSTEM

The system of catch basins, pipes (excluding residential rain gutters and downspouts), sewers, drains, culverts, open ditches, creeks and rivers which carry surface water and unpolluted water. A "storm sewer system" may be located on public or private property or both. See "Storm Drainage Facilities."

STORM, TEN-YEAR

The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in ten (10) years, and of a duration which will produce the maximum peak rate of runoff for the watershed under average antecedent wetness conditions.

STORM, TWENTY-FIVE YEAR

The surface runoff resulting from a rainfall of an intensity expected to be equaled or exceeded, on the average, once in twenty-five (25) years, and of a duration which will produce the maximum peak rate of runoff, from the watershed of interest under average antecedent wetness conditions.

STORMWATER DESIGN MANUAL

The State Stormwater Design Manual approved by the Department for the proper implementation of the State Minimum Design Criteria for engineered stormwater controls. All references herein to the Design Manual are to the latest published edition or revision.

STORMWATER MANAGER

An official or officials of Cary responsible for administration and enforcement of Cary's ordinances pertaining to sedimentation and erosion control, floodplain management, and stormwater management.

STORMWATER MANAGEMENT PLAN

A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to stormwater, stormwater drainage systems, and/or receiving waters to the maximum extent practicable.

STORMWATER RUNOFF

Surplus water resulting from precipitation in any form that cannot percolate into the earth or be accommodated satisfactorily by the existing drainage system and which therefore travels overland to the nearest channel or body of water.

STREAM

A perennial or intermittent body of water running over the earth's surface in a channel or bed and is shown on the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geological Survey (USGS) and the most recent version of the Soil Survey of Wake County, North Carolina, Soil Survey of Durham County, North Carolina, or Soil Survey of Chatham County, North Carolina.

STREET

A public or private right-of-way that is designed, dedicated, or used principally for vehicular traffic.

STREET, ARTERIAL

Higher order streets with controlled access which are intended for through or regional traffic moving between urban centers and not intended for local or residential neighborhood traffic. These streets have multiple travel lanes, provide access to regional travelways, and carry high volumes of traffic.

STREET, COLLECTOR

Streets that penetrate various land use classifications to provide both land access and mobility within neighborhoods and commercial areas. Their primary function is traffic service, collecting traffic from intersecting streets and funneling it to major thoroughfares. A major collector roadway/street has limited direct access from individual lots/parcels. A minor collector roadway/street allows direct access of individual lots/parcels.

STREET, LOOP

A street that originates and terminates at intersections with the same street.

STREET, MAJOR COLLECTOR

Streets which collect and distribute traffic from local roadways and urban centers. These streets are intended to provide mobility and access within neighborhoods and commercial areas and carry moderate amounts of traffic.

STREET, MINOR COLLECTOR

Streets which collect and distribute traffic from local roadways and urban centers. These streets are intended to provide mobility and access within neighborhoods and commercial areas and carry smaller amounts of traffic than a major collector.

STREET, PRIVATE

A road owned and maintained by a private individual, organization, or company rather than by a government.

STREET, PUBLIC

Any street or road owned or maintained by a unit of government.

STREET, RESIDENTIAL

A street whose primary function is to serve the immediately abutting residential land uses (that is, only local traffic generated by the residents near the street), with traffic volumes flowing from other intersecting residential streets not exceeding the traffic volumes generated by the land uses abutting the street.

STREET, THOROUGHFARE

A street which serves as a primary traffic artery serving major centers of activity and carrying traffic between such centers at moderate speeds, which primarily has the function of carrying traffic which has an origin and destination removed from that street itself, and access to which is primarily provided by at-grade intersections which may be signal-controlled.

STREET FRONTAGE

The distance for which a lot line adjoins a public or private street from one lot line intersecting said street to the furthest lot line intersecting the same street.

STREETSCAPE

An area along a street that may be required by this Ordinance to provide special landscape plantings or other treatment.

STREET-SIDE TRAILS

Street-side trails are pedestrian trails located adjacent to roadways and provide supporting linkage to the off-road greenway system.

STRUCTURE

Any improvement upon land that requires more or less permanent location on the ground or attachment to something having a permanent location on the ground. This includes buildings, signs, decks and enclosed decks, manufactured homes, a gas, liquid, or liquefied gas storage tank that is principally above ground, and impervious surfaces. Building setbacks shall not apply to certain structures which do not require issuance of a building permit, and/or which may by necessity pass through or encroach into setbacks, including driveways, walkways, sidewalks, fences, private recreational equipment like swing sets or basketball goals, fences and retaining walls less than eight (8) feet in height, greenways, and similar features.

STRUCTURE, ACCESSORY (or Appurtenant Structure)

For purposes of Sections 3.12 and 14.7 only, a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports, and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may or may not be located on the same parcel as the farm dwelling or shop building.

STRUCTURE, EXISTING

For purposes of Sections 3.12 and 14.7 only, any or structure for which the “start of construction” commenced before May 10, 2001, the initial effective date of the floodplain management regulations adopted by Cary.

STRUCTURE, NONCONFORMING

A building or structure that met all legal requirements when constructed but that does not comply with this Ordinance or a subsequent amendment hereto.

STRUCTURE, PRINCIPAL

A structure, or in some cases, group of structures, which contain or from which the primary use of the property is conducted. The area of a principal structure is considered the gross square footage contained within the exterior walls of the structure.

SUBDIVIDER

Any person, firm, or corporation who commences proceedings to effect the subdivision of land.

SUBDIVISION

All divisions of a tract or parcel of land into two (2) or more lots, building sites, or other divisions when any one (1) or more of those divisions is created for the purpose of sale or building development (whether immediate or future) and shall include all divisions of land involving the dedication of a new street or a change in existing streets; but the following shall not be included within this definition nor be subject to the regulations authorized by G.S. 160D, Article 8:

- (1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards set forth in this Ordinance's subdivision regulations.
- (2) The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.
- (3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
- (4) The division of a tract in single ownership whose entire area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards set forth in this Ordinance's subdivision regulations.
- (5) The division of a tract into parcels in accordance with the terms of a probated will or in accordance with intestate succession under Chapter 29 of the General Statutes.

See also LDO Section 3.9.3(B).

SUBSTANTIAL DAMAGE

- (a) Damage of any origin sustained by a structure during any one (1)-year period whereby the cost of restoring the structure to its before-damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred; or, See definition of substantial improvement.
- (b) Flood-related damage sustained by a structure on two (2) separate occasions during a 10 (ten) year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds twenty five percent (25%) of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT

For purposes of Section 3.12 and 14.7 only, any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any five (5)-year period for which the cumulative cost equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not, however, include either:

- (a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,

- (b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure and the alteration is approved pursuant to this ordinance.

SUBSTANTIALLY COMMENCED

For the purposes of G.S. 160D-108, "substantially commenced" means one or more of the following construction activities toward the completion of a development plan has occurred:

- Obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or
- Installation and approval of on-site infrastructure; or
- Obtaining a building permit for the construction and approval of a building foundation.

SUBSTANTIALLY IMPROVED EXISTING MANUFACTURED HOME PARK OR SUBDIVISION

Where the repair, reconstruction, rehabilitation or improvements of the streets, utilities and pads exceeds fifty (50) percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

SURFACE WATER

Runoff from rainfall or ground watering that finds its way naturally into ditches and creeks.

SURVEY

An official stamped or sealed document prepared by a licensed and registered North Carolina Land Surveyor which graphically denotes the precise area, boundaries, dimensions, location, and important attributes of a parcel or portion of a parcel.

SWALE

A depression in the ground or below the surrounding grade which is intended to channel stormwater runoff.

SWEEPSTAKES

Any game, advertising scheme or plan, or other promotion, which, with or without payment of any consideration, a person may enter to win or become eligible to receive any prize, including cash, merchandise, or anything else of value, the determination of which is based on chance.

SWIMMING POOL

Any receptacle or artificial basin of water, either above or below grade level, intended for swimming or recreational bathing having a depth of eighteen (18) inches or greater at the deepest point. This includes hot tubs and spas.

TABLED APPLICATION

Any application for an entitlement, procedure, or approval outlined in Chapter 3 which has been temporarily removed from consideration by a decision-making body. Such removal may or may not have an associated time limitation.

TASTING ROOM

A room that is ancillary to the production of beer, wine, or spirituous liquor at a brewery, distillery, or winery where the public can purchase and/or consume the beer, wine, or spirituous liquor.

TECHNICAL BULLETIN AND TECHNICAL FACT SHEET

A FEMA publication that provides guidance concerning the building performance standards of the NFIP, which are contained in Title 44 of the U.S. Code of Federal Regulations at Section 60.3. The bulletins and fact sheets are intended for use primarily by State and local officials responsible for interpreting and enforcing NFIP regulations and by members of the development community, such as design professionals and builders. New bulletins, as well as updates of existing bulletins, are issued periodically as needed. The bulletins do not create regulations; rather they provide specific guidance for complying with the minimum requirements of existing NFIP regulations.

TEMPERATURE CONTROLLED

Having the temperature regulated by a heating and/or cooling system, built-in or appliance.

THEATER

An establishment offering to the public movies or live performances.

THOROUGHFARE, LIMITED ACCESS

A thoroughfare whose sole function is to carry large volumes of traffic safely and expediently through developed areas, and access to which is controlled to occur only at intersections with other thoroughfares or streets, with such intersections spaced at intervals which promote traffic progression with the absolute minimal delays incurred. Speeds on limited access thoroughfares are typically limited to no greater than forty-five (45) miles per hour.

TOWN

The Town of Cary, North Carolina.

TOWN-RECOGNIZED EVENT

A celebration, festival, activity, or other event which is sponsored wholly or in part by the Town, or which is recognized or proclaimed as a Town-recognized Event by the Town Council. A list of such events is maintained in the Town Clerk's office.

TOWN-RECOGNIZED HOMEOWNER'S ASSOCIATION

A formally constituted non-profit association or corporation with an elected or appointed board made up of property owners and/or residents.

TOWNHOUSE DEVELOPMENT

One or more townhouses located on a single property.

TOXIC SUBSTANCE

Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their offspring or other adverse health effects.

TRACT

All contiguous land under one (1) ownership or under multiple ownership either undeveloped or developed as a single unit or recorded as a single unit.

TRAFFIC CONTROL DEVICES

These devices include but are not limited to rumble strips, raised pavement markers, pavement undulations, and speed bumps as defined in the current edition of the *Standard Specifications and Details Manual*.

TRAIL, MULTI-PURPOSE

An access way, whether paved or unpaved, which is intended to serve multiple modes of travel including walking, jogging, bicycling, or other forms of non-motorized transport.

TRANSIT ACCESS LOCATION

A designated place along a transit route typically in the street right-of-way where a public transit vehicle stops to load and unload passengers, usually consisting of, at a minimum, a stop pad. Also called a "bus stop."

TRANSIT EASEMENT

A permanent easement dedicated to the Town for the purpose of providing public transit access at a transit access location. The transit easement provides public access to the transit access location; and allows construction, installation, operation, and maintenance of transit amenities by the Town.

TRANSPORTATION FACILITIES

Stations and related facilities intended for the transportation of the general public, including bus and railroad passenger stations.

TRANSPORTATION IMPROVEMENT

Any improvement to any highway, road, or street designated on the Transportation Plan.

TRAVEL TRAILER

A device intended for human habitation on a short term or temporary basis which lacks its own source of locomotion and is intended to be towed behind a motor vehicle.

TREE, NATIVE

A tree species that naturally occurs within Wake County or the Piedmont area of North Carolina in which the Town of Cary is located.

TREE, ORNAMENTAL

Woody Plants that are two (2) inches in caliper or larger and one of the following species and other native specimens as specified in the Standard Specifications and Details Manual, including native species of the following: *Amelanchier* (Serviceberry), *Ostrya* (Hophornbeam), *Halesia* (Silverbell), *Chionanthus* (Fringe Tree), *Ilex* (Holly), *Cornus* (Dogwood), *Cercis* (Redbud), and *Carpinus* (Ironwood).

TREE, UNDERSTORY

A tree with a canopy that covers at least two hundred (200) square feet at maturity but less than nine hundred (900) square feet under urban conditions, with a crown diameter of at least fifteen (15) feet and a height at maturity not exceeding forty (40) feet. For the purpose of Sections 7.2.5 and 7.2.10, understory trees include only dogwood (native *Cornus species*), horticultural cherry (*Prunus species*), redbud (*Cercis canadensis*), ironwood (*Carpinus caroliniana*), and silverbell (*Helesia carolina*).

TREE, UPPER-STORY

A tree with a canopy that covers at least sixteen hundred (1,600) square feet at maturity under urban conditions, with a crown diameter of at least forty (40) feet and a height at maturity of at least sixty (60) feet.

TREE SURVEY

A map or plan identifying certain trees in accordance with the requirements of Section 7.2.5 to assist in the preservation and protection of trees.

TRUCK, LIGHT DUTY

Any motor vehicle rated at eight thousand five hundred (8,500) pounds Gross Vehicular Weight Rating or less which has a vehicular curb weight of six thousand (6,000) pounds or less and which has a basic vehicle frontal area of forty-five (45) square feet or less as defined in 40 CFR 86.082-2 and is: (a) designed primarily for purposes of transportation of property or is a derivation of such a vehicle, or (b) designed primarily for transportation of persons and has a capacity of more than twelve (12) persons; or (c) available with special features enabling off-street or off-highway operation and use.

TRUNKLINE

A measured line between existing tree trunks greater than four (4) inches in caliper.

UNCOVERED AREA

As used in Section 7.4 of this Ordinance, an area having no ground cover on or above the soil surface.

UNDERDEVELOPED LAND

A parcel or site which contains some form of structure or other land-disturbing activity, but which is developed substantially less than that otherwise allowable under the area's zoning designation or as otherwise controlled by public or private utilities.

URBAN TRANSITION BUFFER (UTB)

A buffer established along streams within the Cary Planning Jurisdiction effective at protecting private and public investment, buffering incompatible uses, promoting conservation, balancing the built environment with preservation of natural resources and open spaces, and preserving the identity and character of Cary.

USE, ANCILLARY

A use located on the same lot as a principal use which provides necessary support to the activities occurring within the principal use.

USE, INCIDENTAL

A use located on the same lot as a primary use, but which is subordinate and minor in significance to the principal use, but which bears a reasonable relationship with the principal use.

USE, NONCONFORMING

The use of a building or land that met all legal requirements when first established but which this Ordinance, or a subsequent amendment hereto, does not allow in the zoning district in which it is located.

USE, PERMITTED

A land use allowed in a zoning district without the need for special administrative review and approval, but in accordance with the standards and requirements of this Ordinance.

USE, TEMPORARY

A land use or structure this [that] is needed or in place only for short periods.

UTILITY TRAILER

A container on wheels which is intended to be towed or hauled by another motorized vehicle used for the transport of products, equipment, and/or other vehicles.

VARIANCE, MAJOR

For the purposes of the Watershed Protection Overlay district only, a variance that constitutes:

- The complete waiver of any requirement; or
- The increase by ten percent or more of any numerical requirement. (For example, raising an impervious surface limit for a development from 70 percent to 77 percent.)
- The reduction of any requirement under the High Density Development Option.

VARIANCE, MINOR

For the purposes of the Watershed Protection Overlay district only, any other variance that does not qualify as a major variance.

VEGETATION USE AREA

An area which has been set aside for the sole use of vegetation or other planted materials which includes the below-ground area occupied by the roots, the area on the surface covered by mulch or other ground cover, and the area above the ground which is occupied by the trunk, branches, and leaves of the vegetation.

VEHICULAR GATE

A gate or similar structure across a drive, driveway, road, roadway, street or alley that may be used to block the entrance or passage of motor vehicles. This term includes all forms of gates, including automatic and manual gates and gates manned by attendants.

VEHICULAR SECURITY GATE

A vehicular gate for a non-residential use that provides safety and security yet is operated such that emergency service providers can pass through at any time.

VEHICULAR USE AREA

Any portion of the site or property, paved or unpaved, designed to receive or accommodate vehicular traffic, including the driving, parking, temporary storage, loading, or unloading of any vehicle.

VELOCITY, FLOW

The average velocity of flow through the cross-section of the main channel of a watercourse at the peak flow of the storm. The cross-section of the main channel is that area defined by the geometry of the channel, plus the area of flow below the flood height, which is defined by vertical lines at the banks of the main channel. Overload flows shall not be included for the purpose of computing velocity of flow.

VIOLATION, FLOOD DAMAGE PREVENTION

For the purposes of flood damage prevention, the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required is presumed to be in violation until such time as that documentation is provided.

WALL, EXTERIOR

A vertical structural component of a building that encloses habitable or usable space; a parapet extending not more than twelve inches above a flat roof shall be considered part of the exterior wall for purposes of determining signage.

WALL, FIRE

A common or shared wall between two separate structures, buildings, or dwelling units which has a minimum rating related to its ability to withstand the impacts of fire or intense heat for a specified period of time.

WALL, PARTY

A common or shared wall between two separate structures, buildings, or dwelling units.

WASTE

Surplus materials resulting from on-site construction that is disposed of at other locations.

WASTEWATER

Any water or other liquid, other than uncontaminated stormwater, discharged from a facility.

WATER SURFACE ELEVATION (WSE)

The height, in relation to NAVD 1988, of floods of various magnitudes and frequencies in the floodplains of riverine areas.

WATERCOURSE

A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

WATERSHED

The entire land area, also known as a drainage area, which collects precipitation and contributes surface runoff to a receiving body of water or specific point along a watercourse.

WATERSHED CRITICAL AREA

The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as extending either one-half (0.5) mile from the normal pool elevation of the reservoir in which the intake is located or to the ridge line of the watershed (whichever comes first); or one-half (0.5) mile upstream from the intake located directly in the stream or river (run-of-the-river), or the ridge line of the watershed (whichever comes first).

WATERSHED OVERLAY

That land area of a watershed that is defined on the Official Zoning Map on file in the Planning Department, provided that more precise boundaries may be established by topographic data from actual site surveys.

WATERSHED PROTECTED AREA

The land area lying adjacent to a water supply watershed and extending to a point five (5) miles from the shoreline at normal pool level.

WETLANDS

Those areas that inundated or saturated by surface or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

WINDBLOWN DEVICE

Any banner, pennant, spinner, streamer, propeller, disc, moored blimp, gas balloon, or flag (that is not of local, state, federal, corporate, nonprofit or religious origin) designed to inform or attract attention, whether or not such device carries a message, all or part of which is set in motion by wind, mechanical, electrical or any other means.

WORKING DAYS

Days exclusive of Saturdays, Sundays, and legal holidays observed by the Town.

YARD

An open space on a lot which is generally unoccupied and unobstructed by any building or structure, except as otherwise allowed in this Ordinance.

YARD, FRONT

The area located between the front of the principal building or structure (or use in the absence of a principal building or structure) and the boundary of the lot upon which the principal building or structure is located. The front of a principal building or structure is the one typically containing the primary entrance.

YARD, REAR

The area located between the rear of the principal building or structure (or use in the absence of a principal building or structure) and the boundary of the lot upon which the principal building or structure is located. The rear of a principal building or structure is typically the side immediately opposite the primary entrance.

YARD, SIDE

The area located between the side of the principal building or structure (or use in the absence of a principal building or structure) and the boundary of the lot upon which the principal building or structure is located. The side of a principal building or structure typically does not contain the primary entrance.

YARD SALE

The sale or offering for sale to the general public of over five (5) items of personal property on any portion of a lot in a residential zoning district, whether within or outside any building. Also known as a yard sale, tag sale, or rummage sale.

ZONING DISTRICT

A section or portion of the Town within which certain zoning regulations and requirements governing the use of buildings and land apply under the provisions of this Ordinance.

ZONING DISTRICT, NON-RESIDENTIAL

A zoning district established under this Ordinance that primarily allows uses that are not residential in nature but are intended to serve commercial, office, institutional or similar uses and activities.

ZONING DISTRICT, OVERLAY

A zoning district established under this Ordinance that prescribes special regulations to be applied to a site in combination with the underlying or base district.

ZONING DISTRICT, RESIDENTIAL

A residential zoning district established under this Ordinance that primarily permits uses that are intended for household or group living.

(Ord. No. 04-007, 7-15-04; Ord. No. 04-013, 10-28-04; Ord. No. 05-001, 1-13-05; Ord. No. 05-002, 1-13-05; Ord. No. 05-007, 5-12-05; Ord. No. 06-005, adopted 3-23-06; eff. 3-23-06; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2009-LDO-02, 3-26-09; Ord. No. 2009-LDO-03, 5-14-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2010-LDO-05, 12-16-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-02, 4-14-11; Ord. No. 12-LDO-01, 2-23-12; Ord. No. 2012-LDO-06, 8-9-12; Ord. No. 2012-LDO-07, 8-23-12; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2013-LDO-07, 12-19-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-04, 8-28-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-003, 7-23-15; Ord. No. 2016-LDO-01, 7-25-16; Ord. No. 2016-LDO-02, 12-8-16; Ord. No. 2017-LDO-01, 1-24-17; Ord. No. 2017-LDO-02, 3-30-17; Ord. No. 2018-LDO-01, 5-3-18; Ord. No. 2018-LDO-03, 11-15-18; Ord. No. 2019-LDO-03, 10-10-19; Ord. No. 2019-LDO-02, 11-21-19; Ord. No. 2019-LDO-04, 12-12-19; Ord. No. 2020-LDO-01, 5-7-20; Ord. No. 2021-LDO-01, 6-24-21; Ord. No. 2022-LDO-01, 1-13-22; Ord. No. 2022-LDO-02, 4-28-22; Ord. No. 2022-LDO-03, 10-27-22; Ord. No. 2023-LDO-02, 3-23-23; Ord. No. 2023-LDO-03, 6-22-23)

CARY LAND DEVELOPMENT ORDINANCE

CHAPTER 14: ENVIRONMENTAL REGULATION

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Chapter 14: ENVIRONMENTAL REGULATION**14.1 GENERAL PROVISIONS****14.1.1 Purposes**

In addition to promoting the general purposes outlined in Section 1.3 of this ordinance, the purposes of this chapter include:

- (A) To encourage the proper use of the land by promoting an appropriate balance between the built environment and the preservation of open space, environmentally sensitive lands, and natural resources;
- (B) To protect private and public investment by preserving open space; protecting natural resources including the existing tree canopy and forests; reducing heat and air pollution; capturing carbon; and protecting water quality in our streams and waterways;
- (C) To protect and promote the health and economic value of streams, waterways, trees, forests, open space, and natural lands; and
- (D) To promote water quality benefits through preserving natural areas and encouraging good soil management.

14.1.2 Authority

This chapter is adopted pursuant to, among other authorities, G.S. Part 2, Article 9 of Chapter 160D; Article 8 of Chapter 160A, and Part 6, Article 21 of Chapter 143.
(Ord. No. 2022-LDO-03, 10-27-22)

14.2 NUISANCE AND HAZARD CONTROL STANDARDS**14.2.1 Purpose and Applicability**

This section is intended to ensure that industrial, research, and other business activities are established and maintained with proper appearance from streets and adjoining properties, and to ensure that such activities are good neighbors to adjoining properties by controlling the emission of noise, odors, glare, vibration, smoke, dust, liquid wastes, radiation, radioactivity, and similar pollutants. Accordingly, this section states the performance standards and conditions with which Cary expects the construction and operation of industrial, research, and other business activities to comply. These performance standards, like all other provisions of this Ordinance, are continuing obligations, and all industrial, research, and other business uses will be expected to operate in compliance with these standards. Any land use that fails to comply with these standards shall be in violation of this Ordinance.

14.2.2 General Standards and Measures for Compliance

- (A) All uses shall be conducted so as to preclude any nuisance, hazard, or commonly-recognized offensive condition or characteristics of the use, including the creation or emission on other properties of dust, gas, smoke, noise, fumes, odors, vibrations, particulate matter, chemical compounds, toxic matter, fire, explosions, electrical disturbance, heat, glare, or excessive night illumination. At any time before or after a building is used or occupied, the Planning Director may require that adequate control measures be provided in accordance with the

requirements or standards of the appropriate state or federal government agency responsible for regulating that condition or pollutant, in order to protect the public health, safety, comfort, convenience, and general welfare from any such nuisance, hazard, condition, or pollutant.

- (B) Federal and State environmental regulations may also apply to one or more of the features governed by the standards in Section 14.2.3 below. The intent is for the standards of this section to supplement and complement, not supersede or replace, any applicable Federal and State regulations. If any standard herein conflicts with an applicable Federal or State standard, then the Federal or State standard shall control.

14.2.3 Performance Standards

(A) Landscaping

All required front yards, side yards, and rear yards shall be open, landscaped green areas or left in their natural state. Where landscaped, such yards shall be planted attractively with lawn, trees, shrubs, and the like in accordance with the development plan which Cary has approved for the use. Any areas left in their natural state shall be properly maintained in a sightly and well-kept condition. Parking areas also shall be maintained in a sightly and well-kept condition.

(B) Noise

Noise shall be muffled so as not to become objectionable at or beyond the property line due to intermittent beat frequency, shrillness, or intensity.

(C) Odors

Odors from any use shall not exceed the standards established by the State of North Carolina.

(D) Glare

Direct or reflected glare, such as from floodlights or high temperature processes, and as differentiated from general illumination, shall not be visible at or beyond any property line.

(E) Smoke

Smoke emissions shall not exceed the maximum limits established by the State of North Carolina.

(F) Dust and Other Particulate Matter

Solid or liquid particulate matter shall not be emitted at any point in a concentration exceeding three-tenths (0.3) grains per cubic foot of the conveying gas or air.

(G) Gases

Fumes or gases shall not be emitted at any point in concentrations or amounts that are noxious, toxic, corrosive, or in excess of any applicable maximum limits established by State or Federal regulations.

(H) Fire and Explosion Hazards

All operations shall be carried out in accordance with the Cary Fire Code and with reasonable precautions against fire and explosive hazards.

(I) Radiation and Radioactivity

Operations shall cause no radiation or radioactivity at or beyond any property line that exceeds any applicable standards or regulations established by the U. S. Nuclear Regulatory Commission or by other federal or state agencies or laws.

(J) Electrical Radiation

Any electrical radiation shall not at any point adversely affect or interfere with any operations or equipment other than those of the person, company, or other entity emitting the radiation. Avoidance of adverse effects or interference from electrical radiation by appropriate single or mutual scheduling of operations is permitted.

(K) Wastewater and Industrial Wastes

All wastewater and industrial wastes shall be treated and disposed in such a manner as to comply with the water quality standards applicable to the classification assigned to the receiving waters by the State of North Carolina. Approval by the State of North Carolina of all plans for waste disposal facilities shall be required before the issuance of any building permit. All uses connected to Cary's sanitary sewer system also shall comply with all applicable requirements established in Chapter 36 of the Code of Ordinances of Cary.

(L) Underground and Above-Ground Storage Tanks

All storage tanks which are placed above or below the ground shall be designed and installed so as to prevent the infiltration of their contents into groundwater or surface waters, and to comply with all applicable State regulations promulgated by the North Carolina Department of Health, Environment and Natural Resources.

14.2.4 Effects of Concurrent Operations on Different Properties

The sum total of the effects of concurrent operations on two (2) or more parcels measured at any property line shall not be greater or more offensive to the senses than the standards contained in this section. Compliance with the provisions of this section may occur by independent or mutual changes in operational levels, scheduling of operations, and other adjustments.

14.2.5 Determination of Violation of Performance Standards

- (A)** The Planning Director shall have the authority to determine violations of the standards set forth in this section.
- (B)** Where determination of a violation of these standards requires the use of personnel or instruments not available to Cary, and a violation exists in the opinion of the Planning Director, the following procedures shall be followed:
 - (1)** The Planning Director shall give written notice of the alleged violation by registered or certified mail, return receipt requested, to the owner or occupant of the property. The

notice shall describe the alleged violation, state the reasons why the Director believes there is a violation, and require that the owner or occupant answer the allegation within thirty (30) days of receiving the notice.

- (2) After the thirty (30)-day period passes, if a dispute still exists between the Director and the alleged violator regarding the existence of a violation, then the alleged violator may appeal to the Zoning Board of Adjustment. The Director shall then transmit to the Board a copy of the notice given to the alleged violator, along with any recommendations as to alterations, modifications, or securing the services of a consultant to determine whether a standard has been violated. The Board then shall make a determination as to whether a violation exists.
- (3) If the Zoning Board of Adjustment finds the alleged violation to exist, then the costs of making that determination shall be charged to the owner or occupant of the property responsible for the violation. If the Zoning Board of Adjustment determines that no violation exists, then Cary shall cover the costs of making the determination.
- (4) If a violation is not removed or corrected as directed by the Zoning Board of Adjustment, then the Director may:
 - (a) Void any occupancy permits previously issued to the violator and require the operator to cease operation until the violation is removed, corrected, or otherwise remedied; and/or
 - (b) Initiate further enforcement actions under Chapter 11 of this Ordinance.
- (C) Where determination of a violation of these standards does not require the use of personnel or instruments not available to Cary, the Director may initiate enforcement actions under Chapter 11 of this Ordinance.

(Ord. No. 2022-LDO-03, 10-27-22)

14.3 ILLEGAL DISCHARGES TO THE STORM SEWER SYSTEM

14.3.1 Purpose

The purpose of this section 14.3 is to provide for the health, safety, and general welfare of the citizens of Cary through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This section establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this section are:

- (A) To regulate the contribution of pollutants to the MS4 by storm water discharges by any user.
- (B) To prohibit illicit connections and discharges to the MS4.
- (C) To establish legal authority to carry out all inspection, surveillance, monitoring, and enforcement procedures necessary to ensure compliance with this section.

14.3.2 Applicability

This section 14.3 shall apply to all water entering the storm drain system generated on any developed and undeveloped lands unless explicitly exempted by Cary.

14.3.3 Responsibility for Administration

The Town Manager shall administer, implement, and enforce the provisions of this section 14.3. Any powers granted or duties imposed upon the Town Manager may be delegated by the Town Manager to persons or entities acting in the beneficial interest of or in the employ of Cary.

14.3.4 Compatibility With Other Regulations

This section 14.3 is not intended to modify or repeal any other ordinance, rule, regulation, or other provision of law. The requirements of this section are in addition to the requirements of any other ordinance, rule, regulation, or other provision of law, and where any provision of this section imposes restrictions different from those imposed by any other ordinance, rule, regulation, or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human health or the environment shall control.

14.3.5 Severability

The provisions of this section 14.3 are hereby declared to be severable. If any provision, clause, sentence, or paragraph of this section or the application thereof to any person, establishment, or circumstances shall be held invalid, such invalidity shall not affect the other provisions or application of this section.

14.3.6 Ultimate Responsibility

The standards set forth herein and promulgated pursuant to this section 14.3 are minimum standards; therefore, this section does not intend or imply that compliance by any person will ensure that there will be no contamination, pollution, or unauthorized discharge of pollutants.

14.3.7 Discharge Prohibitions**(A) Prohibition of Illegal Discharges**

No person shall throw, drain, or otherwise discharge, cause, or allow others under its control to throw, drain, or otherwise discharge into the MS4 any pollutants or waters containing any pollutants, other than stormwater. The commencement, conduct or continuance of any illegal discharge to the storm drain system is prohibited except as described as follows:

- (1) The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing, landscape irrigation, diverted stream flows, rising ground waters, uncontaminated ground water infiltration, uncontaminated pumped ground water, discharges from potable water sources, foundation drains, air conditioning condensation, irrigation water, springs, water from crawl space pumps, footing drains, lawn watering, individual residential car washing, flows from riparian habitats and wetlands, dechlorinated swimming pool discharges, and street wash water.
- (2) Discharges or flow from firefighting, and other discharges specified by the Town as being necessary to protect public health and safety.
- (3) Discharges associated with dye testing; however, this activity requires a verbal notification to the Town prior to the time of the test.

- (4) The prohibition shall not apply to any non-stormwater discharge permitted under an NPDES permit, waiver, or waste discharge order issued to the discharger and administered under the authority of the United States Environmental Protection Agency (EPA), provided that the discharger is in full compliance with all requirements of the permit, waiver, or order and other applicable laws and regulations, and provided that written approval has been granted for any discharge to the storm drain system.

(B) Prohibition of Illicit Connections

- (1) The construction, use, maintenance, or continued existence of illicit connections to the storm drain system is prohibited.
- (2) This prohibition expressly includes, without limitation, illicit connections made in the past, regardless of whether the connection was permissible under law or practices applicable or prevailing at the time of connection.
- (3) A person is considered to be in violation of this ordinance if the person connects a line conveying sewage to the MS4 or allows such a connection to continue.
- (4) Improper connections in violation of this ordinance must be disconnected and redirected, if necessary, to an approved onsite wastewater management system or the sanitary sewer system upon approval of the Town.
- (5) Any drain or conveyance that has not been documented in plans, maps or equivalent, and which may be connected to the storm sewer system, shall be located by the owner or occupant of that property upon receipt of written notice of violation requiring that such locating be completed. Such notice will specify a reasonable time period within which the location of the drain or conveyance is to be determined, that the drain or conveyance be identified as storm sewer, sanitary sewer or other, and that the outfall location or point of connection to the storm sewer system, sanitary sewer system or other discharge point be identified. Results of these investigations are to be documented and provided to the Town.

14.3.8 Watercourse Protection

Every person owning property through which a watercourse passes, or such person's lessee, shall keep and maintain that part of the watercourse within the property free of trash, debris, excessive vegetation, and other obstacles that would pollute, contaminate, or significantly retard the flow of water through the watercourse. In addition, the owner or lessee shall maintain existing privately owned structures within or adjacent to a watercourse, so that such structures will not become a hazard to the use, function, or physical integrity of the watercourse.

14.3.9 Industrial or Construction Activity Discharges

(A) Submission of Notice of Intent to Cary

- (1) Any person subject to an industrial or construction activity NPDES stormwater discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the Town prior to the allowing of discharges to the MS4.

- (2) The operator of a facility, including construction sites, required to have an NPDES permit to discharge stormwater associated with industrial activity shall submit a copy of the Notice of Intent (NOI) to the Town at the same time the operator submits the original Notice of Intent to the EPA as applicable.
- (3) The copy of the Notice of Intent may be delivered to the Stormwater Manager in person or by mailing it to: Notice of Intent to Discharge Stormwater, Stormwater Manager, 316 N. Academy Street, Cary, NC 27513.
- (4) A person commits an offense if the person operates a facility that is discharging storm water associated with industrial activity without having submitted a copy of the Notice of Intent to do so to the Town.

14.3.10 Compliance Monitoring

(A) Right of Entry: Inspection and Sampling

The Stormwater Manager shall be permitted to enter and inspect facilities subject to regulation under this ordinance as often as may be necessary to determine compliance with this ordinance.

- (1) If a discharger has security measures in force which require proper identification and clearance before entry into its premises, the discharger shall make the necessary arrangements to allow access to representatives of Cary.
- (2) Facility operators shall allow the Town ready access to all parts of the premises for the purposes of inspection, sampling, examination and copying of records that must be kept under the conditions of an NPDES permit to discharge stormwater, and the performance of any additional duties as defined by state and federal law.
- (3) The Town Manager or is/her designee shall have the right to set up on any permitted facility such devices as are necessary in the opinion of the Town to conduct monitoring and/or sampling of the facility's stormwater discharge. The monitoring and/or sampling of the facility's stormwater shall be at the facility's expense.
- (4) Cary has the right to require the discharger to install monitoring equipment as necessary. The facility's sampling and monitoring equipment shall be maintained at all times in a safe and proper operating condition by the discharger at its own expense. All devices used to measure stormwater flow and quality shall be calibrated to ensure their accuracy.
- (5) Any temporary or permanent obstruction to safe and easy access to the facility to be inspected and/or sampled shall be promptly removed by the operator at the written or oral request of the Town and shall not be replaced. The costs of clearing such access shall be borne by the operator.
- (6) Unreasonable delays in allowing Cary access to a permitted facility is a violation of a storm water discharge permit and of this ordinance. A person who is the operator of a facility with an NPDES permit to discharge storm water associated with industrial activity commits an offense if the person denies Cary reasonable access to the permitted facility for the purpose of conducting any activity authorized or required by this ordinance.

(B) Search Warrants

If the Town has been refused access to any part of the premises from which stormwater is discharged, then the Town may seek issuance of a search warrant.

14.3.11 Requirement to Prevent, Control, and Reduce Stormwater Pollutants by the Use of Best Management Practices

Cary will adopt requirements identifying Best Management Practices (BMPs) for any activity, operation, or facility which may cause or contribute to pollution or contamination of stormwater, the storm drain system, or waters of the United States. The owner or operator of such activity, operation, or facility shall provide, at their own expense, reasonable protection from accidental discharge of prohibited materials or other wastes into the municipal storm drain system or watercourses through the use of these structural and non-structural BMPs. Further, any person responsible for a property or premise that is, or may be, the source of an illicit discharge, may be required to implement, at said person's expense, additional structural and non-structural BMPs to prevent the further discharge of pollutants to the MS4. Compliance with all terms and conditions of a valid NPDES permit authorizing the discharge of storm water associated with industrial activity, to the extent practicable, shall be deemed in compliance with the provisions of this section. These BMPs shall be part of a Stormwater Management Plan (SWMP) as necessary for compliance with requirements of the NPDES permit.

14.3.12 Notification of Spills

Notwithstanding other requirements of law, as soon as any person responsible for a facility or operation, or responsible for emergency response for a facility or operation has information of any known or suspected release of materials which are resulting or may result in illegal discharges or pollutants discharging into storm water, the storm drain system, or waters of the United States, said person shall take all necessary steps to ensure the discovery, containment, and cleanup of such release. In the event of such a release of hazardous materials said person shall immediately notify emergency response agencies of the occurrence via emergency dispatch services. In the event of a release of non-hazardous materials, said person shall notify the Stormwater Manager in person or by phone or facsimile no later than the next business day. Notifications in person or by phone shall be confirmed by written notice addressed and mailed to the Stormwater Manager within two (2) business days of the phone notice. If the discharge of prohibited materials emanates from a commercial or industrial establishment, the owner or operator of such establishment shall also retain an on-site written record of the discharge and the actions taken to prevent its recurrence. Such records shall be retained for at least five (5) years. Failure to provide notification of a release as provided above is a violation of this ordinance.

14.3.13 Violations, Enforcement, and Penalties**(A) Violations**

It shall be unlawful for any person to violate any provision or fail to comply with any of the requirements of this section 14.3. Any person who has violated or continues to violate the provisions of this section, may be subject to the enforcement actions outlined in this section or may be restrained by injunction or otherwise abated in a manner provided by law.

In the event the violation constitutes an immediate danger to public health or public safety, the Town is authorized to enter upon the subject private property, without giving prior notice, to take any and all measures necessary to abate the violation and/or restore the property. Town Manager is authorized to seek costs of the abatement as outlined in section 14.3.16.

(B) Warning Notice

When the Town finds that any person has violated, or continues to violate, any provision of this section 14.3, or any order issued hereunder, the Town may serve upon that person a written Warning Notice, specifying the particular violation believed to have occurred and requesting the discharger to immediately investigate the matter and to seek a resolution whereby any offending discharge will cease. Investigation and/or resolution of the matter in response to the Warning Notice in no way relieves the alleged violator of liability for any violations occurring before or after receipt of the Warning Notice. Nothing in this subsection shall limit the authority of Cary to take any action, including emergency action or any other enforcement action, without first issuing a Warning Notice.

(C) Notice of Violation

Whenever the Town finds that a person has violated a prohibition or failed to meet a requirement of this section 14.3, the Town may order compliance by written notice of violation to the responsible person. The Notice of Violation shall contain:

- (1) The name and address of the alleged violator;
- (2) The address when available or a description of the building, structure or land upon which the violation is occurring, or has occurred;
- (3) A statement specifying the nature of the violation;
- (4) A description of the remedial measures necessary to restore compliance with this ordinance and a time schedule for the completion of such remedial action;
- (5) A statement of the penalty or penalties that shall or may be assessed against the person to whom the notice of violation is directed;
- (6) A statement that the determination of violation may be appealed by filing a written notice to the Stormwater Manager within five (5) days of service of notice of violation; and
- (7) A statement specifying that, should the violator fail to restore compliance within the established time schedule, the work will be done by a designated governmental agency or a contractor and the expense thereof shall be charged to the violator.

Such notice may require without limitation:

- (a) The performance of monitoring, analyses, and reporting;
- (b) The elimination of illicit connections or discharges;
- (c) That violating discharges, practices, or operations shall cease and desist;
- (d) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property;
- (e) Payment of a fine to cover administrative and remediation costs; and
- (f) The implementation of source control or treatment BMPs.

(D) Compensatory Action

In lieu of enforcement proceedings, penalties, and remedies authorized by this ordinance, Cary may impose upon a violator alternative compensatory action, such as storm drain stenciling, attendance at compliance workshops, creek cleanup, etc.

(E) Suspension of MS4 Access**(1) *Emergency Cease and Desist Orders***

When the Town finds that any person has violated, or continues to violate, any provision of this section 14.3, or any order issued hereunder, or that the person's past violations are likely to recur, and that the person's violation(s) has (have) caused or contributed to an actual or threatened discharge to the MS4 or waters of the United States which reasonably appears to present an imminent or substantial endangerment to the health or welfare of persons or to the environment, the Stormwater Manager may issue an order to the violator directing it immediately to cease and desist all such violations and directing the violator to:

- (a)** Immediately comply with all ordinance requirements; and
- (b)** Take such appropriate preventive action as may be needed to properly address a continuing or threatened violation, including immediately halting operations and/or terminating the discharge.

Any person notified of an emergency order directed to it under this Subsection shall immediately comply and stop or eliminate its endangering discharge. In the event of a discharger's failure to immediately comply voluntarily with the emergency order, Cary may take such steps as deemed necessary to prevent or minimize harm to the MS4 or waters of the United States, and/or endangerment to persons or to the environment, including immediate termination of a facility's water supply, sewer connection, or other municipal utility services. Cary may allow the person to recommence its discharge when it has demonstrated to the satisfaction of the Stormwater Manager that the period of endangerment has passed, unless further termination proceedings are initiated against the discharger. A person that is responsible, in whole or in part, for any discharge presenting imminent endangerment shall submit a detailed written statement, describing the causes of the harmful discharge and the measures taken to prevent any future occurrence, to the Town within thirty (30) days of receipt of the emergency order. Issuance of an emergency cease and desist order shall not be a bar against, or a prerequisite for, taking any other action against the violator.

(2) *Suspension due to Illicit Discharges in Emergency Situations*

The Town Manager may, without prior notice, suspend MS4 discharge access to a person when such suspension is necessary to stop an actual or threatened discharge which presents or may present imminent and substantial danger to the environment, or to the health or welfare of persons, or to the MS4 or waters of the United States. If the violator fails to comply with a suspension order issued in an emergency, the Town Manager may take such steps as deemed necessary to prevent or minimize damage to the MS4 or waters of the United States, or to minimize danger to persons.

(3) *Suspension due to the Detection of Illicit Discharge*

Any person discharging to the MS4 in violation of this ordinance may have their MS4 access terminated if such termination would abate or reduce an illicit discharge. The Town will notify a violator of the proposed termination of its MS4 access. The violator may petition the Town Manager for a reconsideration and hearing. A person commits an offense if the person reinstates MS4 access to premises terminated pursuant to this Section, without the prior approval of the Town.

(F) Civil Penalties

In the event the alleged violator fails to take the remedial measures set forth in the notice of violation or otherwise fails to cure the violations described therein within five (5) days, or such greater period as the Stormwater Manager shall deem appropriate, after the Stormwater Manager has taken one or more of the actions described above, the Stormwater Manager may impose a penalty not to exceed one thousand dollars (\$1,000) (depending on the severity of the violation) for each day the violation remains unremedied after receipt of the notice of violation.

(G) Criminal Prosecution

Any person that has violated or continues to violate this ordinance shall be liable to criminal prosecution to the fullest extent of the law and shall be subject to a criminal penalty of one thousand dollars (\$1,000) per violation per day and/or imprisonment for a period of time not to exceed thirty (30) days. Each act of violation and each day upon which any violation shall occur shall constitute a separate offense.

14.3.14 Appeal of Notice of Violation

Any person receiving a Notice of Violation may appeal the determination. The notice of appeal must be received within five (5) days from the date of the Notice of Violation and must specify with particularity the grounds for the appeal. Hearing on the appeal before the court of appropriate jurisdiction shall take place within thirty (30) days from the date of receipt of the notice of appeal. The decision of the municipal authority or their designee shall be final.

14.3.15 Enforcement Measures After Appeal

If the violation has not been corrected pursuant to the requirements set forth in the Notice of Violation, or, in the event of an appeal, within thirty (30) days of the decision upholding the NOV, then representatives of Cary shall enter upon the subject private property and are authorized to take any and all measures necessary to abate the violation and/or restore the property. It shall be unlawful for any person, owner, agent or person in possession of any premises to refuse to allow the government agency or designated contractor to enter upon the premises for the purposes set forth above.

14.3.16 Cost of Abatement of the Violation

Within thirty (30) days after abatement of the violation, the owner of the property will be notified of the cost of abatement, including administrative costs. The property owner may file a written protest objecting to the amount of the assessment within thirty (30) days. If the amount due is not paid within a timely manner as determined by the decision of the municipal authority or by the expiration of the time in which to file an appeal, the charges shall become a special assessment against the

property and shall constitute a lien on the property for the amount of the assessment. Any person violating any of the provisions of this article shall become liable to Cary by reason of such violation. The liability shall be paid in not more than ten (10) equal payments. Interest at the rate of eight percent (8%) per annum shall be assessed on the balance beginning on the first day following discovery of the violation.

14.3.17 Violations Deemed a Public Nuisance

In addition to the enforcement processes and penalties provided, any condition caused or permitted to exist in violation of any of the provisions of this section 14.3 is a threat to public health, safety, and welfare, and is declared and deemed a nuisance, and may be summarily abated or restored at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken.

14.3.18 Remedies Not Exclusive

The remedies listed in this section 14.3 are not exclusive of any other remedies available under any applicable federal, state or local law and it is within the discretion of the Stormwater Manager to seek cumulative remedies. Cary may recover all attorney's fees, court costs and other expenses associated with enforcement of this ordinance, including sampling and monitoring expenses.

(Ord. No. 2022-LDO-03, 10-27-22)

14.4 SOIL EROSION AND SEDIMENTATION CONTROL

14.4.1 Purposes

This section is adopted for the purpose of regulating land-disturbing activities in order to control accelerated erosion and sedimentation and accordingly to prevent water pollution from sedimentation, to prevent accelerated erosion and sedimentation of lakes and natural watercourses, and to prevent damage to public and private property by sedimentation during and after construction.

14.4.2 Permit and Approval Requirements

Land-disturbing activities shall be subject to the requirements and procedures set forth in Section 3.13 of this Ordinance for obtaining grading permits and the approval of erosion control plans and required permits by the U.S. Army Corps of Engineers or other federal or state agencies responsible for regulating development in wetlands. Any required state and/or federal permits must be obtained prior to the issuance of a grading permit.

14.4.3 General Erosion and Sedimentation Control Standards

All persons conducting land-disturbing activities shall take all reasonable measures to protect all public and private property from damage by such activities. Any and all state and/or federal standards apply and must be met. In situations where state and/or federal rules conflict with the provisions of this section, the more restrictive shall apply. All land-disturbing activities, except for those exempted by Section 3.13.1 of this Ordinance, shall meet the following standards:

(A) Conveyance Channels

- (1)** Stream banks and drainageway channels downstream from any land-disturbing activity shall be protected from increased degradation by accelerated erosion caused by increased velocity of runoff from the land-disturbing activity. The land-disturbing activity

shall be planned and conducted such that the velocity of stormwater runoff in the receiving watercourse at the point of discharge resulting from a ten (10)-year storm after development shall not exceed the greater of:

- (a) The velocity as determined from Table 14.4-1 below; or
- (b) The velocity in the receiving watercourse determined for the ten (10)-year storm prior to development.

TABLE 14.4-1: MAXIMUM PERMITTED VELOCITIES FOR STORMWATER DISCHARGES		
Material	Feet per Second	Meters per Second*
Fine sand (noncolloidal)	2.5	0.8
Sandy loam (noncolloidal)	2.5	0.8
Silt loam (noncolloidal)	3.0	0.9
Ordinary firm loam	3.5	1.1
Fine gravel	5.0	1.5
Stiff clay (very colloidal)	5.0	1.5
Graded, loam to cobbles (noncolloidal)	5.0	1.5
Graded, silt to cobbles (colloidal)	5.5	1.7
Alluvial silts (noncolloidal)	3.5	1.1
Alluvial silts (colloidal)	5.0	1.5
Coarse gravel (noncolloidal)	6.0	1.8
Cobbles and shingles	5.5	1.7
Shales and hard pans	6.0	1.8
* These values are for channels with straight alignment. For sinuous channels: multiply allowable velocity by 0.95 for slightly sinuous channels; by 0.9 for moderately sinuous channels; and by 0.8 for highly sinuous channels.		

- (2) If the requirements of paragraph (1) above cannot be met, then the channel below the discharge point shall be designed and constructed to withstand the expected velocity. Any channel stabilization activities involving stream bank stabilization may not be approved without the required state and/or federal permits.
- (3) Alternative and innovative measures to satisfy the intent of this paragraph (A), applied either alone or in combination, may be used if there are no objectionable secondary consequences and the applicant can demonstrate to the Stormwater Manager that such measures have the potential to keep stormwater discharge velocities from creating an erosion problem in the receiving watercourse. Some alternative measures include:
 - (a) Avoiding increases in surface runoff volume and velocity by including measures to promote infiltration to compensate for increased runoff from areas rendered impervious;

- (b) Avoiding increases in stormwater discharge velocities by using vegetated or roughened swales or waterways in lieu of closed drains and high-velocity paved sections;
- (c) Providing energy dissipators, which may range from simple rip-rapped sections to complex structures, at the outlets of storm drainage facilities to reduce flow velocities to the point of discharge; and/or
- (d) If the watercourse velocity is greater than 2.0 F.P.S., improving cross-sections and installing erosion-resistant linings.

(B) Slopes Left Exposed

Slopes left exposed shall be planted or otherwise provided with ground cover, devices, or structures sufficient to restrain erosion within fifteen (15) calendar days after completion of any phase of grading.

(C) Design Requirements

Erosion and sedimentation control measures, structures, and devices shall be planned, designed, and constructed to provide protection from the calculated maximum peak rate of runoff from the ten (10)-year storm. Runoff rates shall be calculated in accordance with Cary's Standard Specifications and Details Manual. Calculations shall be submitted with the plans and shall be drafted and organized in a neat and readable manner.

(D) Protective Cover Required

All uncovered areas shall be provided with protective cover unless the Planning Director has granted an extension of time, for good cause shown, upon written request of the developer or landowner. This cover shall be installed within fifteen (15) working days (exclusive of days where seedbed preparation is not possible due to weather as determined by the Stormwater Manager) or ninety (90) calendar days following completion of any phase of grading, whichever period is shorter. Ground cover is not required on cleared land forming the future basin of a planned reservoir.

(E) Activity Near Watercourse

All land-disturbing activities near a lake or natural watercourse shall provide erosion and sedimentation control measures. An undisturbed buffer may be used as an erosion/sedimentation control measure, provided that the undisturbed zone shall be of sufficient width to confine visible siltation within the twenty-five percent (25%) of the undisturbed zone nearer to the land-disturbing activity. This requirement shall not apply to land-disturbing activities for the construction of facilities to be located on, over, or under a lake or natural watercourse.

(F) Protection During Construction

During construction, soil erosion and sedimentation control practices and devices shall be employed that are sufficient to retain the sediment generated by the land-disturbing activity within the boundaries of the tract during construction upon and development of said tract in accordance with plans approved by Cary.

(G) Limits on Single-Unit Residential Lot Grading

Grading and Erosion Control Plans submitted as part of a development plan associated with residential development that has a gross density of three (3) units per acre or less are limited to clearing and disturbing only the land area required to install the infrastructure to serve the development (e.g., sewer and water lines, roads, storm water devices, greenways, and similar infrastructure). Until a building permit is issued for a lot, each lot must remain undisturbed, with the exception of portions of a lot impacted by the installation of infrastructure. Exceptions to grade upon a lot prior to the issuance of a building permit may be granted as a modification to the original plan approved by Cary, if there is sufficient justification (e.g., problematic drainage issues and/or severe topographic issues).

(H) Limit on Grading Area for Medium Density Residential Developments

Development plans containing residential development with a gross density not exceeding eight (8) units per acre shall not grade more than twenty-five (25) acres per phase or section of development. Each twenty-five (25) acre phase or section of development must be stabilized and seeded meeting the requirements of this ordinance prior to grading an additional phase or section of development. Exceptions to this requirement may be granted as a modification to the original plan approved by Cary if compliance is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure.

(I) Installation of Required Landscape After Grading

See Section 7.2.3, Requirements for Perimeter Buffers and Landscape Areas, for the specific requirements.

(J) Compliance with Town Manual

In addition to the standards set forth in this section, all soil erosion and sedimentation control measures shall conform to the applicable minimum standards set forth in Cary's Standard Specifications and Details Manual.

14.4.4 Basic Control Objectives for Erosion Control Plans

In addition to meeting the standards of this Section 14.4.3 above, all erosion control plans submitted for approval under Section 3.13 of this Ordinance shall be developed and implemented in accordance with the following objectives:

(A) Identify Especially Vulnerable Areas

On-site areas that are subject to severe erosion, and off-site areas that are especially vulnerable to damage from erosion and/or sedimentation, shall be identified and receive special attention.

(B) Limit Time of Exposure

All land-disturbing activities shall be planned and conducted to limit exposure to the shortest feasible time.

(C) Limit Exposed Area

All land-disturbing activities shall be planned and conducted to minimize the size of the area to be exposed at any one (1) time.

(D) Control Surface Water

Surface water runoff originating upgrate of exposed areas should be controlled to reduce erosion and sediment loss during the period of exposure.

(E) Control Sedimentation

All land-disturbing activities shall be planned and conducted so as to prevent off-site sedimentation damage.

(F) Manage Stormwater Runoff

When the increase in the velocity of stormwater runoff resulting from a land-disturbing activity is sufficient to cause accelerated erosion of the receiving watercourse, erosion control plans shall include measures to control the velocity at the point of discharge so as to minimize accelerated erosion of the site and increased sedimentation of the stream.

14.4.5 Borrow and Waste Areas

When the person conducting the land-disturbing activity is also the person conducting the borrow or waste disposal activity, areas from which borrow is obtained and which are not regulated by the Mining Act of 1971 (G.S. 74-46 et seq., as amended), and waste areas for surplus materials other than landfills regulated by the N. C. Department of Human, Environment, and Natural Resources, Division of Solid Waste Management, shall be considered as part of the land-disturbing activity from where the borrow material is being used or from which the waste material originated. When the person conducting the land-disturbing activity is not the person obtaining the borrow and/or disposing of the waste, these areas shall be considered a separate land-disturbing activity.

14.4.6 Access and Haul Roads

Temporary access and haul roads, other than public roads, constructed or used in connection with any land-disturbing activity shall be considered a component of such activity.

14.4.7 Operations in Lakes or Natural Watercourses

Land-disturbing activities for construction in, on, over, or under a lake or natural watercourse shall be planned and conducted so as to minimize the extent and duration of disturbance of the stream channel or lakebed. Where relocation of a stream is an essential component of the proposed activity, the relocation shall be planned and executed so as to minimize changes in the stream flow characteristics, except where the developer or landowner demonstrates to the Planning Director that significant alteration to the flow characteristics is justified.

14.4.8 Non-Compliance

Failure to comply with the provisions of this section shall constitute a violation of this Ordinance, and shall subject an offending party to enforcement as provided in section 11.4 of this Ordinance. (Ord. No. 2022-LDO-03, 10-27-22)

14.5 TREE CLEARING CERTIFICATE

14.5.1 Purpose

This section implements the enabling legislation granted to Cary by the North Carolina General Assembly. The purposes of these regulations are to:

- (A) Protect existing trees and shrubs located upon undeveloped sites for use as future buffers and streetscapes to meet development plan requirements;
- (B) Preserve existing tree and vegetative cover to protect and promote the health, safety, and welfare of the public by preserving the visual and aesthetic qualities of Cary; maintaining property values; maximizing the physical, mental, and social health benefits provided by trees and forests; providing shade and reducing surface temperatures; reducing air pollution and road noise; sequestering carbon; controlling erosion; and reducing sediment and other pollutant runoff into streams and waterways in an effort to protect water quality; and
- (C) Create a process whereby some properties are required to obtain a tree clearing certificate, recognize some properties are exempted from the requirement to obtain a tree clearing certificate prior to the removal of vegetation, and establish penalties for removal of all or substantially all of the required vegetation within required vegetation protection areas.

14.5.2 Applicability

The requirements for obtaining a Tree Clearing Certificate and penalties for non-compliance are applicable to all undeveloped properties that are zoned for residential or non-residential use located within Cary limits and/or extraterritorial jurisdiction (ETJ). For the purposes of the section, "undeveloped properties" shall include any property within Cary's jurisdiction that is not subject to an approved development plan.

14.5.3 Exemptions

A Tree Clearing Certificate shall not be required for the activities listed below.

- (A) Normal forestry activities taking place on property that is taxed under the present-use value standard or conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to G.S. Chapter 89B, and provided such activities are accomplished in compliance with this Ordinance.
- (B) Properties with a Cary-approved development plan provided such plan has not expired and that any clearing or vegetation removal is done in strict accordance with the approved development plan.
- (C) The removal of vegetation by public or private agencies within the lines of any public street rights-of-way, utility easements, or other Cary property, as may be necessary to ensure public safety, to obtain clear visibility at driveways or intersections, to perform authorized field survey work, or to preserve or enhance the symmetry and beauty of such Cary property.
- (D) The Cary-initiated or approved removal of any vegetation which is in an unsafe condition, constitutes a nuisance or noxious weed, or which by its nature is injurious to sanitary sewers, electrical power lines, gas lines, water lines, stream or conveyance channels, or other public improvements, or vegetation which is infected with any injurious fungus, insect, or other pest.

- (E) The removal of vegetation on property located within an approved residential subdivision that is zoned for single-unit residential use, and provided such vegetation is not a portion of a required streetscape or other landscaping buffer.
- (F) The removal of less than fifty percent (50%) of vegetation on property of three (3) acres in size or less which is vacant and zoned for residential purposes.

14.5.4 Required Buffers and Vegetation Protection Areas

Other than that necessary to gain reasonable access to the property, clearing and/or removal of trees and other vegetation shall be prohibited in the areas listed below. In situations where one (1) or more buffer zones or vegetation protection areas overlap on the same site, then the more restrictive requirement shall apply.

- (A) A perimeter streetscape zone having a width of fifty (50) feet as measured from all ultimate property boundaries that adjoin existing roadways as depicted in the Cary Transportation Plan or as required in Section 7.2.4, Streetscape and Streetfront Landscaping. For the purposes of this section, the term "ultimate property boundary" of a parcel or tract shall mean the final demarcation line around the perimeter of a parcel excluding all areas that must be dedicated to Cary for use as rights-of-way.
- (B) A perimeter buffer zone having a width of sixty-five (65) feet as measured from all property boundaries that adjoin developed property or vacant property with an approved development plan.
- (C) A perimeter buffer zone having a width of thirty-two (32) feet as measured from all property boundaries that adjoin undeveloped property or vacant property without an approved development plan.
- (D) Any other areas necessary for the protection of existing vegetation as indicated within this Ordinance (e.g., Urban Transition Buffers).

14.5.5 Application Requirements

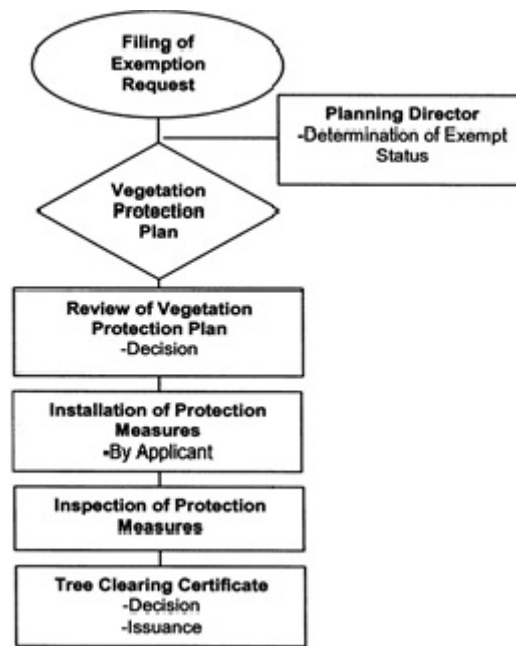
- (A) An application for a Tree Clearing Certificate may be filed only by all the owners of the property or by such owners' authorized agent.
- (B) An application for a Tree Clearing Certificate shall be filed with the Planning Department. The application form shall be accompanied by a Vegetation Protection Plan that shall include, at a minimum, the following information on a sheet size no larger than twenty-four (24) by thirty-six (36) inches at a minimum scale of one (1) inch equals fifty (50) feet:
 - (1) Vicinity map showing the location of the tract at a readable scale.
 - (2) A map of the entire tract, including the property boundary of the entire tract by courses and distances with references to true meridian and the location and dimension of all on-site and adjacent off-site easements (e.g., drainage, utility, public access, aerial utility, conservation, permanent and temporary construction easements).
 - (3) General information about the tract, including but not limited to the owner of the tract; the current zoning of the tract, the area of the tract, and the conditional-use zoning conditions, planned unit development master plan requirements, if applicable.

- (4) The location and use(s) of all existing building(s) on the tract.
 - (5) The owner, current zoning, and present use of all contiguous properties (including property on opposite side of adjoining streets).
 - (6) The general classification of all existing and proposed adjacent roadways (as depicted in the Cary Transportation Plan) and the ultimate right-of-way boundaries associated with these roadways.
 - (7) The location and width of all future/existing buffers and associated vegetation protection areas, including Urban Transition Buffers, perimeter buffers and perimeter streetscapes.
 - (8) The proposed limits of timbering activities, including the location and extent of all tree protection fencing as required under Chapter 7 of this Ordinance.
- (C) The Planning Director may reduce or waive the requirements for a Vegetation Protection Plan in situations where it can be demonstrated that all vegetation removal will take place outside of required vegetation protection areas.

14.5.6 Procedure

Prior to the commencement of any vegetation clearing or removal on any undeveloped property, the owner or the owner's agent must demonstrate exemption from the requirements of this section or submit the required application materials and applicable fees for a Tree Clearing Certificate.

- (A) Upon receipt of documentation that a property is exempted from obtaining a Tree Clearing Certificate, the Planning Director shall review all materials and make a determination if a property is exempted from the requirements or if the requirements apply. In situations where exemption status is claimed based on forestry use, this documentation shall include proof that the property is taxed under the present-use value standard, or a copy of the valid forestry management plan prepared or approved by a North Carolina registered forester. The decision of the Planning Director may be appealed to the Zoning Board of Adjustment pursuant to Section 3.21.
- (B) If a property is not exempted from the provisions pertaining to a Tree Clearing Certificate, then such application materials shall include a Vegetation Protection Plan consistent with the requirements listed in Section 14.5.5(B) above.



- (C) The Vegetation Protection Plan shall be reviewed by the Planning Director based upon the provisions of 3.9 of this Ordinance.
- (D) An applicant for a Tree Clearing Certificate shall be notified upon approval of the Vegetation Protection Plan and shall be free to erect or install any and all barriers necessary to protect existing vegetation within required buffer areas and vegetation protection areas from damage during tree clearing and/or removal activities. Failure to protect these areas shall result in penalties as indicated in Section 7.2.13, Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines.
- (E) Once all barriers for the protection of existing vegetation have been installed, a property owner or agent shall request inspection of such barriers for compliance with the requirements of this Ordinance.
- (F) Upon a passing inspection of vegetation protection barriers, the Director of Planning shall issue a Tree Clearing Certificate, and authorized vegetation clearing and/or removal may commence.

14.5.7 Non-Compliance

Failure to comply with the provisions of this section shall constitute a violation of this Ordinance, and shall subject an offending party to a series of actions listed in Chapter 11 of this Ordinance. (Ord. No. 2022-LDO-03, 10-27-22)

14.6 URBAN TRANSITION BUFFER REGULATIONS

14.6.1 The Purpose and Intent of Urban Transition Buffers

Urban Transition Buffers (UTBs or “buffers”) provide a transition from waterbodies and environmentally sensitive areas associated with waterbodies to areas which are less fragile and appropriate for more intense uses and development. Some of the benefits of UTBs are minimizing danger to lives and properties from flooding, preserving the water carrying capacity of the waterbodies, preserving tree canopy, reducing temperatures, capturing carbon, improving air quality, providing open spaces, limiting intense uses adjacent to waterbodies and environmentally sensitive areas associated with waterbodies, and maintaining the aesthetic qualities and appearance of Cary. As part of the Cary's Land Development Ordinance, UTBs implement many of Cary's responsibilities under State and Federal law and regulations regarding stormwater management and watershed preservation and are designed to work in conjunction with erosion and sedimentation control regulations. Cary's water utility system uses surface water to provide drinking water to its citizens and the preservation of this resource is important to Cary and its citizens. General UTBs are uniform and comprehensive zoning buffers which accomplish these important benefits and purposes as well as regulating and restricting the location of buildings, structures, and land, providing yards and open spaces, all for the promotion of health, safety and the general welfare of Cary's citizens. Specialized UTBs exist to address concerns which are not present in Cary's entire zoning jurisdiction.

14.6.2 Establishing General Urban Transition Buffers

- (A) This Section 14.6 shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Section 14.6.2(C)(1)(c), the following basins/watershed as designated on the most recent officially adopted version of maps maintained by the North Carolina Environmental Management Commission:

(1) *Cape Fear Basin/Jordan Watershed*

- (a) A one hundred (100) foot wide buffer directly adjacent to all surface waters (intermittent streams, perennial streams, lakes, reservoirs, and ponds) as approximately indicated on the most recent version of the 1:24,000 scale {seven and one-half (7.5) minute} quadrangle topographic maps prepared by the United States Geological Survey (USGS).
- (b) A fifty (50) foot wide buffer approximately adjacent to any surface waters (intermittent streams, perennial streams, lakes, reservoirs and ponds) shown on the most recent version of the Soil Survey of Wake or Chatham or Durham County, North Carolina prepared by the Natural Resources Conservation Service of the United States Department of Agriculture and not shown on a USGS quadrangle topographic map, or shown on a map approved by the Geographic Information Coordinating Council and by the NC Environmental Management Commission pursuant to 15A NCAC.0267.

(2) *Neuse River Basin*

- (a) A fifty foot (50') wide buffer beginning at the landward boundary of any Neuse River Riparian Buffer mandated by regulations adopted by the Environmental Management Commission of the State of North Carolina and established

adjacent to surface waters (intermittent streams, perennial streams, lakes, reservoirs and ponds) as approximately indicated on the most recent version of the 1:24,000 scale {seven and one-half (7.5) minute} quadrangle topographic maps prepared by the United States Geological Survey (USGS).

- (3) Wetlands adjacent to surface waters or within fifty (50) feet of surface waters shall be considered as part of the UTB but are regulated pursuant to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15 NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.
- (B) General UTBs are applied to specific properties as follows:

 - (1) Where the specific origination point of a stream regulated under subsection (A)(1) is in question upon request of the NC Division of Water Resources ("Division") or another party, Cary shall make an on-site determination. Cary representative who has the training required by 15A NCAC 02B .0267 shall establish that point using the methods described by 15A NCAC 02B .0267. Any disputes over said on-site determinations shall be referred to the Director of the Division of Water Resources c/o the 401 Oversight Express Permitting Unit or its successor in writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. Chapter 150B.
 - (2) When a landowner or other affected party including the Division believes that the maps referenced in subsection (A)(1) have inaccurately depicted surface waters, he or she shall consult Cary. Upon request the Cary representative who has the training required by 15A NCAC 02B .0267 shall make an on-site determination. Any disputes over said on-site determination shall be referred to the Director of the Division of Water Resources c/o the 401 Oversight Express Permitting Unit or its successor, in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. Chapter 150B. Surface waters that appear on maps shall not be subject to these requirements if a site evaluation reveals any of the following cases:

 - (a) Man-made ponds and lakes that are not part of the natural drainage way that is classified in accordance with 15A NCAC 2B .0100 including ponds and lakes created for animal watering, irrigation, or other agricultural uses. (A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream).
 - (b) Ephemeral streams
 - (c) The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.
 - (d) Ditches or other man-made water conveyances, other than modified streams.
- (C) General UTBs shall have zones as follows:

General UTBs may have as many as three (3) regulatory zones. The purpose of the different regulatory zones is to provide transition within General UTBs from the most fragile areas to less fragile areas and to provide some flexibility to Cary in administering of the UTBs. The regulatory zones shall be:

(1) Cape Fear River Basin/Jordan Watershed

(a) UTBs established pursuant to Section 14.6.2(A)(1)(a) shall have three (3) zones:

1. Zone One shall consist of a stable, vegetated area that is undisturbed except for uses provided in subsection 14.6.5 and Table 14.6-2. The locations of Zone One shall be as follows: For intermittent and perennial streams, Zone One shall begin at the top of bank and extend landward a distance of thirty (30) feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank. For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of thirty (30) feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.
2. Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided in subsection 14.6.5 and Table 14.6-2. Zone Two shall begin at the outer edge of Zone One and extend landward twenty (20) feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be fifty (50) feet on all sides of the surface water.
3. Zone Three shall consist of a stable, vegetated area that is undisturbed except for uses provided for in subsection 14.6.5 and Table 14.6-2. Zone Three shall begin at the outer edge of Zone Two and extend landward fifty (50) feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One, Two and Three shall be one hundred (100) feet on all sides of the surface water.

(b) UTBs established pursuant to Section 14.6.2(A)(1)(b) shall have two (2) zones:

1. Zone One shall consist of a stable, vegetated area that is undisturbed except for uses provided in subsection 14.6.5 and Table 14.6-2. The locations of Zone One shall be as follows: For intermittent and perennial streams, Zone One shall begin at the top of bank and extend landward a distance of thirty (30) feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank. For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of thirty (30) feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.
2. Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided in subsection 14.6.5 and Table 14.6-2. Grading and revegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised. Zone Two shall begin at the outer edge of Zone One and extend landward twenty (20) feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be fifty (50) feet on all sides of the surface water.

(c) Diffuse Flow Requirement: Diffuse flow of runoff shall be maintained in the UTBs established pursuant to Section 14.6.2(A) by dispersing concentrated flow prior to its entry into the UTB and reestablishing vegetation as follows:

1. Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters the UTB.
2. Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of gullies; and
3. No new stormwater conveyances are allowed through the UTBs except for those specified in subsection 14.6.5 and Table 14.6-2 addressing stormwater management ponds, drainage ditches, roadside ditches, and stormwater conveyances.

(2) *Neuse River Basin*

General UTBs established pursuant to Section 14.6.2(A)(2) shall have one (1) zone: Zone Three. Zone Three shall consist of a stable, vegetated area that is undisturbed except for uses provided for in subsection 14.6.5 and Table 14.6-2. Zone Three shall begin at the outer edge of the Neuse Riparian Buffer and extend landward fifty (50) feet as measured horizontally on a line perpendicular to the surface water. The combined width of the Neuse Riparian Buffer and Zone Three shall be one hundred (100) feet on all sides of the surface water.

14.6.3 Establishing Specialized Urban Transition Buffers

(A) Property within Watershed Protection Overlay

In addition to the General UTBs established above, Specialized UTBs are required by Cary's Watershed Protection Overlay (Section 4.4.6). Specialized UTBs shall overlay General UTBs, as opposed to being situated adjacent to General UTBs. The Specialized UTBs are as follows:

(1) *Low Density Development Option*

In the event the Landowner elects to develop his property under the Low Density Development Option, as provided in Section 4.4.6(F)(1), a Specialized UTB thirty (30) feet wide shall be established adjacent to all perennial surface waters including perennial streams, lakes, reservoirs, and ponds as approximately indicated on the most recent versions of USGS 1:24,000 scale {seven and one-half (7.5) minute} quadrangle topographic maps prepared by the United States Geological Survey (USGS).

(2) *High Density Development Option*

In the event the Landowner elects to develop his property under the High Density Development Option, as provided in Section 4.4.6(F)(2), a Specialized UTB one hundred feet (100') wide shall be established adjacent to all perennial surface waters including perennial streams, lakes, reservoirs and ponds as approximately indicated on the most recent versions of USGS 1:24,000 scale {seven and one-half (7.5) minute} quadrangle topographic maps prepared by the United States Geological Survey (USGS).

(B) Uses Allowed Within Specialized UTBs

The uses allowed within Specialized UTBs are described in Table 14.6-2.

(C) Measurement of Specialized UTBs

Specialized UTBs shall be measured from a point perpendicular to the bank of the perennial waters.

14.6.4 Overlap or Conflict between Urban Transition Buffers established by Cary and buffers established by State of North Carolina or Federal Regulations

- (A)** In the event of an overlap or conflict between a General UTB and a Specialized UTB, the more restrictive buffer shall govern. It is the intent of Cary that General UTBs shall provide the minimum urban transition buffer for all properties located in Cary's zoning jurisdiction.
- (B)** In the event of an overlap or conflict between any buffer established by this Section and any buffer or other requirement established by another law, rule or regulation administered by the State of North Carolina or the Federal Government, the more restrictive law, rule or regulation shall govern.

Table 14.6-1 below graphically depicts Cary's UTBs and their zones.

TABLE 14.6-1 CARY GENERAL AND SPECIALIZED UTBs					
Type of Buffers	General UTBs			Watershed Overlay Buffers	
Zones of Buffers	ZONE 1	ZONE 2	ZONE 3	Low Density Option	High Density Option
Cape Fear River Basin					
Not in Watershed overlay district					
Shown on USGS map	Yes	Yes	Yes	N/A	N/A
Shown on county soil map	Yes	Yes	No	N/A	N/A
In watershed overlay district					
Shown on USGS map	Yes	Yes	Yes	Yes ^[1]	Yes ^[2]
Shown on county soil map	Yes	Yes	No	N/A	N/A
Neuse River Basin					
Not in Watershed overlay district					
Shown on USGS map	No ^[3]	No ^[3]	Yes	N/A	N/A
Shown on county soil map	No ^[3]	No ^[3]	No	N/A	N/A
In watershed overlay district					
Shown on USGS map	No ^[3]	No ^[3]	Yes	Yes ^[1]	Yes ^[2]
Shown on county soil map	No ^[3]	No ^[3]	No	No	No

- [1] Minimum thirty (30) foot wide vegetative buffer and other regulations apply. See Section 4.4.6 of the LDO.
[2] Minimum one hundred (100) foot wide vegetative buffer and other regulations apply. See Section 4.4.6 of the LDO.
[3] Regulated by State of North Carolina.

14.6.5 Activities Prohibited and Permitted in Urban Transition Buffers

- (A) Any activity which disturbs the soil or vegetation within any Urban Transition Buffer is prohibited unless expressly permitted by this Section 14.6.5 and Table 14.6-2. Table 14.6-2 describes the uses permitted in each UTB established by this Section 14.6.5.
- (B) Uses designated as exempt, allowable, allowable with mitigation and prohibited shall have the following requirements:

(1) ***EXEMPT***

Uses designated as exempt are allowed within the Urban Transition Buffer provided that they adhere to the limitations of the activity as defined in subsection 14.6.5(A) and Table 14.6-2 below. Exempt uses shall be designed, constructed, and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable including construction, monitoring, and maintenance activities.

(2) ***ALLOWABLE***

Uses designated as allowable may proceed within the Urban Transition Buffer provided that there are no practical alternatives to the requested use as determined pursuant to Section 14.6.9. This includes construction, monitoring, and maintenance activities. These uses require written authorization from Cary.

(3) ***ALLOWABLE WITH MITIGATION***

Uses designated as allowable with mitigation may proceed within the Urban Transition Buffer provided that there are no practical alternatives to the requested use as determined pursuant to Section 14.6.9 and mitigation approval has been obtained pursuant to Section 14.6.12. These uses require written authorization from Cary.

(4) ***PROHIBITED***

Uses designated as prohibited or not designated as exempt, allowable, or allowable with mitigation, may not proceed within the Urban Transition Buffer unless a variance is granted pursuant to this Section 14.6.

TABLE 14.6-2 CARY GENERAL AND SPECIALIZED UTBs				
Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Access Trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities				
Pedestrian Access trails that are restricted to the minimum width practicable and do not exceed four (4) feet in width of buffer disturbance, and provided that installation and use does not result in the removal of trees as defined in this Ordinance and no impervious surface is added to the UTB	X			
Pedestrian Access trails that exceed four (4) feet in width of buffer disturbance, the installation or use results in the removal of trees as defined in this Ordinance or impervious surface is added to the UTB		X		
Airport facilities:				
Airport facilities that impact equal to or less than one hundred and fifty (150) linear feet of UTB		X		
Airport facilities that impact greater than one hundred and fifty (150) linear feet of UTB			X	
Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips) ¹		X		
Archaeological activities	X			
Bridges		X		
Canoe Access provided that installation and use does not result in the removal of trees as defined in this Ordinance and no impervious surface is added to the UTB	X			
Dam Maintenance activities:				
Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3	X			
Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3		X		

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Drainage ditches, roadside ditches, and stormwater conveyances through buffers:				
New stormwater flows to existing drainage ditches, roadside ditches, and stormwater outfalls provided that flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies	X			
Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added, and the minimum required roadway typical section is used based on traffic and safety considerations		X		
New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nitrogen and attenuate flow before the conveyance discharges through the buffer		X		
New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide stormwater management facility due to topography constraints provided that other practicable BMPs are employed.			X	
New drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging into the UTB				X
Excavation of the streambed in order to bring it to the same elevation as the invert of a ditch				X
Driveway crossings of streams and other surface waters subject to this Ordinance:				
Driveway crossings on single-unit residential lots that disturb equal to or less than twenty-five (25) linear feet of UTB	X			
Driveway crossings on single-unit residential lots that disturb greater than twenty-five (25) linear feet of UTB		X		
In a subdivision that cumulatively disturb equal to or less than one hundred and fifty (150) linear feet of UTB		X		
In a subdivision that cumulatively disturb greater than one hundred and fifty (150) linear feet of UTB			X	

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Fences provided that disturbance is minimized, and installation does not result in removal of forest vegetation	X			
Fences provided that disturbance is minimized, and installation does result in removal of trees as defined in this Ordinance		X		
Forest harvesting [refer to 15A NCAC 02B.0233 (11) and 15A NCAC 02B .0267(14)]				
Fertilizer application:				
One-time fertilizer application to establish re-planted vegetation	X			
Ongoing fertilizer application				X
Grading and revegetation in Zone 2 and 3 only provided that diffuse flow and the health of existing vegetation in Zone 1 is not compromised and disturbed areas are stabilized		X		
Greenway/hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat and protect water quality to the maximum extent practical		X		
Historic preservation	X			
Landfills as defined by G.S. 130A-290	X			
Maintenance Access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X		
Mining activities:				
Mining activities that are covered by the Mining Act provided that new UTBs that meet the requirements of 14.6.2(C)(1) of this Ordinance are established adjacent to the relocated channels		X		
Mining activities that are not covered by the Mining Act OR where new UTBs that meet the requirements of 14.6.2(C)(1) of this Ordinance are not established adjacent to the relocated channels			X	
Wastewater or mining dewatering wells with approved NPDES permit	X			

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Non-electric utility lines:				
Impacts other than perpendicular crossings in Zones 2 and 3 only ^[3]	X			
Impacts other than perpendicular crossings in Zone 1 ^[3]			X	
Non-electric utility line perpendicular crossing of streams and other surface waters subject to this Ordinance: ^[3]				
Perpendicular crossings that disturb equal to or less than forty (40) linear feet of UTB with a maintenance corridor equal to or less than ten (10) feet in width	X			
Perpendicular crossings that disturb equal to or less than forty (40) linear feet of UTB with a maintenance corridor greater than ten (10) feet in width		X		
Perpendicular crossings that disturb greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) linear feet of UTB with a maintenance corridor equal to or less than ten (10) feet in width		X		
Perpendicular crossings that disturb greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) linear feet of UTB with a maintenance corridor greater than ten (10) feet in width		X		
Perpendicular crossings that disturb greater than one hundred and fifty (150) linear feet of UTB			X	
On-site sanitary sewage systems - new ones that use ground absorption				X
Overhead electric utility lines:				
Impacts other than perpendicular crossings in Zones 2 and 3 only ^[3]		X		
Impacts other than perpendicular crossings in Zone 1 ^[1,2,3]			X	
Overhead electric utility line perpendicular crossings of streams and other surface waters subject to this Ordinance ^[3]				
Perpendicular crossings that disturb equal to or less than one hundred and fifty (150) linear feet of UTB ^[1, 3]	X			
Perpendicular crossings that disturb greater than one hundred and fifty (150) linear feet of UTB ^[1,2, 3]		X		

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Periodic maintenance of modified natural streams such as canals and a grassed travel way on one (1) side of the surface water when alternative forms of maintenance access are not practical		X		
Piping of a stream under a permit issued by the US Army Corps of Engineers		X		
Playground equipment:				
Playground equipment on single-unit residential lots provided that installation and use does not result in removal of vegetation	X			
Playground equipment installed on lands other than single-unit residential lots or that requires removal of vegetation		X		
Ponds created by impounding streams and not used as Stormwater Control Measures (SCM):				
New ponds provided that an UTB that meets the requirements of Section 14.6.2(C)(1) of this Ordinance is established adjacent to the pond		X		
New ponds where an UTB that meets the requirements of Section 14.6.2(C)(1) of this Ordinance is NOT established adjacent to the pond			X	
Ponds: Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of 14.6.2(A)(1), 14.6.2(C)(1)(c), 14.6.2(B), 14.6.2(C)(1), 14.6.5, 14.6.8, and Table 14.6-2 of this rule is established adjacent to the new channel	X			
Protection of existing structures, facilities and streambanks when this requires additional disturbance of the UTB or the stream channel		X		
Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance			X	
Railroad crossings of streams and other surface waters subject to this Ordinance:				
Railroad crossings that impact equal to or less than forty (40) linear feet of UTB	X			
Railroad crossings that impact greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) feet of UTB		X		
Railroad crossings that impact greater than one hundred and fifty (150) linear feet of UTB			X	
Recreational and accessory structures in the UTB				X

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Removal of previous fill or debris provided that diffuse flow is maintained, and any vegetation removed is restored	X			
Road impacts other than crossings of streams and other surface waters subject to this Ordinance			X	
Road crossings of streams and other surface waters subject to this Ordinance:				
Road crossings that impact equal to or less than forty (40) linear feet of UTB	X			
Road crossings that impact greater than forty (40) linear feet but equal to or less than one hundred and fifty (150) linear feet		X		
Road crossings that impact greater than one hundred and fifty (150) linear feet			X	
Road Relocation: Road relocation of existing private access roads associated with public road projects where necessary for public safety:				
Relocations that are less than or equal to twenty-five (25) linear feet of UTB width		X		
Relocations that are more than twenty-five (25) linear feet of UTB width			X	
Scientific studies and stream gauging	X			
Stormwater Control Measures:				
Wet detention, bioretention and constructed wetlands in Zone Two and Three if diffuse flow of discharge is provided		X		
Wet detention, bioretention and constructed wetlands in Zone One			X	
Stream restoration		X		
Streambank or shoreline stabilization		X		
Temporary roads:				
Temporary roads that disturb less than or equal to twenty-five (25) linear feet of UTB provided that vegetation is restored to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of five (5) years the restored UTB shall comply with the restoration criteria of Section 14.6.12 below	X			

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Temporary roads that disturb greater than twenty-five (25) linear feet of UTB provided that vegetation is restored to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of five (5) years the restored UTB shall comply with the restoration criteria of Section 14.6.12 below		X		
Temporary roads used for culvert installation or bridge construction or replacement provided that restoration to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of five (5) years the restored UTB shall comply with the restoration criteria of Section 14.6.12 below		X		
Temporary sediment and erosion control devices:				
In Zone 2 and 3 only provided that the vegetation in Zone 1 is not compromised and that discharge is released as diffuse flow is restored to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of five (5) years the restored UTB shall comply with the restoration criteria of Section 14.6.12 below	X			
In Zones 1, 2, and 3 to control impacts associated with uses approved by Cary or that have received a variance provided that sediment and erosion control for upland areas is addressed to maximum extent practical outside the UTB and restored to preconstruction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season; at the end of five (5) years the restored UTB shall comply with the restoration criteria of Section 14.6.12 below		X		

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act	X			
In-stream temporary erosion and sediment control measures for work within a stream channel		X		
Underground electric utility lines:				
Impacts other than perpendicular crossings in Zone 2 and Zone 3 ^[3]	X			
Impacts other than perpendicular crossings in Zone 1 ^[3,4]	X			
Underground electric utility line perpendicular crossings of streams and other surface waters subject to this Ordinance: ^[3]				
Perpendicular crossings that disturb less than or equal to forty (40) linear feet of UTB ^[3,4]	X			
Perpendicular crossings that disturb greater than forty (40) linear feet of UTB ^[3,4]		X		
Vegetation management:				
Emergency fire control measures provided that topography is restored	X			
Periodic mowing and harvesting of plant products in Zone 2 and 3 only	X			
Planting vegetation to enhance the UTB	X			
Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X			
Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life or are imminently endangering stability of the streambank	X			
Removal of individual trees which are dead, diseased or damaged	X			
Removal of poison ivy	X			
Removal of invasive exotic vegetation as defined in: Smith, Cherri L. 1998. Exotic Plant Guidelines. Department of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30	X			

Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten (10) feet and where installation and use result in disturbance of UTB		X		
Water-dependent structures as defined in 15A NCAC 02B .0202 where the installation and use result in the disturbance of UTB		X		
Water supply reservoirs:				
New reservoirs provided that an UTB that meets the requirements of 14.6.2(C)(1) of this Ordinance is established adjacent to the reservoir		X		
New reservoirs where an UTB that meets the requirements of 14.6.2(C)(1) of this Ordinance is NOT established adjacent to the reservoir			X	
Wells on single-unit residential lots	X			
All other wells		X		
Wetland, stream and buffer restoration that results in impacts to the UTB				
Wetland, stream and buffer restoration that requires Division approval for the use of a 401 Water Quality Certification	X			
Wetland, stream and buffer restoration that does not require approval for the use of a 401 Water Quality Certification		X		
Wildlife passage structures		X		
Wooden slatted decks and associated steps in the UTB, provided the use meets the requirements of Sections 14.6.4 and 14.6.5 of this Ordinance				
Deck at least eight (8) feet in height and no vegetation removed		X		
Deck less than eight (8) feet in height or vegetation removed			X	

[1] Provided that, in Zone 1, all of the following WQBMPs for overhead utility lines are used. If all of these WQBMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by Cary (Cape Fear Basin/Jordan Watershed) or Division of Water Resources (Neuse River Basin).

A minimum zone of ten (10) feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.

Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

Vegetation root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut. Rip rap shall not be used unless it is necessary to stabilize a tower.

No fertilizer shall be used other than a one (1) time application to re-establish vegetation.

Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.

Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.

In wetlands, mats shall be utilized to minimize soil disturbance.

[2] Provided that poles or towers shall not be installed within ten (10) feet of a water body unless Cary (Cape Fear Basin/Jordan Watershed) or Division of Water Resources (Neuse River Basin) completes a no practical alternatives evaluation.

[3] Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

[4] Provided that, in Zone 1, all of the following WQBMPs for underground utility lines are used. If all of these WQBMPs are not used then the underground utility line shall require a no practical alternatives evaluation by Cary (Cape Fear Basin/Jordan Watershed) or Division of Water Resources (Neuse River Basin).

Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.

Underground cables shall be installed by vibratory plow or trenching.

The trench shall be backfilled with the excavated soil material immediately following cable installation. No fertilizer shall be used other than a one (1) time application to re-establish vegetation.

Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.

Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.

In wetlands, mats shall be utilized to minimize soil disturbance.

14.6.6 Description of Buffers on Development Plans

All UTBs shall be shown on all development plans and subdivision plats submitted for approval within Cary's planning jurisdiction. In addition to UTBs, State of North Carolina and U.S. Army Corps of Engineers' jurisdictional wetlands waters and buffers shall be shown on the inventory of natural resources required as part of development plan approval.

14.6.7 Exclusion of Urban Transition Buffer and Riparian Buffer from Lots

Generally, no single-unit residential lots may encroach upon any required or established riparian buffer or UTB, except that single-unit residential lots platted prior to July 27, 2000, shall be exempt from Zone Three of the Urban Transition Buffer requirements. Notwithstanding the foregoing, single-unit residential lots platted after July 27, 2000, may encroach upon a required or established riparian buffer or UTB when all of the following conditions are met:

- (A) The total area of a parcel under single ownership is not greater than five (5) acres and the Landowner establishes that he/she is unable to use any cluster development option that may be available;
- (B) The proposed subdivision consists of fewer than ten (10) lots and has no homeowners association;
- (C) There is no other reason for the formation of a homeowner's association (e.g., covenant, other common areas, common facilities, engineered stormwater control structures);
- (D) The area of the UTB or riparian buffer is subject to a permanent conservation easement or other legal instrument dedicated to a not-for-profit conservation entity approved by Cary. All documents required for such a conveyance to a not-for-profit conservation entity shall be provided to and approved by Cary, in writing on such instruments, prior to recording any plat showing property proposed to be conveyed.

14.6.8 Exemption when Existing Uses are Present and Ongoing

This Section 14.6 shall not apply to uses that are existing and ongoing; however, this Section 14.6 shall apply at the time an existing, ongoing use is changed to another use. Change of use shall involve the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:

- (A) It was present within the UTB as of July 27, 2000 and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems any of which involve either specific, periodic management of vegetation or displacement of vegetation by use is exempt from this Section. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within fifty (50) feet of the surface water where it did not previously exist as of July 27, 2000, and existing diffuse flow is maintained.
- (B) Projects or proposed development that are determined by Cary to meet at least one (1) of the following criteria:

- (1) Project requires a 401 Certification/404 Permit, and these were issued prior to July 27, 2000.
- (2) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and received all required state permits and certifications prior to July 27, 2000.
- (3) Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has written approval of Cary prior to July 27, 2000; or
- (4) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has written approval of Cary prior to July 27, 2000; or

14.6.9 Determinations of No Practical Alternatives/Request for Authorization Certificate

- (A) Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a "no practical alternatives" determination to Cary. The applicant shall certify that the project meets all the following criteria for finding "no practical alternatives."
- (1) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;
 - (2) The use cannot practically be reduced in size or density, reconfigured, or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and
 - (3) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- (B) The applicant shall also submit at least the following information in support of its assertion of "no practical alternatives":
- (1) The name, address and phone number of the applicant;
 - (2) The nature of the activity to be conducted by the applicant;
 - (3) The location of the activity, including the jurisdiction;
 - (4) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in UTBs associated with the activity, and the extent of UTBs on the land;

- (5) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the UTB, preserve aquatic life and habitat and protect water quality; and
 - (6) Plans for any best management practices proposed to be used to control the impacts associated with the activity.
- (C) Within sixty (60) days of a complete submission, Cary shall review the entire project and make a finding of fact as to whether the criteria of this Section 14.6.9 have been met. A finding of "no practical alternatives" shall result in issuance of an Authorization Certificate. Failure to act within sixty (60) days shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:
- (1) The applicant agrees, in writing, to a longer period;
 - (2) Cary determines that the applicant has failed to furnish requested information necessary to Cary's decision;
 - (3) The final decision is to be made pursuant to a public hearing; or
 - (4) The applicant refuses access to its records or premises for the purpose of gathering information necessary to Cary's decision.
 - (5) Cary may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of this Section 14.6.
 - (6) Any appeals of determinations regarding Authorization Certificates for activities in Zones One and Two shall be referred to the Stormwater Manager of the Town Managers Office, or its successor. The Stormwater Manager's decision is subject to review as provided in G.S. Chapter 150B, Articles 3 and 4. Any appeals of determinations regarding Authorization Certificates for activities taking place only in Zone Three shall be pursuant to Sections 3.21 and 11.2 of this Ordinance.

14.6.10 Modification of Urban Transition Buffers as part of Approving Development Plans

UTBs are part of Cary's overall zoning, land subdivision and land use regulations. Cary has collected these regulations together in Cary's Land Development Ordinance (LDO). UTBs are intended to assist Cary in accomplishing the broad and important purposes of the LDO stated in 1.3 of the LDO as well as the specific purposes stated in Sections 1.3.1-1.3.12 and 14.6.1. In any specific development plan, Cary's reviews the entire proposed development and determines whether the proposed development in its entirety satisfies the LDO. Cary recognizes that UTBs will affect different property and projects differently and that all circumstances or applications of UTBs cannot be foreseen. Therefore, Cary has established a process by which the width of Zone 3 of the UTB may be modified in certain limited circumstances based upon review and approval of an applicant's application for modification which shall include the overall development plan. Any modification granted shall be conditioned upon the implementation of the related development plan and shall be conditioned upon the applicant providing mitigation as set forth below.

(A) Procedures for Requesting Modifications to Zone Three

The Zoning Board of Adjustment, after receiving comment from various Cary departments which review the proposed development plan pursuant to the LDO, may reduce the total area of Zone Three after establishing the following at a quasi-judicial hearing:

- (1) The reduction will have a minimal impact upon the purposes of the General UTBs stated in Section 14.6.1 and is consistent with general purposes of the LDO stated in Section 1.3; and
- (2) The mitigation of impacts offered by the applicant as part of the proposed development plan significantly outweighs the impacts of the reduction to the General UTBs proposed by the applicant; and
- (3) The impact of the reduction in the General UTB is balanced by mitigation, as required below:
 - (a) Mitigation on a 1:1 ratio for restoration of a degraded buffer or for protection of ephemeral streams contiguous to protected streams; or
 - (b) Mitigation on a 3:1 ratio for preservation of an existing buffer; or
 - (c) Mitigation on a 10:1 ratio for preservation of open space.
- (4) The requirements of Section 14.6.12(G)(3), (4), (5), (6) and (7) shall apply to any mitigation required by Section 14.6.10(A)(3) above. In addition, the applicant shall submit a restoration or enhancement plan meeting the requirements of Section 14.6.12(G)(5) together with its request for modification.
- (5) The preferred mitigation area is off-site. However, in some cases mitigation requirements may be met by protecting land on-site which would otherwise not be protected through another avenue such as buffer, wetlands, floodplain, or open space requirements.

(B) In addition to the mitigation required and the considerations provided above, the Zoning Board of Adjustment may consider other factors such as the following:

- (1) Whether a substantial conflict exists between the General UTBs and other provisions and provisions of the LDO (e.g., the appropriate layout of streets in a proposed development conflicts with the location of the General UTBs);
- (2) Whether approvals of other governmental agencies impede the effectiveness of the General UTBs or otherwise impact the layout or development of the proposed development; or
- (3) Any other information which may be relevant to the Zoning Board of Adjustment determination that the development plan otherwise satisfies the purposes and goals of the LDO.

(C) Notwithstanding the foregoing, in the event the applicant provides written evidence that the State of North Carolina has granted the applicant a variance to the riparian buffer required

by the State of North Carolina, or if Cary has granted a minor variance as described below in section 14.6.11, the Planning Director shall grant a modification to the UTBs applicable to such applicant sufficient to permit such applicant to utilize the State variance granted.

14.6.11 Variances

- (A) Except where General UTBs are modified pursuant to Section 14.6.10 above, General UTBs shall not be modified or varied unless the applicant is granted a variance pursuant to this Section 14.6.11.

(B) Requirements for Variances

Persons who wish to undertake prohibited uses may pursue a variance. Cary may grant minor variances. For major variances, Cary shall prepare preliminary findings and submit them to the Stormwater Division, or its successor for approval by the Environmental Management Commission. The variance request procedure shall be as follows:

- (1) For any variance request, Cary shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the UTB requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
- (a) If the applicant complies with the provisions of this Ordinance, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, Cary shall consider whether the variance is the minimum possible deviation from the terms of this Section 14.6 that shall make reasonable use of the property possible;
 - (b) The hardship results from application of this Section 14.6 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, such that compliance with provisions of this Section 14.6 would not allow reasonable use of the property;
 - (d) The applicant did not cause the hardship by knowingly or unknowingly violating this Section 14.6;
 - (e) The applicant did not purchase the property after July 14, 2011 (the effective date of this Ordinance), and then request a variance; and
 - (f) The hardship is rare or unique to the applicant's property.
 - (g) The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and this Ordinance and preserves its spirit; and
 - (h) In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

(C) Minor Variances

A minor variance request pertains to activities that will impact Zone Two of the UTB. Minor variance requests shall be reviewed and approved based on the criteria in Section 14.6.11(B). Cary may attach conditions to the variance approval that support the purpose, spirit, and intent of the UTB program. Request for appeals to decisions made by Cary shall be made in writing to the Director of Water Quality, 401 Oversight Express Permitting Unit, or its successor. The Directors decision is subject to review as provided in G.S. Chapter 150B, Articles 3 and 4.

(D) Major Variances

A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of UTB. If Cary has determined that a major variance request meets the requirements in Section 14.6.11(B), then it shall prepare a preliminary finding and submit it to the NC Environmental Management Commission c/o the Division of Water Resources, 401 Oversight Express Permitting Unit, or its successor, for approval. Within ninety (90) days after receipt by Cary, the Commission shall review preliminary findings on major variance requests and take one (1) of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Commission decision on a major variance request are made on judicial review to Superior Court.

- (E)** Any use allowed by a variance which requires mitigation as a condition of variance approval shall not be undertaken until a Mitigation Approval is issued pursuant to Section 14.6.12.

14.6.12 Mitigation

- (A)** This item shall apply to persons who wish to impact a UTB when one (1) of the following applies:

- (1)** A person has received an Authorization Certificate pursuant to Section 14.6.9 for a proposed use that is designated as "allowable with mitigation"; or
- (2)** A person has received a variance pursuant to Section 14.6.11 and is required to perform mitigation as a condition of a variance approval; or
- (3)** A person has requested a modification pursuant to Section 14.6.10.

(B) Issuance of the Mitigation Approval

Cary shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Ordinance. The approval shall identify at a minimum the option chosen, the required and proposed areas, and either the mitigation location or the offset payment amount as applicable.

(C) Options for Meeting the Mitigation Requirement

The mitigation requirement may be met through one (1) of the following options:

- (1)** Payment of a mitigation fee pursuant to 15A NCAC 2B .0269 for impacts to Zone 1 and Zone 2 of the UTB only;

- (2) Donation of real property or of an interest in real property pursuant to Section 14.6.12(F); or
- (3) Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Section 14.6.12(G).
- (4) Other alternative buffer mitigation options for impacts to the UTB as approved by the Town. Other alternative riparian buffer mitigation options not specified within this Section may be submitted to the Town for review. Any proposal submitted under this Section shall provide documentation or calculations to demonstrate that the proposed alternative mitigation option removes an equal or greater annual mass load of nutrients to surface waters as a riparian buffer.

(D) The Area of Mitigation

Cary shall determine the required area of mitigation, which shall apply to all mitigation options identified in Section 14.6.11(C) and as further specified in the requirements for each option set out in this Section, according to the following:

- (1) The impacts in square feet to each zone of the UTB shall be determined by Cary by adding the following:
 - (a) The area of the footprint of the use causing the impact to the UTB;
 - (b) The area of the boundary of any clearing and grading activities within the UTB necessary to accommodate the use; and
 - (c) The area of any ongoing maintenance corridors within the UTB associated with the use.
- (2) The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Section 14.6.11(D) of this Ordinance to each zone of the UTB:
 - (a) Impacts to Zone One of the UTB shall be multiplied by three (3);
 - (b) Impacts to Zone Two of the UTB shall be multiplied by one and one-half (1.5); and
 - (c) Impacts to wetlands within the UTB that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

(E) The Location of Mitigation

For any option chosen for impacts in the Jordan watershed, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of

Jordan Reservoir resulting from differences between the locations of the impact and mitigation. Additional location requirements for the property donation option are enumerated in Section 14.6.12(F)(3)(a).

(F) Donation of Property

Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

- (1) The donation of real property interests may be used to either partially or fully satisfy the payment of a mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0272 for impacts to Zone 1 and Zone 2. The value of the property interest shall be determined by an appraisal performed in accordance with Section 7.2.14(L)(6)(d)4. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to 15A NCAC 02B .0272, the applicant shall pay the remaining balance due.
- (2) The donation of conservation easements to satisfy mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.
- (3) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

 - (a) In addition to the location requirements of Section 14.6.12(E) for impacts in the Jordan watershed, the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin developed by NC Division of Water Resources pursuant to G.S. 143-214.10;
 - (b) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Section 14.6.12 (G);
 - (c) The restorable riparian buffer on the property shall have a minimum length of one thousand (1,000) linear feet along a surface water and a minimum width of fifty (50) feet as measured horizontally on a line perpendicular to the surface water;
 - (d) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the area of mitigation responsibility determined pursuant to Section 14.6.12 (D);
 - (e) Restoration shall not require removal of man-made structures or infrastructure;
 - (f) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
 - (g) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;

- (h) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;
 - (i) The property shall not contain any hazardous substance or solid waste;
 - (j) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;
 - (k) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and
 - (l) The property shall not have any encumbrances or conditions on the transfer of the property interests.
- (4) At the expense of the applicant or donor, the following information shall be submitted to Cary with any proposal for donations or dedications of interest in real property:
- (a) Documentation that the property meets the requirements laid out in Section 14.6.12(F)(3);
 - (b) US Geological Survey 1:24,000 {seven and one-half (7.5) minute} scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;
 - (c) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;
 - (d) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and
 - (e) A title certificate.

(G) Riparian Buffer Restoration or Enhancement

Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

- (1) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

- (a) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Section 14.6.12(D); or
 - (b) The area of riparian buffer enhancement is three (3) times larger than the required area of mitigation determined pursuant to Section 14.6.12(D);
- (2) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Section 14.6.12(E5);
- (3) The riparian buffer restoration or enhancement site shall have a minimum width of fifty (50) feet as measured horizontally on a line perpendicular to the surface water;
- (4) Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, defined as greater than or equal to one hundred (100) trees per acre but less than two hundred (200) trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, defined as less than one hundred (100) trees per acre, a buffer may be restored;
- (5) The applicant shall submit a restoration or enhancement plan for approval by Cary after receiving an Authorization Certificate for the proposed use according to the requirements of Section 14.6.9; after receiving a variance for the proposed use according to the requirements of Section 14.6.12; or prior to requesting a modification for the proposed use according to the requirements of Section 14.6.10. The restoration or enhancement plan shall contain the following:
 - (a) A map of the proposed restoration or enhancement site;
 - (b) A vegetation plan. The vegetation plan shall include a minimum of at least two (2) native hardwood tree species planted at a density sufficient to provide three hundred twenty (320) trees per acre at maturity;
 - (c) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
 - (d) A fertilization plan; and
 - (e) A schedule for implementation.
- (6) Within one (1) year after Cary has approved the restoration or enhancement plan, the applicant shall present proof to Cary that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State's riparian buffer protection program and this Section 14.6;
- (7) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and
- (8) The applicant shall submit annual reports for a period of five (5) years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five (5)-year period.

14.6.13 Site Inspections

Agents, officials, or other qualified persons authorized by Cary may periodically inspect UTBs to ensure compliance with this ordinance. Notice of the right to inspect shall be included in the letter of approval of each variance and authorization certificate. Authorized agents, officials or other qualified persons shall have the authority, upon presentation of proper credentials, to enter and inspect at reasonable times any property, public or private, for the purpose of investigating and inspecting the site of any UTB. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of Cary, while that person is inspecting or attempting to inspect a UTB nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties. Cary shall have the power to conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Section 14.6.

14.6.14 Violations; Fines; Enforcement

- (A) This Section 14.6 shall be enforced by the Town Manager. Any person who fails to comply with any provision of this Section 14.6 shall be in violation of this Ordinance for each occurrence or non-compliance. The disturbance or damage of vegetation within the UTB shall constitute a violation of this Ordinance. For purposes of this Section 14.6, "disturbance" shall be defined as any action that results in injury or harm to required trees, shrubbery, or other vegetation. The owner(s) of the property which term includes their agents, heirs, and assigns, shall be fined and shall replace the disturbed or damaged vegetation as set forth in subsections 14.6.14(B) and 14.6.14(C). In addition, Cary may assess civil penalties in accordance with Chapter 11 of the LDO. Each day that the violation continues shall constitute a separate offense.
- (B) The area disturbed or damaged shall be revegetated to re-establish the natural landscape. The person to whom a notice of violation is issued must submit a vegetation plan which shall include a minimum of at least two (2) native hardwood tree species planted at a density sufficient to provide three hundred twenty (320) trees per acre at maturity. In addition, any tree with a dbh of at least six (6) inches that is damaged or removed shall be replaced with one (1) or more trees that have a caliper of at least two (2) inches and a cumulative dbh equal to or greater than the original tree.
- (C) A fine of between two dollars (\$2.00) and four dollars (\$4.00) for every square foot area used by the disturbed or damaged vegetation within the UTB shall be imposed. In determining the amount of the fine, the Town Manager shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and whether the violation was committed willfully. Fines imposed pursuant to this subsection may be appealed pursuant to Section 11.2.2(D).

14.6.15 Delegation of Authority

Any act authorized by this Section 14.2.2 to be carried out by or at the direction of Cary may be carried out by the Town Manager or designee.

14.6.16 Definitions

For the purpose of Section 14.6, these terms shall be defined as follows:

"Access Trails" means pedestrian trails constructed of pervious or impervious surfaces and related structures to access a surface water, including boardwalks, steps, rails, and signage.

"Airport Facilities" means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one (1) or more of the definitions or uses of the words or phrases "air navigation facility" , "airport", or "airport protection privileges" under G.S. 63-1; the definition of "aeronautical facilities" in G.S. 63-79(1); the phrase "airport facilities" as used in G.S. 159-48(b)(1); and the phrase "aeronautical facilities" as defined in G.S. 159-81 and G.S. 159-97; and the phrase "airport facilities and improvements" as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation and maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of "airport facilities":

- (1) Satellite parking facilities
- (2) Retail and commercial development outside of the terminal area, such as rental car facilities; and
- (3) Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special government entity such as an airport authority, in which case they are included in the definition of "airport facilities".

"Channel" means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.

"DBH" means the diameter at breast height of a tree measured at four and one-half (4.5) feet above ground level surface.

"Development" means the same as defined in Rule 15A NCAC 2B .0202(23).

"Ditch or canal" means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.

"Ephemeral Stream" means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

"Existing Development" means development, other than that associated with agricultural or forest management activities that meets one (1) of the following criteria:

- (1) It either is built or has established a vested right based on statutory or common law as interpreted by the courts, for projects that do not require a state permit, as of the effective date of either local new development stormwater programs implemented under Rule 15A NCAC 2B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) or, for projects requiring a state permit, as of the applicable compliance date established in Rule 15A NCAC 2B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development), Items (5) and (6); or
- (2) It occurs after the compliance date set out in Sub-Item (4)(d) of Rule .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) but does not result in a net increase built-upon area.

"Greenway / Hiking Trails" means pedestrian trails constructed of pervious or impervious surface and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the shoreline.

"High Value Tree" means a tree that meets or exceeds the following standards: for pine species, fourteen (14)-inch DBH or greater or eighteen (18)-inch or greater stump diameter; or for hardwoods and wetland species, sixteen (16)-inch DBH or greater or twenty-four (24)-inch or greater stump diameter.

"Intermittent Stream" means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

"Jordan Nutrient Strategy" or "Jordan water supply nutrient strategy" means the set of Rules 15A NCAC 2B .0262 through .0273 and .0311(p).

"Jordan Reservoir" means the surface water impoundment operated by the US Army Corps of Engineers and named B. Everett Jordan Reservoir, as further delineated for purposes of the Jordan Nutrient strategy rule in Rule 15A NCAC 2B .0262(4).

"Jordan watershed" means all lands and waters draining to B. Everett Jordan Reservoir.

"New Development" means any development project that does not meet the definition of existing development set out in Section 14.6.

"Perennial Stream" means a well-defined channel that contains water year-round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

"Perennial waterbody" means a natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths sufficient to preclude growth of rooted plants. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).

"Referenced / reference reach" means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.

"Shoreline stabilization" is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist of "hard" engineering, such as concrete lined channels, riprap, or gabions, while providing bank stabilization, shall not be considered stream restoration.

"Stream restoration" is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium.

"Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

"Stump diameter" means the diameter of a tree measured at six (6) inches above the ground surface level.

"Surface Waters" means all waters of the state as defined in G.S. 143-212 except underground waters.

"Tree" means a woody plant with a DBH equal to or exceeding five (5) inches or a stump diameter exceeding six (6) inches.

"Temporary road" means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, pipes or water dependent structures or to maintain public traffic during construction.

(Ord. No. 2022-LDO-03, 10-27-22)

14.7 FLOOD DAMAGE PREVENTION

14.7.1 Purpose; Enforcement

- (A) The Special Flood Hazard Area (SFHA) is subject to periodic inundation that could result in loss of life and property, hazards to public health and safety, disruption of commerce and governmental services, damage to and disruption of public utilities, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

These losses and hazards are caused by the cumulative effect of obstructions in floodplains, which increase flood heights and velocities, and by the occupancy in flood-prone areas by uses that are vulnerable to floods, or hazardous to other properties, because they are inadequately elevated, flood proofed, or otherwise protected from flood damages. Therefore, the regulations set forth in this section are designed to:

- (1) Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion or increased flood heights or velocities;

- (2) Require that uses that are vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- (3) Control the alteration of natural floodplains, stream channels, and natural protective barriers that accommodate and restrain floodwaters;
- (4) Prevent or control filling, grading, dredging, and other development that may increase erosion or flood damage;
- (5) Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or that may increase flood hazards to other lands;

(B) Objectives

The objectives of this ordinance are to:

- (1) Protect human life, safety, and health;
 - (2) Minimize expenditure of public money for costly flood control projects;
 - (3) Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 - (4) Minimize prolonged business losses and interruptions;
 - (5) Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;
 - (6) Minimize damage to private and public property due to flooding;
 - (7) Make flood insurance available to the community through the National Flood Insurance Program;
 - (8) Maintain the natural and beneficial functions of floodplains;
 - (9) Help maintain a stable tax base by providing for the sound use and development of flood prone areas; and
 - (10) Ensure that potential buyers are aware that property is in a Special Flood Hazard Area.
- (C) The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by manmade or natural causes. This section does not imply that land outside the Special Flood Hazard Area will be free from flooding or flood damages. Neither shall this section create liability on the part of Cary or by any officer or employee thereof for any flood damages that result from reliance on this section, or any administrative decision lawfully made hereunder.
- (D) In the interpretation and application of this section, all provisions shall be considered as minimum requirements, shall be liberally construed in favor of Cary, and shall be deemed neither to limit nor repeal any other powers granted to Cary under state statutes.

- (E) This Section 14.7 shall be enforced by the Town Manager or designee. Any person who fails to comply with any provision of this Section 14.7 shall be in violation of this Ordinance.

14.7.2 Applicability

(A) Applicability

This section 14.7 shall apply to the Special Flood Hazard Area (SFHA) and the Future Conditions Flood Hazard Area. Additionally, section 14.7.9 (Downstream Impact Analysis) shall apply to all development that requires a stormwater management plan under 7.3 of this ordinance.

(B) Exemptions

- (1) All new residential construction and substantial residential improvements proposed on a parcel of land that has no buildable area outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area, and that was platted prior to June 1978, shall be exempt from the requirements for residential construction set forth in this section, but shall be developed in strict accordance with the requirements for non-residential construction.
- (2) Residential subdivision plats submitted for review prior to May 10, 2001, shall be exempted from the requirements prohibiting the platting of lands located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas, provided the subdivision complies with the requirements in place prior to May 10, 2001, and shall be developed in strict accordance with the requirements for non-residential construction.
- (3) Development plans submitted prior to May 10, 2001, and all new residential construction or substantial residential improvements proposed on a platted lot that is located within the Special Flood Hazard Area or Future Conditions Flood Hazard Area, but was not so located at the time it was platted, shall be exempt from the requirement to obtain a special use permit for filling in the flood fringe portion of the Special Flood Hazard Area or the Future Conditions Flood Hazard Area but shall submit a floodplain development permit application and shall be developed in strict accordance with the requirements for non-residential construction.
- (4) Development plans or plats submitted after May 10, 2001, may not plat residential lots within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas unless one of the following is true:
 - (a) The residential subdivision is within an approved Planned Development District and the master plan and/or conditions have exempted lots from this provision;
or
 - (b) The Zoning Board of Adjustment finds, after an evidentiary hearing, that all the following conditions are met:
 1. The Special Flood Hazard Area or Future Conditions Flood Hazard Area impacts a limited section of the subdivision (i.e., less than ten percent (10%) of the total land area of the subdivision);

2. There is no other reason for the formation of a homeowner's association to retain ownership and maintenance responsibility for the Special Flood Hazard Area or Future Conditions Flood Hazard Area (e.g., covenant, other common areas); and
3. The Special Flood Hazard Area or Future Conditions Flood Hazard Area is placed in a permanent maintenance easement prior to plat recordation.

(C) Study Required

Residential development that contains a watercourse that has a contributory drainage area of fifty (50) acres or greater shall require the applicant to provide a signed and sealed engineered study prepared by a qualified professional that determines the extent of the Special Flood Hazard Area.

14.7.3 Development Restrictions and Related Standards In and Near Special Flood Hazard Areas and Future Conditions Flood Hazard Areas

(A) Development Restrictions

In general, no development is allowed in Special Flood Hazard Areas or Future Conditions Flood Hazard Areas unless one or more of the following are met:

- (1) A special use is approved;
- (2) The property/use is exempted from this requirement; and/or
- (3) The development is for roads, greenways, pedestrian crossings, park-related equipment, or public utilities and facilities such as wastewater, gas, electrical, and water systems that are located and constructed to minimize flood damage.

Structures for pedestrian crossings (e.g., footbridges, etc.), playground equipment, and other similar items may be permitted if the applicant provides certification by a professional registered engineer, architect, or landscape architect that these encroachments will not result in any increase in flood levels during the base flood.

(B) Development Standards

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

If development or encroachments are permitted, the following standards shall apply in Special Flood Hazard Areas and Future Conditions Flood Hazard Areas.

- (1) An engineering study must be performed to determine whether an adverse impact will result from development in the flood fringe portion of the Special Flood Hazard Area or Future Conditions Flood Hazard Area and must be submitted with the floodplain development permit application. For purposes of this Section 14.7.3 an "adverse impact" includes, but is not limited to, a reduction of floodplain storage greater than ten percent (10%), an increase in one hundred (100) year average channel velocities greater than ten percent (10%), any increase in one hundred (100) year water surface

elevation, the potential for aggravating a known existing drainage problem or creating a new drainage problem, as determined by the Stormwater Manager.

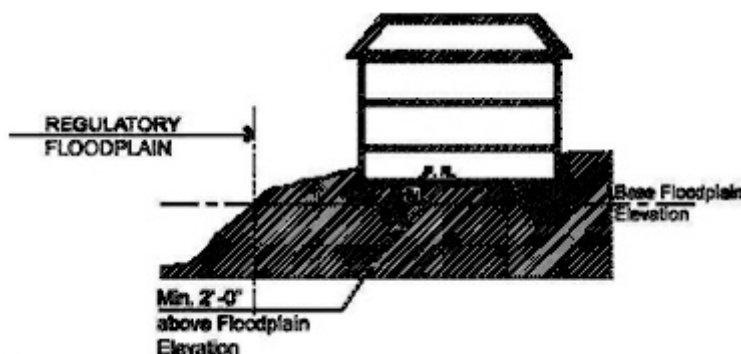
- (2) All new non-residential construction and substantial improvements to existing non-residential construction shall be:
 - (a) Anchored to prevent flotation, collapse, or lateral movement of the structure; and
 - (b) Constructed with materials and utility equipment resistant to flood damage; and
 - (c) Constructed by methods and practices that minimize flood damage.
- (3) All new and replacement electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and constructed to prevent water from entering or accumulating in or on the components.
- (4) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.
- (5) New and replacement sanitary sewer systems shall be designed to minimize or eliminate infiltration of floodwaters into the system and discharges from the system into flood waters.
- (6) On-site waste disposal systems shall be located to avoid impairment to them or contamination from them during flooding.
- (7) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.
- (8) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, except by variance as specified in Section 3.20. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area or a Future Conditions Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section 14.7.3(D)(3) of this ordinance.

(C) Additional Development Standards and Restrictions for Areas with Established Base Flood Elevation Data

(1) Residential Construction

- (a) New construction of or substantial improvements to any residential structure shall be located outside Special Flood Hazard Areas and Future Conditions

Flood Hazard Areas and shall have the lowest floor, including basement, elevated no lower than the regulatory flood protection elevation as defined. "Substantial improvement" is defined in Chapter 12.



Residential Construction 2'-0" Above Base Flood Elevation

- (b) No proposed building lot that is wholly or partly subject to flooding shall be approved unless there is established on the final plat a line representing an actual contour as determined by field survey at elevation of the regulatory flood protection elevation as determined by the Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps, or by other studies approved by Cary. Such a line shall be known and identified on the development plan and final plat as the "Building Restriction Flood Line."
 - (c) Placement of fill within the floodway, non-encroachment area, and/or flood fringe is prohibited unless such activities are authorized through a Special Use Permit.
- (2) ***Non-Residential Construction Approved within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas***
- (a) New construction of or substantial improvements to any commercial, industrial, or other non-residential structure shall have the lowest floor, including basement, elevated no lower than the regulatory flood protection elevation as defined in Chapter 12, with attendant utilities and sanitary facilities flood-proofed.
 - (b) For all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on the exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must be certified by a registered Professional Engineer or architect, or must meet or exceed the following minimum criteria:
 - 1. A minimum of two (2) openings having a total net area of not less than one (1) square inch for every square foot of enclosed area subject to flooding shall be provided;
 - 2. The bottom of all openings shall be no higher than one (1) foot above grade;

3. Openings may be equipped with screens, louvers, or other coverings or devices, provided that they permit the automatic entry and exit of floodwaters; and
4. A registered professional engineer or architect shall certify to the Floodplain Administrator that the standards of this section are satisfied.

(D) Application Requirements

(1) Application for a floodplain development permit shall be made to the Floodplain Administrator prior to any development activities located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas. The following items shall be presented to the Floodplain Administrator to apply for a floodplain development permit:

(a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

1. the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
2. the boundary of the Special Flood Hazard Area or Future Conditions Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 14.7.2(A), or a statement that the entire lot is within the Special Flood Hazard Area or Future Conditions Flood Hazard Area;
3. flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 14.7.2(A);
4. the boundary of the floodway(s) or non-encroachment area(s) as determined in Section 14.7.2(A);
5. the Base Flood Elevation (BFE) or Future Conditions Flood Elevation where provided as set forth in Section 14.7.2;
6. the old and new location of any watercourse that will be altered or relocated as a result of proposed development;
7. certification of the plot plan by a registered land surveyor or professional engineer.

(b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area or Future Conditions Flood Hazard Area including but not limited to:

1. Elevation in relation to NAVD 1988 of the proposed reference level (including basement) of all structures;
2. Elevation in relation to NAVD 1988 to which any non-residential structure in Zone AE, A or X (Future) will be flood-proofed; and

3. Elevation in relation to NAVD 1988 to which any proposed utility systems will be elevated or floodproofed;
- (c) If floodproofing, a Floodproofing Certificate (FEMA Form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
- (d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:
 1. The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);
 2. Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section 14.7.3(E)(1)(c) 1 through 6, when solid foundation perimeter walls are used in the SFHA;
- (e) Usage details of any enclosed areas below the regulatory flood protection elevation.
- (f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
- (g) Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Mining, etc.)
- (h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Section 14.7.3(F)(5)(b) ordinance are met.
- (i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) Permit Requirements

The floodplain development permit shall include, but not be limited to:

- (a) A complete description of all the development to be permitted under the floodplain development permit. (e.g. house, garage, pool, septic, bulkhead, cabana, pier, bridge, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials, etc.).
- (b) The Special Flood Hazard Area or Future Conditions Flood Hazard Area determination for the proposed development per available data specified in Section 14.7.3(A).

- (c) The regulatory flood protection elevation required for the reference level and all attendant utilities.
- (d) The regulatory flood protection elevation required for the protection of all public utilities.
- (e) All certification submittal requirements with timelines.
- (f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.
- (g) The flood openings requirements, if in SFHA.
- (h) Limitations of below RFPE enclosure uses (i.e., parking, building access and limited storage only) if applicable.
- (i) A statement, that all materials below RFPE must be flood resistant materials.

(3) Certification Requirements

(a) Elevation Certificates

1. An Elevation Certificate (FEMA Form 81-31) or a Cary Lowest Floor Certificate within non-FEMA SFHA, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.
2. An Elevation Certificate (FEMA Form 81-31) or a Cary Lowest Floor Certificate within non-FEMA SFHA, is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the elevation of the reference level, in relation to NAVD 1988. Any work done within the seven (7) day calendar period and prior to submission of the certification shall be at the permit holder's risk. The Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
3. A final as-built Elevation Certificate (FEMA Form 81-31) or a Cary Lowest Floor Certificate within non-FEMA SFHA, is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities in relation to NAVD 1988. The

Floodplain Administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/ Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) *Floodproofing Certificate*

1. If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.
 2. A final Finished Construction Floodproofing Certificate (FEMA Form 086-0-34), with supporting data, an operational plan, and an inspection and maintenance plan are required prior to the issuance of a Certificate of Compliance/Occupancy. It shall be the duty of the permit holder to submit to the Floodplain Administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to NAVD 1988. Floodproofing certificate shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The Floodplain Administrator shall review the certificate data, the operational plan, and the inspection and maintenance plan. Deficiencies detected by such review shall be corrected by the applicant prior to Certificate of Occupancy. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to deny a Certificate of Compliance/Occupancy.
- (c)** If a manufactured home is placed within the SFHA and the elevation of the chassis is more than thirty-six (36) inches in height above grade, an engineered foundation certification is required per Section 14.7.7(A), (B) and (C).
- (d)** If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification Exemptions

The following structures, if located within the SFHA, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

1. recreational Vehicles meeting requirements of Section 14.7.3(F)(5);
2. temporary Structures meeting requirements of Section 14.7.3(F)(6); and
3. accessory Structures less than one hundred fifty (150) square feet meeting requirements of Section 14.7.3(H).

(4) Determinations for existing buildings and structures

For applications for building permits to improve buildings and structures, including alterations, movement, enlargement, replacement, repair, change of occupancy, additions, rehabilitations, renovations, substantial improvements, repairs of substantial damage, and any other improvement of or work on such buildings and structures, the Floodplain Administrator, in coordination with the Building Official, shall:

- (a) Estimate the market value, or require the applicant to obtain an appraisal of the market value prepared by a qualified independent appraiser, of the building or structure before the start of construction of the proposed work; in the case of repair, the market value of the building or structure shall be the market value before the damage occurred and before any repairs are made;
- (b) Compare the cost to perform the improvement, the cost to repair a damaged building to its pre-damaged condition, or the combined costs of improvements and repairs, if applicable, to the market value of the building or structure;
- (c) Determine and document whether the proposed work constitutes substantial improvement or repair of substantial damage; and
- (d) Notify the applicant if it is determined that the work constitutes substantial improvement or repair of substantial damage and that compliance with the flood resistant construction requirements of the NC Building Code and this ordinance is required.

(E) Additions/Improvements**(1) Elevated Buildings**

Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

- (a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area

shall not be finished or partitioned into separate rooms, except to enclose storage areas;

- (b) shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;
- (c) shall include, in the SFHA, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a qualified professional or meet or exceed the following minimum design criteria:
 - 1. a minimum of two (2) flood openings on different sides of each enclosed area subject to flooding;
 - 2. the total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - 3. if a building has more than one (1) enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - 4. the bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;
 - 5. flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - 6. enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(F) Additions/Improvements to Existing Structures

- (1) For additions and/or improvements to pre-FIRM structures located within the Special Flood Hazard Area or Future Flood Conditions Hazard Area when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (a) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.
 - (b) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction contained in Section 14.7.3(B) and (C).
- (2) Additions to post-FIRM structures located within the Special Flood Hazard Area or Future Flood Conditions Hazard Area with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction contained in Section 14.7.3(B) and (C).

- (3) Additions and/or improvements to post-FIRM structures located within the Special Flood Hazard Area or Future Flood Conditions Hazard Area when the addition and/or improvements in combination with any interior modifications to the existing structure are:
- (a) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction contained in Section 14.7.3(B) and (C).
 - (b) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction contained in Section 14.7.3(B) and (C).
- (4) For either a pre-FIRM or post-FIRM structure located within the Special Flood Hazard Area or Future Flood Conditions Hazard Area, where an independent perimeter load-bearing wall is provided between the addition and the existing building, the addition(s) shall be considered a separate building and only the addition must comply with the standards for new construction contained in Section 14.7.3(B) and (C).

(5) ***Recreational Vehicles***

Recreational vehicles shall either:

- (a) be on site for fewer than one hundred and eighty (180) consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- (b) meet all the requirements for new construction.

(6) ***Temporary Non-Residential Structures***

Prior to the issuance of a Floodplain Development Permit for a temporary structure, the applicant must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the Floodplain Administrator for review and written approval;

- (a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
- (b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;
- (c) the time frame prior to the event at which a structure will be removed (i.e., minimum of seventy-two (72) hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

- (e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area, to which the temporary structure will be moved.

(G) Accessory Structures

When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area or Future Conditions Flood Hazard Area, the following criteria shall be met:

- (1) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);
- (2) Accessory structures shall not be temperature-controlled;
- (3) Accessory structures shall be designed to have low flood damage potential;
- (4) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (5) Accessory structures shall be firmly anchored in accordance with Section 14.7.3(C)(2);
- (6) All service facilities such as electrical shall be installed in accordance with Section 14.7.3(C)(2)(a);
- (7) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Section 14.7.3(C)(2)(b)1 through 6.

An accessory structure with a footprint less than one hundred fifty (150) square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 14.7.3(D)(3).

14.7.4 Limitations on Encroachments in Floodways and Non-Encroachment Areas

Floodways and non-encroachment areas, located within the Special Flood Hazard Area or Future Conditions Flood Hazard Areas, are extremely hazardous areas due to the velocity of flood waters that carry debris, potential projectiles, and the potential for erosion. Therefore, encroachments, including fill, in floodways or non-encroachment areas are permitted only in limited circumstances and only under the following restrictions:

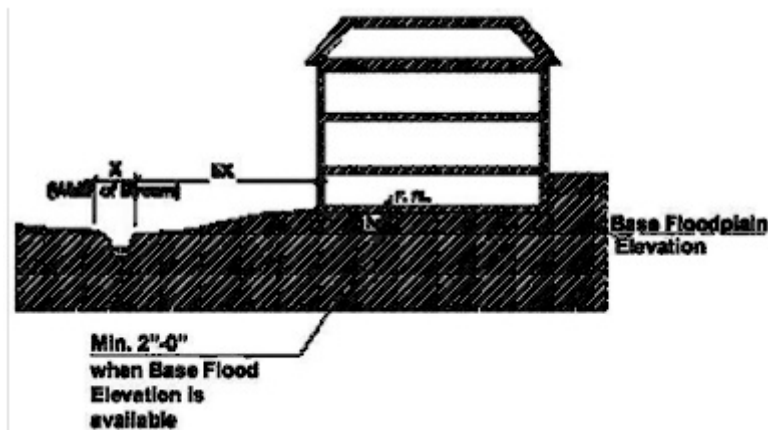
- (A) There shall be no encroachment, including fill, unless the applicant has received a Special Use Permit (see Section 3.8) or the use is permitted under Section 14.7.3(A). The applicant for a special use involving the floodway portion of a Special Flood Hazard Area or Future Conditions Flood Hazard Area shall provide certification by a professional registered engineer, architect, or landscape architect that the encroachment will not result in any increase in flood levels during the discharge of the base flood or provide a Conditional Letter or Map Revision (CLOMR) issued by the Federal Emergency Management Agency. A Letter of Map Revision (LOMR) must also be obtained within six (6) months of completion of the proposed encroachment.

- (B) Once paragraph (A) above is satisfied, all new construction and substantial improvements shall comply with all applicable flood hazard reduction requirements of this section.

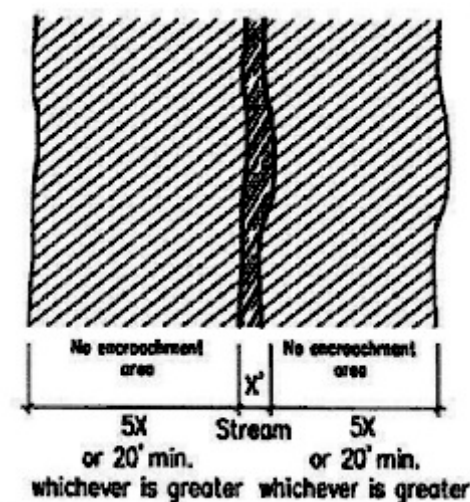
14.7.5 Standards for Streams without Established Base Flood Elevations

Located within Special Flood Hazard Areas are small streams where no base flood data has been provided. The following provisions apply within such areas:

- (A) No encroachments, including fill, new construction, substantial improvements, or new development, shall be permitted within a distance of the stream bank equal to five (5) times the width of the stream at the top of the bank or twenty (20) feet each side from the top of the bank, whichever is greater, unless a special use is approved or the use is permitted.



New Construction near Streams



Standards for Streams without Established Base Flood Elevations

- (B) In cases where the streams lacking base flood data are USGS or County Soils Map streams, then the limitations upon encroachments shall apply to the entire area within the associated UTBs, or an area five (5) times the width of the stream at the top of the bank, whichever is greater.
- (C) If paragraph (A) above is satisfied, and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable flood hazard ordinance provisions of this Section and shall be elevated or flood-proofed in accordance with elevations established under Section 14.7.2. When base flood elevation data is not available from a federal, state, or other source, the lowest floor, including basement, shall be elevated to or above the regulatory flood protection elevation as defined in Chapter 12.

14.7.6 Cross Drainage Area Standards and Restrictions

For any new proposed development subject to flooding which includes, but is not limited to, those lots along any significant watercourse, whether or not the stream or water course is enclosed with a pipe or culvert; the applicant shall make a determination of the crest elevation of the flood expected to be equaled or exceeded that has a one percent (1%) chance of annual occurrence in accordance with generally accepted engineering practice, which is to be submitted with the seal and signature of a Professional Engineer to Cary. Any new construction of, or substantial improvements (see Chapter 12, Definitions) to, any residential or non-residential structure shall comply with Section 14.7.3(B).

14.7.7 Special Requirements for Manufactured Homes

- (A) No manufactured home shall be placed in Special Flood Hazard Areas or Future Conditions Flood Hazard Areas, except when located within an existing manufactured home park. In existing manufactured home parks, all manufactured homes to be placed or substantially improved within the SFHA or Future Conditions Flood Hazard Area, shall be elevated on a permanent foundation such that the lowest floor of the manufactured home is no lower than the regulatory flood protection elevation as defined in Chapter 12 and shall be securely anchored to an adequate foundation system in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to G.S. 143-143.15.
- (B) Manufactured homes may not be placed in the floodway.
- (C) All manufactured homes within Special Flood Hazard Areas or Future Conditions Flood Hazard Areas shall be anchored to resist flotation, collapse, or lateral movement in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the Commissioner of Insurance pursuant to G.S. 143-15. Where the required elevation can be met by elevating the chassis no more than thirty-six (36) inches above grade at the site, the chassis shall be supported by reinforced piers or other foundation of equivalent strength. When the elevation of the chassis is above thirty-six (36) inches in height an engineering certification is required.

14.7.8 Special Requirements for Development Proposals Requiring Development Plan Approval

For purposes of this section only, the boundaries of the Special Flood Hazard Area or Future Conditions Flood Hazard Area for a development or a discrete phase of a development are established if all of the following conditions are met:

- (A) The development is approved for construction;
- (B) A substantial investment is made in constructing the development.
- (C) In addition to satisfying the other requirements of this Ordinance, all proposals for development plans shall:
 - (1) Be consistent with the need to minimize flood damage;
 - (2) Have public utilities and facilities, such as wastewater, gas, electrical, and water systems, located and constructed so as to minimize flood damage;
 - (3) Have all proposed residential structures located outside the Special Flood Hazard Area or Future Conditions Flood Hazard Area, with the lowest floor, including basement, elevated at least two (2) feet above the base flood elevation;
 - (4) Have all proposed non-residential structures located outside of the Special Flood Hazard Area or Future Conditions Flood Hazard Area, with the lowest floor, including basement, located at least two (2) feet above the base flood elevation. (Note that an approved special use may permit structures in a flood fringe - see Section 3.12.3).
 - (5) Have all drainage structures located within the Flood Hazard Area designed to accommodate the one percent (1%) annual chance flood without causing increased base flood elevations on properties other than that for which development approval is being requested;
 - (6) Shall provide base flood elevation data along with the development plan, which is submitted to Cary for approval.

14.7.9 Downstream Impact Analysis

- (A) A Downstream Impact Analysis shall be submitted at the time of development plan submission for all proposed development that requires development plan approval. Development plans that are not subject to the stormwater management regulations of LDO Section 7.3 are exempt from this section 14.7.9.
- (B) The Downstream Impact Analysis shall calculate the pre- and post-development discharges for each discharge point from the area subject to the development plan.
 - (1) If the calculated post-development discharge is less than the calculated pre-development discharge for the two (2), five (5), ten (10) and one hundred (100)-year peak discharges at each discharge point, then no further analysis is needed.
 - (2) If the calculated post-development discharge is greater than the calculated pre-development discharge for the two (2), five (5), ten (10) or one hundred (100)-year peak discharges at any discharge point, then one of the options below shall be required.
 - (a) Provide onsite detention to fully mitigate each storm event to calculated pre-development discharge; or

- (b) Provide an engineering model demonstrating no adverse impacts from the development on downstream properties and infrastructure.

14.7.10 Non-Compliance

Failure to comply with the provisions of this section shall constitute a violation of this Ordinance and shall subject an offending party to a series of actions listed in Chapter 11 of this Ordinance.
(Ord. No. 2022-LDO-03, 10-27-22)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE – 1976 CODE

This table gives the location within the Land Development Ordinance of those ordinances included in the 1976 Code. Ordinances not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

Adoption Date	Section	Section this Code
3- 9-61		App. A, §§ 76 – 90
4-16-63		App. A, §§ 9 – 75
12-14-72		App. A, §§ 111 – 117
12-28-72		App. A, § 88
2-27-73		App. A, § 21
		App. A, § 37
		App. A, § 38
		App. A, § 39
		App. A, § 40
		App. A, § 41
		App. A, § 42
5-10-43	1	App. A, § 58
	2	App. A, § 59
	3	App. A, § 60
	4	App. A, § 61
		App. A, § 74
		App. A, § 79
6-24-74		App. A, § 26
8- 8-74		App. A, § 90
9-15-74		App. A, §§ 91 – 110
12-12-74		App. A, § 45
		App. A, § 46
		App. A, § 47
		App. A, § 48
		App. A, § 49
		App. A, § 50
		App. A, § 51
		App. A, § 52
		App. A, § 53
		App. A, § 54
		App. A, § 55
		App. A, § 74
2-27-75		App. A, § 21
4-24-75		App. A, § 21
12-11-75		App. A, § 43
5-27-76		App. A, § 88
6-29-78		App. A, §§ 120 – 137

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76-3	2-26-76			App. A, § 46
				App. A, § 50
76-23	7-22-86	1		App. A, § 36
77-12	5- 1-77	1, 2		App. A, § 21
77-39	10-27-77	1		App. A, § 46
		2		App. A, § 47
		3		App. A, § 48
		4		App. A, § 49,
				App. A, § 50
		6		App. A, § 51
		7		App. A, § 52
		8		App. A, § 53
77-43	12- 8-77	1		App. A, §§ 28, 29, 30
77-44	12- 8-87	2		App. A, § 21
		3		App. A, § 27
		4		App. A, § 31
		5		App. A, § 32
		6		App. A, § 33
				App. A, § 59
78-4	4-27-78	1		App. A, § 29
78-5	4-27-78	1		App. A, § 13
		2		App. A, § 14
		4		App. A, § 35
78-6	4-27-78	1		App. A, § 29
		2		App. A, § 30
		3		App. A, § 31
		4		App. A, § 35
78-7	4-27-78	1		App. A, § 88
78-8	4-27-78	1		App. A, § 21
79-3	3-22-79	1, 2		App. A, § 36
		3		App. A, § 31

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79-14	8-23-79	1		App. A, § 36
		2		App. A, § 37
		3		App. A, § 38
		4		App. A, § 41
		5		App. A, § 42
79-16	9-27-79	1		App. A, § 65
79-17	9-27-79	1		App. A, § 53
		2 – 6		App. A, § 50
79-18	9-27-79	1		App. A, § 66(a)(1)(C)
79-24	9-27-79	1		App. A, § 49
79-25	7-11-79	1		App. A, § 21
79-26	9-27-79	1		App. A, § 85
79-27	9-27-79	1		App. A, § 26
79-31	12-20-79	1		App. A, § 88
80-6	2-28-80	1		App. A, § 42
80-7	2-28-80	1		App. A, § 13
		2		App. A, § 14
		3		App. A, § 15
80-9	3-27-80	1		App. A, § 90
80-11	4-24-80	1		App. A, §§ 28 – 33
80-12	4-24-80	1		App. A, § 36
		2		App. A, § 38
		3		App. A, § 39
80-15	6-26-80	1		App. A, § 31
80-18	7-24-80	1		App. A, § 38
		2		App. A, § 39
80-19	7-29-80	1		App. A, § 79
80-24	9-25-80	1		App. A, § 38
		2		App. A, § 39
80-26	9-25-80	1		App. A, § 41
				App. A, § 42
80-27	9-25-80	1		App. A, § 40.1

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81-4	5-23-81	1		App. A, § 38
		2		App. A, § 39
81-5	5-28-81	1		App. A, §§ 62 – 65
81-8	6-29-81	1		App. A, § 31
		2		App. A, § 32,
				App. A, § 33
		3		App. A, § 34
		4		App. A, § 35
81-9	6-29-81	1		App. A, § 74
81-11	8-27-81	1		App. A, § 91,
				App. A, § 92,
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				App. A, § 102,
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				App. A, § 104,
				App. A, § 105,
				App. A, § 106,
				App. A, § 107,
				App. A, § 108,
				App. A, § 109,
				App. A, § 110
81-14	9-24-81	1		App. A, § 74
81-15	9-24-81	1		App. A, § 36
		2		App. A, §§ 37 – 41
		3		App. A, § 42

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Ordinance Number	Adoption Date	Section		Section this Code
82-7	5-27-82	1, 2		App. A, § 99
82-18	10-28-82	1		App. A, § 29(d)(2)
83-2	4-15-83	1		App. A, § 118
83-4	4-28-83	1		App. A, §§ 138 – 144
83-11	7-28-83	1		App. A, § 19
83-12	7-28-83	1		App. A, § 77
83-13	7-28-83	1		App. A, § 30(e)(4)(B), (C)
83-14	7-28-83	1		App. A, § 65(a)(1)(B)
83-17	10-27-83	1	Rpld	App. A, § 73
		2		App. A, § 195
83-18	12-22-83	1		App. A, §§ 118.50 – 118.56, 118.75
84-14	5-24-84	2		App. A, § 28(d)
		3		App. A, § 29(c)
		4		App. A, § 29(d)(1)
		5		App. A, § 29(f)
		66		App. A, §§ 30(e), 41(e), 42(e)
		7		App. A, §§ 31(a)(4), 32(a)(4), 33(a)(4), 36(a)(4)
		8		App. A, § 34(a)(2)(B)
		9		App. A, § 35(a)(3)(E)
		10		App. A, § 37(e), 39(e)
		11		App. A, § 38(f)
		12		App. A, § 40(c)
		13		App. A, § 40.1(e)(1)
		14, 15		App. A, § 48(a)(2)(A)
		16	Rpld	App. A, § 48(a)(2)(E)
			Rnbd	App. A, § 48(a)(2)(F) – (H)
			as	App. A, § 48(a)(2)(E) – (G)
		17		App. A, § 48(a)(2)(G)
		18		App. A, § 52(a)(10)
		19		App. A, § 59(b)(3)
84-15	5-24-84	1		App. A, §§ 42.1 – 42.8

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84-18	9-27-84	1		App. A, § 55.1
84-19	9-27-84	1(a)		App. A, § 32(a)(4)(I)
		1(b)		App. A, § 33(a)(4)(H)
		1(c)		App. A, § 34(a)(2)(D)
84-22	10-25-84	1		App. A, § 36(a)(1)(E)
84-23	12-13-84	1(1)		App. A, § 25(e)
		1(2)		App. A, § 26(a)(3)
		1(3)		App. A, § 40.1(i)(8)(A)(viii)
		1(4)		App. A, § 48(a)(2)(c)(i)
		1(5)		App. A, § 86(a)(1)(d) – (i)
		1(6)		App. A, § 86(a)(4)
		1(7)		App. A, § 88(a)(4)b
		1(8)		App. A, § 88(a)(4)c
		1(9)	Rpld	App. A, § 88(a)(4)d
		1(10)	Rnbd	App. A, § 88(a)(4)e
			as	App. A, § 88(a)(4)d
		1(11)		App. A, § 126
85-1	1-10-85	1		App. A, § 42.2(a)
		2		App. A, § 42.3
		3		App. A, § 42.7(a)
		4		App. A, § 42.7(b)
		5		App. A, § 42.8
85-5	2-28-85	1		App. A, § 36(a)(2)(C)
85-6	2-28-85	1		App. A, § 43(g)(1)(A)
		2		App. A, § 59(d)(1)
85-7	3-14-85	1		App. A, §§ 40.1(d), 41(c)(4), 42(c)(2)
85-10	3-28-85	1		App. A, § 29(a), 29(b)(4)
85-12	4-25-85	1		App. A, § 28(b.1)
		2		App. A, § 29(c)(6)
		3		App. A, § 34(a)(2)(E)
		4		App. A, § 35(a)(1.1)
		5		App. A, § 36(a)(2)(D)

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		6		App. A, § 37(c)(2)
		7		App. A, § 38(c)(3)
		8		App. A, § 39(c)(4)
		9		App. A, § 40(b.1)
		10		App. A, § 41(c)(5)
		11		App. A, § 42(c)(3)
85-13	6-13-85	1		App. A, §§ 124, 128(e), (f)
				130(5), 131(1) – (3), (7)
				132(1), (2), 132(a), 133(1),
				133(2)a, b, 134(3) – (6)
85-21	7-25-85	1		App. A, § 25(g)(3)
85-22	7-25-85	1		App. A, §§ 15(b)(3)(B), 66(a)(1)(C)(ii), 66(a)(3)(A), 66(a)(3)(B)
85-23	7-25-85	1		App. A, §§ 25(a)(6), 25(p), 27, 66
85-24	7-25-85	1		App. A, § 16
85-25	8-22-85	1		App. A, §§ 36(a)(4)(13),
				37(e)(3), 38(f)(1),
				39(c)(1), 39(e)(3)
85-29	9-12-85	1		App. A, § 79
		2 – 4		App. A, § (a)(1)a, b, d, n, o
86-1	1-23-86	1		App. A, § 93
		2		App. A, § 96
		3		App. A, § 98(a), (b), (h)
		4		App. A, § 99(b)
		5		App. A, § 101(a)
86-5	2-28-86	1		App. A, § 42.50
86-6	2-28-86	1	Rpld	App. A, § 39(e)(3)
86-9	3-13-86	1		App. A, §§ 45 – 55
86-10	3-13-86	1	Rpld	App. A, § 35(a)(3)(J)
		2	Rpld	App. A, § 36(a)(2)(C)(iv)(aa) – (cc)
		3	Rpld	App. A, § 36(a)(4)(E)
		4	Rpld	App. A, § 40(c)(4)

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		5	Rpld	App. A, § 42.6
		6		App. A, § 34(a)(2)(F)
		7		App. A, § 35(a)(1.1)(B)
		8		App. A, § 36(a)(2)(E)
		9		App. A, § 37(c)(3)
		10		App. A, § 38(c)(4)
		11		App. A, § 40(b.1)(2)
		12		App. A, § 40.1(d0(2)
		13		App. A, § 41(c)(6)
		14		App. A, § 42(c)(4)
		15		App. A, § 42.6
		16		App. A, § 56(c)
		17		App. A, § 59(b)(2)(A)
		18		App. A, § 29(c)(7)
86-18	4-24-86	1		App. A, § 90(b)(2)
86-20	5-22-86	1		App. A, §§ 42.60 – 42.64
		2		App. A, § 25(g)(1)
86-22	6-26-86	1		App. A, § 8(a)(17)
86-23	6-26-86	1		App. A, § 25(q)
86-24	6-26-86	1		App. A, § 66(a)(3)(B)
86-25	6-26-86	1		App. A, §§ 118.51, 118.55, 119.75
86-28	8-28-86	1		App. A, § 91 – 110
86-29	8-28-86	1		App. A, § 19(b)
86-30	8-28-86	1		App. A, § 61(b)
		23	Rpld	App. A, § 61(b) – (e)
			as	App. A, § 61(c) – (f)
86-31	8-28-86	1		App. A, § 66(a)(3)(A)
86-37	9-25-86	1		App. A, § 87(c)
86-43	12-11-86	1	Rpld	App. A, § 118
			Added	App. A, §§ 119 – 119.6
87-1	2-26-87	1		App. A, § 40.1(k)(2)(D)
87-2	2-26-87	1	Rpld	App. A, § 41(b)(25)

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87-3	2-26-87	1		App. A, § 41(d)
87-4	2-26-87	1		App. A, § 42(d)(3)(D)
87-16	4-23-87	1		App. A, § 87(e)(1)
87-17	4-23-87	1, 2		App. A, § 86(a)(1)a.
		3, 4		App. A, § 86(a)(1)b.
		5		App. A, § 86(a)(1)d.
87-18	4-23-87	1		App. A, § 124
		2		App. A, § 132(2)
		3		App. A, § 132(3)a
87-22	6-11-87	1		App. A, § 25(d)
87-23	6-11-87	1		App. A, § 25(g)(1)(M)
87-24	6-11-87	1		App. A, § 25(g)(1)(U)
87-25	6-11-87	1		App. A, § 25(g)(1)(V)
87-26	6-11-87	1		App. A, § 27(a)(14)
87-27	6-11-87	1		App. A, § 29(c)(5)(C)
87-28	6-11-87	1	Rpld	App. A, § 29(c)(7)
87-29	6-11-87	1		App. A, § 29(f)
87-30	6-11-87	1		App. A, § 29(f)(1)(B)
87-31	6-11-87	1		App. A, § 30(e)
87-32	6-11-87	1		App. A, § 31(a)(4)
87-33	6-11-87	1		App. A, § 32(a)(4)
87-34	6-11-87	1		App. A, § 33(a)(4)
87-35	6-11-87	1		App. A, § 34(a)(2)(B)
87-36	6-11-87	1	Rpld	App. A, § 34(a)(2)(F)
87-37	6-11-87	1	Rpld	App. A, § 36(a)(2)(F)
87-38	6-11-87	1		App. A, § 36(a)(4)(B)
87-39	6-11-87	1		App. A, § 36(a)(4)(E)
87-40	6-11-87	1		App. A, § 37(e)(3)
87-41	6-11-87	1		App. A, § 37(e)(6)
87-42	6-11-87	1		App. A, § 38(b)(2)
87-43	6-11-87	1		App. A, § 38(f)(1)
87-44	6-11-87	1		App. A, § 38(f)(5)

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87-45	6-11-87	1	Rpld	App. A, § 40(b.1)(2)
87-46	6-11-87	1	Rpld	App. A, § 40.1(d)(2)
87-47	6-11-87	1	Rpld	App. A, § 41(b)(8)
87-48	6-11-87	1	Rpld	App. A, § 41(c)(6)
87-49	6-11-87	1		App. A, § 41(e)(1)
87-50	6-11-87	1		App. A, § 41(e)(5)
87-51	6-11-87	1	Rpld	App. A, § 42(c)(4)
87-52	6-11-87	1		App. A, § 42(e)(1)
87-53	6-11-87	1		App. A, § 42(e)(5)
87-54	6-11-87	1		App. A, § 46
87-55	6-11-87	1		App. A, § 46
87-56	6-11-87	1		App. A, § 47(h)
87-57	6-11-87	1		App. A, § 48(b)
87-58	6-11-87	1		App. A, § 49(a)(2)(B)(ii)
87-59	6-11-87	1		App. A, §§ 49(a)(3)(A)(i)
87-60	6-11-87	1		App. A, § 49(a)(3)(A)(ii)
87-61	6-11-87	1		App. A, § 53(a)(1)(A)
87-62	6-11-87	1		App. A, § 53(a)(1)(D)
87-63	6-11-87	1		App. A, § 53(a)(5)
87-64	6-11-87	1		App. A, § 53(a)(7)
87-65	6-11-87	1		App. A, § 54(b)(1)(D)(i)
87-66	6-11-87	1		App. A, § 54(c)(1)
87-67	6-11-87	1		App. A, § 54(d)(1)
87-68	6-11-87	1		App. A, § 55(b)(2)
87-69	6-11-87	1		App. A, § 55, (d)(1)
87-70	6-11-87	1		App. A, § 59(b)(2)(A)
87-71	6-11-87	1		App. A, § 66(a)(1)(C)
87-72	6-11-87	1		App. A, § 66(a)(3)(D)
87-73	6-11-87	1		App. A, § 66(a)(3)(B)
87-74	6-11-87	1		App. A, § 74(a)
87-75	6-11-87	1		App. A, § 74(a)
87-76	6-11-87	1		App. A, § 74(a)

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Ordinance Number	Adoption Date	Section		Section this Code
87-77	7-23-87	1		App. A, § 66(a)(3)(G)
87-85	9-24-87	1		App. A, § 28(a)
		2	Rpld	App. A, § 28(b)(1)
		3, 4	Rpld	App. A, § 28(b)(8), (9)
		5		App. A, § 28(b)(6)
		6		App. A, § 28(c), (d)
87-86	10- 8-87	1		App. A, § 29(c)(7)
87-87	10- 8-87	1		App. A, § 28(b.1)(2)
87-88	10- 8-87	1		App. A, § 34(a)(2)(F)
87-89	10- 8-87	1		App. A, § 35(a)(1.1)(B)
87-90	10- 8-87	1		App. A, § 36(a)(2)(E)
87-91	10- 8-87	1		App. A, § 37(c)(3)
87-92	10- 8-87	1		App. A, § 38(c)(4)
87-93	10- 8-87	1		App. A, § 39(c)(5)
87-94	10- 8-87	1		App. A, § 40(b.1)(2)
87-95	10- 8-87	1		App. A, § 40.1(d)(2)
87-96	10- 8-87	1		App. A, § 41(c)(6)
87-97	10- 8-87	1		App. A, § 42(c)(4)
88-9	5-26-88	1		App. A, § 28(b.1)(3)
88-13	8-25-88	1		App. A, § 42.9
88-18	10-13-88	1		App. A, § 25(o)(1)
88-19	10-13-88	1		App. A, § 25(o)(5)(M)
88-22	10-27-88	1		App. A, §§ 124, 129(a), (b), (b)(7) – (10), 130
			Added	App. A, § 131(4)
			Rnbd	App. A, § 131(4) – (7)
			as	App. A, § 131(5) – (8)
				App. A, §§ 132(1), (2),
				133(2)a., 134(3), (4),
				135(tit.), 135 – 137
88-22a	10-27-88	1		App. A, § 36(a)(4)(B)
88-23	10-27-88	1		App. A, § 16(a) – (d)
88-24	10-27-88	1		App. A, § 29(a)

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88-25	10-27-88	1		App. A, § 30(a)
88-26	10-27-88	1		App. A, § 42.63(c)
89-1	1-12-89	1		App. A, § 25(g)(1)(U)
89-3a	2-23-89	1		App. A, § 2
		2		App. A, § 5
		3		App. A, § 12
89-4	2-23-89	1	Rpld	App. A, § 25(g)(1)(R)
89-5	2-23-89	1	Rpld	App. A, § 25(g)(1)(U), (V)
89-6	2-23-89	1		App. A, § 25(o)
89-7	2-23-89	1		App. A, § 25(q)
89-8	2-23-89	1		App. A, § 32(a)(2)(B)
89-9	2-23-89	1		App. A, § 33(a)(2)(A)(i)
89-10	2-23-89	1		App. A, § 34(a)(2)(B)
89-11	2-23-89	1	Rpld	App. A, § 36(a)(2)(C)(ii)
89-12	2-23-89	1		App. A, § 36(a)(4)(B)
89-13	2-23-89	1		App. A, § 37(e)(3)
89-14	2-23-89	1		App. A, § 38(f), (1)
89-15	2-23-89	1		App. A, § 40.1(h)(1)
89-16	2-23-89	1	Rpld	App. A, § 40.1(1)(2)
89-17	2-23-89	1	Rpld	App. A, § 40.1(i) (Tables II – V)
89-18	2-23-89	1		App. A, § 40.1(j)6), (7)
89-19	2-23-89	1		App. A, § 40.1
89-20	2-23-89	1		App. A, § 41(e)(1)
89-21	2-23-89	1		App. A, § 42(e)(1)
89-22	2-23-89	1	Rpld	App. A, § 43(e)(3)
89-23	2-23-89	1		App. A, § 56(b)(3)
89-24	2-23-89	1	Rpld	App. A, § 86(a)(5)
89-26	2-23-89	1		App. A, § 36(a)(4)(B)
89-27	2-23-89	1		App. A, § 37(e)(3)
89-28	2-23-89	1		App. A, § 38(f)(1)
89-29	2-23-89	1		App. A, § 41(e)(1)
89-30	2-23-89	1		App. A, § 42(e)(1)

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89-36	5-11-89	1		App. A, §§ 200 – 223
89-39	7-13-89	1		App. A, § 83(a)
		2		App. A, § 83(c)
		3		App. A, § 88(a)(2)
89-40	7-27-89	1		App. A, § 30(d)
89-40a	7-27-89	1		App. A, § 29(d)(2)(R)
89-43	9-14-89	1		App. A, § (h)(16)
89-44	9-14-89	1		App. A, § (o)(7)(C)
89-45	9-14-89	1		App. A, § (o)(10)(B)(i)(cc)
89-46	9-14-89	1		App. A, § 25(p)(2)
89-47	9-14-89	1		App. A, § 25(q)(2)
89-48	9-14-89	1		App. A, § 25(g)(3)
89-49	9-14-89	1		App. A, §§ 25(o)(3)(G) – (L), (4)(C)(ii), (5)(C), (7)(A)(iii), (7)(E)(i), (7)(I), (7)(J), (10)(A)(vi)
89-50	9-14-89	1		App. A, § 29(c)(3)
89-51	9-14-89	1		App. A, § 36(a)(1)(E)
89-52	9-14-89	1		App. A, § 36(a)(2)(C)
89-53	9-14-89	1		App. A, § 40.1(e)(4)(D)
89-54	9-14-89	1		App. A, § 43(f)
89-55	9-14-89	1		App. A, § 47(i)
89-56	9-14-89	1	Rpld	App. A, § 48(b)
89-57	9-14-89	1		App. A, § 48(e)(1)
89-58	9-14-89	1		App. A, § 49(a)(3)(A)
89-59	9-14-89	1		App. A, § 51(a)(1)
89-60	9-14-89	1		App. A, § 53(a)(1)(E)
89-61	9-14-89	1		App. A, § 53(a)(1)(H)
89-62	9-14-89	1		App. A, § 55.1(a)
89-63	9-14-89	1		App. A, § 66(a)(1)(C)
89-64	9-14-89	1		App. A, § 86(a)(1)(o)
89-65	9-14-89	1		App. A, § 195(a)(1)
89-75	9-28-89	1, 2		App. A, § 42.63(a), (b)
		3	Rpld	App. A, § 42.63(c)
		4		App. A, § 42.64

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89-76	9-28-89	1		App. A, § 86(a)(2)(e)
90-1	1-11-90	1		App. A, § 64(a)(2)
90-2	1-11-90	1		App. A, § 29(e)
90-3	1-11-90	1		App. A, § 34(a)(2.1)
90-4	1-11-90	1		App. A, § 35(a)(1.2)
90-5	1-11-90	1		App. A, § 36(a)(2.1)
90-6	1-11-90	1		App. A, § 37(d)
90-7	1-11-90	1		App. A, § 38(e)
90-8	1-11-90	1		App. A, § 39(d)(1)
90-9	1-11-90	1		App. A, § 40(b.2)
90-10	1-11-90	1		App. A, § 40.1(e)(7)
90-11	1-11-90	1		App. A, § 41(d)
90-12	1-11-90	1		App. A, § 42(d)(4)
90-13	1-11-90	1		App. A, § 28(c)(3)
90-14	1-25-90	1		App. A, § 41(d)(1)
90-15	2- 8-90	1		App. A, §§ 118.50, 118.51, 118.54, 118.56
90-27	4-12-90	1		App. A, §§ (b)(5), 98(b), 107(a)(2) – (5)
90-31	4-26-90	1	Rpld	App. A, § 119 – 119.6
90-32	6-14-90	1		App. A, § 36(a)(1)(A)
90-33	6-14-90	1		App. A, § 37(b)(4)
90-34	6-14-90	1		App. A, § 38(b)(2)
90-35	6-14-90	1		App. A, § 39(b)(4)
90-36	6-14-90	1		App. A, § 40.1(c)(11)
90-38	6-14-90	1		App. A, § 25(n)
90-39	6-14-90	1		App. A, § 85
90-40	6-14-90	1		App. A, § 118.51
90-43	9-13-90	1		App. A, § 29(e)(5), (6)
90-44	9-13-90	1		App. A, § 46
90-45	9-13-90	1		App. A, § 46
90-46	9-13-90	1		App. A, § 48(e)(1)
90-47	9-13-90	1		App. A, § 49(a)(3)(1)
90-48	9-13-90	1		App. A, § 51(a)(1)

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90-49	9-13-90	1		App. A, § 52(b)
90-50	9-13-90	1		App. A, § 54(b)(1)(F)
90-51	9-13-90	1		App. A, § 54(a)(8)
90-52	9-13-90	1		App. A, § 55(d)
90-53	9-13-90	1		App. A, § 55(e)
91-1	1-10-91	1		App. A, § 47(j)
91-2	1-10-91	1		App. A, § 132(1)
91-4	2-14-91	1		App. A, §§ 42.70 – 42.76, 42.79 – 42.81
91-8	3-14-91	1		App. A, § 28(b.1)(1)
91-9	3-14-91	1		App. A, § 29(c)(6)
91-10	3-14-91	1		App. A, § 34(a)(2)(E)
91-11	3-14-91	1		App. A, § 35(a)(1.1)(A)
91-12	3-14-91	1		App. A, § 36(a)(2)(D)
91-13	3-14-91	1		App. A, § 37(c)(2)
91-14	3-14-91	1		App. A, § 38(c)(3)
91-15	3-14-91	1		App. A, § 39(c)(4)
91-16	3-14-91	1		App. A, § 40(b.1)(1)
91-17	3-14-91	1		App. A, § 40.1(d)(3)
91-18	3-14-91	1		App. A, § 41(c)(5)
91-19	3-14-91	1		App. A, § 42(c)(3)
Unified Development Ordinance			Rpld	App. A, Planning and Zoning
			Added	App. A, Unified Development Ordinance
92-32	5-14-92	1	Added	App. A, Ch. 8, Pt. 9
				App. A, Ch. 10, Pt. 6
		2	Rnbd	App. A, Ch. 8, Pts. 9 – 17
			As	App. A, Ch. 8, Pts. 10 – 18
92-33	5-14-92	1		App. A, §§ 2.1.4,
				3.8.2(h),
				5.6.1(c), 5.6.4(a)(4)(vii),
				5.6.4(a)(5)(vi), (f),
				5.6.5(a)(1)(ii)(12),

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Ordinance Number	Adoption Date	Section		Section this Code
				5.7.1(a)(2),
				5.7.3(d)(24), (26),
				5.7.3(e)(6)
				5.7.10(e)(9), 8.14.3(f),
				8.15.2(q), 13.2.10(b),
				14.1.5(d)(6), 18.1.1(a)
			Added	App. A, § 5.8.4
			Rpld	App. A, §§ 5.6.4(a)(4)(viii),
				18.14.3(f)
92-34	5-14-92	1		App. A, §§ 2.1.4, 14.1.2, 14.1.3, 14.1.11
92-39	6-25-92	1		App. A, §§ 8.10.2, 17.1.5
93-30	5-13-93	1		App. A, § 15.1.15(b)
93-31	5-27-93	1		App. A, §§ 2.1.4, 5.6.4.(a)(4)(xi),
				5.6.4.(a)(5)(iii), 5.7.3.(d)(22),
				5.7.3.(e)(3)(ii)
93-32	6-24-93	1		App. A, § 2.1.4
			Rnbd	App. A, § 3.1.1.(i)
			As	App. A, § 3.1.1.(j)
			Added	App. A, § 3.1.1.(i)
				App. A, §§ 3.8.2.(h)(9), 5.6.4.(a)(4)(xx),
				5.6.4.(a)(5)(v), 5.6.5.(a)(1)(v),
				5.7.3.(d)(27), 5.7.3.(e)(5)(v),
				6.1.2.(d), 10.3.1. – 10.3.13.,
				11.1.4.
93-37	10-28-93	1		App. A, §§ 2.1.4, 5.4.3., 5.5.13.,
				5.6.1. – 5.6.4, 5.6.4.(a)(4)(xviii),
				5.6.4.(a)(5)(iii), 5.6.4.(a)(5)(v),
				5.6.4.(g)(5), 5.6.5.(a)(v)(1), 3., (6),
				5.7.1.(b), (c), Fig. 5.7.1.(c),
				5.7.3.(d)(10), 5.7.3.(e)(1), (5),
				5.7.12.(a), 5.14.1.(c), (d),
				8.1.3., Table 8.1.3.,

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			Rnbd	App. A, § 8.1.4.
			As	App. A, § 8.1.6.
			Added	App. A, §§ 8.1.4., 8.1.5.
				8.2.2., 8.2.3., 8.3.2., 8.3.3.,
				8.4.2., 8.4.3., 8.5.2., 8.5.3.,
				8.6.2., 8.6.3., 8.7.2., 8.7.3.,
				8.8.1. – 8.8.3., 8.8.5., 8.9.2., 8.9.3.,
				8.10.2., 8.10.3., 8.11.2., 8.11.3.,
				8.13.2. – 8.13.4., 8.14.2. – 8.14.4.,
				8.15.2., 8.15.3., 8.16.2., 8.16.3.,
				8.17.2., 8.17.3., 8.18.2., 8.18.3.,
				10.1.5., Fig. 11.1.1., Tables 11.1.3., 11.1.4.,
				11.1.3.(c)(4), Table 12.1.2.,
				12.1.3.(e), 12.1.5.(a), 13.1.4., 13.1.5.,
				13.2.4.(c)(2), 13.2.5., 13.3.1.,
				14.1.4.(c), 14.1.5.(d), (h),
				14.2.5.(b), 14.2.7., 15.1.2.(b), (e)(2) – (5), (f), (g)
93-41	12- 9-93	1		App. A, §§ 2.1.4., 6.1.2., 6.1.4.(e)
			Rnbd	App. A, §§ 6.1.6., 6.1.7.
			As	App. A, §§ 6.1.7., 6.1.8.
			Added	App. A, §§ 6.1.6.
				8.14.4.(d), 8.16.4.(g), 17.1.2.(h)
94-017	7-28-94	1		App. A, § 13.3.1(b)(6)
94-029	9-29-94	1		App. A, §§ 8.3.5., 8.3.6., 8.4.5.,
				8.4.6.
95-001	1-12-95			App. A, §§ 2.1.4, 10.3.3, 10.3.7,
				11.1.3(d), 13.1.3(b)(3), (5), 14.5.3(c)
95-002	1-12-95			App. A, §§ 3.2.2, 3.3.2, 3.4.2
			Rpld	App. A, §§ 3.5.1 – 3.5.5
				App. A, §§ 3.6.1 – 3.6.6
			Rpld	App. A, §§ 3.7.1 – 3.7.5

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				App. A, §§ 5.5.9(b), 5.5.10(c), 5.6.3(b),
				5.7.4(b), 5.7.5, 5.7.6(a), 5.7.7,
				14.1.4(b), 14.4.2(a), 14.4.3(b), 15.1.2(d),
				15.1.3(b)
95-008	3- 9-95			App. A, §§ 5.6.4(a)(4)(xii),
				(a)(5)(ii), (vi),
				5.7.3(d)(18), (24), (e)(2), (6),
				14.1.5(n) – (p)
95-009	3- 9-95			App. A, §§ 2.1.4, 8.17.4, 8.18.4,
				13.2.8, 15.1.1(a), 15.1.2(a),
				18.1.2 – 18.1.4, 18.1.6
95-012	4-13-95			App. A, § 5.1.4
95-014	4-27-95			App. A, §§ 10.4.2(e), 14.3.8(a)
95-017	5-25-95			App. A, §§ 2.1.4, 5.5.1 – 5.5.13,
				5.6.1(c), 5.7.1(b), 10.5.1 – 10.5.11,
				15.1.2(b), (f), (g)
95-018	5-25-95			App. A, § 2.1.4
			Added	App. A, § 13.1.9
95-019	6-22-95			App. A, § 13.2.10(c)(2)
95-022	7-13-95			App. A, § 10.4.4(g)
95-026	8-24-95			App. A, §§ 2.1.4, 8.3.4,
				8.3.5(f), 8.4.4, 8.4.5(f), 8.5.4,
				8.5.5(g), 8.6.4, 8.6.5(g), 8.7.4,
				8.7.5(g), 8.8.4(d), 8.8.5(c), 8.9.4(b),
				8.9.5, 8.10.4(d), 8.10.5(h), 8.11.4(e),
				8.11.5(h), 8.13.2(t), (u), 8.13.5(c),
				8.14.2(dd), (ee),
				8.14.5, 8.16.2(z), (aa), 8.16.5(c),
				8.17.2(v), (w),
				8.17.5(b), 8.18.2(v), (w), 8.18.5(b), 11.1.5,
				13.1.10, 14.1.5(c), (d), 17.1.6(g)
95-027	9-14-95	1		App. A, §§ 6.1.5, 13.2.8(f), 17.1.6(i)
95-029	10-26-95		Added	App. A, § 13.1.1(f)

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95-030	12-14-95			App. A, § 2.1.4
			Added	App. A, § 13.1.9
95-032	12-14-95			App. A, §§ 2.1.4, 5.6.1, 5.6.2
			Added	App. A, § 5.6.3
			Rnbd	App. A, §§ 5.6.3 – 5.6.9
			As	App. A, §§ 5.6.4 – 5.6.10
			Rnbd	App. A, § 13.1.1(e)
			As	App. A, § 13.1.1(g)
			Added	App. A, § 13.1.1(e)
				App. A, § 13.1.1(g)
			Added	App. A, § 13.2.10(i)
96-005	6-13-96		Rpld	App. A, § 5.5.11(a)
			Rpld	App. A, § 7.1.4(b)
96-007	7-24-96			App. A, § 2.1.4
			Added	App. A, §§ 8.3.2(i),
				8.3.3(i), 8.4.2(i), 8.4.3(i), 8.5.2(h),
				8.5.3(g), 8.6.2(h), 8.6.3(h), 8.7.2(h),
				8.7.3(h), 8.8.2(k), 8.8.3(i), 8.9.2(l),
				8.9.3(e)
96-008	7-24-96			App. A, § 2.1.4
				App. A, § 13.2.3(g)
			Added	App. A, § 13.2.3(l)
96-009	7-24-96			App. A, § 10.3.9(b)(2)
				App. A, § 10.3.10(b)(1)
96-011	11-14-96			App. A, § 13.3.2(b)(1)
96-013	11-14-96			App. A, § 18.1.2(b)
96-015	12-12-96		Added	App. A, § 8.10.2(k)
				App. A, § 8.10.5(b)
			Added	App. A, § 8.10.5(c)(4)
				App. A, § 8.10.5(g)(1)
			Added	App. A, § 8.11.2(i)
				App. A, § 8.11.5(b)

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			Added	App. A, § 8.11.5(c)(4)
				App. A, § 8.11.5(g)(1)
96-016	12-12-96			App. A, § 13.2.6(b)(1)
			Added	App. A, § 13.2.6(e), (f)
96-017	12-12-96			App. A, § 13.2.8(e)(2)
				App. A, Table 13.2.8
96-018	12-12-96			App. A, § 13.2.8(l)
96-019	12-12-96		Added	App. A, § 13.2.5(m)
96-020	12-12-96			App. A, §§ 13.2.8(c)(4), (d)(4), (f)(4), (g)(4)
				App. A, Table 13.2.8
96-021	12-12-96			App. A, § 13.2.3(d), (l)
				App. A, § 13.2.5(e)
96-022	12-12-96		Rpld	App. A, § 13.2.6(a)
			Added	App. A, § 13.2.5(n)
96-023	12-12-96		Added	App. A, § 13.2.10(j), (k)
96-024	12-12-96		Added	App. A, § 13.3.2(a)(5)
				App. A, § 13.3.2(c)
96-025	12-12-96			App. A, § 13.1.6(a)
97-001	1-23-97			App. A, § 3.2.2(a)
				App. A, § 3.3.2(a)
97-002	2-13-97			App. A, § 13.2.10(c)
97-003	2-13-97			App. A, § 2.1.4
				App. A, § 13.2.8(m)
			Added	App. A, § 13.2.8(m)(1)
97-004	2-13-97		Added	App. A, § 13.2.8(e)(2)a
97-005	2-13-97		Added	App. A, § 13.2.3(m)
97-006	2-13-97			App. A, § 2.1.4
				App. A, § 13.2.4(a)
97-007	2-13-97		Rpld	App. A, § 13.2.10(f)
				App. A, § 13.2.10(g)
97-008	2-13-97			App. A, § 13.2.8(f)(5)
97-009	2-13-97			App. A, § 2.1.4
				App. A, § 13.1.4(a)

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Ordinance Number	Adoption Date	Section		Section this Code
97-010	2-13-97		Added	App. A, § 3.3.1(d)
97-011	2-13-97			App. A, § 11.1.4
				App. A, § 12.1.4(d)
				App. A, § 13.1.10(b)
				App. A, § 14.1.5(f)
97-014	5- 8-97		Added	App. A, § 2.1.4
				App. A, Table 8.1.3
			Added	App. A, § 8.3.2(j),
				App. A, § 8.4.2(j),
				App. A, § 8.5.2(i),
				App. A, § 8.6.2(i),
				App. A, § 8.7.2(i),
				App. A, § 8.8.2(l),
				App. A, § 8.9.2(m),
				App. A, § 8.10.2(l),
				App. A, § 8.11.2(j),
				App. A, § 8.12.2(d)
97-016	5- 8-97			App. A, § 2.1.4
				App. A, Table 8.1.3
			Added	App. A, § 8.13.2(v),
				App. A, § 8.13.3(e),
				App. A, § 8.14.2(ff),
				App. A, § 8.14.3(g),
				App. A, § 8.15.2(y),
				App. A, § 8.15.3(g),
				App. A, § 8.16.2(bb)
				App. A, § 8.16.3(j)
			Added	App. A, § 8.17.2(x)
				App. A, § 8.17.3(d)
			Added	App. A, § 8.18.2(x)
				App. A, § 8.18.3(d)
				App. A, § 13.1.5

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Ordinance Number	Adoption Date	Section		Section this Code
97-017	5- 8-97			App. A, § 18.1.3(e)
97-018	5- 8-97			App. A, § 13.1.1(b)
97-019	5- 8-97			App. A, § 13.3.2(a)(5)
97-020	5- 8-97			App. A, § 12.1.6(c)
				App. A, § 13.2.5(b)
97-021	5- 8-97			App. A, § 2.1.4
97-022	5- 8-97			App. A, § 7.1.8(d) – (f)
97-023	5- 8-97			App. A, § 5.14.1(a)
97-024	5- 8-97			App. A, § 13.2.10(k)
97-025	5- 8-97			App. A, § 8.2.3
				App. A, § 8.3.3
				App. A, § 8.4.3
				App. A, § 8.5.3
				App. A, § 8.6.3
				App. A, § 8.7.3
				App. A, § 8.8.3
				App. A, § 8.9.3
				App. A, § 8.10.3
				App. A, § 8.11.3
				App. A, § 8.12.3
				App. A, § 8.13.3
				App. A, § 8.14.3
				App. A, § 8.15.3
				App. A, § 8.16.3
				App. A, § 8.17.3
				App. A, § 8.18.3
97-026	6-12-97			App. A, § 2.1.4
				App. A, § 3.2.1(a)
				App. A, §§ 5.4.1 – 5.4.9
				App. A, §§ 5.6.1 – 5.6.10
				App. A, §§ 5.7.1 – 5.7.12
				App. A, § 15.2.1
				App. A, §§ 17.1.2 – 17.1.6

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Ordinance Number	Adoption Date	Section		Section this Code
97-030	7-23-97	1		App. A, § 2.1.4
			Added	App. A, § 13.1.12
97-035	9-24-97			App. A, §§ 10.1.1 – 10.1.7
				App. A, § 14.1.2(d)
				App. A, § 14.1.11
97-036	9-24-97			App. A, § 13.2.7(e)
				App. A, § 13.2.9(e)
97-037	9-24-97			App. A, § 8.14.2(gg)
				App. A, § 8.15.2(z)
97-039	11-13-97			App. A, § 2.1.4
				App. A, §§ 4.1.1, 4.1.2
				App. A, §§ 4.2.1 – 4.2.5
				App. A, § 7.1.2
				App. A, § 8.8.1
97-040	11-13-97			App. A, § 10.5.6
98-001	2-12-98			App. A, § 2.1.4
98-002	3-26-98			App. A, §§ 13.3.2, 13.3.5
98-004	5-28-98			App. A, § 2.1.4
			Added	App. A, § 13.1.13
98-005	5-28-98			App. A, § 2.1.4
98-006	5-28-98			App. A, § 3.2.2
98-011	8-13-98			App. A, § 10.6.4(b)
98-012	8-13-98			App. A, § 2.1.4
				App. A, § 8.13.2(w)
				App. A, § 8.14.2(hh)
98-013	8-13-98			App. A, § 11.1.3(c)(2), (3)
				App. A, Table 11.1.4
98-015	8-27-98			App. A, § 10.1.5(a)
98-016	8-27-98			App. A, § 8.8.5(d)(1)
				App. A, § 8.9.5(c)(1)
98-017	10- 8-98			App. A, §§ 5.1.1, 5.1.2
				App. A, § 5.2.3

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Ordinance Number	Adoption Date	Section		Section this Code
				App. A, § 5.6.11
				App. A, §§ 5.10.1 – 5.10.3
98-019	11-12-98			App. A, § 8.17.2(y)
				App. A, § 8.18.2(y)
98-020	12-10-98		Added	App. A, §§ 5.6.12, 5.7.13
99-001	1-14-99			App. A, § 2.1.4
				App. A, § 8.13.5(b)
				App. A, § 8.14.5(b)
				App. A, § 8.16.5(a)
				App. A, § 8.17.5(a)
				App. A, § 8.18.5(a)
				App. A, §§ 14.1.1 – 14.1.15
99-002	1-14-99			App. A, § 15.1.7(b), (f), (g), (m), (n)
				App. A, § 15.2.1(f), (l)
99-003	1-14-99			App. A, § 8.16.2(cc)
99-005	3-25-99			App. A, § 13.1.10(c), (f), (g)
99-006	5-13-99			App. A, § 5.1.1(c)
99-007	5-13-99			App. A, §§ 5.6.2, 5.6.4, 5.6.5, 5.7.1,
				5.7.6 – 5.7.8, 5.7.11
99-011	7-22-99			App. A, § 18.1.3(d)
99-012	7-22-99	1	Added	App. A, §§ 6.16.1 – 6.16.7
		2		App. A, § 5.5.9(b)
		3		App. A, § 7.1.5
99-014	8-12-99			App. A, §§ 14.3.3(b)(2), 14.3.3(b)(6),
				5.9.4(b), (e), 5.9.6, 5.9.7(d),
				18.1.1(a), 18.1.2(b)(2)
99-015	8-12-99			App. A, § 14.2.3(b)(1)
			Added	App. A, § 14.2.5(c)
99-016	8-26-99			App. A, § 8.13.4(d)
99-018	9- 9-99			App. A, Table 12.1.2
00-001	1-13-00		Rpld	App. A, §§ 13.2.1 – 13.2.10
			Added	App. A., §§ 13.2.1 – 13.2.17

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Ordinance Number	Adoption Date	Section		Section this Code
			Rpld	App. A, §§ 5.12.1 – 5.12.3
			Rpld	App. A, § 17.1.4
00-002	1-13-00			App. A, §§ 2.1.4, 4.2.1 – 4.2.5
			Added	App. A, §§ 4.3.1, 4.3.2
00-004	3- 9-00			App. A, § 5.6.11
00-006	3- 9-00			App. A, § 5.1.1(c)
00-010	5-11-00			App. A, § 2.1.4
			Added	App. A, §§ 4.4.1, 4.4.2
00-011	5-11-00			App. A, §§ 12.1.3, 12.1.5
00-012	5-25-00			App. A, §§ 10.2.1 – 10.2.6
00-014	7-11-00			App. A, §§ 8.3.2, 8.4.2, 8.5.2,
				8.6.2, 8.7.2, 8.8.2, 8.9.2,
				8.10.2, 8.11.2, 8.13.2
00-015	7-11-00			App. A, § 18.1.3
00-016	7-11-00			App. A, § 12.1.2
00-018.1	4-12-01		Added	App. A, §§ 14.6.1 – 14.6.8,
				14.7.1 – 14.7.10
				App. A, § 10.3.12
				App. A, § 14.1.15(e)
				App. A, § 2.1.4
00-020	8-10-00			App. A, § 2.1.4
			Added	App. A, § 5.13.10
00-021	8-10-00			App. A, §§ 5.6.1(c)(4), 5.6.2(a), 5.6.3,
				15.1.5(f, g), 2.1.4
00-022	9-14-00			App. A, § 18.1.2(b)(2)
				App. A, §§ 5.9.2, 5.9.7(d)
00-023	9-14-00			App. A, § 11.1.3(c)(2), (3)
00-025	10-12-00			App. A, § 13.1.10
				App. A, §§ 14.1.4, 14.1.5
				App. A, § 2.1.4
00-026	11- 9-00			App. A, §§ 10.2.1 – 10.2.6
00-029	12-14-00			App. A, § 13.1.1(f)

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Ordinance Number	Adoption Date	Section		Section this Code
00-030	12-14-00			App. A, § 10.6.4(a) – (c)
01-002	3-22-01			App. A, § 8.14.2(l)
			Added	App. A, § 8.14.4(e)
01-006	4-12-01		Added	App. A, § 8.16.4(h)
			Added	App. A, § 8.17.4(e)
			Added	App. A, § 8.18.4(g)
01-008	5-10-01		Added	App. A, § 13.2.7
				App. A, § 13.2.17
				App. A, § 13.2.4(b)(4), (12), (14), (19), (21), (23)
				App. A, § 13.2.5
				App. A, § 13.2.4(1) (table)
01-009	5-10-01			App. A, § 2.1.4
				App. A, §§ 5.8.1 – 5.8.4
				App. A, §§ 14.2.1 – 14.2.7
01-012	6-14-01		Added	App. A, §§ 5.15.1 – 5.15.6
				App. A, §§ 16.1.1 – 16.1.21
01-016	8-23-01			App. A, § 5.6.11(a)
01-020	9-13-01			App. A, § 5.16.7
02-002	1-10-02			App. A, § 13.2.2(c)(1), (d)(1)
				App. A, §§ 13.2.4(a), (b)(6)c,
				(b)(12)d, (b)(14)a,
				(b)(16)d, e, (b)(20)d,
				(b)(21), (b)(24)a,
				(b)(25)a, (b)(26)a,
				13.2.4(c), 13.2.5(f),
				13.2.7(d)(4)(ii),
				13.2.7(d)(5)(iv),
				13.2.17
02-003	2-14-02			App. A, §§ 14.6.1 – 14.6.8,
				App. A, §§ 14.7.1 – 14.7.10
				App. A, § 10.3.12

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Ordinance Number	Adoption Date	Section		Section this Code
				App. A, § 14.1.15(c)
				App. A, § 2.1.4
02-009	4-11-02			App. A, §§ 3.2.1, 3.2.2(c), 3.2.5
			Rpld	App. A, §§ 3.4.1 – 3.4.6
				App. A, § 5.7.4(b)
			Rpld	App. A, § 5.7.5
				App. A, §§ 5.7.7, 5.7.12
02-010	4-11-02			App. A, §§ 3.6.1(a), 3.6.2(a), (c),
				3.6.5, 3.6.6(b)
02-014	6-13-02			App. A, §§ 13.2.7(c), 13.2.9
02-015	6-13-02		Added	App. A, §§ 5.12.1 – 5.12.7
				App. A, §§ 5.6.5(c), 5.7.6, 14.1.9(i),
				14.1.15(a) – (c), 14.6.3, 2.1.4
02-021	9-12-02			App. A, §§ 11.1.9, 13.1.1
			Rpld	App. A, §§ 13.3.1 – 13.3.5
			Added	App. A, §§ 13.3.1 – 13.3.7
02-022	9-12-02			App. A, §§ 8.8.5(d) – (g), 8.10.5, 8.11.5
02-026	12-12-02			App. A, §§ 2.1.4, 8.13.4, 8.14.4
03-001	1- 9-03			App. A, §§ 3.6.1(d),
				3.6.2(a), 3.6.6(a), (b)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

This table gives the location within this Land Development Ordinance of those ordinances adopted subsequent to and including Ord. No. 03-007, adopted May 22, 2003, effective July 1, 2003. Ordinances not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

Ordinance Number	Adoption Date	Section		Section this Code
03-007	5-22-03		Rpld	App. A (UDO), Chs. 1 – 18
		Chs. 1 – 12	Added	App. A (LDO), Chs. 1 – 12
04-001	1- 8-04			1.2
				3.2.2(A)(5)(a), (b)
				3.4.1(D)(5)(a), (b)
				3.1.6(Table 3.1-1)
				3.4.1(D)(1)
				3.4.2(B)
				3.9.2(E), (M)
			Added	3.10, 3.11
				3.17.4(C)(2)(b)
				3.17.5
				3.19.1(Table 3.19-1)
				3.19.1
				3.19.1(C)(1)
				3.19.3(B)
				4.4.5(E)
				4.4.6(a)(7)
				5.1.2(Table 5.1-1)
				5.1.3(Table 5.1-2)
			Added	5.2.1(N)
				5.2.2(C)(1)(e)
				5.2.2(E)(4)
			Added	5.2.3(H)
				5.3.4(A)(2)
			Added	5.3.4(I)
				6.1.1(Table 6.1-1)
				6.1.1(B)(3)
			Added	6.1.1(B)(6)
				6.1.3(Table 6.1-2)

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Ordinance Number	Adoption Date	Section		Section this Code
				6.4.2
				7.2.3(Table 7.2-1)
				7.2.3(Table 7.2-2)
				7.2.4(E)
				7.2.5(H)(2)
				7.8.2(C)(4)
				7.8.2(H)(1)
				7.8.3(A)(3)
				8.1.4(H)
				8.1.7(C)
				8.1.7(C)(2)
				8.1.8(A)(1)
				8.1.8(B)
				9.1.6(B)
				9.3.2(E)
				9.3.2(W)(2)
			Added	9.3.2(W)(10)
				10.2.1
				11.2.2(A), (B)
				11.3.5
				11.3.7
				11.4.3(C)
				12.3.2(B)(1)
04-003	4-15-04		Added	5.3.4(J)
04-006	5-13-04		Added	9.6.4(A)(2)
04-007	7-15-04			2.1.2
				2.1.3(Table 2.1-1)
			Added	3.4.3(G)
				3.9.2(H)(3)
				3.9.2(K)(2)
			Added	3.14.2(D)
				3.19.2(A)(1)(a)

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Ordinance Number	Adoption Date	Section		Section this Code
				3.21.4(D)
			Added	3.21.4(E)
				4.2.2(N)(7)
				4.4.2(E)
				4.4.2(G)(4)(d)1.
				5.1.2(Table 5.1-1)
				5.2.2(B)(1)(a), (f)
				5.2.2(B)(2), (3)
				5.2.4(D)(3)(c)2
				5.3.2(D)(2)
				7.2.5(B)(2)(a), (b)
				7.2.13(A)(1), (7)
				7.2.13(C)(1)(a), (b)
				7.2.13(C)(3)
			Added	7.2.13(D)
			Rnbd	7.2.13(D)
			as	7.2.13(E)
				Table 9.3-2
			Added	9.6.4(C)
			Rnbd	9.6.4(C) – (H)
			as	9.6.4(D) – (I)
			Added	9.6.4(E)
			Rnbd	9.6.4(E) – (I)
			as	9.6.4(F) – (J)
				9.6.4(H)
				9.6.4(J)
			Added	9.6.5
				11.2.2(B) – (D)
				12.3.3(D)(1) – (3)
				12.4
04-011	9- 9-04			2.1.3 (Table 2.1-1)
				3.4.3(D)(4)
			Rpld	3.18

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Ordinance Number	Adoption Date	Section		Section this Code
04-012	10-28-04			9.6.1(Table 9.3-3)
			Added	9.6.4(J)
04-013	10-28-04			9.3-1(Table)
			Rnbd	9.3.2(R)
			as	9.3.2(Q)
			Added	9.3.2(R)
				12.4
05-001	1-13-05			3.1.6(A)
				3.2.2(A)(1)(b)
				3.22.3(F)
			Added	4.4.4(D)(2)
			Rnbd	4.4.4(D)(2) – (5)
			as	4.4.4(D)(3) – (6)
				4.4.6(G)(7)
				4.4.6(G)(8)(b)1.
				Table 5.1-1
				Table 5.1-2
				5.2.1(L)
				5.2.2(B)(1)(a)
				5.2.3(C)
				5.4.6(C)(2)(a)
				7.2.8(B)(1)
				7.2.11(A)
			Added	7.3.2(B)(4), (5)
				Table 7.3-1
				7.3.2(C)(4)(c)
				7.3.2(F)(1)
			Added	7.3.4(A)(4)
				7.3.5(C)
			Added	7.3.5(F)
			Rnbd	7.3.5(F), (G)
			as	7.3.5(G), (H)

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Ordinance Number	Adoption Date	Section		Section this Code
				Table 7.3-3
				7.3.7(A)(4)
				7.3.7(A)(5)9a)
				7.3.8(E)(2)
				7.3.8(G)(1)
				Table 7.8-1
				8.1.7
				8.1.7(C)(3)
				8.1.8
				9.6.4(B)(graphic)
			Added	9.10.3(A)(4), (5)
				10.4.1(tit.)
				11.2.2
			Added	12.3.4(A)(1)
			Rnbd	12.3.4(A)(1) – (3)
			as	12.3.4(A)(2) – (4)
				12.4
05-002	1-13-05	Pt. 1		12.4
		Pt. 2		12.4
		Pt. 3		9.3.2(O)
		Pt. 4		9.3.2(Q)
				9.3.2(Q)(1)(a)
		Pt. 5	Added	9.3.2(Q)(7), (8)
		Pt. 6	Added	9.17]
05-006	5-12-05			7.11.1
				7.11.5
				7.11.6
				7.11.7(C)
				7.11.8(B), (C)
			Added	7.11.8(D)

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Ordinance Number	Adoption Date	Section		Section this Code
				7.11.9(C)
				7.11.10(A)
				7.11.11(A)
			Rpld	7.11.11(B)
			Rnbd	7.11.11(C), (D)
			as	7.11.11(B), (C)
			Rpld	7.11.11(C)(1)
			Rnbd	7.11.11(C)(2) – (5)
			as	7.11.11(C)(1) – (4)
				7.11.11(C)(2)
			Rnbd	7.11.11(E), (F)
			as	7.11.11(D), (E)
				7.11.14
				7.11.15(A)
			Rpld	7.11.15(B)
			Rnbd	7.11.15(C) – (F)
			as	7.11.15(B) – (E)
				7.11.15(B) – (E)
				7.11.16
05-007	5-12-05			Table 5.1-2
				9.3.2(H)(1)
				9.3.2(H)(2)(b), (c)
				9.3.2(H)(3)
				9.4.1(B)
				9.4.1(H)
				9.4.1(M) – (O)
				12.4
05-009	6-23-05			3.23.1(A)
				3.23.2(A)(1), (3) – (5)
				3.23.2(B)
				3.23.3(A)
				3.23.3(C)
				3.23.3(C)(1)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rpld	3.23.3(C)(2) – (4)
			Rnbd	3.23.3(C)(5)
			as	3.23.3(C)(2)
				3.23.3(C)(2)
				3.23.4(B)
				3.23.4(B)(1)
				Table 3.23-1
				3.23.4(G)(5), (6)
				3.23.4(H)
				3.23.4(H)(6)
				3.23.4(J)
				3.23.5(B)(2)
			Added	3.23.5(D)
			Added	3.23.6(D)
05-015	9- 8-05		Added	4.4.3
			Added	Tables 4.4.1 – 4.4.3
			Rnbd	Table 4.4-1
			as	Table 4.4-4
			Rnbd	Table 4.4-2
			as	Table 4.4-5
			Added	7.3.2(A)(4)
			Rnbd	7.3.2(A)(4)
			as	7.3.2.(A)(5)
				7.3.2(D)
				7.3.2(E)(1), (2)
			Rpld	7.3.2(E)(4)
				7.3.5(Table 7.3-3)
				7.3.7(A)(6)
06-005	3-23-06			3.23.2(A)(1)
			Added	3.23.2(A)(2)
			Rnbd	3.23.2(A)(2) – (5)
			as	3.23.2(A)(3) – (6)
			Added	4.4.2(E)(5), (6)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rpld	4.4.2(H)(3)(a)
			Rnbd	4.4.2(H)(3)(b) – (d)
			as	4.4.2(H)(3)(a) – (c)
				4.4.2(I)(7)
			Added	4.4.2(I)(8)
				5.1.2(Table 5.5-1)
			Added	5.2.1(L)(4)
				12.4
06-009	4-27-06			1.5.3 (Table 1.5-1)
				Ch. 2, Table 2.1-1
				Ch. 2, Table 2.1-1 (note [13])
				3.1.5(A)(1)(g)
				3.1.6(C)
				3.1.6(F)(Table 3.1-1)
				3.1.9(B)(5)
				3.3.3(tit.)
				3.4.1(D)(4)(b)(1)
			Added	3.4.1(D)(4)(c)
				3.4.1(E)
				3.4.1(F)(1)
				3.4.1(F)(2)(b)
				3.4.1(F)(2)(b)1., 2.
			Rpld	3.4.1(F)(2)(b)3., 4.
				3.4.1(F)(2)(c)
				3.4.2(A),(B)
				3.4.2(B)(1)
			Rpld	3.4.2(B)(2)
				3.4.2(C)(1)
			Added	3.4.2(C)(1)(a), (b)
				3.9.3(H)
				3.11.3(1)
				3.19.1(A)(Table 3.19-1)
				3.20.4(D)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				3.23.2(A)(2)
				3.23.6(D)
				4.2.3(D)(3)(b)7.
				4.4.1(A)
				4.4.2
				4.4.2(A) – (C)
				4.4.2(C)(1) – (3)
				4.4.2(D), (E)
				4.4.2(E)(2), (3)
				4.4.2(E)(4)(a)
				4.4.2(E)(5), (6)
				4.4.2(F), (G)
				4.4.2(G)(3)
			Rpld	4.4.2(G)(3)
			Rnbd	4.4.2(G)(4)
				4.4.2(G)(3)
				4.4.2(G)(3)(a)2.
				4.4.2(G)(3)(b) – (d)
				4.4.2(G)(3)(d)1.
				4.4.2(G)(3)(d)1.a., b.
				4.4.2(G)(3)(d)2., 3.
			Rpld	4.4.2(G)(5)
				4.4.2(H)
				4.4.2(H)(1) – (3)
			Rpld	4.4.2(H)(3)(a) – (c)
				4.4.2(H)(4), (5)
				4.4.2(I)
				4.4.2(I)(1) – (8)
				4.4.2(I)(8)(e)
				4.4.2(I)(8)(g), (h)
				4.4.2(J)
				4.4.2(J)(1) – (6)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				4.4.2(K)(1), (2)
			Rpld	4.4.2(K)(3), (4)
				4.4.2(L) – (N)
				4.4.2(N)(3)
				4.4.4(A)(graphic)
				4.4.4(D)(3)
				4.4.6(G)(7)(b)
				4.4.6(G)(8)(a)2.
				4.4.6(G)(8)(c) – (e)
				4.4.6(G)(9)(a), (c)
			Added	4.4.6(G)(9)(d)
			Rnbd	4.4.6(G)(9)(d), (e)
			as	4.4.6(G)(9)(e), (f)
				4.4.6(G)(9)(e)
				4.4.6(I)(3)
				5.1.2(Table 5.1-1)
				5.2.1(D)
				5.2.1(E)(1)(Table 5.2-1)
				5.2.1(F)(4)
				5.2.1(F)(5)(a)
				5.2.1(G)(1)(Table 5.2-2)
				5.2.1(H)(3)
				5.2.1(K)(1)
				5.2.1(L)(2), (3)
				5.2.1(L)(3)(c)
				5.2.1(L)(4)
				5.2.1(L)(4)(a) – (c)
				5.2.2(B)
				5.2.2(B)(1)(a)
				5.2.2(B)(3)
				5.2.2(E)(1)
				5.2.3(Q)(1)
				5.2.4(D)(3)(c)1.

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				5.3.2(D)(2)
				5.3.4(D)
				5.4.5(L)
			Added	6.3.1(E)
			Rnbd	6.3.1(E), (F)
			as	6.3.1(F), (G)
				6.3.2(D)(4)
				7.2.3(A)(2)
				7.2.3(D)(1)(a)4.
				7.2.3(D)(1)(b)4.
				7.2.3(D)(1)(c)3.
				7.2.3(J)(4)(a) – (c)
			Rpld	7.2.3(J)(4)(d)
				7.2.4(C)
				7.2.4(D)(2)
			Added	7.2.4(I)
				7.2.6(C)(3)
				7.2.7(B)
				7.2.7(C)(1)
				7.2.8(C)(9)
				7.2.10(F)
				7.2.13(A)(7)
				7.2.13(C)
				7.2.13(C)(1)
				7.3.2(C)(4)(c)
				7.3.3(D)(Table 7-3.2)
				7.3.7(A)
			Added	7.3.7(A)(5) – (8)
			Rnbd	7.3.7(A)(5), (6)
			as	7.3.7(A)(9), (10)
			Added	7.3.7(A)(B)
			Rnbd	7.3.7(B), (C)
			as	7.3.7(C), (D)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				7.5.2(A)
				7.5.2(A)(1), (2)
				7.5.3(C)(1)(a)
				7.5.3(C)(1)(b)
				7.5.3(C)(2)
				7.5.4(A)
				7.5.5(A)
				7.5.8(C)(5)
				7.7.3(C)
				7.8.2(D)(1)
				7.8.2(D)(1)(Table 7.8-1)
			Added	7.8.2(D)(4), (5)
				7.10.5(A), (B)
			Rpld	7.10.5(B)(1) – (4)
				8.1.5(H)(3)
				8.1.6(B)
			Added	8.1.7(G), (H)
				8.1.8(A)
				8.1.8(B)
				8.5.1
				8.5.2
				8.5.3(D)
				9.1.2(C)
				9.1.5(A)
				9.1.5(C)
			Added	9.2(H)
				9.3.1(Table 9.3-1)
				9.3.2(E)
				9.3.2(N)(3), (4)
				9.3.2(Q)
				9.3.2(Q)(1)
			Rpld	9.3.2(Q)(1)(a), (b)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				9.3.2(Q)(2)
			Rpld	9.3.2(Q)(2)(a), (b)
			Rnbd	9.3.2(Q)(2)(c)
			as	9.3.2(Q)(2)(a)
				9.3.2(Q)(2)(a)
			Added	9.3.2(Q)(2)(b) – (e)
				9.3.2(Q)(3) – (7)
				9.3.2(R)(1), (2)
			Rpld	9.3.2(R)(8)
			Added	9.3.2(W)
			Rnbd	9.3.2(W)
			as	9.3.2(X)
				9.3.2(X)
			Added	9.3.2(X)(1)
			Rnbd	9.3.2(X)(1) – (6)
			as	9.3.2(X)(1)(a) – (f)
				9.3.2(X)(1)(b)
			Added	9.3.2(X)(1)(g)
			Rnbd	9.3.2(X)(7)
			as	9.3.2(X)(1)(h)
			Rnbd	9.3.2(X)(8) – (10)
			as	9.3.2(X)(1)(i) – (k)
			Rnbd	9.3.2(X)(1)(k)a. – d.
			as	9.3.2(X)(1)(k)(1) – (4)
			Rnbd	9.3.2(X)(1)(k)4. 1. – 4.
			as	9.3.2(X)(1)(k)4.a. – d.
			Rnbd	9.3.2(X)(1)(k)4. e., f.
			as	9.3.2(X)(1)(k)5., 6.
			Rnbd	9.3.2(X)
			as	9.3.2(W)(2)
			Rnbd	9.3.2(W)(2)(1)
			as	9.3.2(W)(2)(a)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rnbd	9.3.2(W)(2)(a)(a) – (c)
			as	9.3.2(W)(2)(a)1. – 3.
			Rnbd	9.3.2(W)(2)(2)
			as	9.3.2(W)(2)(b)
			Rnbd	9.3.2(W)(2)(b)(a), (b)
			as	9.3.2(W)(2)(b)1., 2.
				9.3.2(Y)
				9.6.1(B)(Table 9.3-3)
				9.6.4(C)(3)
			Rnbd	9.6.4(C)(4), (5)
			as	9.6.4(C)(5), (6)
				9.6.4(E), (I), (J)
				10.2.1
				11.1.3
			Added	11.4.3(E)
				11.4.4
				11.4.8
				11.5.2(D)
			Rpld	11.6.2(C)(1)
			Rnbd	11.6.2(C)(2) – (4)
			as	11.6.2(C)(1) – (3)
			as	11.6.2(C)(2), (3)
				12.4
2007-04	3-22-07		Rpld	3.1.5(A)(1)(b)
			Rnbd	3.1.5(A)(1)(c) – (g)
			as	3.1.5(A)(1)(b) – (f)
				3.2.2(A)(2)
				3.2.2(A)(4)(a), (b)
				3.2.2(A)(5)(a)
				3.2.2(A)(5)(a)(1)
				3.2.2(A)(5)(b)
				3.4.1(D)(1), (2), (4)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				3.4.1(D)(4)(b)
				3.4.1(D)(4)(b)1.
				3.4.1(D)(5)(a)
				3.4.1(F)(2)(d)
				3.4.3(D)(1)
				4.4.2(G)(3)(a)
				4.4.2(G)(3)(a)2.
			Added	4.4.2(G)(3)(a)3.
			Added	4.4.2(G)(3)(b), (c)
			Rnbd	4.4.2(G)(3)(b) – (d)
			as	4.4.2(G)(3)(d) – (f)
				4.4.2(G)(3)(f)1.b.
				4.4.2(I)
			Rpld	4.4.2(I)(1) – (6)
			Rnbd	4.4.2(I)(7)
			as	4.4.2(I)(1)
			Rnbd	4.4.2(I)(8)
			as	4.4.2(I)(1)(a)
			Rnbd	4.4.2(I)(8)(a) – (h)
			as	4.4.2(I)(1)(a)1. – 8.
				4.4.2(I)(1)(a)8.
				4.4.2(K)(1), (2)
				Table 5.5-1
			Added	6.3.1(F)
			Rnbd	6.3.1(F), (G)
			as	6.3.1(G), (H)
			Added	7.2.7(J)
			Added	7.2.14(A) – (I)
			Rpld	7.3.2
			Rnbd	7.3.3 – 7.3.8
			as	7.3.2 – 7.3.7
				7.3.7

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				7.5.2(A)
				7.5.2(A)(2)
				7.5.2(B)(1) – (3)
				7.5.3(tit.)
			Added	7.5.3(A)
			Rnbd	7.5.3(A) – (C)
			as	7.5.3(B) – (D)
				7.5.3(B), (C)
			Added	7.5.3(C)(6), (7)
				7.5.3(D)(1)(a) – (d)
				7.5.3(D)(1)(d)2.a. – c.
				7.5.3(D)(2)
				7.5.3(D)(2)(a)
				7.5.3(D)(2)(b)1., 2.
			Added	7.5.3(E) – (H)
				7.5.4, 7.5.5
				7.5.6
				7.5.7(A), (C)
				7.5.8(intro)
				7.5.8(C)(3), (4)
				12.4
				3.16.2(C)
				3.19.3(intro)
				3.19.3(A), (B), (D)
				3.20.2(D), (E)
				3.20.4(C)
				3.21.3(C)
				3.21.6
				3.22.4(D)
				3.22.5(B)(7)
				4.2.3(D)(6)(b)
			Added	4.4.1(B)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rnbd	4.4.1(B) – (D)
			as	4.4.1(C) – (E)
				4.4.5(D)(1)(j)
				5.1.3(Table 5.1-2)
				5.4.2(Table 5.4-1)
			Added	5.2.1(J)
			Rnbd	5.2.1(J) – (N)
			as	5.2.1(K) – (O)
			Rpld	5.4.7(D)(1)(a)
			Rnbd	5.4.7(D)(1)(b) – (g)
			as	5.4.7(D)(1)(a) – (f)
				6.4.2(B)
				7.1.5(A)(4)
				7.2.5(H)(3)
				7.2.5(B)(1)(c)
				7.2.5(C)
				7.2.13(A), (C)
				7.2.13(C)(1)(a)
				7.2.13(E)
				7.3.1
			Rnbd	Table 7.3-2
			as	Table 7.3-1
			Rnbd	7.3.4
			as	7.3.3
			Rnbd	7.3.5
			as	7.3.4
				7.3.4(intro)
				7.3.4(D)
			Rnbd	Table 7.3-3
			as	Table 7.3-2
				7.3.4(Table 7.3-2)
				7.3.6

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				7.3.8(E)
				7.10.3(B)(1)
				8.2.3(G)(2)
				8.3.2
				9.3.2(H)(2)(c)
			Added	9.3.2(H)(6), (7)
				9.3.2(V)(2)
				9.6.1(Table 9.3-3)
				9.6.4(F)
				9.6.4(J)(2)
				9.8.1
				9.8.3(E)
				9.10.3(B)
				9.11.6(A)
				9.16(A), (B)
				11.4.3(B)
				11.5.1(intro ¶)
				11.5.1(A)
				11.5.2(intro ¶)
				11.5.2(C)
				12.3.2(A)(2)
				12.3.3(D)(2)
				12.3.5(A)(1)
2007-21	12-13-07			3.4.1(D)
				3.8.2(E)
				3.8.4(A) – (D)
			Added	3.8.4(E)
				3.8.5
			Added	3.8.6
				3.23
				3.23.1
				3.23.4(A) – (D)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				3.23.4(G)(6)
				3.23.4(H)
				3.23.5(A)
				3.23.6(A) – (D)
				4.2.2(K)(4)(h) (Table 4.2-1)
				4.4.2(H)(5)
				5.2.2(B)(1)(a)
				5.2.2(B)(2)
				5.4.7(G)
				6.1.1(B)
				7.2.4(D)(3)
				7.2.14(D), (E)(1)
				7.5.3(H)(5)
				7.5.7(A)
				7.8.2(C)(4)
				7.8.2(D)(1) (Table 7-8.1)
				7.8.2(E)(1) (Table 7-8.3)
			Added	7.8.2(G)(8)
				7.10.1
				7.10.3(A)
			Added	7.10.6
				8.1.4(D)
				9.3.2(A), (F)
				9.3.2(X)(1)(f), (g)
				9.6.4(C)
				9.8.3
				9.8.5
				10.4.2
				11.2.2(A), (B)
				11.3.1
				11.5.1
				12.4

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
2008-03	1-24-08	3-1-08	Added	8.6
2008-07	5-8-08	7-1-08		7.11
2008-LDO-01	9-25-08	11-30-08		3.1.6
				3.9.2(B), (F), (H)
				3.9.3(E), (F)
				3.23.2(A)
				3.23.4(D), (J)
				3.23.5(B), (D)
				4.2.2(N)
				4.2.3(D)(7)
				4.4.4(B), (D)
				4.4.6(D), (F), (Table 4.4-4), (Table 4.4-5), (G), (H)
				5.1.2 (Table 5.1-1)
				5.1.3 (Table 5.1-2)
				5.1.4 (Table 5.1-3)
				5.2.1(E)-(L)
				5.2.2(B)
				5.2.3(N)
				5.2.4(A), (B), (D), (F)
				5.3.2(D)
				5.3.4(C), (I)
				5.4.1
				5.4.2 (Table 5.4-1)
				5.4.6(A)
				6.1.1(B)
				6.1.2
				6.1.3 (Table 6.1-2)
				6.2.2(A)
				6.3.1

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
				6.4.2
				7.2.3(A), (B), (D)
				7.2.4
				7.2.6
				7.2.7(J)
				7.2.8(C)
				7.2.9
				7.2.10
				7.2.14(B), (F), (I), (Table 7.2-5), (Table 7.2-6)
				7.3.3
				7.3.6(G)
				7.5.3(G), (H)
				7.7.3
				7.8.2(C)(4), (C)(8), (D)(1), (Table 7.8-1), (G)(8)
				7.10.3
				7.10.4(A)
				8.1—8.6
				9.1.2(C)
				9.1.5(A)-(D)
				9.3.2(P), (V), (X)
				9.4
				9.6, 9.6.1, Table 9.3-3, 9.6.2, 9.6.3
				9.8.2
				9.11.6
				11.4.3
				12.3.3(D)
				12.4

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

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				4.2.3(B), (D)
				7.2.3(A), (D)
				7.2.4(A) - (F), (H)
				7.2.5(B), (D)
				7.2.6(A), (C), (D)
				7.2.9(D), (E), (H) - (L)
				7.2.10
				7.2.13(A) - (D)
				7.4.3(G) - (J)
			Added	8.6.3
				12.4
2009-LDO-02	3-26-09	4-27-09		4.4.3
				8.4
				12.4
2009-LDO-03	5-14-09	6-15-09		Table 4.2-1
				8.1.2
				9.3.2(E), (G), (H), (N), (P)
				9.9.2
				9.11.1—9.11.8
				10.5.1
				10.5.3(C)
				12.4
2009-LDO-04	7-23-09	7-23-09		10.1.6
				10.1.7
				10.1.8
				10.2.1
				3.11
2009-LDO-05	7-23-09	7-23-09		7.11.11(E)

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				3.4.1(B), (F)
				3.4.2
			Added	3.4.5
				3.19.2(C)
				4.4.1
				4.4.2
			Added	4.5
2010-LDO-01	1-14-10	1-14-10		1.9
				3.9.2(B)
				3.14.2(D)
				3.21.2
				3.21.3
			Added	3.24
				4.2.3(D)
				4.4.4
				4.4.6
				5.1.2
				5.1.3
				5.1.5
				5.2.2(B), (C), (E)
				5.2.3
				5.3.2(D)
			Added	5.3.4(K)
				6.1.1 - 6.1.4
				6.3.1(H)

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				7.2.7(C)
				7.2.13
				7.2.14(G)
			Added	7.3.7
				7.5.2(B)
				7.5.3(G)
				7.8.2(C)
				7.8.3
				8.1.1
				8.1.4(D)
				11.2.1
				11.2.2
				12.3.1(C)
				12.3.3(I)
				12.3.4(L), (M)
				12.4
2010-LDO-02	1-28-10	1-28-10		Tables 5.1-1, 5.1-2
				5.2.2(B)
				5.3.4(L), (M)
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				Table 7.2-2
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				9.3.2
				Table 9.3-3
				9.4
				9.6.1
				10.3.6
				12.3.4
				12.4
2010-LDO-04	9-30-10	9-30-10	Added	8.1.9
2010-LDO-05	12-16-10	12-16-10		3.1.6
				Table 3.1-1
				3.23.3
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				Table 5.1-1
				Table 5.1-3
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				8.2.3
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				12.4
2011-LDO-01	1-11-11	1-11-11		Table 2.1-1
				3.1.7
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				3.9.2
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				3.10.1
				3.12.2
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				3.13.4
				3.16.4
				3.17.4
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				3.19.1 - 3.19.3
				3.21.1
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				7.6.5
				Table 7.8-1
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				7.8.6
				7.11.8
				7.11.20
				8.1.7
				10.3.3
				12.3.1
				12.3.2
				12.4
2011-LDO-02	4-14-11	4-14-11	Added	Ch. 9A
			Added	Ch. 9B
				3.16.2
				3.16.4
			Rpld	3.16.6
				3.20.2
				5.3.2
				5.4.5, 5.4.6
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				9.1.5
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				9.6.1
			Rpld	9.8.6
				11.6.1, 11.6.2
				12.4

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				3.19.1
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				4.4.4
				5.2.1
				5.3.2
				6.3.2
				7.1.5
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				10.4.1
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2011-LDO-05	12-15-11	12-15-11		Tables 5.1-1, 5.1-2, 5.1-3
				5.2.1, 5.2.3
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				12.3.2, 12.3.4
12-LDO-01	2-23-12	2-23-12		Table 2.1-1
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				10.5.1, 10.5.3
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				12.4
2012-LDO-02	3-7-12	3-7-12		3.10
				8.1.1, 8.1.3
2012-LDO-03	5-10-12	5-10-12		Table 2.1-1
				3.8
				3.9.2
				Table 5.1-1
				5.2.4
2012-LDO-04	5-24-12	5-24-12		2.1.1
				Table 2.1-1
			Rpld	2.5
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				3.9.2
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				4.2.2
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				9A.1.3, 9A.1.7
				9A.2.4
				9A.3.1
				12.3.4
2012-LDO-05	6-14-12	7-1-12		8.2.3
			Rpld	8.2.4
			Added	8.2.4
2012-LDO-06	8-9-12	8-9-12		Table 2.1-1
				3.19.1
				5.3.4
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			Rpld	5.4.3
				5.4.7
				7.1.4
				7.2.6, 7.2.8, 7.2.9
				7.7.3, 7.7.4, 7.7.5
				7.8.2
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2012-LDO-07	8-23-12	8-23-12		Tables 5.1-1, 5.1-2
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2012-LDO-08	10-11-12	10-11-12		3.1.8, 3.4.2, 3.4.3, 3.4.5, 3.20.4
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				Table 7.3-1
			Rpld	Table 7.3-2
			Added	7.3.8
				9.3.2
				9A.1.3, 9A.2.2, 9A.2.4, 9A.3.1
				10.1.7
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2013-LDO-01	2-13-13	3-1-13		3.4.1, 3.4.5, 3.9.2, 3.10.2, 3.23, 3.26.2
				8.1.3
2013-LDO-02	6-13-13	6-13-13		Table 2.1-1
				3.1.9, 3.1.10, 3.4.5, 3.9.2, 3.9.3, 3.17.4, 3.17.8, 3.19.1
				4.2.3, 4.4.3, 4.4.6, 4.5.2
				Tables 5.1-1, 5.1-2
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				6.1.1, 6.3.2
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				7.2.3, 7.2.4, 7.2.5, 7.2.6, 7.2.7, 7.2.9, 7.2.13, 7.2.14, 7.3.2, 7.4.3, 7.5.1, 7.7.3, 7.8.2, 7.8.3, 7.9.2, 7.10.3, 7.10.4
				Table 7.3-1
				8.1.1, 8.1.3, 8.1.4, 8.1.5, 8.1.7, 8.2.3, 8.5.4, 8.5.6
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				9A.3.1

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				11.5.1
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2013-LDO-04	9-26-13	9-26-13		Table 2.1-1
				2.4.2
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				7.2.4, 7.2.5, 7.2.13
				10.1.8
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2013-LDO-05	10-10-13	10-10-13		9A.1.5, 9A.2.1, 9A.2.3, 9A.3.1, 9A.3.2
2013-LDO-06	11-21-13	12-13-13		5.2.4
				6.2.2
2013-LDO-07	12-19-13	12-19-13		Table 3.19-1
				7.2.5
				12.4
2014-LDO-01	1-9-14	1-9-14		3.1.6, 3.4.2, 3.4.3, 3.9.3, 3.21.4, 3.21.5, 3.22.6
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				9B.1.6
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				2.1.1, 2.1.3; Table 2.1-1
			Added	2.5
				3.1.6, 3.21.2; Table 3.1-1
			Added	3.27
				4.4.1
			Added	4.4.7
				11.3.1
			Added	11.4.9
2014-LDO-03	8-14-14	8-14-14		2.8.2
				3.1.6, 3.1.9, 3.4.1, 3.4.3, 3.5.1, 3.5.2, 3.8.2, 3.9.2, 3.10.2, 3.11.3, 3.11.5, 3.11.7, 3.12.1, 3.12.2, 3.13.1—3.13.7, 3.20.4, 3.21.4, 3.25.3, 3.25.6, 3.26.2
				4.2.2, 4.4.3, 4.4.6; Table 4.4-5
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				6.1.1, 6.1.3; Tables 6.1-1, 6.1-3, 6.3-1
				7.2.3, 7.2.4, 7.2.9, 7.2.14, 7.3.4, 7.4.3, 7.5.1, 7.5.6, 7.8.2, 7.8.5, 7.10.3, 7.10.4, 7.10.6, 7.11.16; Tables 7.2-6, 7.8-2
				8.1.1, 8.1.4, 8.1.5, 8.1.7, 8.1.8, 8.2.3, 8.6.3
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				11.2.3, 11.4.5
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				7.2.5, 7.2.9, 7.2.10
				12.4
2014-LDO-05	12-11-14	12-11-14		3.4.1, 3.4.2
				4.4.2
2015-LDO-001	4-21-15	4-21-15		1.4.2, 1.4.4
				3.1.6, 3.4.1, 3.4.5, 3.19.1, Table 3.19-1, 3.26, 3.27.2
				4.2.2, 4.4.4
				Tables 5.1-1, 5.1-2, 5.1-3
				5.2.1, 5.2.3, 5.2.4, 5.3.4, 5.4.6
				Table 6.1-4
				7.2.7, 7.2.14, 7.8.2, 7.10.4
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				8.1.4, 8.1.5, 8.1.8
				9A.1.3, 9A.2.1, 9A.2.3
				9B.2
				11.2.2
				12.3.4, 12.4
2015-LDO-002	6-25-15	6-25-15		4.4.3
				6.3.1
				7.11.1—7.11.21
2015-LDO-003	7-23-15	7-23-15		3.2.2, 3.3.2, 3.4.1
				4.3.5
				Table 5.1-2; 5.2.3, 5.3.4
				7.2.3—7.2.5, 7.2.9, 7.2.13
				8.1.4, 8.1.8
				11.1—11.7
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2015-LDO-005	11-19-15	11-19-15		4.2.2
				7.10.1—7.10.3
2015-LDO-006	12-10-15	12-10-15		1.6.5
				3.4.1, 3.4.4, 3.4.5, 3.9.2, 3.16.5, 3.19.1
				4.2.2, 4.2.3, 4.4.6
				5.1, 5.2.1, 5.2.3, 5.3.4
			Rpld	5.1.5
				7.2.3, 7.2.9, 7.2.11, 7.9.3
				8.1.4, 8.1.5, 8.1.7
			Rpld	8.6
				9.3.2
				9A.1.1
				9B.2
				11.7.1
2016-LDO-01	7-25-16	7-25-16		3.9.2, 3.9.3, 3.14.5, 3.17.8, 3.19.1, 3.19.2
				Tables 4.2-1, 4.2-2
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				Tables 5.1-1, 5.1-2, 5.2-3
				5.2.2–5.2.4, 5.4.6
				Table 6.1-2
				7.2.5, 7.2.7, 7.2.13, 7.8.2
			Added	7.2.15
				8.1.2–8.1.5, 8.1.7, 8.1.8, 8.4.5
				11.5.2
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			Rpld	Ch. 9A, 9B
				10.5.1, 10.5.3
				11.7.1, 11.7.2
				12.4
2017-LDO-01	1-24-17	1-24-17		1.4.1—1.4.4
				2.6.2
				3.1.9, 3.2.2—3.2.4, 3.4.1, 3.4.4, 3.4.5
				4.1.3, 4.2.2, Table 4.2-1, 4.3.2, 4.4.2, 4.4.3, 4.4.6, 4.5.2
				Table 5.1-1, 5.2.1—5.2.3, 5.3.4
				7.1.4
				7.2.3, 7.2.5, 7.2.8, 7.2.10, 7.7.3, 7.8.2, 7.10.2, 7.10.4
				8.1.1, 8.1.3, 8.1.4, 8.2.3, 8.2.6, 8.5.3, 8.5.5
				10.1.8
				12.4
2017-LDO-02	3-30-17	3-30-17		3.4.1, 3.4.2
				5.1, 5.3.2
				6.3.2
				7.2.3
				12.4
2017-ACT-01	10-26-17	10-26-17		3.9.2, 3.19.3, Table 3.1-1
				4.4.2
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				6.3.2
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				4.5.2
				Tables 5.1-1, 5.1-2, 5.2-3; 5.2.4
				7.8.2
				12.3.5
2018-LDO-01	5-3-18	5-3-18		3.27.1, 3.27.2
				Tables 5.1-1, 5.1-2; 5.2.4
				Table 6.1-3
				7.2.4, 7.2.10; Table 7.8-1
				8.1.3, 8.1.5, 8.2.3
				9.2.8
				12.3.5, 12.4
2018-LDO-02	8-9-18	8-9-18		Table 2.1-1; 2.3.2, 2.6.2
				3.2.4, 3.3.2, 3.4.1, 3.4.2, 3.4.3, 3.4.5, 3.9.2, 3.27.1
2018-LDO-03	11-15-18	11-15-18		3.9.3
				5.2.4
				7.10.6
				8.1.3, 8.1.4, 8.1.5
				12.4
2018-LDO-04	12-13-18	12-13-18		5.2.4
2019-LDO-01	9-26-19	9-26-19		Table 2-1.1
				3.8.1, 3.8.2, 3.8.3, 3.8.4, 3.8.5, 3.9.2, 3.12.4, 3.13.3, 3.17, 3.19.1
				4.4.6
				5.2.4
				7.2.5, 7.2.10, 7.2.14, 7.2.15, 7.8.2, 7.11.8, 7.11.20
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			Rpld	3.23
2019-LDO-02	11-21-19	11-21-19		7.3.3, 7.5.2, 7.5.3
			Added	7.5.9
				12.4
2019-LDO-03	10-10-19	10-10-19	Added	1.11
				2.8.2
				3.1.6, 3.4.1 - 3.4.3, 3.4.5, 3.8.1, 3.8.4, 3.9.2, 3.12.1 - 3.12.4, 3.13.1 - 3.13.7, 3.19.2, 3.21.3, 3.22.6, 3.27.1, 3.27.2
			Added	3.1.14
			Rpld	3.20.7, 3.25.6
				4.4.3, 4.4.6, 4.5.1
				5.2.4, 5.4.5, 5.4.6
				7.2.14, 7.3.6, 7.4.3, 7.5.1 - 7.5.3, 7.5.6
				8.1.4, 8.1.5
				11.2.3, 11.4.6
				12.4
2019-LDO-04	12-12-19	12-12-19		3.9.2, 3.19.1
				6.1.3, 6.4.1, 6.4.2
				12.4
2020-LDO-01	5-7-20	5-7-20		3.1.6, 3.4.1, 3.4.3, 3.20.2, 3.20.4
				4.5.2
				5.1.2, 5.2.1, 5.3.2
				6.1.1
				7.2.4, 7.8.1, 7.8.2
				8.1.4, 8.2.6
				9.3.3
				12.4

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
2021-LDO-01	6-24-21	6-25-21		1.2, 1.3, 1.4.1, 1.5.1, 1.6.1, 1.6.3, 1.6.5, 1.10.2, 1.10.3
			Added	1.12
				2.1.3, 2.3.2, 2.4.2, 2.5.1, 2.5.2, 2.6.2
			Added	2.8.3
				3.1.1, 3.1.4 - 3.1.7, 3.1.9, 3.1.10, 3.1.14, 3.2.1 - 3.2.4, 3.3.2, 3.4.1 - 3.4.3, 3.4.5, 3.6.1, 3.8.2 - 3.8.4, 3.8.6, 3.9.1 - 3.9.3, 3.11 - 3.11.4, 3.12.2, 3.13.1, 3.13.3, 3.13.5, 3.14.1 - 3.14.3, 3.15.1, 3.15.2, 3.17 - 3.17.8, 3.18, 3.19.1, 3.19.2, 3.20.4, 3.20.8, 3.21.2 - 3.21.4, 3.21.6, 3.22.1 - 3.22.4, 3.22.6, 3.24 - 3.24.2, 3.25.3, 3.25.7, 3.27.1, 3.27.2
			Added	3.1.15, 3.1.16
			Rpld	3.9.4, 3.10
				4.1.3, 4.2.2, 4.3.2, 4.3.4, 4.3.6, 4.4.2, 4.4.3, 4.4.5, 4.4.6, 4.5 - 4.5.2
			Rnbd	4.2.3 to 4.5.3
			Rpld	4.3.5
				5.1, 5.1.2, 5.2.1, 5.2.3, 5.2.4, 5.3.4, 5.4.2, 5.4.6, 5.4.7
				6.1.1, 6.2.2, 6.3.1, 6.3.2, 6.4.2
				7.1.2, 7.1.3, 7.2.2 - 7.2.9, 7.2.11 - 7.2.14, 7.4.3, 7.5.2, 7.5.3, 7.5.8, 7.6.3, 7.7.2 - 7.7.7, 7.8.2, 7.8.3, 7.8.6, 7.9.1, 7.9.2, 7.10.3, 7.10.4
				ch. 8 (title), 8.1 - 8.1.5, 8.1.7, 8.1.8, 8.2 - 8.2.2, 8.3, 8.3.1, 8.5.4
			Rnbd	8.2.6 to 8.1.9
			Rpld	8.2.5, 8.3.1
				9.2.3 - 9.2.5
				10.1.6, 10.1.8, 10.5.3
				11.1.2, 11.2.1 - 11.2.3, 11.4.1, 11.4.2, 11.5 - 11.5.2, 11.6.1, 11.6.2, 11.7.1
			Added	11.7.3
				12.3.2, 12.4

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
2022-LDO-01	1-13-22	1-13-22		3.22.1
				5.1.2, 5.1.3, 5.3.4
				7.1.1, 7.2.1, 7.2.3 - 7.2.6, 7.2.9 - 7.2.11, 7.2.14
				12.4
2022-LDO-01A	2-24-22	2-24-22		6.1.3
				7.8.2
2022-LDO-02	4-28-22	4-29-22		3.4.1, 3.7.1, 3.9.1, 3.9.3, 3.13.1, 3.19.2, 3.22.3, 3.24.2
				4.1.3, 4.2.2, 4.4.2, 4.4.3, 4.4.6
				5.2.3, 5.2.4, 5.3.4, 5.4.6, 5.4.7
				6.1.1, 6.3.2
				7.2.3, 7.2.5, 7.2.9, 7.2.10, 7.2.14, 7.3.2, 7.4.3, 7.8.2, 7.9.1
				8.1.3, 8.1.4, 8.1.7, 8.1.9, 8.2.1, 8.3.1, 8.4.1, 8.4.2, 8.4.7, 8.4.8, 8.5.4
				9.1.6, 9.2.5 - 9.2.7, 9.3
				10.3.2, 10.4.2, 10.4.3
				11.4, 11.4.5, 11.5, 11.5.1, 11.6.1, 11.6.4
				12.3.2, 12.3.3, 12.4
2022-LDO-03	10-27-22	10-27-22		3.12.1 - 3.12.4, 3.13.1, 3.13.6
				5.2.3, 5.2.4
				8.1.3, 8.1.4, 8.2.1
				11.2.2, 11.4, 11.4.4 - 11.4.7, 11.5, 11.5.2, 11.6.1, 11.6.2, 11.6.5
				12.4
				14.1.1, 14.1.2, 14.2.1 - 14.2.5, 14.3.1 - 14.3.18, 14.4.1 - 14.4.7, 14.5.1 - 14.5.7, 14.6.1 - 14.6.16, 14.7.1 - 14.7.9

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
2022-LDO-04	11-17-22	11-17-22		3.4.1
				7.11.11, 7.11.14
				8.1.4, 8.1.8, 8.1.9
2023-LDO-01	2-9-23	2-9-23		9.2.3 - 9.2.5, 9.2.7
2023-LDO-02	3-23-23	3-23-23		4.4.6
				7.3.1 - 7.3.6
				12.4
2023-LDO-03	6-22-23	6-22-23		1.4.4, 1.5.1
				3.4.5
				4.2.2, 4.4.2, 4.4.3, 4.4.6, 4.5.2
				5.1.3, 5.2.3, 5.2.4
				6.1.3
				7.2.2, 7.7.2, 7.7.5, 7.9.1, 7.9.3
				8.5.5
				10.1
				12.4

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

STATE LAW REFERENCE TABLE

This table shows the location within this Land Development Ordinance, either in the text or notes following the text, of references to the North Carolina General Statutes.

G.S. Section	Section this Code	G.S. Section	Section this Code
1A-1, rule 4	11.4.4	ch. 143, Art. 21, Part 1	1.2
14-202.10	12.3.4	ch. 143, Art. 21, Part 6	1.2
14-414	5.4.7		14.1.2
ch. 18B	12.3.5	143-15	14.7.7
18B-1000(6)	12.3.4	143-128.2	3.24.1
20-4.01	12.3.4	143-129	3.24.1
ch. 29	12.4	143-143.15	14.7.7
ch. 47A	12.4	143-145(7)	12.3.2
ch. 47C	12.4		12.4
62-3	1.6.4	143-212	14.6.16
	7.2.15	143-214	12.4
ch. 63, Art. 4	1.2	143-214.10	14.6.12
63-1	14.6.16	143-755	3.1.14
63-79(1)	14.6.16		5.2.1
74-46 et seq.	14.4.5		6.1.1
74-46 - 74-68	3.13.1	ch. 150B, Art. 3	14.6.2
74-49(7)	12.3.5		14.6.9
74-65	5.2.4		14.6.11
ch. 89B	14.5.3	ch. 150B, Art. 4	14.6.2
105-164.3	12.3.4		14.6.9
105-164.4(a)(4c)	5.2.4		14.6.11
105-164.4(a)(6)	5.2.4	ch. 157	1.2
ch. 113A, Art. 4	1.2	ch. 158, Art. 1	3.9.2
113A-50 et seq.	3.13.6		6.4.2
113A-52(8)	3.13.1	159-48(b)(1)	14.6.16
113A-57(3)	11.4.6	159-81	14.6.16
113A-61	3.13.3	159-97	14.6.16
	11.2.2	ch. 160A, Art. 3C	12.3.5
113A-61(C)	3.13.3	ch. 160A, Part 3E	5.2.4
113A-64	11.4.4	ch. 160A, Art. 8	14.1.2
113A-64(a)	11.4.4	ch. 160A, Art. 20	1.6.1
113A-64(b)	3.13.4	160A-31	3.17.8
	11.4.5	160A-58.1	3.17.8
113A-85	12.4	160A-307	3.8.4
ch. 130A, Art. 9	12.3.5	160A-309	3.24.1
130A-290	14.6.5	160A-320	3.24.1
130A-290(a)(6)	12.4	160A-334	3.9.3
ch. 136	1.2	160A-499	3.24.1
136-18(29)	3.8.4	ch. 160D	1.2
ch. 143, Art. 8	3.24.1		12.4
	7.11.14		

STATE LAW REFERENCE TABLE

G.S. Section	Section this Code	G.S. Section	Section this Code
ch. 160D, art. 9, Part 2	14.1.2	160D-947(c)	3.27.2
ch. 160D, art. 9, Part 3	5.2.4	160D-947(e)	3.21.4
ch. 160D, art. 9, Part 4	2.5.1		3.27.2
	2.5.2	160D-1108	2.8.3
	3.27.2	160D-1114	11.2.2
	5.2.4	160D-1315	3.9.2
ch. 160D, art. 8	12.4		6.4.2
ch. 160D, art. 10	3.9.2	160D-1402	3.8.6
	3.24.2		3.20.8
	6.4.2		3.21.3
160D-102	12.4	160D-1402(c)	3.1.7
160D-102(7)	3.4.1		3.21.2
160D-106	3.17.5	160D-1402(j)	3.21.4
160D-108	3.1.14	160D-1403(b)	3.9.3
	3.17.1	160D-1403.1	3.17.8
	3.17.8	Ch. 168, Art. 3	12.3.2
	12.4		
160D-108.1	3.17.1		
	3.17.8		
	12.4		
160D-109	2.8.3		
160D-202	12.4		
160D-203	1.6.1		
160D-405	3.1.16		
160D-406(g)	2.4.2		
160D-501	1.4.1		
160D-601	3.4.1		
160D-602(b)	3.1.6		
160D-605	3.2.4		
	3.3.2		
	3.4.1		
	3.4.5		
160D-702	3.4.2		
	3.4.3		
	4.5.1		
160D-702(b)	3.4.5		
	3.8.4		
160D-703	3.4.1		
160D-802	12.4		
160D-804(d)	8.2.2		
160D-804.1	8.1.4		
	8.1.7		
160D-807	3.9.3		
160D-903	1.6.5		
	5.2.3		
	12.4		
160D-913	1.6.3		
160D-931	5.2.4		
160D-933	5.2.4		
160D-934	5.2.4		

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

This table gives the location within this Land Development Ordinance of those ordinances adopted subsequent to and including Ord. No. 03-007, adopted May 22, 2003, effective July 1, 2003. Ordinances not listed herein have been omitted as repealed, superseded or not of a general and permanent nature.

Ordinance Number	Adoption Date	Section		Section this Code
03-007	5-22-03		Rpld	App. A (UDO), Chs. 1 – 18
		Chs. 1 – 12	Added	App. A (LDO), Chs. 1 – 12
04-001	1- 8-04			1.2
				3.2.2(A)(5)(a), (b)
				3.4.1(D)(5)(a), (b)
				3.1.6(Table 3.1-1)
				3.4.1(D)(1)
				3.4.2(B)
				3.9.2(E), (M)
			Added	3.10, 3.11
				3.17.4(C)(2)(b)
				3.17.5
				3.19.1(Table 3.19-1)
				3.19.1
				3.19.1(C)(1)
				3.19.3(B)
				4.4.5(E)
				4.4.6(a)(7)
				5.1.2(Table 5.1-1)
				5.1.3(Table 5.1-2)
			Added	5.2.1(N)
				5.2.2(C)(1)(e)
				5.2.2(E)(4)
			Added	5.2.3(H)
				5.3.4(A)(2)
			Added	5.3.4(I)
				6.1.1(Table 6.1-1)
				6.1.1(B)(3)
			Added	6.1.1(B)(6)
				6.1.3(Table 6.1-2)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				6.4.2
				7.2.3(Table 7.2-1)
				7.2.3(Table 7.2-2)
				7.2.4(E)
				7.2.5(H)(2)
				7.8.2(C)(4)
				7.8.2(H)(1)
				7.8.3(A)(3)
				8.1.4(H)
				8.1.7(C)
				8.1.7(C)(2)
				8.1.8(A)(1)
				8.1.8(B)
				9.1.6(B)
				9.3.2(E)
				9.3.2(W)(2)
			Added	9.3.2(W)(10)
				10.2.1
				11.2.2(A), (B)
				11.3.5
				11.3.7
				11.4.3(C)
				12.3.2(B)(1)
04-003	4-15-04		Added	5.3.4(J)
04-006	5-13-04		Added	9.6.4(A)(2)
04-007	7-15-04			2.1.2
				2.1.3(Table 2.1-1)
			Added	3.4.3(G)
				3.9.2(H)(3)
				3.9.2(K)(2)
			Added	3.14.2(D)
				3.19.2(A)(1)(a)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				3.21.4(D)
			Added	3.21.4(E)
				4.2.2(N)(7)
				4.4.2(E)
				4.4.2(G)(4)(d)1.
				5.1.2(Table 5.1-1)
				5.2.2(B)(1)(a), (f)
				5.2.2(B)(2), (3)
				5.2.4(D)(3)(c)2
				5.3.2(D)(2)
				7.2.5(B)(2)(a), (b)
				7.2.13(A)(1), (7)
				7.2.13(C)(1)(a), (b)
				7.2.13(C)(3)
			Added	7.2.13(D)
			Rnbd	7.2.13(D)
			as	7.2.13(E)
				Table 9.3-2
			Added	9.6.4(C)
			Rnbd	9.6.4(C) – (H)
			as	9.6.4(D) – (I)
			Added	9.6.4(E)
			Rnbd	9.6.4(E) – (I)
			as	9.6.4(F) – (J)
				9.6.4(H)
				9.6.4(J)
			Added	9.6.5
				11.2.2(B) – (D)
				12.3.3(D)(1) – (3)
				12.4
04-011	9- 9-04			2.1.3 (Table 2.1-1)
				3.4.3(D)(4)
			Rpld	3.18

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
04-012	10-28-04			9.6.1(Table 9.3-3)
			Added	9.6.4(J)
04-013	10-28-04			9.3-1(Table)
			Rnbd	9.3.2(R)
			as	9.3.2(Q)
			Added	9.3.2(R)
				12.4
05-001	1-13-05			3.1.6(A)
				3.2.2(A)(1)(b)
				3.22.3(F)
			Added	4.4.4(D)(2)
			Rnbd	4.4.4(D)(2) – (5)
			as	4.4.4(D)(3) – (6)
				4.4.6(G)(7)
				4.4.6(G)(8)(b)1.
				Table 5.1-1
				Table 5.1-2
				5.2.1(L)
				5.2.2(B)(1)(a)
				5.2.3(C)
				5.4.6(C)(2)(a)
				7.2.8(B)(1)
				7.2.11(A)
			Added	7.3.2(B)(4), (5)
				Table 7.3-1
				7.3.2(C)(4)(c)
				7.3.2(F)(1)
			Added	7.3.4(A)(4)
				7.3.5(C)
			Added	7.3.5(F)
			Rnbd	7.3.5(F), (G)
			as	7.3.5(G), (H)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				Table 7.3-3
				7.3.7(A)(4)
				7.3.7(A)(5)9a)
				7.3.8(E)(2)
				7.3.8(G)(1)
				Table 7.8-1
				8.1.7
				8.1.7(C)(3)
				8.1.8
				9.6.4(B)(graphic)
			Added	9.10.3(A)(4), (5)
				10.4.1(tit.)
				11.2.2
			Added	12.3.4(A)(1)
			Rnbd	12.3.4(A)(1) – (3)
			as	12.3.4(A)(2) – (4)
				12.4
05-002	1-13-05	Pt. 1		12.4
		Pt. 2		12.4
		Pt. 3		9.3.2(O)
		Pt. 4		9.3.2(Q)
				9.3.2(Q)(1)(a)
		Pt. 5	Added	9.3.2(Q)(7), (8)
		Pt. 6	Added	9.17]
05-006	5-12-05			7.11.1
				7.11.5
				7.11.6
				7.11.7(C)
				7.11.8(B), (C)
			Added	7.11.8(D)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				7.11.9(C)
				7.11.10(A)
				7.11.11(A)
			Rpld	7.11.11(B)
			Rnbd	7.11.11(C), (D)
			as	7.11.11(B), (C)
			Rpld	7.11.11(C)(1)
			Rnbd	7.11.11(C)(2) – (5)
			as	7.11.11(C)(1) – (4)
				7.11.11(C)(2)
			Rnbd	7.11.11(E), (F)
			as	7.11.11(D), (E)
				7.11.14
				7.11.15(A)
			Rpld	7.11.15(B)
			Rnbd	7.11.15(C) – (F)
			as	7.11.15(B) – (E)
				7.11.15(B) – (E)
				7.11.16
05-007	5-12-05			Table 5.1-2
				9.3.2(H)(1)
				9.3.2(H)(2)(b), (c)
				9.3.2(H)(3)
				9.4.1(B)
				9.4.1(H)
				9.4.1(M) – (O)
				12.4
05-009	6-23-05			3.23.1(A)
				3.23.2(A)(1), (3) – (5)
				3.23.2(B)
				3.23.3(A)
				3.23.3(C)
				3.23.3(C)(1)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rpld	3.23.3(C)(2) – (4)
			Rnbd	3.23.3(C)(5)
			as	3.23.3(C)(2)
				3.23.3(C)(2)
				3.23.4(B)
				3.23.4(B)(1)
				Table 3.23-1
				3.23.4(G)(5), (6)
				3.23.4(H)
				3.23.4(H)(6)
				3.23.4(J)
				3.23.5(B)(2)
			Added	3.23.5(D)
			Added	3.23.6(D)
05-015	9- 8-05		Added	4.4.3
			Added	Tables 4.4.1 – 4.4.3
			Rnbd	Table 4.4-1
			as	Table 4.4-4
			Rnbd	Table 4.4-2
			as	Table 4.4-5
			Added	7.3.2(A)(4)
			Rnbd	7.3.2(A)(4)
			as	7.3.2.(A)(5)
				7.3.2(D)
				7.3.2(E)(1), (2)
			Rpld	7.3.2(E)(4)
				7.3.5(Table 7.3-3)
				7.3.7(A)(6)
06-005	3-23-06			3.23.2(A)(1)
			Added	3.23.2(A)(2)
			Rnbd	3.23.2(A)(2) – (5)
			as	3.23.2(A)(3) – (6)
			Added	4.4.2(E)(5), (6)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rpld	4.4.2(H)(3)(a)
			Rnbd	4.4.2(H)(3)(b) – (d)
			as	4.4.2(H)(3)(a) – (c)
				4.4.2(I)(7)
			Added	4.4.2(I)(8)
				5.1.2(Table 5.5-1)
			Added	5.2.1(L)(4)
				12.4
06-009	4-27-06			1.5.3 (Table 1.5-1)
				Ch. 2, Table 2.1-1
				Ch. 2, Table 2.1-1 (note [13])
				3.1.5(A)(1)(g)
				3.1.6(C)
				3.1.6(F)(Table 3.1-1)
				3.1.9(B)(5)
				3.3.3(tit.)
				3.4.1(D)(4)(b)(1)
			Added	3.4.1(D)(4)(c)
				3.4.1(E)
				3.4.1(F)(1)
				3.4.1(F)(2)(b)
				3.4.1(F)(2)(b)1., 2.
			Rpld	3.4.1(F)(2)(b)3., 4.
				3.4.1(F)(2)(c)
				3.4.2(A),(B)
				3.4.2(B)(1)
			Rpld	3.4.2(B)(2)
				3.4.2(C)(1)
			Added	3.4.2(C)(1)(a), (b)
				3.9.3(H)
				3.11.3(1)
				3.19.1(A)(Table 3.19-1)
				3.20.4(D)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				3.23.2(A)(2)
				3.23.6(D)
				4.2.3(D)(3)(b)7.
				4.4.1(A)
				4.4.2
				4.4.2(A) – (C)
				4.4.2(C)(1) – (3)
				4.4.2(D), (E)
				4.4.2(E)(2), (3)
				4.4.2(E)(4)(a)
				4.4.2(E)(5), (6)
				4.4.2(F), (G)
				4.4.2(G)(3)
			Rpld	4.4.2(G)(3)
			Rnbd	4.4.2(G)(4)
				4.4.2(G)(3)
				4.4.2(G)(3)(a)2.
				4.4.2(G)(3)(b) – (d)
				4.4.2(G)(3)(d)1.
				4.4.2(G)(3)(d)1.a., b.
				4.4.2(G)(3)(d)2., 3.
			Rpld	4.4.2(G)(5)
				4.4.2(H)
				4.4.2(H)(1) – (3)
			Rpld	4.4.2(H)(3)(a) – (c)
				4.4.2(H)(4), (5)
				4.4.2(I)
				4.4.2(I)(1) – (8)
				4.4.2(I)(8)(e)
				4.4.2(I)(8)(g), (h)
				4.4.2(J)
				4.4.2(J)(1) – (6)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				4.4.2(K)(1), (2)
			Rpld	4.4.2(K)(3), (4)
				4.4.2(L) – (N)
				4.4.2(N)(3)
				4.4.4(A)(graphic)
				4.4.4(D)(3)
				4.4.6(G)(7)(b)
				4.4.6(G)(8)(a)2.
				4.4.6(G)(8)(c) – (e)
				4.4.6(G)(9)(a), (c)
			Added	4.4.6(G)(9)(d)
			Rnbd	4.4.6(G)(9)(d), (e)
			as	4.4.6(G)(9)(e), (f)
				4.4.6(G)(9)(e)
				4.4.6(I)(3)
				5.1.2(Table 5.1-1)
				5.2.1(D)
				5.2.1(E)(1)(Table 5.2-1)
				5.2.1(F)(4)
				5.2.1(F)(5)(a)
				5.2.1(G)(1)(Table 5.2-2)
				5.2.1(H)(3)
				5.2.1(K)(1)
				5.2.1(L)(2), (3)
				5.2.1(L)(3)(c)
				5.2.1(L)(4)
				5.2.1(L)(4)(a) – (c)
				5.2.2(B)
				5.2.2(B)(1)(a)
				5.2.2(B)(3)
				5.2.2(E)(1)
				5.2.3(Q)(1)
				5.2.4(D)(3)(c)1.

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				5.3.2(D)(2)
				5.3.4(D)
				5.4.5(L)
			Added	6.3.1(E)
			Rnbd	6.3.1(E), (F)
			as	6.3.1(F), (G)
				6.3.2(D)(4)
				7.2.3(A)(2)
				7.2.3(D)(1)(a)4.
				7.2.3(D)(1)(b)4.
				7.2.3(D)(1)(c)3.
				7.2.3(J)(4)(a) – (c)
			Rpld	7.2.3(J)(4)(d)
				7.2.4(C)
				7.2.4(D)(2)
			Added	7.2.4(I)
				7.2.6(C)(3)
				7.2.7(B)
				7.2.7(C)(1)
				7.2.8(C)(9)
				7.2.10(F)
				7.2.13(A)(7)
				7.2.13(C)
				7.2.13(C)(1)
				7.3.2(C)(4)(c)
				7.3.3(D)(Table 7-3.2)
				7.3.7(A)
			Added	7.3.7(A)(5) – (8)
			Rnbd	7.3.7(A)(5), (6)
			as	7.3.7(A)(9), (10)
			Added	7.3.7(A)(B)
			Rnbd	7.3.7(B), (C)
			as	7.3.7(C), (D)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				7.5.2(A)
				7.5.2(A)(1), (2)
				7.5.3(C)(1)(a)
				7.5.3(C)(1)(b)
				7.5.3(C)(2)
				7.5.4(A)
				7.5.5(A)
				7.5.8(C)(5)
				7.7.3(C)
				7.8.2(D)(1)
				7.8.2(D)(1)(Table 7.8-1)
			Added	7.8.2(D)(4), (5)
				7.10.5(A), (B)
			Rpld	7.10.5(B)(1) – (4)
				8.1.5(H)(3)
				8.1.6(B)
			Added	8.1.7(G), (H)
				8.1.8(A)
				8.1.8(B)
				8.5.1
				8.5.2
				8.5.3(D)
				9.1.2(C)
				9.1.5(A)
				9.1.5(C)
			Added	9.2(H)
				9.3.1(Table 9.3-1)
				9.3.2(E)
				9.3.2(N)(3), (4)
				9.3.2(Q)
				9.3.2(Q)(1)
			Rpld	9.3.2(Q)(1)(a), (b)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				9.3.2(Q)(2)
			Rpld	9.3.2(Q)(2)(a), (b)
			Rnbd	9.3.2(Q)(2)(c)
			as	9.3.2(Q)(2)(a)
				9.3.2(Q)(2)(a)
			Added	9.3.2(Q)(2)(b) – (e)
				9.3.2(Q)(3) – (7)
				9.3.2(R)(1), (2)
			Rpld	9.3.2(R)(8)
			Added	9.3.2(W)
			Rnbd	9.3.2(W)
			as	9.3.2(X)
				9.3.2(X)
			Added	9.3.2(X)(1)
			Rnbd	9.3.2(X)(1) – (6)
			as	9.3.2(X)(1)(a) – (f)
				9.3.2(X)(1)(b)
			Added	9.3.2(X)(1)(g)
			Rnbd	9.3.2(X)(7)
			as	9.3.2(X)(1)(h)
			Rnbd	9.3.2(X)(8) – (10)
			as	9.3.2(X)(1)(i) – (k)
			Rnbd	9.3.2(X)(1)(k)a. – d.
			as	9.3.2(X)(1)(k)(1) – (4)
			Rnbd	9.3.2(X)(1)(k)4. 1. – 4.
			as	9.3.2(X)(1)(k)4.a. – d.
			Rnbd	9.3.2(X)(1)(k)4. e., f.
			as	9.3.2(X)(1)(k)5., 6.
			Rnbd	9.3.2(X)
			as	9.3.2(W)(2)
			Rnbd	9.3.2(W)(2)(1)
			as	9.3.2(W)(2)(a)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rnbd	9.3.2(W)(2)(a)(a) – (c)
			as	9.3.2(W)(2)(a)1. – 3.
			Rnbd	9.3.2(W)(2)(2)
			as	9.3.2(W)(2)(b)
			Rnbd	9.3.2(W)(2)(b)(a), (b)
			as	9.3.2(W)(2)(b)1., 2.
				9.3.2(Y)
				9.6.1(B)(Table 9.3-3)
				9.6.4(C)(3)
			Rnbd	9.6.4(C)(4), (5)
			as	9.6.4(C)(5), (6)
				9.6.4(E), (I), (J)
				10.2.1
				11.1.3
			Added	11.4.3(E)
				11.4.4
				11.4.8
				11.5.2(D)
			Rpld	11.6.2(C)(1)
			Rnbd	11.6.2(C)(2) – (4)
			as	11.6.2(C)(1) – (3)
			as	11.6.2(C)(2), (3)
				12.4
2007-04	3-22-07		Rpld	3.1.5(A)(1)(b)
			Rnbd	3.1.5(A)(1)(c) – (g)
			as	3.1.5(A)(1)(b) – (f)
				3.2.2(A)(2)
				3.2.2(A)(4)(a), (b)
				3.2.2(A)(5)(a)
				3.2.2(A)(5)(a)(1)
				3.2.2(A)(5)(b)
				3.4.1(D)(1), (2), (4)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				3.4.1(D)(4)(b)
				3.4.1(D)(4)(b)1.
				3.4.1(D)(5)(a)
				3.4.1(F)(2)(d)
				3.4.3(D)(1)
				4.4.2(G)(3)(a)
				4.4.2(G)(3)(a)2.
			Added	4.4.2(G)(3)(a)3.
			Added	4.4.2(G)(3)(b), (c)
			Rnbd	4.4.2(G)(3)(b) – (d)
			as	4.4.2(G)(3)(d) – (f)
				4.4.2(G)(3)(f)1.b.
				4.4.2(I)
			Rpld	4.4.2(I)(1) – (6)
			Rnbd	4.4.2(I)(7)
			as	4.4.2(I)(1)
			Rnbd	4.4.2(I)(8)
			as	4.4.2(I)(1)(a)
			Rnbd	4.4.2(I)(8)(a) – (h)
			as	4.4.2(I)(1)(a)1. – 8.
				4.4.2(I)(1)(a)8.
				4.4.2(K)(1), (2)
				Table 5.5-1
			Added	6.3.1(F)
			Rnbd	6.3.1(F), (G)
			as	6.3.1(G), (H)
			Added	7.2.7(J)
			Added	7.2.14(A) – (I)
			Rpld	7.3.2
			Rnbd	7.3.3 – 7.3.8
			as	7.3.2 – 7.3.7
				7.3.7

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				7.5.2(A)
				7.5.2(A)(2)
				7.5.2(B)(1) – (3)
				7.5.3(tit.)
			Added	7.5.3(A)
			Rnbd	7.5.3(A) – (C)
			as	7.5.3(B) – (D)
				7.5.3(B), (C)
			Added	7.5.3(C)(6), (7)
				7.5.3(D)(1)(a) – (d)
				7.5.3(D)(1)(d)2.a. – c.
				7.5.3(D)(2)
				7.5.3(D)(2)(a)
				7.5.3(D)(2)(b)1., 2.
			Added	7.5.3(E) – (H)
				7.5.4, 7.5.5
				7.5.6
				7.5.7(A), (C)
				7.5.8(intro)
				7.5.8(C)(3), (4)
				12.4
				3.16.2(C)
				3.19.3(intro)
				3.19.3(A), (B), (D)
				3.20.2(D), (E)
				3.20.4(C)
				3.21.3(C)
				3.21.6
				3.22.4(D)
				3.22.5(B)(7)
				4.2.3(D)(6)(b)
			Added	4.4.1(B)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
			Rnbd	4.4.1(B) – (D)
			as	4.4.1(C) – (E)
				4.4.5(D)(1)(j)
				5.1.3(Table 5.1-2)
				5.4.2(Table 5.4-1)
			Added	5.2.1(J)
			Rnbd	5.2.1(J) – (N)
			as	5.2.1(K) – (O)
			Rpld	5.4.7(D)(1)(a)
			Rnbd	5.4.7(D)(1)(b) – (g)
			as	5.4.7(D)(1)(a) – (f)
				6.4.2(B)
				7.1.5(A)(4)
				7.2.5(H)(3)
				7.2.5(B)(1)(c)
				7.2.5(C)
				7.2.13(A), (C)
				7.2.13(C)(1)(a)
				7.2.13(E)
				7.3.1
			Rnbd	Table 7.3-2
			as	Table 7.3-1
			Rnbd	7.3.4
			as	7.3.3
			Rnbd	7.3.5
			as	7.3.4
				7.3.4(intro)
				7.3.4(D)
			Rnbd	Table 7.3-3
			as	Table 7.3-2
				7.3.4(Table 7.3-2)
				7.3.6

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				7.3.8(E)
				7.10.3(B)(1)
				8.2.3(G)(2)
				8.3.2
				9.3.2(H)(2)(c)
			Added	9.3.2(H)(6), (7)
				9.3.2(V)(2)
				9.6.1(Table 9.3-3)
				9.6.4(F)
				9.6.4(J)(2)
				9.8.1
				9.8.3(E)
				9.10.3(B)
				9.11.6(A)
				9.16(A), (B)
				11.4.3(B)
				11.5.1(intro ¶)
				11.5.1(A)
				11.5.2(intro ¶)
				11.5.2(C)
				12.3.2(A)(2)
				12.3.3(D)(2)
				12.3.5(A)(1)
2007-21	12-13-07			3.4.1(D)
				3.8.2(E)
				3.8.4(A) – (D)
			Added	3.8.4(E)
				3.8.5
			Added	3.8.6
				3.23
				3.23.1
				3.23.4(A) – (D)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Section		Section this Code
				3.23.4(G)(6)
				3.23.4(H)
				3.23.5(A)
				3.23.6(A) – (D)
				4.2.2(K)(4)(h) (Table 4.2-1)
				4.4.2(H)(5)
				5.2.2(B)(1)(a)
				5.2.2(B)(2)
				5.4.7(G)
				6.1.1(B)
				7.2.4(D)(3)
				7.2.14(D), (E)(1)
				7.5.3(H)(5)
				7.5.7(A)
				7.8.2(C)(4)
				7.8.2(D)(1) (Table 7-8.1)
				7.8.2(E)(1) (Table 7-8.3)
			Added	7.8.2(G)(8)
				7.10.1
				7.10.3(A)
			Added	7.10.6
				8.1.4(D)
				9.3.2(A), (F)
				9.3.2(X)(1)(f), (g)
				9.6.4(C)
				9.8.3
				9.8.5
				10.4.2
				11.2.2(A), (B)
				11.3.1
				11.5.1
				12.4

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
2008-03	1-24-08	3-1-08	Added	8.6
2008-07	5-8-08	7-1-08		7.11
2008-LDO-01	9-25-08	11-30-08		3.1.6
				3.9.2(B), (F), (H)
				3.9.3(E), (F)
				3.23.2(A)
				3.23.4(D), (J)
				3.23.5(B), (D)
				4.2.2(N)
				4.2.3(D)(7)
				4.4.4(B), (D)
				4.4.6(D), (F), (Table 4.4-4), (Table 4.4-5), (G), (H)
				5.1.2 (Table 5.1-1)
				5.1.3 (Table 5.1-2)
				5.1.4 (Table 5.1-3)
				5.2.1(E)-(L)
				5.2.2(B)
				5.2.3(N)
				5.2.4(A), (B), (D), (F)
				5.3.2(D)
				5.3.4(C), (I)
				5.4.1
				5.4.2 (Table 5.4-1)
				5.4.6(A)
				6.1.1(B)
				6.1.2
				6.1.3 (Table 6.1-2)
				6.2.2(A)
				6.3.1

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
				6.4.2
				7.2.3(A), (B), (D)
				7.2.4
				7.2.6
				7.2.7(J)
				7.2.8(C)
				7.2.9
				7.2.10
				7.2.14(B), (F), (I), (Table 7.2-5), (Table 7.2-6)
				7.3.3
				7.3.6(G)
				7.5.3(G), (H)
				7.7.3
				7.8.2(C)(4), (C)(8), (D)(1), (Table 7.8-1), (G)(8)
				7.10.3
				7.10.4(A)
				8.1—8.6
				9.1.2(C)
				9.1.5(A)-(D)
				9.3.2(P), (V), (X)
				9.4
				9.6, 9.6.1, Table 9.3-3, 9.6.2, 9.6.3
				9.8.2
				9.11.6
				11.4.3
				12.3.3(D)
				12.4

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
2009-LDO-01	2-12-09	3-12-09		3.9.3(E)
				4.2.3(B), (D)
				7.2.3(A), (D)
				7.2.4(A) - (F), (H)
				7.2.5(B), (D)
				7.2.6(A), (C), (D)
				7.2.9(D), (E), (H) - (L)
				7.2.10
				7.2.13(A) - (D)
				7.4.3(G) - (J)
			Added	8.6.3
				12.4
2009-LDO-02	3-26-09	4-27-09		4.4.3
				8.4
				12.4
2009-LDO-03	5-14-09	6-15-09		Table 4.2-1
				8.1.2
				9.3.2(E), (G), (H), (N), (P)
				9.9.2
				9.11.1—9.11.8
				10.5.1
				10.5.3(C)
				12.4
2009-LDO-04	7-23-09	7-23-09		10.1.6
				10.1.7
				10.1.8
				10.2.1
				3.11
2009-LDO-05	7-23-09	7-23-09		7.11.11(E)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
2009-LDO-06	8-13-09	8-13-09		3.1.5(A)
				Table 3.1-1
				3.1.9(B)
				3.4.1(B), (F)
				3.4.2
			Added	3.4.5
				3.19.2(C)
				4.4.1
				4.4.2
			Added	4.5
2010-LDO-01	1-14-10	1-14-10		1.9
				3.9.2(B)
				3.14.2(D)
				3.21.2
				3.21.3
			Added	3.24
				4.2.3(D)
				4.4.4
				4.4.6
				5.1.2
				5.1.3
				5.1.5
				5.2.2(B), (C), (E)
				5.2.3
				5.3.2(D)
			Added	5.3.4(K)
				6.1.1 - 6.1.4
				6.3.1(H)

LAND DEVELOPMENT ORDINANCE DISPOSITION TABLE

Ordinance Number	Adoption Date	Effective Date		Section this Code
				6.3.2
				7.2.6
				7.2.7(C)
				7.2.13
				7.2.14(G)
			Added	7.3.7
				7.5.2(B)
				7.5.3(G)
				7.8.2(C)
				7.8.3
				8.1.1
				8.1.4(D)
				11.2.1
				11.2.2
				12.3.1(C)
				12.3.3(I)
				12.3.4(L), (M)
				12.4
2010-LDO-02	1-28-10	1-28-10		Tables 5.1-1, 5.1-2
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				10.3.6
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2010-LDO-04	9-30-10	9-30-10	Added	8.1.9
2010-LDO-05	12-16-10	12-16-10		3.1.6
				Table 3.1-1
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				Table 7.8-1
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				7.8.6
				7.11.8
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				10.3.3
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				12.4
2011-LDO-02	4-14-11	4-14-11	Added	Ch. 9A
			Added	Ch. 9B
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2011-LDO-05	12-15-11	12-15-11		Tables 5.1-1, 5.1-2, 5.1-3
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2012-LDO-02	3-7-12	3-7-12		3.10
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2012-LDO-05	6-14-12	7-1-12		8.2.3
			Rpld	8.2.4
			Added	8.2.4
2012-LDO-06	8-9-12	8-9-12		Table 2.1-1
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2013-LDO-01	2-13-13	3-1-13		3.4.1, 3.4.5, 3.9.2, 3.10.2, 3.23, 3.26.2
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2013-LDO-02	6-13-13	6-13-13		Table 2.1-1
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2013-LDO-04	9-26-13	9-26-13		Table 2.1-1
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2013-LDO-07	12-19-13	12-19-13		Table 3.19-1
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2014-LDO-01	1-9-14	1-9-14		3.1.6, 3.4.2, 3.4.3, 3.9.3, 3.21.4, 3.21.5, 3.22.6
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			Added	3.27
				4.4.1
			Added	4.4.7
				11.3.1
			Added	11.4.9
2014-LDO-03	8-14-14	8-14-14		2.8.2
				3.1.6, 3.1.9, 3.4.1, 3.4.3, 3.5.1, 3.5.2, 3.8.2, 3.9.2, 3.10.2, 3.11.3, 3.11.5, 3.11.7, 3.12.1, 3.12.2, 3.13.1—3.13.7, 3.20.4, 3.21.4, 3.25.3, 3.25.6, 3.26.2
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				9A.3.1
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				4.4.2
2015-LDO-001	4-21-15	4-21-15		1.4.2, 1.4.4
				3.1.6, 3.4.1, 3.4.5, 3.19.1, Table 3.19-1, 3.26, 3.27.2
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2015-LDO-002	6-25-15	6-25-15		4.4.3
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2015-LDO-003	7-23-15	7-23-15		3.2.2, 3.3.2, 3.4.1
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2015-LDO-006	12-10-15	12-10-15		1.6.5
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				4.2.2, 4.2.3, 4.4.6
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			Rpld	5.1.5
				7.2.3, 7.2.9, 7.2.11, 7.9.3
				8.1.4, 8.1.5, 8.1.7
			Rpld	8.6
				9.3.2
				9A.1.1
				9B.2
				11.7.1
2016-LDO-01	7-25-16	7-25-16		3.9.2, 3.9.3, 3.14.5, 3.17.8, 3.19.1, 3.19.2
				Tables 4.2-1, 4.2-2
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				Table 6.1-2
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				11.7.1, 11.7.2
				12.4
2017-LDO-01	1-24-17	1-24-17		1.4.1—1.4.4
				2.6.2
				3.1.9, 3.2.2—3.2.4, 3.4.1, 3.4.4, 3.4.5
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				8.1.1, 8.1.3, 8.1.4, 8.2.3, 8.2.6, 8.5.3, 8.5.5
				10.1.8
				12.4
2017-LDO-02	3-30-17	3-30-17		3.4.1, 3.4.2
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				6.3.2
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2017-ACT-01	10-26-17	10-26-17		3.9.2, 3.19.3, Table 3.1-1
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				4.5.2
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				7.8.2
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2018-LDO-01	5-3-18	5-3-18		3.27.1, 3.27.2
				Tables 5.1-1, 5.1-2; 5.2.4
				Table 6.1-3
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2018-LDO-02	8-9-18	8-9-18		Table 2.1-1; 2.3.2, 2.6.2
				3.2.4, 3.3.2, 3.4.1, 3.4.2, 3.4.3, 3.4.5, 3.9.2, 3.27.1
2018-LDO-03	11-15-18	11-15-18		3.9.3
				5.2.4
				7.10.6
				8.1.3, 8.1.4, 8.1.5
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2018-LDO-04	12-13-18	12-13-18		5.2.4
2019-LDO-01	9-26-19	9-26-19		Table 2-1.1
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				5.2.4
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			Rpld	3.23
2019-LDO-02	11-21-19	11-21-19		7.3.3, 7.5.2, 7.5.3
			Added	7.5.9
				12.4
2019-LDO-03	10-10-19	10-10-19	Added	1.11
				2.8.2
				3.1.6, 3.4.1 - 3.4.3, 3.4.5, 3.8.1, 3.8.4, 3.9.2, 3.12.1 - 3.12.4, 3.13.1 - 3.13.7, 3.19.2, 3.21.3, 3.22.6, 3.27.1, 3.27.2
			Added	3.1.14
			Rpld	3.20.7, 3.25.6
				4.4.3, 4.4.6, 4.5.1
				5.2.4, 5.4.5, 5.4.6
				7.2.14, 7.3.6, 7.4.3, 7.5.1 - 7.5.3, 7.5.6
				8.1.4, 8.1.5
				11.2.3, 11.4.6
				12.4
2019-LDO-04	12-12-19	12-12-19		3.9.2, 3.19.1
				6.1.3, 6.4.1, 6.4.2
				12.4
2020-LDO-01	5-7-20	5-7-20		3.1.6, 3.4.1, 3.4.3, 3.20.2, 3.20.4
				4.5.2
				5.1.2, 5.2.1, 5.3.2
				6.1.1
				7.2.4, 7.8.1, 7.8.2
				8.1.4, 8.2.6
				9.3.3
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2021-LDO-01	6-24-21	6-25-21		1.2, 1.3, 1.4.1, 1.5.1, 1.6.1, 1.6.3, 1.6.5, 1.10.2, 1.10.3
			Added	1.12
				2.1.3, 2.3.2, 2.4.2, 2.5.1, 2.5.2, 2.6.2
			Added	2.8.3
				3.1.1, 3.1.4 - 3.1.7, 3.1.9, 3.1.10, 3.1.14, 3.2.1 - 3.2.4, 3.3.2, 3.4.1 - 3.4.3, 3.4.5, 3.6.1, 3.8.2 - 3.8.4, 3.8.6, 3.9.1 - 3.9.3, 3.11 - 3.11.4, 3.12.2, 3.13.1, 3.13.3, 3.13.5, 3.14.1 - 3.14.3, 3.15.1, 3.15.2, 3.17 - 3.17.8, 3.18, 3.19.1, 3.19.2, 3.20.4, 3.20.8, 3.21.2 - 3.21.4, 3.21.6, 3.22.1 - 3.22.4, 3.22.6, 3.24 - 3.24.2, 3.25.3, 3.25.7, 3.27.1, 3.27.2
			Added	3.1.15, 3.1.16
			Rpld	3.9.4, 3.10
				4.1.3, 4.2.2, 4.3.2, 4.3.4, 4.3.6, 4.4.2, 4.4.3, 4.4.5, 4.4.6, 4.5 - 4.5.2
			Rnbd	4.2.3 to 4.5.3
			Rpld	4.3.5
				5.1, 5.1.2, 5.2.1, 5.2.3, 5.2.4, 5.3.4, 5.4.2, 5.4.6, 5.4.7
				6.1.1, 6.2.2, 6.3.1, 6.3.2, 6.4.2
				7.1.2, 7.1.3, 7.2.2 - 7.2.9, 7.2.11 - 7.2.14, 7.4.3, 7.5.2, 7.5.3, 7.5.8, 7.6.3, 7.7.2 - 7.7.7, 7.8.2, 7.8.3, 7.8.6, 7.9.1, 7.9.2, 7.10.3, 7.10.4
				ch. 8 (title), 8.1 - 8.1.5, 8.1.7, 8.1.8, 8.2 - 8.2.2, 8.3, 8.3.1, 8.5.4
			Rnbd	8.2.6 to 8.1.9
			Rpld	8.2.5, 8.3.1
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