

## **CHAPTER 8: STANDARDS FOR USES REQUIRING DEVELOPMENT PLANS**

### **8.1 GENERAL PROVISIONS**

- 8.1.1 General Design Standards
- 8.1.2 Phasing Plan Requirements
- 8.1.3 Required Improvements
  - (A) General Requirements
  - (B) Exceptions to General Requirements
- 8.1.4 Improvements
  - (A) Streets
  - (B) Curbs and Gutters
  - (C) Storm Drainage
  - (D) Sidewalks
  - (E) Utilities
  - (F) Street Signs
  - (G) Street Lights
  - (H) Easements
  - (I) Greenways, Street-Side Trails and Private Trail Connectors
  - (J) Public Transit Infrastructure
- 8.1.5 Payment of Fees in Lieu of Required Improvements
- 8.1.6 Restrictions on Certificate of Occupancy
- 8.1.7 Timing and Inspection of Improvements
  - (A) Fire Protection
  - (B) Level Required for Final Plat Approval or Issuance of Certificate of Occupancy if No Plat is Required
  - (C) Level Required for Certificates of Occupancy
  - (D) Connection of New Streets to Streets within Existing Developments
  - (E) Construction Traffic; Use of Alternative Routes
  - (F) Completion of Improvements
- 8.1.8 Final Acceptance of Improvements for Town Maintenance
- 8.1.9 Subdivision Monuments, Blocks, and Lots
  - (A) Monuments and Markers
  - (B) Blocks
  - (C) Lots

### **8.2 RECREATION AREAS**

- 8.2.1 Dedication Land for Parks and Greenways
  - (A) General Provisions
  - (B) Amount of Park Land to be Dedicated
  - (C) Nature of Park Land to be Dedicated
  - (D) Dedication of Greenway Land
  - (E) Procedure for Dedication of Park Land and Greenway Land
  - (F) Submission of Deed and Survey
- 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
  - (B) Funds for Multi-Family Dwelling Units Not Requiring Subdivision Plan Approval

**8.3 PRIVATE OPEN SPACE**

8.3.1 Private Open Space

**8.4 ALTERNATIVE DEVELOPMENT OPTION: CLUSTER RESIDENTIAL SUBDIVISIONS**

8.4.1 Purpose

8.4.2 Applicability

8.4.3 Approval of Cluster Site and/or Subdivision Plans

8.4.4 Allowable Density, Lot Size and Open Space Requirements

8.4.5 Calculating Base Number of Lots

8.4.6 Maximum Density, Minimum Lot Size and Open Space Requirements

8.4.7 Basic Requirements for Cluster Development

8.4.8 Provision and Maintenance of Open Space and Facilities

**8.5 ALTERNATIVE DEVELOPMENT OPTION: TRADITIONAL NEIGHBORHOOD DEVELOPMENT**

8.5.1 Purpose

8.5.2 Applicability

8.5.3 General Principles

(A) Neighborhood Size

(B) Interconnected Street Pattern

(C) Mix of Land Uses and Diversity of Housing Types

(D) Mixed Use Center

(E) Civic Buildings and Uses

(F) Public Spaces

(G) Location of Buildings and Relationship Between Buildings

(H) Relationship Between Building Types

8.5.4 Development Standards

(A) Minimum Development Size

(B) Permitted Types and Mix of Land Uses

(C) Permitted Densities

(D) Dimensional Standards

(E) Additional Standards

8.5.5 Design Standards

8.5.6 Approval Process

**Chapter 8: STANDARDS FOR USES REQUIRING DEVELOPMENT PLANS****8.1 GENERAL PROVISIONS**

<b>TABLE 8.1-1: REQUIRED DEDICATIONS AND IMPROVEMENTS FOR DEVELOPMENT PLANS</b>	
<b>Requirement or Improvement</b>	<b>See Section</b>
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);

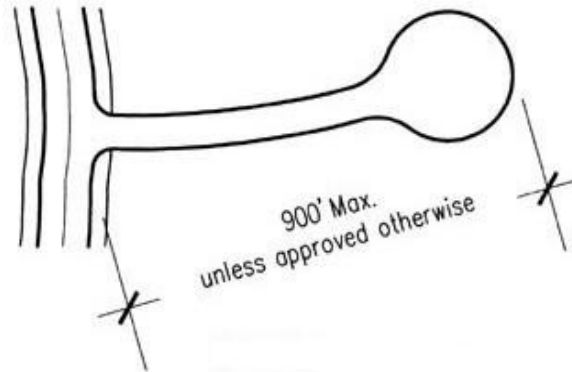
- (b) The cumulative addition of the greater of five thousand (5,000) square feet to an existing structure, or the replacement of a demolished structure or five percent (5%) of the total square footage of the buildings on the site, provided such cumulative addition does not generate one hundred (100) 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**

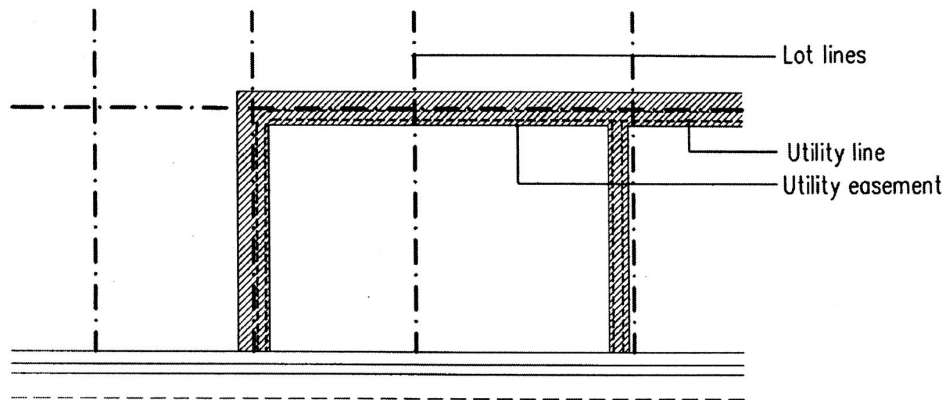
- (1) Developments shall comply with the requirements set forth in Sections 14.4, Soil Erosion and Sedimentation Control, and 14.7, Flood Damage Prevention, of this Ordinance and the following standards:
- (a) No surface water drainage from the site shall empty into a sanitary sewer.
  - (b) The size, 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 Development Review Committee 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; Ord. No. 2023-LDO-04, 11-16-23)

## **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 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).

<b>TABLE 8.4-1: MAXIMUM DENSITY, MINIMUM LOT SIZE AND OPEN SPACE REQUIREMENTS</b>			
<b>District</b>	<b>Maximum Allowable Development Density in District</b>	<b>Minimum Lot Size (sq. ft.)</b>	<b>Bonus Open Space Required Per Additional Lot (sq. ft.)</b>
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; Ord. No. 2023-LDO-04, 11-16-23)

## **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**

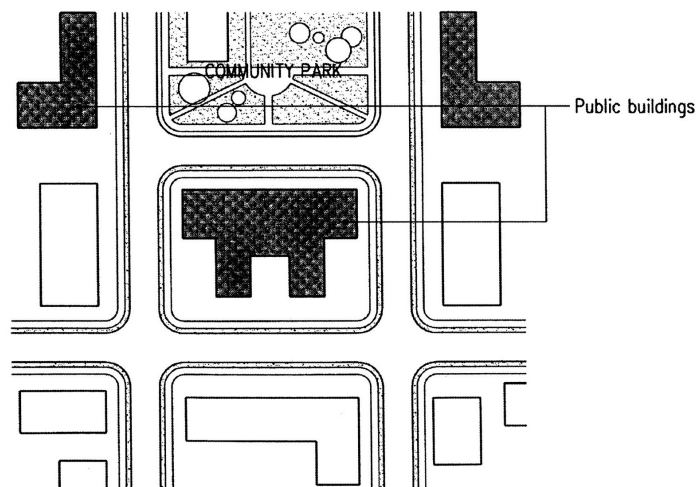
TNDs should be structured to provide a balanced mix of uses, including residential, retail, employment, civic, and recreational uses, all within the same development. The integration of uses allows residents to meet more of their daily needs through shorter trips. In addition, provision of a variety 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**

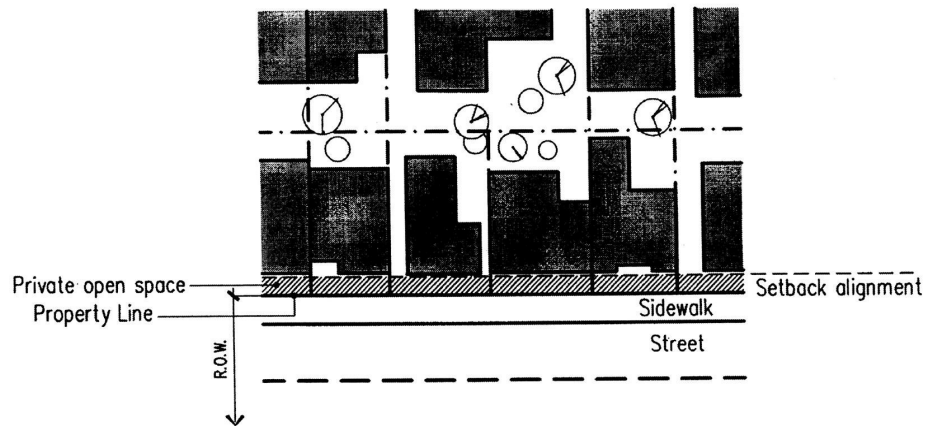
Public buildings and uses, including government offices, museums, schools, and libraries, serve as focal points and landmarks for the community within TNDs and should be located on prominent sites.



**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)