

STAFF REPORT

Town Council, July 23, 2015

Land Development Ordinance Text Amendments Round 31 (PL15-046b)

Consider proposed Round 31 amendments to the Land Development Ordinance (LDO)

Speaker: Ms. Mary Beerman

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Approved by: Benjamin T. Shivar, Town Manager

Approved by: Russ Overton, Assistant Town Manager

EXECUTIVE SUMMARY

Staff has compiled a series of amendments to the Land Development Ordinance (LDO) in response to concerns raised by Town Council, citizens and staff.

A public hearing on Round 31 LDO Amendment Items A through E was conducted by Town Council on March 26, 2015. Amendment Items B, D and E were discussed at the Planning and Zoning Board work session on April 27, 2015, and its regular meeting on May 18, 2015. The board [recommended approval](#) of Items B, D and E, including Option 2 under Item D, by a vote of 7-0. Items A (*Connectivity*) and C (*Low-Density Residential Development Standards*) were referred back to a Council work session (scheduled for July 21).

Staff recommends approval of Round 31 Items B (*Buffer and Tree Protection Enforcement*) and E (*Technical, Procedural and Minor Amendments*), and no changes (Option 1) regarding Item D (*Motor Vehicle Restoration*).

OVERVIEW

SCHEDULE:

Public Hearing	March 26, 2015
Planning and Zoning Board Work Session	April 27, 2015
Planning and Zoning Board Meeting	May 18, 2015
Final Action by Town Council	July 23, 2015
Effective	July 23, 2015

SUMMARY OF PROPOSED AMENDMENTS:

A brief description of each proposed amendment is provided below. More detailed background information is included in the section of this report entitled "DETAILS REGARDING PROPOSED LDO AMENDMENTS". Additional time-sensitive items may also be added prior to the public hearing.

Item B BUFFER AND TREE PROTECTION ENFORCEMENT – The proposed amendment would increase fines and revegetation requirements where buffers, streetscapes and other required landscape areas are disturbed in violation of the LDO.

There were no speakers on this item at the public hearing, and no discussion by Town Council. The Planning and Zoning Board recommended approval by a vote of 7-0.

Item D MOTOR VEHICLE RESTORATION – The proposed amendment would allow restoration of motor vehicles in portions of the Town Center, subject to use-specific standards. *There were no speakers on this item at the public hearing. There was discussion by Town Council regarding applicability to an existing use at 523 W. Chatham Street. The Planning and Zoning Board recommended approval of Option 2 (would allow vehicle repair in MXD and HMXD subdistricts of Town Center subject to certain requirements) by a vote of 7-0. Staff recommends approval of Option 1 (no change to existing regulations). Additional detail is provided in the Item D section of this staff report.*

Item E TECHNICAL, PROCEDURAL AND MINOR AMENDMENTS

There were no speakers on this item at the public hearing. A council member asked for clarification regarding the proposal to prohibit roosters in the R-40 and R-80 districts. The Planning and Zoning Board discussed the details of the proposed amendment at its work session on April 27, 2015.

Proposed technical, procedural and minor amendments would:

- Clarify time frames for Planning & Zoning Board and Town Council action on comprehensive plan amendments, LDO text amendments, and rezonings;
- Prohibit the keeping of roosters in the R-40 and R-80 zoning districts on lots smaller than five acres, in response to a citizen request;
- Clarify that a required 30-foot roadway setback adjacent to a “collector” applies to collector *avenues*, not collector *streets* (which are classified as “Other Streets” for purposes of determining building setbacks);
- Correct various cross-references to LDO sections;
- Clarify requirements for landscape areas on individual lots;
- Clarify requirements for placement of underground utilities; and
- Clarify the process for acceptance of infrastructure constructed by others.

FISCAL IMPACT:

As a result of continuing to review these proposed changes to the LDO, staff believes that implementation of most of the proposed changes included in items B, D and E will be absorbed by existing staff during the review and approval process for various development applications and/or construction plan submittals. However, it is anticipated that changes related to fines associated with and enforcement of severe pruning violations will increase staff workload. In addition, there will be costs associated with an intended mail notification to all of the Town’s non-residential developments to make them aware of the changes. It should be generally noted that LDO amendments have had, and continue to have, a cumulative impact on staff resources that may adversely impact the time needed for review of development proposals or increase the amount of zoning enforcement required.

STAFF RECOMMENDATION: Staff recommends approval of Item B (*Buffer and Tree Protection Enforcement*) and Item E (*Technical, Procedural, and Minor Amendments*). Staff recommends approval of Option 1 for Item D (*Motor Vehicle Restoration*), which would retain current standards. If changes are desired, staff recommends approval of Option 2, which would allow motor vehicle repair in the HMXD and MXD subdistricts of the Town Center, subject to use-specific standards.

DETAILS REGARDING PROPOSED LDO AMENDMENTS

ITEM B – BUFFER AND TREE PROTECTION ENFORCEMENT

BACKGROUND

On April 24, 2014 Town Council requested that staff review current regulations related to protection of buffers and other landscape areas, and identify options for strengthening standards and enforcement provisions related to protection of these areas. Concern with tree protection and consequences of unauthorized removal of vegetation became of heightened concern to citizens, council and staff after several instances where healthy, mature trees and other vegetation had been removed from established buffers and streetscapes in violation of the LDO. Even if vegetation is replaced in such areas, it can take years of tree growth to regenerate the tree canopy.

Further discussion on this topic occurred at the December 9, 2014 Town Council Work Session. Based on discussion and council direction provided at the work session, Staff has developed proposed changes to the LDO for consideration. These changes seek to require revegetation of buffers, streetscapes or other landscape areas that have been disturbed or removed to the extent feasible, while taking into account the challenges and limitations encountered in duplicating performance standards that have resulted from years of natural growth. The proposed amendment would require replanting of vegetation to the extent feasible, such that the required performance standard can be achieved in a sustainable manner considering site-specific factors affecting plant growth. Fines applicable to unauthorized removal of vegetation are also increased, particularly where large mature trees that cannot be replaced have been removed.

If the proposed amendments are adopted, staff recommends that notification be sent to owners of non-residential properties, as part of an outreach effort in inform the community of these changes.

SUMMARY OF PROPOSED CHANGES

Proposed substantive changes to the LDO are summarized below. Except where indicated otherwise, Section numbers listed in the following table are for the proposed text, renumbered and reorganized as explained below under “Reorganization and Renumbering of Section 7.2.13 and Chapter 11”

Replacement of Vegetation	Section Number
Minimum number of replacement evergreen trees: Increase from 2 to 6 per 2,000 square feet. Where an opaque performance standard is required, plant in staggered double rows, with a species that provides foliage from the ground up.	11.5.2(B)(1)(c)
Minimum size of replacement ornamental trees: Increase from 1.5 to 2 caliper inches <i>(consistent with size required for initial planting.)</i>	
Flexibility for staff to approve increase or reduce amount of required vegetation: Flexibility provided to maximize performance standard for replanted buffer or landscape area, taking into account unique existing vegetation and site factors affecting long term plant growth and viability. Fines would be assessed in lieu of any vegetation not required to be planted.	
Clarification regarding intent of Type A or opaque buffer: Clarify that intent is to provide greatest degree of screening that is feasible, acknowledging that in some cases opacity may not be achievable. The current standards are difficult to implement and enforce in situations where there are existing trees within a buffer/streetscape that do not allow enough room and/or sunlight for the required evergreen plants to thrive and create an opaque screen. The proposed amendment would authorize the	11.5.2(B)(1)(d)

Planning Director to modify planting requirements in such cases, based on specified criteria.	7.2.3(D)(1)(a) 4.3.5(D)
Fines	Section Number
For entering a required tree protection area: Increase from \$1,000 to \$2,000	7.2.13(D) 11.5.2(B)(2)(b)
Per square foot of disturbed area: \$4 per square foot <i>(instead of existing range of \$2 to \$4 per square foot)</i>	7.2.13(D) 11.5.2(B)(2)(c)
Per caliper inch not replaced: Where the required amount of replacement vegetation (based on the area disturbed and or the caliper inches or trees removed) exceeds the amount of vegetation that can be replanted given site constraints and good horticultural practices, the amount of required vegetation may be adjusted, with a fine of \$100 per caliper inch assessed for the landscape material not planted.	7.2.13(D) 11.5.2(B)(2)(d)
<i>(Current provisions that allow a portion of the required plant material to be planted in off-site open space not owned or controlled by the Town are proposed to be eliminated).</i>	11.5.2(B)(2)(d) 7.2.5(E)
For Severe Pruning: Assess fine of \$50 per shrub or caliper inch for first violation. For subsequent violations \$1,000 plus \$100 per shrub or caliper inch.	11.5.2(C)(2)
<i>(Current fines: no fine for 1st violation; \$100 per shrub or caliper inch for second violation; and \$1,000 plus \$100 per shrub or caliper inch for subsequent violations)</i>	7.2.13(D) <i>(existing)</i>
Disturbing buffers or streetscapes located within individual lots: Require only a revegetation plan, and do not impose a fine when the disturbance occurs within buffers and streetscapes included within existing single-family lots.	11.5.2(B)(2)(a) 11.5.2(B)(1)(e)
<i>(For subdivisions approved prior to 1999, buffers/streetscapes were included within lots; enforcement of tree disturbance in such areas has been problematic. Based upon staff's experience, most single-family lot owners are unaware that their lot is encumbered with a buffer/streetscape area).</i>	
Other	Section Number

<p>Definition of “disturbed area”: Clarify that disturbed area is land that has been subjected to: the removal of trees, shrubs, or vegetative cover; or earthmoving activities, such as the addition of fill or installation of impervious surface.</p>	11.5.2(B)(2)
<p>Appeals: Appeal of the Planning Director’s decision regarding a fine or the amount of replacement vegetation would be made to the Zoning Board of Adjustment pursuant to Section 3.21. <i>(Currently, appeal of the Planning Director’s decision regarding the amount of replacement vegetation is made to The Town Council (existing Section 7.2.13(A)(3), while appeal of the amount of a fine is made to the Town Manager (existing Section 11.2.2(B))</i></p>	11.2.2(D)
<p>Penalties for unauthorized clear-cutting of trees: Town Council may consider reducing 5-year delay in approval of building permit or development plan based on criteria <i>(instead of Planning Director as currently allowed).</i></p>	Table 11.5-1
<p>Applicability to Previously-Approved Development Plans: Clarify that that all existing buffers, streetscapes and other required landscaped areas must remain undisturbed, and any unauthorized disturbance will result in penalties including fines and revegetation</p>	7.2.2(D) 7.2.13(A)

Reorganization and Renumbering of Section 7.2.13 and Chapter 11

In addition to the substantive changes summarized in the table above, the proposed amendment includes reorganizing and renumbering the following portions of the LDO in their entirety:

- Section 7.2.13 (*LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines*) - These changes include moving the specific requirements for replacement of vegetation and payment of fines for unauthorized removal of vegetation from Section 7.2.13 to Chapter 11 (*Enforcement.*).
- Chapter 11 (*Enforcement*) - These changes are needed to absorb requirements currently found in Section 7.2.13 for replacement of vegetation and payment of fines for violations in a manner that improves clarity and organization, for ease of understanding by citizens as well as staff.

Copies of the existing LDO text for Section 7.2.13 and Chapter 11, notated to indicate the corresponding section number in the proposed text, are available upon request.

Corresponding Update of Community Appearance Manual

If the proposed changes are adopted, then the text and exhibits of the Community Appearance Manual will be revised for consistency, and brought forward to Town Council at a later date for review and approval.

PROPOSED TEXT

4.3.5 CONDITIONAL USE DISTRICTS: Applicable Regulations

- (D) In some cases, the ability to implement or strictly follow approved conditional use zoning conditions can be problematic (e.g., 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 required by condition that may be beyond the Town's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;

- (2) Specimen or champion trees required by condition to be preserved, but that 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 verses re-forestation.
- (3) Type A or opaque buffers required by conditions to be preserved or provided, where achieving opacity may not be feasible due to a combination of the factors specified in Section 7.2.3(D)(1)(a).

7.2.3 LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Requirements for Perimeter Buffers and Landscape Areas

(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, Opaque

- (1) This perimeter buffer is intended to function as an opaque screen provide the greatest degree of screening feasible from the ground to a height of at least eighteen (18) feet. This type of buffer prevents and minimize visual contact between uses and creates, creating a strong impression of total separation from the ground to a height of at least eighteen (18) feet. Vegetative material within this buffer should shall meet the following criteria:
 - 1- a) Upper story trees shall be planted at a density of four (4) trees for every 100 linear feet of buffer, with a maximum spacing of thirty (30) feet between trees. Existing vegetation or planted uUpper-story deciduous and evergreen trees shall attain a height at maturity of no less than sixty (60) feet.
 - 2- b) Evergreen understory trees shall be planted at a density of fourteen (14) trees for every 100 linear feet of buffer, with a maximum spacing of ten (10) feet between trees. Existing vegetation or planted uUnderstory evergreen trees shall attain a height at maturity of no less than eighteen (18) feet.
 - 3- At least fifty percent of the required upper story trees, and all of the required understory trees and shrubs, shall be evergreen species which are locally adapted to the area
 - 4- c) Upper story trees shall be spaced no wider than twenty (20) feet, understory trees shall be spaced no wider than fifteen (15) feet, and evergreen shrubs Type A buffers that are wider than 30 feet shall also incorporate shrubs planted at a density of 10 shrubs per 100 linear feet of buffer. Shrubs shall attain a height at maturity of no less than six (6) three (3) feet and shall be spaced no wider than five (5) feet between plants.
 - 5- d) The Type A buffers may include a wall, fence, landscaped earthen berm, planted vegetation, existing vegetation, or any appropriate combination of these elements.

6. ~~Streetscapes required to be planted meeting the planting standard for a Type A opaque buffer shall also incorporate ornamental trees spaced no wider than twenty (20) feet.~~

(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, Semi-Opaque

~~This perimeter buffer is intended to~~ functions as a semi-opaque screen from the ground to at least a height of six (6) feet. Vegetative material within this buffer ~~should shall~~ meet the following criteria:

1. ~~Existing or planted deciduous and evergreen trees~~ Mid- or upper-story trees shall be planted at a density of four (4) trees for every 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 16 shrubs for every 100 linear feet of buffer, with a maximum spacing of eight (8) feet between shrubs. At least seventy-five (75) percent of the required shrubs shall be an evergreen species locally adapted to the area.
3. ~~Minimum spacing shall generally be no wider than thirty (30) feet between tree trunks (but may be wider depending on tree type), with evergreen shrubs spacing ranging from five (5) to eight (8) feet on center.~~
43. ~~Composition of the Semi-Opaque 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, Aesthetic

This buffer area is intended to functions 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 ~~should~~ shall meet the following criteria:

1. ~~Existing or proposed tree plantings and shrubs of deciduous and evergreen species may be installed in either a random, clustered, and/or linear fashion~~ Upper-story trees shall be planted at a density of three (3) trees for every 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. ~~Minimum spacing shall generally be no wider than forty (40) feet between upper-story tree trunks and no wider than twenty (20) feet between ornamental tree trunks~~ Understory or ornamental trees shall be planted at a density of five (5) trees for every 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. ~~Composition of the 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 spread across evenly distributed throughout the entire span of 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, and not always planted in a row or rows. In some cases, planting in a row or rows is necessary to achieve the desired performance objective. Specifically, In cases where the entire buffer width may not be needed to achieve the desired performance objective of the buffer type; however, the remainder of the buffer 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 ~~three to~~ five years).
- (c) When detailed information regarding existing vegetation is not available at the time of site or subdivision 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~~
- (d) ~~Consistency with the types of buffers required may be achieved by following the requirements set forth below or another alternative that meets the performance requirements.~~
- (e) In instances where planting requirement calculations produce a fraction, the plants shall be rounded up to the next whole number (e.g. 5.1 required shrubs shall equal six provided shrubs).

(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 site 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.

7.2.4 LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Streetscape Landscaping

(D) Plantings in Streetscape

- ~~(1) The property owner or developer shall preserve existing healthy trees or, if none exist, install or maintain one (1) upper-story of at least two (2) inches in caliper for each forty (40) linear feet of streetscape. One (1) understory ornamental tree of at least two (2) inches in caliper for every twenty (20) linear feet is also required.~~
- ~~(2) Shrubs and other types of vegetation shall be planted to meet the performance requirements of the streetscape.~~
- ~~(3) If existing trees that meet the intent of upper-story trees are preserved, then credit will be provided such that these requirements are reduced proportionally.~~
- ~~(4) Where required trees are located under overhead power lines, the selected tree type may reach a maximum height of twenty to twenty-five (20-25) feet at maturity. In place of the required upper-story tree every forty (40) feet, two (2) smaller trees shall be installed or maintained for every forty (40) linear feet of streetscape, in addition to the required understory ornamental trees.~~
- ~~(5) The calculation of road frontage to meet the spacing requirements for trees shall not include driveway widths measured at the right-of-way line. Upper-story trees shall be planted at appropriate distances from public rights-of-way, sidewalks, and other utilities as recommended in the Community Appearance Manual.~~
- ~~(6) Sites with streetscapes that meet all LDO requirements and have a minimum width of at least thirty (30) feet, may cluster understory ornamental trees in accordance with the following requirements:

 - ~~(a) Up to twenty percent (20%) of the required understory ornamental trees (or a minimum of two (2)) along a specific frontage may be relocated elsewhere in the streetscape along the same frontage;~~
 - ~~(b) Gaps that are created between understory ornamental trees may not exceed eighty (80) feet in length; and there shall be a minimum of two hundred (200) linear feet between gaps.~~
 - ~~(c) When understory 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.~~~~

(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. 5.1 required shrubs shall equal six provided shrubs).

(2) Upperstory 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.

(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 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 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.

(4) Power Line Encroachment

Where overhead power lines encroach into the streetscape or buffer, each required upperstory tree may be replaced with two understory trees. The selected tree type may reach a maximum height of twenty to twenty-five (20-25) feet at maturity

(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. 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. The following trees meet this requirement: European Hornbeam (*Carpinus betulus*), Zelkova (*Zelkova serrata*), Chinese Elm (*Ulmus parviflora*), Ginkgo (*Ginkgo biloba*), Chinese pistache (*Pistacia chinensis*) and other similar trees. The following trees shall not be used in these areas: Red Maple (*Acer rubrum*), Sugar Maple (*Acer saccharum*), Ash (*Fraxinus spp.*), Sweetgum (*Liquidambar styraciflua*), Tulip Poplar (*Liriodendron tulipifera*), Pin Oak (*Quercus palustris*) and similar trees.

7.2.5 Tree Protection, Tree Surveys and Replacement Trees

(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 site and/or subdivision 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 ½) 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, ~~the trees may be planted in open space areas on other property within the Town's jurisdiction~~ finances shall be assessed in accordance with Section 11.5.2(B)(2)(d).

7.2.13 LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines (*Replaces existing Section 7.2.13. See "Overview of Proposed Changes" above for a summary of the proposed substantive changes.*)

(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, Section 4.4.4 (Thoroughfare Overlay), by zoning condition(s) or by an approved site and/or subdivision 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 site and/or subdivision 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 site and/or subdivision 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).

Chapter 11 ENFORCEMENT

(Replaces existing Chapter 11. See "Overview of Proposed Changes" above for a summary of the proposed substantive changes.)

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 land use 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.

11.2 RESPONSIBILITY FOR ENFORCEMENT AND APPEALS

11.2.1 Primary Responsibility

Except as specified elsewhere in this Ordinance, the Planning Director shall have primary 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 7.4

(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 7.4 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 NCGS 160A-421. Appeals of all other stop work orders except those issued pursuant to Section 7.4 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 7.4)

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 7.4), 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 30 days of receipt of the first citation issued for the violation.

11.2.3 Inspections

The Directors of Planning, Transportation and Facilities, Water Resources, 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.

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 of 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.

11.4 REMEDIES AND PENALTIES FOR EROSION AND SEDIMENTATION CONTROL VIOLATIONS PURSUANT TO SECTION 7.4

The Town shall have the following remedies and enforcement powers to prevent, correct, stop, abate, or penalize a violation of Section 7.4 of this Ordinance. The remedies provided for violations 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 Permits

The Director may deny or withhold all permits, certificates, or other forms of authorization 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 the permit or other approval is responsible for the violation.

11.4.2 Revoke Permits

Any development permit, certificate, or other form of authorization required under this Ordinance may be revoked when the Director determines that:

- (1) There is a departure from the approved plans, specifications, or conditions as required under the permit;
- (2) The development permit was procured by false representation;
- (3) The development permit was issued in error; or
- (4) There is a violation of any provision of this Ordinance.

Written notice of revocation shall be served upon the property owner, agent, applicant, or other person to whom the permit was issued, or such notice may 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 7.4 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 7.4, 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 7.4.

TABLE 11.4-1 CIVIL PENALTIES FOR VIOLATION OF SEDIMENTATION AND EROSION CONTROL REQUIREMENTS OF SECTION 7.4		
ACTION	DESCRIPTION	MAXIMUM PENALTY
Penalty for Willful Violation	One-time-only civil penalty for the day a willfull violation of the requirements of Section 7.4 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

Unless otherwise specifically provided, in addition to, or in lieu of, such civil penalties or other remedies, violations of the sedimentation requirements set forth in this Ordinance shall constitute a misdemeanor, pursuant to G.S. 160A-175 and G.S. 14-4, as amended, punishable for each day the violation continues by a fine the maximum amount of which exceeds fifty dollars (\$50.00) and/or incarceration for up to thirty (30) days. Furthermore, any person who knowingly or willfully violates the soil erosion and sedimentation control provisions in Section 7.4 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) and/or by incarceration for up to ninety (90) days.

11.4.6 Require Restoration of Disturbed Areas

The Water Resources Director may require a person who engaged in a land-disturbing activity regulated under Section 7.4 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 7.4 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.

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 a Section of this Ordinance other than Section 7.4. The remedies provided for violations 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.

11.5.1 General Remedies and Penalties

(A) Deny or Withhold Permits

The Director may deny or withhold all permits, certificates, or other forms of authorization 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 the permit or other approval is responsible for the violation.

(B) Revoke Permits

Any development permit, certificate, or other form of authorization required under this Ordinance may be revoked when the Director determines that:

- (1) There is a departure from the approved plans, specifications, or conditions as required under the permit;
- (2) The development permit was procured by false representation;
- (3) The development permit was issued in error; or
- (4) There is a violation of any provision of this Ordinance.

Written notice of revocation shall be served upon the property owner, agent, applicant, or other person to whom the permit was issued, or such notice may 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:

1 st day of violation	\$100
2 nd day of violation	\$200
3 rd day of violation	\$300

Each day thereafter that violation continues	\$400
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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. Pursuant to G.S. 160A-175(b) and G.S. 14-4, violation of this Ordinance, with the exception of stormwater related enforcement, shall not constitute a misdemeanor or infraction. 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 building or structure or part thereof is being demolished, constructed, reconstructed, altered or repaired in a hazardous manner; in substantial violation of any state building law or this Ordinance (including violations of approved site and/or subdivision 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 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, and shall state the specific work to be stopped, the specific reasons therefore, and the conditions under which the work may be resumed.
- (3) Notice shall be served on the person doing the work or conducting the violation activity by personal delivery or by certified or registered mail or any of the methods for service of process set forth in G.S. 1A-1, Rule 4 and shall be posted on the site. Notice may also be served by registered or certified mail to the financially responsible person for the project or upon the property owner, if they are to be held responsible for stopping work.
- (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.

11.5.2 Additional Remedies and Penalties For Certain Violations

(A) Clear Cutting of Trees

Failure to comply with the provisions of Section 3.22 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 site and/or subdivision plan approval or building permit issuance, and the requirement to double the amount of required vegetation as would typically be required during the site and/or subdivision 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	Five Year Delay in Approval of	Landscaping Requirements

		Site and/or Subdivision Plans by Town Council	a Building Permit or Site and/or Subdivision Plan*	Doubled During Site and/or Subdivision 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 Town Council 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 Town Council 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

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 the removal of trees, shrubs, or vegetative cover, or land that has been subjected to earthmoving activities, including the addition of fill or installation of impervious surface.

(a) 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.

(b) 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 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.

(c) 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 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 <i>(applicable only where slope is 2.5:1 or greater)</i>		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

(d) 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 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 plant 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.

(e) 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 (\$2000) 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 \$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
1 st 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.

11.56 ENFORCEMENT PROCEDURES

11.56.1 Notice of Violation Procedure

..... violations of the soil erosion and sedimentation control provisions in Section 7.4 of this Ordinance are set forth in Section ~~11.4.3(B)~~-11.4.4.

(A) Notice Required Before Penalty

..... ~~In the case of violations of Section 7.4, violations are subject to the notice provision of Section 11.4.3(B).~~

(E) Extension of Time to Cure

..... citation pursuant to Section 11.56.2.

(F) Corrective Action Taken

.....extension of time granted in Section 11.56.1(E),

11.56.2 Citation Procedure

.....notice of violation pursuant to Section 11.56.1, subject to the penalties and remedies set forth in Section 11.56. assessment procedure for violations of Section 7.4 are set forth in Section 11.4.3(B).

(A) Citation for Violation

..... written citation on the alleged violator by any of the methods specified in Section 11.56.1.

(D) Action for Recovery of Penalty

..... Additionally, if any person against whom a civil penalty has been finally assessed under this Ordinance, ~~or pursuant to Section 17-64 of the Cary Code of Ordinances ("clean streets")~~, seeks a Certificate of Occupancy.....

11.56.3 Summary Removal of Dangerous Signs or Structures.....

11.56.4 Injunctive Relief and Other Remedies...

11.67 ENFORCEMENT OF SIGN REGULATIONS.....

12.4 OTHER KEY TERMS DEFINED

SEVERE OR EXCESSIVE PRUNING

Severe ~~or excessive~~ 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 ~~or excessive~~ 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.....

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ITEM D – MOTOR VEHICLE RESTORATION

BACKGROUND

History of Town Center Regulations

The Land Development Ordinance, when initially adopted in 2003, included creation of the Town Center Zoning District and its 18 sub-districts to implement the Town Center Area Plan (TCAP), adopted in 2002. The area in the TCAP included a number of existing automotive service and repair uses, which had previously existed as conforming uses in the prior commercial or industrial zoning districts. Under the 2003 LDO, new automotive service and repair uses were not permitted within any of the Town Center subdistricts. However, an existing business which had previously been a conforming use could continue as a non-conforming use, provided that it did not cease operation for a period longer than six months.

Initiation of Proposed Amendment

An automotive repair facility located at 523 Old Apex Road, which operated as a legal non-conforming use between 2003 and 2011, ceased operation several years ago. The property remained vacant until it was purchased in August 2014. The new owner renovated the building's interior and began operation of a business specializing in automotive restoration, in violation of the Land Development Ordinance.

At its meeting on December 11, 2014, Town Council directed staff to investigate amending the LDO to allow automotive restoration in Downtown Cary, noting that restoration differed from other automotive repair or body shop work in that the volume of work would be less and, and the work was cleaner and more quiet.

Options and Concerns Presented By Staff at Public Hearing (March 26, 2015)

In response to direction by Town Council, staff initially prepared a draft amendment to establish Automobile Restoration as a new land use, to be allowed as a special use in the MXD and HMXD sub-districts of the Town Center (where only existing vehicle service and repair uses are currently allowed, as non-conforming uses). Staff was concerned that enforcement and implementation issues would arise in distinguishing vehicle restoration from vehicle repair, and proposed a second option that would allow new automobile repair use in the HMXD and MXD subdistricts as a special use subject to the following:

- the building is one that had been used for a conforming vehicle service and repair use at some point in past;
- the building has been vacant for the past 24 months;
- the current or previous property owner can provided documentation of unsuccessful attempts to convert the property to a different use permitted in the subdistrict; and

- up to five vehicles could be stored outdoors.

It was noted, however, that any such accommodation would reflect a departure from the land use goals for the Town Center as expressed in the TCAP and currently implemented in the LDO.

Council Discussion at Public Hearing

Town Council questioned whether or not the options presented would fully accommodate the existing facility at 523 Old Apex Road, and indicated that such an option should be provided for consideration. There were concerns related to limiting outdoor storage to five vehicles, and requiring documentation of unsuccessful attempts to sell the property for conversion to a use more in keeping with the vision of the Town Center Area Plan.

Changes Since Public Hearing

Based on feedback received at the public hearing and additional information provided by the business owner at 523 Old Apex Road, staff proposes a new Option 2 that would eliminate the requirement to document attempts to sell the property, and require that outdoor storage be screened from off-site views rather than limited to a certain number of vehicles. The new Option 2 also removes the requirement for a special use permit, which would allow the use by right subject to the proposed use-specific standards.

Planning and Zoning Board Meeting (May 18, 2015)

The Planning and Zoning Board recommended approval of Option 2 by a vote of 7-0.

PROPOSED TEXT

OPTION 1: No change to existing LDO text

OPTION 2: Revisions to Use-Specific Standards as indicated below.

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	CB&R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
Commercial Uses																
Vehicles and Equipment	Vehicle Service and Repair	P/S	P/S								P	S	P		P	5.2.3(N)

5.2.3 USE-SPECIFIC STANDARDS: Commercial Uses

(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.
- (4) In the ORD district,
- (5) compliance with Section 7.3.8 Illegal Discharges to the Storm Sewer System.
- (6) 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 and the Town Center Design Guidelines;
 - (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 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 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.
- (7) 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.
- (8) 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.

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ITEM E – TECHNICAL, PROCEDURAL AND MINOR AMENDMENTS

BACKGROUND

Proposed technical, procedural and minor amendments would:

- Clarify time frames for Planning & Zoning Board and Town Council action on comprehensive plan amendments, LDO text amendments, and rezonings; *Sections 3.2.2, 3.3.2, and 3.4.1*
- Prohibit the keeping of roosters in the R-40 and R-80 zoning districts on lots smaller than five acres, in response to a citizen request; *Section 5.3.4(J)*

- Clarify that a required 30' roadway setback adjacent to a "collector" applies to collector *avenues*, not collector *streets* (which are classified as "Other Streets" for purposes of determining building setbacks); *Table 6.1-1*
- Correct various cross-references to LDO sections; *Section 7.2.5(B)*
- Clarify requirements for landscape areas on individual lots; *Section 7.2.9(A)*
- Clarify requirements for placement of underground utilities; and *Section 8.1.4(E)*
- Clarify the process for acceptance of infrastructure constructed by others. *Section 8.1.8(B)*

PROPOSED TEXT

3.2.2 AMENDMENTS TO THE COMPREHENSIVE PLAN: Substantive Amendments to the Comprehensive Plan

(A) Procedure

(4) Second Public Hearing: Staff Recommendation to Planning and Zoning Board

- (a) Following the first public hearing, the Planning and Zoning Board shall hold a second public hearing on the proposed amendment. The Director shall provide the staff's recommendation regarding whether to approve or deny the amendment at this second public hearing.
- (b) The Planning and Zoning Board shall make its recommendation to the Town Council within ninety (90) days of the second (or last) public hearing, based on the standards of review set forth in paragraph (B). The Planning and Zoning Board may request an extension of time from the Town Council. If no recommendation is made and no extension is granted, 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, the Town Council ~~shall take one of the following actions within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation, or within ninety (90) days from the final public hearing if no Planning and Zoning Board recommendation is made,~~ may 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 ~~or to a committee of the Town Council for further consideration.~~
- (b) Failure of the Town Council to take any action ~~act~~ within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation at a Council meeting, ~~or within ninety (90) days from the final public hearing if no Planning and Zoning Board recommendation is made,~~ shall be deemed a denial of the amendment request.

3.3.2 AMENDMENTS TO THE TEXT OF THE LAND DEVELOPMENT ORDINANCE

(D) Review by Planning and Zoning Board

After the public hearing, the Planning and Zoning Board shall review the proposed amendment based on the approval criteria of Section 3.3.3 and any oral and written comments received at or before the public hearing. Based on this information, the Planning and Zoning Board shall submit, ~~within ninety (90) days of the public hearing,~~ a report and written recommendation to the Town Council that addresses whether the proposed amendment is consistent with the Comprehensive Plan and other applicable plans and regarding whether or not the proposed amendment should be adopted as submitted, adopted with modifications, rejected, or returned for additional public hearing. 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 ~~made~~ determined and no extension is granted within ninety (90) days ~~of the public hearing,~~ 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;
- .

3.4.1 REZONINGS: Rezoning Generally

(D) Procedure

(6) Public Hearings

(c) Planning and Zoning Board Recommendation on Rezoning

The Planning and Zoning Board shall consider the proposed rezoning based on the approval criteria of Section 3.4.1(E) and any oral and written comments received at or before the public hearing (if hearing is required). Based on this information, the Planning and Zoning Board shall submit, ~~within ninety (90) days of the public hearing,~~ a written recommendation to the Town Council that addresses whether the proposed amendment is consistent with the Comprehensive Plan and other applicable plans and whether or not the proposed amendment should be approved or denied. 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 ~~made~~ 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.

(7) Town Council Action

- (a) After reviewing the reports of the Planning Director and recommendations of the Planning and Zoning Board, the Town Council shall take one of the following actions ~~within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation, or within ninety (90) days from the final public hearing if no Planning and Zoning Board recommendation is made,~~ based on the approval criteria 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 ~~or to a committee of the Town Council~~ 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.
- (b) Failure of the Town Council to take one of the actions listed above ~~act~~ within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation at a Council meeting, or within ninety (90) days from the final public hearing if no Planning and Zoning Board recommendation is made, shall be deemed a denial of the rezoning request unless there is a pending substantive amendment to the Comprehensive Plan (see Section 3.2.2).
- ~~(c) The Town Council, with or without a recommendation of the Planning and Zoning Board, also may rezone the property 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.~~

(8) 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.

5.3.4 ACCESSORY USES AND STRUCTURES: Accessory Uses and Structures Allowed

(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 5.0 acres.

7.2.5 Tree Protection, Tree Surveys, and Replacement Trees

(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 ~~7.2.13(C)(4)(a)~~ 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.

7.2.9 LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Miscellaneous Landscaping Requirements

(A) Required Landscaping on Single-Family Lots

- (1) Minimum requirements shall be written out on the approved site and/or subdivision 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 single-family lots shall be retained to the maximum extent possible.
- ~~(4) Existing and/or installed landscaping shall be provided along the perimeter of the subdivision where rear yards back up to each other or are visible from other rear yards (including trees and shrubs to provide some visual break, or a ten (10) foot wide landscape area meeting the Type B buffer, as applicable, pursuant to the standards of Table 7.2-1).~~
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.

8.1.4 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS: Improvements

(E) Utilities

- (2) All electrical, and telephone and telecommunications lines, fiber optic cables and the like shall be installed underground, except in situations where such placement is prohibited or deemed impractical by the utility provider.

8.1.8 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS: Final Acceptance of Improvements for Town Maintenance

- (B)** The developer or subdivider shall notify the Transportation and Facilities and/or Water Resources Department(s) at the time that the improvements to be routinely maintained by the Town are ready for the one (1)-year warranty inspection. If the Transportation and Facilities and/or Water Resources Department(s) determines that the installed improvements meet all applicable Town standards, including those in the Town's Standard Specifications and Details Manual and the developer or subdivider submits a financial guarantee based on a price schedule provided by the Transportation and Facilities and/or Water Resources Department(s), then a one (1)-year warranty period begins, during which the Town shall provide routine maintenance of the improvements. At the end of the one (1)-year warranty period, the applicant shall request the Transportation and Facilities and/or Water Resources Department(s) to conduct a final inspection of the improvements for acceptance by the Town. ~~The Transportation and Facilities and/or Water Resources Department(s) shall have sixty (60) days after the date of such request in which to either accept the improvements or may provide~~ the applicant with a list of required repairs to the improvements. Upon acceptance of the improvements, including any needed repairs to the improvements that the Transportation and Facilities and/or Water Resources Department(s) shall deem necessary during any of its inspections, the Town shall accept full maintenance responsibility for the improvements and shall release the financial guarantee. If the developer or subdivider fails to make such required repairs within six (6) months, then the Town may draw on the financial guarantee in order to perform the required repairs 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.

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