

STAFF REPORT

Town Council, December 10, 2015

Round 33 Land Development Ordinance Text Amendments (PL16-015b)

Consider proposed Round 33 Amendments to the Land Development Ordinance (LDO)

Speaker: Mary Beerman

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. Following the public hearing held on September 24, 2015, council referred the proposed amendments to the Planning and Zoning Board for a recommendation. The Planning and Zoning Board discussed the proposed amendments at its work session on October 12, 2015.

OVERVIEW

TENTATIVE SCHEDULE:

| | |
|--|--------------------------|
| Public Hearing | September 24, 2015 |
| Planning and Zoning Board Work Session | October 12, 2015 |
| Planning and Zoning Board Meeting | November 16, 2015 |
| Final Action by Town Council | <i>December 10, 2015</i> |
| Effective | <i>December 10, 2015</i> |

* Italicized dates are tentative.

I. 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".

Item A Legislative Changes

- A-1 Aesthetic Controls** - Delete Section 8.6 (Single-family Residential Design Guidelines, which includes provisions related to anti-monotony, garagescapes, and slab-on-grade construction) and modify Table 4.2-1 applicable to the Corridor Transitional (CT) district, to comply with NC Session Law 2015-86.
- A-2 Protest Petitions** - Eliminate all procedural requirements and references to protest petitions, to comply with NC Session Law 2015-160.
- A-3 Privilege License** - Eliminate all requirements for privilege or business licenses required by the Town, to comply with NC Session Law 2014-3.
- A-4 Bona Fide Farms** – Specify that land located in the Town's extra-territorial jurisdiction (ETJ) that is used for bona fide farm purposes is exempt from provisions of the LDO, to comply with NC Session Law 2011-363.
- A-5 Performance Guarantees** – Provide a reference to the definition of performance guarantee provided in the General Statutes, and reduce the amount of a required performance guarantee to 1¼ times the estimated cost of the required improvements remaining to be installed to comply with NC Session Law 2011-363.

ITEM B Quasi-Judicial Review of Site Plans – The proposed amendment would revise procedural requirements related to the review of site or subdivision plan modifications that require council approval.

ITEM C **Town Center Zoning District** – The proposed amendment would clarify regulations applicable in the Town Center related to perimeter buffers and outdoor sales/display of goods. *An additional change (to reduce the minimum lot size required for certain land uses in the HDR Mid-Rise and MXDR sub-districts of the Town Center) was presented at the public hearing, but has been removed from consideration. Staff has since determined that the current dimensional standards in the LDO are needed to ensure consistency with related Notes in the Town Center Area Plan, and a change in the minimum lot size is no longer proposed.)*

ITEM D **TECHNICAL AND MINOR AMENDMENTS** - The proposed technical and minor amendments would:

- Clarify that minor changes and revisions to subdivisions and site plans will not extend the period of validity for the original site plan; 3.9.2(K)
- Clarify that uses not specifically permitted are prohibited; 4.2.3(D), 5.1.1 and 5.1.5
- Clarify the features that identify the location of a boundary related to density limits in the Swift Creek watershed. The area bounded by Tryon Road, Walnut Street, and Jones Franklin Road is not accounted for in current text. 4.4.6(F)
- Remove the requirement that a veterinary hospital include a fenced outdoor area; 5.2.3(O)
- Eliminate the requirement for a special use permit where currently required for certain uses within the Mixed Use Overlay District; Table 5.1-1
- Cross-reference and clarify provisions related to the separation between canopy trees, and light poles and electrical transformers; and 7.2.9(M), 7.9.3(D)
- Require a certification instead of cash bond to ensure certain landscaping improvements. 7.2.11(B)

FISCAL IMPACT:

The proposed changes related to the quasi-judicial process would reduce staff time required for preparation of some staff reports by limiting the focus of the report and presentation; at the same time, the changes may result in an increased number of such applications. Many of the other proposed changes seek to clarify and simplify existing text. The sum of all of these changes are expected to have no net fiscal impact.

STAFF RECOMMENDATION: Staff recommends that the Planning and Zoning Board forward the proposed Round 33 LDO amendments to Town Council with a recommendation for approval.

DETAILS REGARDING PROPOSED LDO AMENDMENTS

ITEM A – LEGISLATIVE CHANGES

A-1 Aesthetic Controls

BACKGROUND

[NC Session Law 2015-86](#), entitled “AN ACT TO CLARIFY WHEN A COUNTY OR MUNICIPALITY MAY ENACT ZONING ORDINANCES RELATED TO DESIGN AND AESTHETIC CONTROLS” and effective June 19, 2015, prohibits the application of aesthetic controls to any structure subject to regulation under the North Carolina Residential Code for one- and two-family dwellings, which includes detached dwellings, duplexes, semi-attached/detached dwellings, and townhomes, as defined in Cary’s LDO. The proposed amendment would delete LDO Section 8.6 (Single-family Residential Design Guidelines), which includes provisions related to anti-monotony, garagescapes and slab-on-grade construction, and restrict applicability of design standards in portions of the Corridor Transition (CT) district in order to comply with this legislation.

PROPOSED TEXT

~~8.6 SINGLE-FAMILY RESIDENTIAL DESIGN GUIDELINES~~

~~8.6.1 Anti-Monotony~~

~~(A) Purpose~~

~~The purpose of this section is to create aesthetic guidelines for single-family developments in order to facilitate varying façade features and foster diverse neighborhood development.~~

~~(B) Applicability~~

~~The Inspections and Permits Department shall not, except as otherwise provided herein, issue building permits for single-family detached residential structure, unless the plans and specifications meet the design standards specified in Section 8.6.1(C).~~

~~(1) These standards apply to all single-family detached dwelling units unless exempted as follows:~~

- ~~(a) A building permit was issued, or an application for building permit was submitted, prior to March 1, 2008.~~
- ~~(b) The lot is located within an approved single-family subdivision and platted prior to March 1, 2008.~~
- ~~(c) The dwelling unit qualifies as affordable housing as defined in the Affordable Housing Plan, which is part of the Town of Cary Comprehensive Plan.~~
- ~~(d) The dwelling unit exists on a lot equal to or greater in size than permitted in the Residential-20 (R-20) zoning designation.~~

~~(C) Standards~~

~~(1) As the dwelling unit is viewed from the front or rear facing a street, the dwelling unit's roof line shall not be repeated by another dwelling unit that is located closer than two (2) dwelling units on either side of the subject dwelling unit.~~

- (2) ~~No dwelling unit shall be located within two (2) dwelling units of a similar dwelling unit model, or directly across the street from a similar model (existing or future) unless there is a break in the model repetition, such as a street, connected open space corridor at least twenty (20) feet wide, a multi-purpose trail at least ten (10) feet wide, or a non-residential building separating the dwelling units.~~
- (3) ~~Dwelling unit models shall be considered similar if they do not meet the criteria described below. The following criteria shall be examined when determining whether dwelling unit models vary in similarity:~~
- (a) ~~Minimum number of dwelling units that vary in aesthetic appearance based on the total number of units in the development~~
- ~~1. A minimum of three (3) types of dwelling units for a development of between ten (10) and forty (40) units.~~
 - ~~2. A minimum of four (4) types of dwelling units for a development of more than forty (40) units.~~
- (b) ~~Dwelling units shall demonstrate a minimum of two (2) of the following methods used to vary their model type so as not to be deemed similar models.~~
- ~~1. Number of stories~~
 - ~~2. Window type and location including, but not limited to, casement, awning, hopper, slider, single and double hung, fixed, ribbon, bay, box bay, circle bay, label mold, Palladian, hood mold, or paired.~~
 - ~~3. Door type and location including, but not limited to, single panel, double panel, six panel, legend, battered, braced, or framed.~~
 - ~~4. Siding material including, but not limited to, aluminum, plank, vinyl, wood, stucco, brick, clapboard, shingles, shakes, stone, or veneer.~~
 - ~~5. Entry treatments, including, but not limited to porches, stoops, turrets, or columns.~~
 - ~~6. Roof type, shape and height including, but not limited to, cross gabled, front gabled, gambrel, hipped, mansard, pavilion-hipped, side gabled, or salt box.~~
 - ~~7. Building footprint including, but not limited to, square, rectangular, or barbell.~~
 - ~~8. Garage entry and location including, but not limited to, front, side, or back.~~
 - ~~9. Architectural style or different models including, but not limited to, Early American, Colonial, or Victorian.~~
 - ~~10. Color~~

(D) ~~Review Process~~

(1) ~~Development Plan and Plat Approval~~

~~The applicant shall place a note on the development plan and final plat demonstrating compliance with this Section. The note shall state:~~

~~No building permit shall be issued for any single-family dwelling unit unless sufficient information is provided as part of the building permit application demonstrating compliance with Section 8.6.1, Anti-Monotony.~~

(2) ~~Building Permit Approval~~

~~When applying for a building permit for a new dwelling unit on any lot within a development, unless exempt under Section 8.6.1(B)(1) above, the applicant shall submit the following information to the Inspections and Permits Department:~~

- a. ~~A portion of the approved subdivision plat which shows the proposed dwelling unit and all dwelling units within two (2) dwelling units on either side and across the street from the dwelling unit, identifying the proposed dwelling unit model numbers and/or elevations or photograph (if existing) or~~
 - b. ~~A notarized affidavit of compliance of single-family design guidelines. The notarized affidavit shall be submitted on a Planning Department form.~~
- (3) ~~The Inspections and Permits Department shall review the proposed permit for compliance with the approved plat. Only building permit applications that comply with the approved residential design plan may be approved.~~

(E) Appeal Process

~~If a building permit is denied based on the failure of a single-family dwelling unit to meet the design minimums set forth in this Section, the aggrieved applicant may appeal to the Director of Inspections and Permits.~~

8.6.2 Garagescapes

(A) Purpose

~~The purpose of these standards is to maintain the convenience of single-family dwelling unit garages without taking away from the architectural and aesthetic appeal of the dwelling unit or the residential neighborhood.~~

(B) Applicability

~~After March 1, 2008, the Inspections and Permits Department shall not, except as otherwise provided in Section 8.6.2(B)(1), issue any building permits for any dwelling unit if the plans and specifications for the dwelling unit do not meet the design minimums specified in Section 8.6.2(C).~~

- (1) ~~These standards apply to all single-family detached dwelling units unless exempted as follows:~~
 - (a) ~~A building permit was issued, or an application for building permit was submitted, prior to March 1, 2008.~~
 - (b) ~~The dwelling unit is located within an approved single-family development and platted prior to March 1, 2008.~~
 - (c) ~~The dwelling unit qualifies as affordable housing as defined in the Affordable Housing Plan, which is part of the Town of Cary Comprehensive Plan.~~
 - (d) ~~The dwelling unit is set back from the road and the view of the dwelling unit is substantially blocked by evergreen species of vegetation to the point where the view of the garage from the roadway is substantially limited.~~

~~Although single-family attached dwelling units are exempted from these specific requirements, they must comply with the Town of Cary Design Guidelines which includes a standard to reduce the visibility of garages.~~

(C) Standards

- (1) ~~As viewed from the front of the dwelling unit, the garage shall not be the dominating feature.~~
- (2) ~~All single-family dwelling units which are not exempted in Section (B)(1) above, shall incorporate a minimum of one (1) of the following options to ensure the garage is not the dominating feature of the dwelling unit:~~
 - (a) ~~No more than fifty percent (50%) of the front house façade of a dwelling unit shall be made up of the front side of the garage.~~
 - (b) ~~Aesthetic characteristics of the front side of the garages shall be varied by adding architectural features, including but not limited to trellises, roof forms,~~

~~balconies, or windows, directly above the garage door to minimize aesthetic impact of the garage facade.~~

- ~~(c) Garages shall be recessed a minimum of two (2) feet from the primary façade, including, but not limited to porches, stoops, etc.~~

~~(D) Review Process~~

~~(1) Development Plan and Plat Approval~~

~~The applicant shall place a note on the development plan and final plat demonstrating compliance with this Section. The note shall state:~~

~~No building permit shall be issued for any single-family dwelling unit unless sufficient information is provided as a part of the building permit application demonstrating compliance with Section 8.6.2, Garagescapes.~~

~~(2) Building Permit Approval~~

~~When applying for a building permit for a new dwelling unit on any lot within a development, unless deemed exempt in Section 8.6.2(B)(1), above, the applicant shall submit the following information to the Inspections and Permits Department:~~

- ~~(a) A building elevation depicting compliance with this Section or
(b) A footprint of the dwelling unit with the front façade and garage set-back measurements if item 8.6.2 (C)(2)(c) is being used or
(c) A notarized affidavit of compliance of single-family design guidelines. The notarized affidavit shall be submitted on a Planning Department form.~~

- ~~(3) The Inspections and Permits Department shall review the proposed permit for compliance with the approved plat. Only applications for building permits that comply with the dwelling unit design minimums shall be approved.~~

~~(E) Appeal Process~~

~~If a building permit is denied based on the failure of a dwelling unit to meet the design minimums set forth in this Section, the aggrieved owner may appeal to the Director of Inspections and Permits.~~

8.6.3 Slab-on-Grade Construction

~~(A) Purpose~~

~~The purpose of these standards is to: maintain architectural and aesthetic appeal of dwellings and residential neighborhoods; maintain or enhance the value of buildings and land; and preserve the quality and character of residential neighborhoods.~~

~~(B) Applicability~~

~~No subsequent building permit shall be issued for a single-family dwelling that does not comply with the design standards specified in Section 8.6.3(C).~~

- ~~(1) These standards apply to all single-family detached developments not exceeding eight (8) dwelling units per acre.~~

~~(C) Standards~~

- ~~(1) The front and side façades of all residential dwellings using slab-on-grade construction shall be covered with brick, stone, or modular block to a minimum height of twelve (12) inches above finished grade.
(2) The rear facade of all residential dwellings using slab-on-grade construction shall either be:~~

- (a) ~~covered with brick, stone, or modular block to a minimum height of twelve (12) inches above finished grade; or~~
- (b) ~~covered with parging (cement overlay) to a minimum height of twelve (12) inches above finished grade.~~

4.2.2 GENERAL USE DISTRICTS: Residential and Non-Residential Zoning Districts

(K) CT: Corridor Transitional District

| TABLE 4.2-1: BUILDING AND SITE DESIGN STANDARDS FOR CERTAIN NEW CONSTRUCTION AND/OR REDEVELOPMENT IN THE CORRIDOR TRANSITIONAL DISTRICT (Not applicable to structures subject to regulation under the North Carolina Residential Code for one- and two-family dwellings). | |
|--|---|
| Walnut Street Corridor | |
| Building Materials | Natural siding, brick, stone and wood. |
| Roofing Materials | Shingles, slate, standing seam metal. |
| Roof Design | Buildings shall have pitched roofs which are residential in character. Mansard roofs prohibited. |
| Building Locations | Non-residential buildings shall provide front elevations and an entrance facing Walnut Street. Corner lots shall be double-fronted. |
| Building Size | Building sizes are limited based upon the standards in Chapter 6, but the maximum building square footage for a new non-residential building within the Conversion sub-district may be increased from two thousand five hundred (2,500) square feet up to five thousand (5,000) square feet through the Special Use process (see Section 3.8) provided that two (2) or more contiguous existing lots designated as "Conversion" are being combined as part of the proposal. See 6.1.4 to reference maximum building size for Infill or Redevelopment sub-districts. |
| Building Facades | If wider than twenty-five (25) feet, the facade surface shall be divided into two (2) or more portions, each distinguished by a variation in building articulation and or facade treatment. This requirement shall not apply to detached dwellings and townhomes. |
| Window Treatment | A minimum of forty percent (40%) of the first floor and twenty percent (20%) of the upper floors on the front facade shall have window/door fenestration. Tinted or mirrored glass is prohibited on the front facade. Side elevations which can be seen from the public view shall have a minimum of twenty percent (20%) window/door fenestration. These requirements shall not apply to residential uses. |
| Streetscape Plantings | Existing healthy trees shall be preserved, but if none exist, then one (1) upper-story tree for each thirty (30) feet of street frontage shall be installed (allowable species are limited to: Pacific Sunset Maple, European Hornbeam, Chinese Pistache). In addition, one (1) understory tree for each twenty (20) feet on average of street frontage shall also be installed (allowable species include: Crepe Myrtle, Greenback Magnolia, Hasee Magnolia, Fosters Holly, Greenleaf Holly, Okame Cherry, or appropriate substitute). |
| Buffer Wall | <ol style="list-style-type: none"> (1) In the conversion area, a masonry wall is required with a minimum height of six (6) feet, with vegetation consisting of evergreen planting spaced no more than fifteen (15) feet apart and ten (10) feet in height at the time of installation. (2) In the redevelopment or infill area, a masonry wall, a minimum height of eight (8) feet, with vegetation consisting of evergreen planting spaced no more than ten (10) feet apart and ten (10) feet in height at the time of installation is required. A masonry wall is not required for detached dwellings or townhome use in the infill area. (3) Walls shall not be placed within utility easements or required drainage areas. |

| | |
|--------------------|--|
| | <p>(4) The Buffer Wall shall be located within five (5) feet of the common property line unless required to be located outside this area to avoid the removal of mature vegetation.</p> <p>(5) Openings in the wall are permitted to allow access for maintenance. In situations where such openings are provided, vegetation shall be installed to maintain a visual buffer between uses.</p> <p>(6) Walls shall be constructed of brick, cast stone, stone or other high quality, long-lasting masonry material.</p> |
| Off-Street Parking | No more than thirty percent (30%) of the parking shall be located between the building and Walnut Street. |
| Pedestrian Access | Pedestrian access between buildings and to Walnut Street shall be provided. |
| Vehicular Access | Cross-access connections with shared access provisions shall be required unless waived by the Planning Director. Conversion properties bordering Sturdivant Drive are not required to provide cross-access. Parcels with access to two (2) or more public streets shall not be allowed full access to Walnut Street. |
| Lighting | Exterior lighting shall not exceed twenty (20) feet in height, and shall include cut-off or shielded fixtures. Light poles shall be neutral earth-tone colors. Accent lighting is only permitted on building fronts, and shall be directed away from adjacent residential dwellings and lots. |
| Signage | All signs shall comply with the Walnut Street Corridor Uniform Sign Plan. |

A-2 Protest Petitions

BACKGROUND

[NC Session Law 2015-160](#), entitled “AN ACT TO AMEND THE PROCESS BY WHICH THE CITY COUNCILS RECEIVE CITIZEN INPUT IN ZONING ORDINANCE AMENDMENTS” and effective August 1, 2015, eliminates the requirement for a ¾ majority affirmative vote to approve a rezoning for which a valid protest is filed, and applies a simple majority affirmative vote to such cases. The proposed amendment would remove all references to protest petitions from the LDO.

PROPOSED TEXT

3.4.1 REZONINGS: Rezoning Generally

(F) Protest Petitions [Reserved]

(1) Effect of Valid Protest Petition

~~In the event that the Town Council receives a valid petition protesting any proposed zoning map amendment at least two (2) working days prior to the Town Council public hearing, the rezoning shall become effective only upon the affirmative vote of three-fourths (3/4) of the members of the Town Council. For the purposes of this subsection, vacant positions on the Town Council and members who are excused from voting shall not be considered 'members' of the Council for calculation of the requisite supermajority.~~

(2) Definition of Valid Protest Petition

(a) Required Signatures

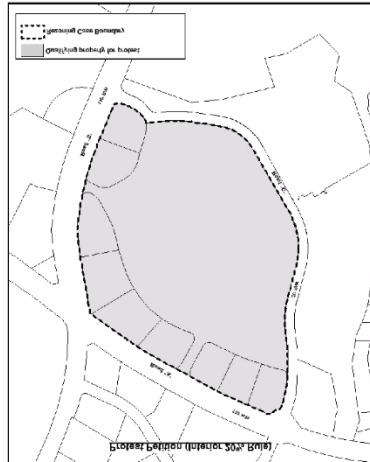
~~A valid protest petition must be signed by the following:~~

1. If a property whose owner is signing the petition has more than one (1) owner (including joint ownership by husband and wife), all owners shall be required to sign the petition in order for that property to be counted as meeting the requirements of this paragraph (a).
2. For properties owned by homeowners' associations, the signature of an officer of the association shall be required to meet the requirements of this paragraph (a).
3. For properties owned by corporations, the signature of an officer of the corporation shall be required to meet the requirements of this paragraph (a).

(b) Validity Determination

For a protest petition to be considered valid, it must be signed by any one (1) of the owners of either:

1. Twenty percent (20%) or more of the area included in the proposed map amendment; or
2. Five percent (5%) or more of a one hundred (100) foot-wide buffer extending along the entire boundary of each discrete or separate area proposed to be rezoned. A street right-of-way shall not be considered in computing the one hundred (100) foot buffer area as long as that street right-of-way is one hundred (100) feet wide or less. When less than an entire parcel of land is subject to the proposed zoning map amendment, the one hundred (100) foot buffer shall be measured from the property line of that parcel. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine the 'owners' of potentially qualifying areas.



PROTEST PETITION VALIDITY DETERMINATION *(delete graphic)*

(c) Withdrawal of Signatures

A protest petition shall be rendered invalid and ineffective where one (1) or more of the original signatories have withdrawn their signatures, by writing submitted to the Town Clerk prior to the Town Council's vote on the proposed amendment, such that the remaining signatures on the protest petition do not meet the requirements of paragraph (b), above.

(d) Form and Content

~~A protest petition shall be valid, effective, and accepted for purposes of this section only if it identifies the proposed amendment; the name, address, and signature of each protesting property owner. Forms shall be submitted on a Planning Department form.~~

~~(e) **Timing of Submission**~~

~~A protest petition shall be valid, effective, and accepted for purposes of this section only if it is submitted to the Town Clerk at least two (2) full working days before the scheduled date of the public hearing on the proposed rezoning, not counting the day of the hearing, in order to allow the Town sufficient time to determine the sufficiency and accuracy of the petition. The petition shall be submitted to the Town Clerk no later than 4:00 p.m. on the day it is due.~~

~~(3) **Exemptions**~~

~~This section shall not apply to any of the following:~~

- ~~(a) Any map amendment that initially zones property that has been newly added to the Town's jurisdiction by annexation or otherwise; or~~
- ~~(b) Any map amendment to an adopted conditional use district if the amendment does not change the types of uses that are permitted, or does not increase the approved density for residential development, or does not increase the total approved size of non-residential development, or does not reduce the size of any buffers or screening approved for the conditional use district.~~

(H) Town-Initiated Comprehensive Rezonings

~~(3) **Protest Petitions**~~

~~Protest petitions may be filed on Town-initiated comprehensive rezonings, but such petitions can only be considered valid when the property owners signing the petition own enough property to constitute twenty percent (20%) or more of the area being rezoned.~~

3.4.4 Rezonings in the Town Center (TC) District

Because the TC district is a single zoning district with various subdistricts, land use changes within this district do not entail a rezoning to a different district. Hence, rezoning requests shall all be considered substantive changes to the Comprehensive Plan and shall be processed in accordance with Section 3.2.2. All other procedural requirements spelled out in Chapter 3 shall be followed, except for altered notice and protest petition calculations as follows:

(A) Change from One Subdistrict to Another Subdistrict

- ~~(1) Where a rezoning contemplates changing the subdistrict designation on property(ies) that will alter the boundaries of a subdistrict or create a new subdistrict, mailed notice shall be provided to all property owners within the same subdistrict category as well as all property owners adjacent to such subdistricts.~~
- ~~(2) In such cases, protest petitions shall be calculated separately as applicable to the boundary of each affected subdistrict.~~

(B) Change within One Subdistrict

- ~~(1) Where a rezoning for a property contemplates changing allowed uses or other development requirements within a subdistrict, mailed notice shall be provided to all property owners within such subdistrict as well as all property owners adjacent to the affected subdistrict.~~
- ~~(2) In such cases, protest petitions shall be calculated as applicable only to the boundary of the individual parcel(s) being rezoned.~~

3.4.5 Rezoning to Mixed Use District (MXD)

(C) Review and Approval Process

(2) Initial Public Hearing

(a) Process

..... Such hearing shall be noticed as required in Section 3.1.6 of this Ordinance, and notification should also be provided to all persons on the mailing list submitted pursuant to Section 3.4.5(B)(3)(d). ~~Protest petitions may be filed prior to the Town Council public hearing in accordance with Section 3.4.1(F) of the LDO.~~ At the public hearing, affected parties shall provide evidence to the Town Council as follows:

A-3 Privilege License

BACKGROUND

[NC Session Law 2014-3](#), entitled "AN ACT TO AMEND THE REVENUE LAWS, AS RECOMMENDED BY THE REVENUE LAWS STUDY COMMITTEE" and effective July 1, 2015, prohibits local jurisdictions from collecting a privilege license tax. The proposed amendment would delete all provisions related to a privilege license from the LDO.

PROPOSED TEXT

3.16.5 SIGN PERMITS: Lapse of Sign Permit

A sign permit shall lapse automatically ~~if the business license for the premises lapses, is revoked or not renewed.~~ A sign permit shall also lapse if the business is discontinued for a period of ninety (90) days or more.

5.2.1 USE-SPECIFIC STANDARDS: Residential Uses

(B) Bed and Breakfast

- (12) The resident owner shall comply with all ~~business license and revenue collection~~ laws and regulations of the Town of Cary, Wake County or Chatham County, and the State of North Carolina.

5.3.4 ACCESSORY USES AND STRUCTURES: Accessory Uses and Structures Allowed

(M) Day Care Homes, Small

- (1) A small day care home is intended...
(f) The operator obtains all required permits ~~and licenses~~ from the Town of Cary.

9.3.2 PERMITTED SIGNS: LOCATION, SIZE AND NUMBER; Conditions

(V) Temporary Sign

- (4) Sign permits for new businesses shall be issued only upon the initial opening of a business for a period that shall end not later than sixty (60) days after issuance of ~~the first business license for that business in that location or from the issuance of a~~ Certificate of Occupancy for that location;

9A.1.1 PERMANENT SIGNS: Definitions

Sign, Discontinued means a sign or sign structure whose owner has failed to operate and maintain said sign or sign structure for a period of six (6) months or longer. The following conditions shall be considered the failure to operate or maintain a sign or sign structure: (1) a

sign displaying advertising for a product or service which is no longer available or displaying advertising for a business which is no longer licensed operating; or (2) a sign which is blank.

9B.2 TEMPORARY SIGNS: Permitted Temporary Signs

(J) New Business

- (1) One (1) banner advertising the opening of new businesses shall be allowed, with approval of a temporary sign permit, provided that:
 - (a) Such signs for new businesses shall be limited to a duration of thirty (30) days within the first sixty (60) days after issuance of ~~the first business license for that business in that location or from the issuance of a Certificate of Occupancy for that location.~~

11.7.1 ENFORCEMENT OF SIGN REGULATIONS: Informal Remedial Procedures

(B) For Other Signs

- (3) When the enforcement official has not been successful in making contact with a responsible individual on the premises at the time of discovery or inspection of the violation, or where the enforcement official has made such contact and the violation has not been cured within three (3) business days, the enforcement official shall give formal notice of violation to: ~~the holder of any business license on the premises; and, to the record owner of the property.~~

A-4 Bona Fide Farms

BACKGROUND

[NC Session Law 2011-363](#), entitled AN ACT TO CLARIFY THE DEFINITION OF “BONA FIDE FARM PURPOSES” TO PROHIBIT THE INVOLUNTARY MUNICIPAL ANNEXATION OF PROPERTY USED FOR BONA FIDE FARM PURPOSES, AND TO PROVIDE THAT PROPERTY USED FOR BONA FIDE FARM PURPOSES IS EXEMPT FROM THE EXERCISE OF MUNICIPAL EXTRATERRITORIAL JURISDICTION became effective on June 17, 2011. The proposed amendment would add a subsection to LDO Section 1.6 (Jurisdiction and Applicability) to explicitly state that land located in the Town’s ETJ that is used for bona-fide farm purposes is exempt from provisions of the LDO.

PROPOSED TEXT

1.6 Jurisdiction and Applicability

1.6.5 Applicability to Bona Fide Farms

Property that is located in the Town’s extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from the provisions of this Ordinance. Property that is located in the Town’s extraterritorial jurisdiction and that ceases to be used for bona fide farm purposes shall become subject to the provisions of this Ordinance. As used in this section, "bona fide farm purposes" is as described in NCGS 153A-340. As used in this section, "property" means a single tract of property or an identifiable portion of a single tract.

A-5 Performance Guarantees

BACKGROUND

[NC Session Law 2015-187](#), entitled “AN ACT TO AMEND LAWS RELATED TO LAND DEVELOPMENT” and effective October 1, 2015, included revision of requirements related to performance guarantees.

The proposed amendment would amend Sections 8.1.4 and 8.1.7 of the LDO to reference the definition of performance guarantee provided in the General Statutes, and reduce the amount of a required performance guarantee to 1¼ times the estimated cost of the required improvements remaining to be installed.

PROPOSED TEXT

8.1.4 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS: Improvements

(A) Streets

- (11) Transportation development fees shall be paid in accordance with the provisions of Section 7.11 of this Ordinance. Developers may attempt to enter into a developer agreement for thoroughfare improvements in accordance with Section 7.11.16 of this Ordinance. Each person entering into such a developer agreement shall, prior to final plat approval, furnish the Town with a performance guarantee as defined by NCGS 160A-372 as now or hereafter amended ~~financial security in the form of cash or an irrevocable letter of credit~~ guaranteeing fulfillment of the person's portion of the thoroughfare improvements agreed upon in the developer agreement. When the Town participates in the cost of thoroughfare improvements through a developer agreement, as described in Section 7.11.16, or through some other means, the Transportation and Facilities Department shall review the bidding procedure to ensure conformity with all requirements for public contracts. The bids shall be publicly opened at Town Hall. The successful bidder shall be required to furnish ~~an irrevocable letter of credit or cash~~ a performance guarantee guaranteeing fulfillment of the contract. The contractor shall furnish the Transportation and Facilities Department with copies of periodic estimates of completion of work, proof of payment for such estimates, and such other records as may be requested by the Transportation and Facilities Department to determine the cost of construction.

(F) Street Signs

Street name signs that comply with the standards set forth in the Town's Standard Specifications and Details Manual shall be placed at all street intersections. The subdivider or developer shall install the signs or shall pay the Town to install the signs, prior to the final plat approval. Street signs shall not be included in the improvements described in Section 8.1.5 below for which ~~cash or an irrevocable letter of credit~~ performance guarantees may be submitted in lieu of the completed improvements. The subdivider or developer shall be required to replace or repair any street sign that is damaged during construction.

8.1.7 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS: Timing and Inspection of Improvements

(A) Fire Protection

Functional fire protection shall be provided to the site before any combustible materials are placed on the site.

(B) Level Required for Final Plat Approval

The final plat shall not be approved until and unless either of the following has occurred:

- (1) The developer or subdivider has installed all improvements in accordance with the requirements of this section and the approved preliminary plat; or

- (2) The developer or subdivider has installed sufficient improvements to provide functional fire protection (with adequate street access and water supplies for fire-fighting equipment), has provided the Town with a schedule for the completion of the remaining improvements, and has provided the Town with ~~cash, or an irrevocable letter of credit with the Town, a performance guarantee as defined by NCGS 160A-372 as now or hereafter amended~~ in an amount equal to one and one-half quarter ($1\frac{1}{2}$) times the estimated cost of the required improvements remaining to be installed, as determined by the Transportation and Facilities and/or Water Resources Department(s), with acceptable sureties guaranteeing the installation of the required improvements. ~~With regard to the construction of thoroughfare improvements required by this Section, the construction of which could be delayed because either the new thoroughfare section would not be accessible for present use, the connecting thoroughfare sections have not been completed, utilities need to be relocated prior to construction of improvements, or other reasons, the amount of the cash or irrevocable letter of credit shall equal two (2) times the estimated cost of constructing the thoroughfare section, as determined by the Transportation and Facilities and/or Water Resources Department(s).~~

(C) Level Required for Certificates of Occupancy

The Inspections and Permits Department shall issue no Certificates of Occupancy for development within the subdivision until the Transportation and Facilities and/or Water Resources Department(s) certifies that the developer or subdivider has installed all improvements in accordance with the requirements of this Section and the approved preliminary plat. All such improvements must be functional and under the one (1) year warranty period for maintenance. Certificates of Occupancy may be issued even though minor deficiencies and defects remain to be cured, provided that:

- (1) Such defects or deficiencies do not render the improvements dysfunctional;
- (2) The improvements that have been installed provide the full level of fire protection proposed for the subdivision and the improvements are under the one (1)-year warranty period for maintenance;
- (3) The developer or subdivider has provided the Town with ~~cash, or an irrevocable letter of credit with the Town, a performance guarantee as defined by NCGS 160A-372 as now or hereafter amended~~ in an amount equal to one and one-half quarter ($1\frac{1}{2}$) times the estimated cost of the required improvements remaining to be installed, as determined by the Transportation and Facilities and/or Water Resources Department(s), with sureties guaranteeing the installation of the required improvements. ~~With regard to the construction of thoroughfare improvements required by this section, the construction of which could be delayed because either the new thoroughfare section would not be accessible for present use, the connecting thoroughfare sections have not been completed, utilities need to be relocated prior to construction of the improvements, or other reasons, the amount of the cash, or irrevocable letter of credit shall equal two (2) times the estimated cost of constructing the thoroughfare section, as determined by the Transportation and Facilities and/or Water Resources Department(s).~~

ITEM B – QUASI-JUDICIAL REVIEW OF SITE PLANS

BACKGROUND

As part of the development review process, the LDO recognizes and provides for modification to or waivers of certain development standards, and specifies whether staff (typically the Director of a specified

Town department) or Town Council is authorized to make the decision. Currently, if an applicant requests a particular modification for which the council is the approval authority, then council must also review and take action on the entire development plan and all modifications, even if such a plan and some modifications could have been approved administratively (by staff) in the absence of the specific modification(s) still needing council consideration.

At its work session on July 21, 2015, council discussed modifying the quasi-judicial plan review process applicable to requests for waivers or modifications requiring council approval.

The proposed amendment, initiated at council's request, would narrow council's focus to just the specific modification(s) requiring Town Council scrutiny. Council would no longer be required to take final action on the entire development plan if the development plan could be approved administratively in the absence of the waiver or modification.

The proposed amendment was discussed at the council work session on July 21, 2015. Additional information can be found in the staff report (see attachment) prepared for that work session. Staff also recommends additional language clarifying approval of payment-in-lieu requests.

PROPOSED TEXT

3.9.2 SUBDIVISIONS AND SITE PLANS: Common Procedures for Review and Approval of Subdivisions and Site Plans

(F) Approval Authority

(1) Approval by Town Council or Zoning Board of Adjustment

The Town Council shall have final decision-making authority on the following types of site and/or subdivision plans, which shall be reviewed using the procedure set forth in this Section, except for properties owned by the Town, which shall be reviewed in accordance with Section 3.9.2(F)(2), except as otherwise noted:

- (a) ~~Plans that seek reductions or deviations from the landscaping, buffering, screening, and tree protection requirements (see Section 7.2) or parking requirements (see Section 7.8) of this Ordinance beyond the Minor Modifications (see Section 3.19) allowed by staff or that otherwise require Town Council waivers pursuant to the terms of this Ordinance; and~~**
[Reserved]

3.19.1 MINOR MODIFICATIONS: Minor Modifications to Development and Zoning District Standards

(A) Applicability

As part of the review and approval of any procedure set forth in this Chapter 3, Town officials may approve a minor modification of any of the development or zoning district standards that are listed in the following table pursuant to the procedures listed in paragraph (C) below. Specifics on allowable modifications may be found in the associated text listed in the table. For properties owned by the Town, the Planning Director shall review all requests for minor modifications listed in the table.

Review of a minor modification is limited to review of that modification only. Consideration of a requested minor modification does not change the applicable approval authority for the development plan as a whole.

(C) Procedure

(1) Minor Modifications Approved by Planning Director.....

(2) Minor Modifications Approved by Town Council

The Town Council may initiate or approve a minor modification allowed under this section at any time before ~~it~~ the applicable approval authority takes action on a development application.

8.1.5 Payment of Fees in Lieu of Required Improvements

(A) Any owner or developer who is required to dedicate or install off-site improvements pursuant to Section 8.1.4 above may make a payment of fees in lieu of such improvements, or part thereof in accordance with the following:

(1) Approval by Transportation and Facilities Director

The Transportation and Facilities Director may approve payment in lieu of required road improvements where road improvement costs do not exceed one hundred thousand dollars (\$100,000), as estimated by a registered engineer, provided that:

- (a) If constructed, the road improvement would not connect with similar existing or proposed improvement and would not provide any immediate traffic or public safety benefit to motorists, pedestrians, or bicyclists, but will be necessary or desirable to motorists, pedestrians, or bicyclists in the future; and/or
- (b) Adverse topographic or environmental features are present that cause the road improvement to be impractical.

(2) Approval By Town Council

The Town Council may approve such payment ~~as part of approving the site plan~~ in a quasi-judicial hearing, upon determining that such improvements are not necessary or desirable at the present time but will be needed in the future and upon determining that the amount of the payment advances the goals and purposes of the Ordinance. The applicant shall provide an estimate of the actual installation and construction cost of the improvements as estimated by a registered professional engineer. This section shall not apply, however, to street improvements that are governed by the fee provisions in Section 8.1.4(A).

ITEM C – TOWN CENTER ZONING DISTRICT

BACKGROUND

The following proposed amendments are applicable in the Town Center Zoning District and Town Center Area Plan (TCAP):

1. Currently, outdoor display and sales of goods is not permitted in the Town Center Zoning District. To create a more interesting and walkable downtown, it is important to provide opportunities for activity to occur both inside and outside of businesses. Outdoor dining, which is currently allowed, brings life to the sidewalks and street. Allowing outdoor display areas to showcase merchandise could create similar activity and help increase the economic viability of businesses. Revisions to Section 5.3.4(D) (Outdoor Display and Sales) would establish standards for outdoor display and sales of goods specific to the Town Center. Outdoor display and sales would be limited to a maximum of 25% of the floor area of the principal use, and could be located to the side and/or rear of the principal building if enclosed within a decorative fence. Up to 40% of the allowable display and sales area could be located in front of the building, outside of the street right-of-way.

Many of the current standards applicable to outdoor display and sales areas focus on large sites containing uses such as home improvement stores, or uses located within shopping centers, and are not effective at addressing smaller commercial locations. 5.3.4(D)

2. A revision to Section 7.2.3 (Requirements for Perimeter Buffers and Landscape Areas) would clarify that perimeter buffers are applicable only around the *perimeter* of the TCAP area, not along interior property boundaries within the TCAP, regardless of whether or not a particular property within the TCAP boundary is also in the Town Center zoning district. Although Town Center zoning has been applied to the vast majority of properties within the TCAP, some properties (*approximately 20 areas containing one or more parcels, ranging in size from approximately 0.2 to 7 acres*) are subject to a conditional use zoning district that was in place at the time the TCAP was adopted in 2003. Such properties were not rezoned to a Town Center sub-district at that time in order to retain the previously-approved zoning conditions. Section 7.2.3(A)(2) currently references the boundary of the Town Center *zoning district* rather than the boundary of the *area plan*. 7.2.3(D)

PROPOSED TEXT

| Portion of TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES (Provided for reference only – no changes proposed). | | | | | | | | | | | | | | | | |
|--|-----------------------|-------------|------------|---------------------|-------------|-------------------|------------|------------|---------------|-----------------|------------|------------|----------------|------------|----------------|-------------------------------|
| 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 Standards |
| ACCESSORY USES | | | | | | | | | | | | | | | | |
| Accessory Uses | Outdoor display/sales | A | A | | | | | | | A | A | A | A | A | A | 5.3.4(D) |
| Accessory Uses | Outdoor storage | | | | | | | | | A | A | A | A | A | A | 5.3.4(E) |

5.3.4 ACCESSORY USES AND STRUCTURES ALLOWED: Outdoor Display and Sales

(D) Outdoor Display and Sales

Outdoor display and/or sale may be allowed as an accessory use for all uses requiring site plan approval. It is the intent of this Ordinance to allow the display of merchandise for sale by the merchant of the principal use, but not where the display of such items impedes the flow of pedestrian or vehicular traffic, or creates an unsafe condition. This shall not include hazardous and flammable materials, such as gasoline, oil, antifreeze, kerosene, poisons, pesticides and similar items. The display of goods shall meet all of the following requirements:

(1) Procedural Requirements

Outdoor display and/or sale shall require approval of the Planning Director. All new site and/or subdivision plans must show the location of such areas in accordance with this section. Existing non-residential uses must submit a sketch showing the

location of the outdoor display or sales areas and how the requirements of this section are to be met. Approval may be subject to appropriate conditions by the Planning Director.

(2) Where Permitted

- (a) All outdoor display and/or sale of goods shall be located immediately adjacent to the storefront and not in drive aisles, loading zones, fire lanes, or parking lots, except as otherwise ~~provided~~ allowed or required in this Section 5.3.4(D)(2).
- (b) The area in front of a store that may be used for outdoor display and/or sales shall be limited to no more than one-half (1/2) of the length of the front of the building. In the case of a shopping center, the "front of the building" shall include the entire frontage of the shopping center, meaning that the total amount of display for all the in-line tenants combined shall not exceed fifty (50) percent of the aggregate building frontage of the overall shopping center. If the store is located in a building that is one hundred thousand (100,000) square feet or larger in size and meets a minimum setback of three hundred (300) feet from a thoroughfare, then the area on one (1) side of the building may be used for outdoor display and/or sales, as long as the area is limited to no more than three-quarters (3/4) of that side of the building.
- (c) The area of outdoor display and/or sales shall not encompass the width of the entrance doors to the facility as projected straight out from the facility. For example, if the width of the entrance doors is ten (10) feet, then there shall be at least a ten (10) foot clearance from the doors as projected straight out and away from the facility.
- (d) Where adjacent to and accessible from an on-site parking area, At least five (5) feet along the parking lot side of the display shall be maintained free of obstruction to allow for pedestrian and handicap movement, such that handicapped pedestrians and others do not have to enter the parking lot or drive aisle to walk around the display.
- (e) No goods shall be attached to a building's wall surface.
- (f) The height of the outdoor display shall not exceed six (6) feet, unless an exception to this provision has been granted by the Planning Director.
- (g) Where adjacent to or accessible from an on-site parking area, ~~the~~ the outdoor display and/or sales area shall take place on an improved surface such as the sidewalk or pavement. Either the outdoor display and/or sales area, or the required area of pedestrian/handicap movement, must be clearly marked by a contrasting paint color or a unique surface treatment (e.g., use of different materials, scored surface, etc.).
- (h) Retail sales or display of goods, products, or services from a motor vehicle, trailer, or shipping container is prohibited, unless explicitly allowed in this Section 5.3.4(D)(2).
- (i) Where the principal use is located within a general shopping center (as defined in LDO Chapter 12), or Mixed Use Overlay District, ~~S~~sale of bulk horticultural or agricultural products such as plants, mulch and pinestraw may occur in parking lots from March 15 through June 15 of each year, subject to all of the following:
 - (i) such display and/or sales may occur from a maximum of two (2) vehicles, trailers, or shipping containers; and
 - (ii) such display and/or sales may occur outside of drive aisles within a designated area in the parking lot not to exceed two thousand (2,000) square feet provided that: any parking spaces located within the designated area are in addition to the minimum number of parking spaces required for the principal use; such designated area is delineated by barrier at least three (3) feet in height, with a single entrance; such designated area is set back at least five (5) feet from any adjacent drive

- aisle; and access to such designated area is located so as to minimize the need to cross drive aisles;
 - (iii) such designated areas, vehicles, trailers or containers will not interfere with the movement of emergency vehicles to such an extent that adequate police, fire, or other emergency services will be impeded and will not likely cause unreasonable or unwarranted disruption to vehicular or pedestrian traffic; and
 - (iv) such designated areas, vehicles, trailers or containers shall be located in a manner that minimizes visibility from public streets.
- (j) Where the property is located within the Town Center Area Plan, outdoor display and sales area may not exceed 25% of the floor area of the principal use, subject to the following:
- (i) all of or a portion of the allowable outdoor display and/or sales area may be located in the side and/or rear yards if enclosed within a minimum 42-inch-high decorative fence attached to the building; and
 - (ii) up to 40% of the allowable outdoor display and/or sales area may be located between the front of the building and the street right-of-way.

(3) Temporary Sales Events Distinguished

Temporary sales events not meeting all requirements of this Section 5.3.4(D) may be allowed as a special event with approval of a temporary use permit in accordance with Section 5.4.7.

(E) Outdoor Storage as an Accessory Use (this Section is provided for reference only. No changes are proposed).

Outdoor storage may be allowed as an accessory use for all uses requiring site plan approval. The storage area shall meet all of the following requirements:

- (1) *Each outdoor storage area shall be incorporated into the overall design of the primary structure on the site and shall be located at the rear of the primary structure.*
- (2) *Goods stored in an approved outdoor storage area shall be limited to those sold on the premises as part of an associated, additional primary use.*
- (3) *Each outdoor storage area shall be screened from view from all property lines and adjacent rights-of-way by an opaque fence or wall between six (6) and eight (8) feet in height that incorporates at least one (1) of the predominant materials and one (1) of the predominant colors used in the primary structure. The fence may exceed eight (8) feet in height where the difference in grade between the right-of-way and the outdoor storage area makes a taller fence necessary to effectively screen the area. Materials may not be stored higher than the height of the primary structure. The perimeter of the fence or wall must be landscaped with a seven (7)-foot wide strip containing a minimum of one (1) tree for every one hundred fifty (150) square feet of lot area.*
- (4) *A landscaped earth berm may be used instead of or in combination with a required fence or wall.*
- (5) *If the outdoor storage area is covered, then the covering shall include at least one (1) of the predominant exposed roofing colors on the primary structure.*
- (6) *Flammable liquids or gases in excess of one thousand (1,000) gallons shall be stored underground.*
- (7) *No materials may be stored in areas intended for vehicular or pedestrian circulation.*
- (8) *If installed, exterior lighting shall meet the functional needs of the facility without adversely affecting adjacent properties or the neighborhood.*

7.2.3 Requirements for Perimeter Buffers and Landscape Areas

(A) Applicability

- (2) Within the Town Center District Area Plan and the Mixed Use Overlay District, the requirements of this section shall apply only to boundaries between properties located within the district and properties located outside the district, and not to boundaries between properties that are each located within the Town Center District Area Plan or the Mixed Use Overlay District.

ITEM D – TECHNICAL AND MINOR AMENDMENTS

SUMMARY

Proposed technical and minor amendments would:

- Clarify that minor changes and revisions to subdivisions and site plans will not extend the period of validity for the original site plan; 3.9.2(K)
- Clarify that uses not specifically permitted are prohibited; 4.2.3(D), 5.1.1 and 5.1.5
- Clarify the features that identify the location of a boundary related to density limits in the Swift Creek watershed. The area bounded by Tryon Road, Walnut Street, and Jones Franklin Road is not accounted for in current text. 4.4.6(F)
- Remove the requirement that a veterinary hospital include a fenced outdoor area; 5.2.3(O)
- Eliminate the requirement for a special use permit where required for certain uses within the Mixed Use Overlay District; Table 5.1-1
- Cross-reference and clarify provisions related to the separation between canopy trees, and light poles and electrical transformers; and 7.2.9(M), 7.9.3(D)
- Require certification instead of cash bond, in accordance with current practice, when Planning Director determines that installation of required landscape plantings should be delayed. 7.2.11(B)

PROPOSED TEXT

3.9.2 SUBDIVISIONS AND SITE PLANS: Common Procedures for Review and Approval

(K) Effect and Duration of the Plan Approval

- (3) In no case, shall a plan or parts of a plan be valid if the owner has not completed the plan as approved within five (5) years after the original approval date. The owner or applicant will be required to resubmit for approval of a plan that meets current development ordinances unless otherwise noted in this Ordinance. This five (5) year limit applies to all plans submitted and/or approved after May 13, 1999. Minor Alterations, Minor Modifications, and approval of revised Site or Subdivision plans shall not extend the original five-year approval period.

4.2.3 PDD: Planned Development Districts

(D) General Use and Development Standards for All PDD Districts

(1) Uses Allowed

A planned development may contain any or all of the uses specified in the approved PDD master plan, provided such uses are consistent with the Comprehensive Plan. A wide range of uses is possible in a PDD district, and the specific uses allowed may be different in each PDD district, so the use tables in Chapter 5 (Table 5.1-1) do not include the PDD districts. All uses that are set out in an approved master plan shall be treated as permitted uses within the planned development, except that uses which are prohibited in this Ordinance shall not be permitted within a PDD. Any use not set out in an approved master plan is a prohibited use.

5.1 TABLES OF PERMITTED USES

Table 5.1-1 below sets forth the uses allowed within all general use districts except the Town Center district, Table 5.1-2 below sets forth the uses allowed within the Town Center district and Table 5.1-3 sets forth the uses allowed within the Corridor Transition district. Each of the uses listed in Tables 5.1-1, 5.1-2, and 5.1-3 are defined in the "Use Classifications" section of Chapter 12. Allowable uses for the PDD districts are discussed in Section 4.2.3(D). Any use not listed in Tables 5.1-1, 5.1-2, or 5.1-3 as a permitted use is prohibited. The Planning Director may approve an unlisted use pursuant to Section 12.3.1 of this Ordinance.

5.1.5 Unlisted Uses

~~When application is made for a particular use category or use type that is not specifically listed in Section 5.1 and that is not otherwise prohibited or restricted by this Ordinance, the procedure set forth in Section 12.3.1(C) for considering unlisted uses shall be followed.~~

12.3.1 USE CLASSIFICATIONS: **General** (text provided for reference only – no changes are proposed)

(C) Unlisted Uses

(1) Procedure for Approving Unlisted Uses

Where a particular use category or use type is not specifically allowed under this Ordinance and is also not prohibited or restricted by this Ordinance, the Planning Director may permit the use category or type if the criteria of subsection (2) below are met. The Planning Director shall give due consideration to the intent of this Ordinance concerning the district(s) involved, the character of the uses specifically identified, and the character of the use(s) in question.

(2) Criteria for Approving Unlisted Uses

In order to determine that the proposed use(s) has an impact that is similar in nature, function, and duration to the other uses allowed in a specific zoning district, the Planning Director shall assess all relevant characteristics of the proposed use, including but not limited to the following:

- (a) The volume and type of sales, retail, wholesale; size and type of items sold and nature of inventory on the premises;*
- (b) Any processing done on the premises, including assembly, manufacturing, warehousing, shipping, distribution; any dangerous, hazardous, toxic, or explosive materials used in the processing; and*
- (c) The nature and location of storage and outdoor display of merchandise; enclosed, open, inside or outside the principal building; and predominant types of items stored (such as business vehicles, work-in-process, inventory, and merchandise, construction materials, scrap and junk, and raw materials including liquids and powders); and*
- (d) The type, size and nature of buildings and structures; and*
- (e) The number and density of employees and customers per unit area of site in relation to business hours and employment shifts; and*
- (f) Transportation requirements, including the modal split for people and freight, by volume type and characteristic of traffic generation to and from the site, trip purposes and whether trip purposes can be shared by other uses on the site; and*
- (g) Parking requirements, turnover and generation, ratio of the number of spaces required per unit area or activity, and the potential for shared parking with other uses; and*
- (h) The amount and nature of any nuisances generated on the premises, including but not limited to noise, smoke, odor, glare, vibration, radiation and fumes; and*
- (i) Any special public utility requirements for serving the proposed use, including but not limited to water supply, waste water output, pre-treatment of wastes*

- and emissions required or recommended, and any significant power structures and communications towers or facilities; and
- (j) The impact on adjacent properties created by the proposed use will not be greater than that of other uses in the zoning district.

(3) Determination by the Planning Director; Effects

All determinations by the Planning Director made pursuant to subsection (2) above shall be in writing. In making the determination described in subsection (2) above, the Planning Director shall initiate an amendment to this Ordinance if the particular use or category of use(s) is likely to be common or to recur frequently, or that omission of specific inclusion and reference to this Ordinance is likely to lead to public uncertainty and confusion. Until final action has been taken on such proposed amendment, the determination of the Planning Director shall be binding on all officers and departments of the Town. If no amendment is initiated, the Planning Director's determination shall thereafter be binding on all officers and departments of the Town, without further action or amendment of this Ordinance.

(4) Appeal of Determination of the Planning Director

The determination of the Planning Director may be appealed to the Zoning Board of Adjustment pursuant to the procedures set forth in Section 3.21 of this Ordinance.

4.4.6 OVERLAY ZONING DISTRICTS: Watershed Protection Overlay

(F) Limitations on Impervious Surface Area and Density

(1) Low-Density Option

| <i>Portion of TABLE 4.4-4: MAXIMUM IMPERVIOUS SURFACE LIMITS: LOW DENSITY OPTION</i> | | | | |
|--|------------------------|---|------------------------|--|
| <i>Suburban-New</i> | | <i>Urban-New</i> | | <i>Existing Urban</i> |
| <i>Residential</i> | <i>Non-Residential</i> | <i>Residential</i> | <i>Non-Residential</i> | <i>Residential and Non-Residential</i> |
| Swift Creek Watershed | | | | |
| | | Six (6.0) dwelling units per acre east of Holly Springs Rd. and Jones Franklin Roads. Greater than six (6.0) units per acre west of Holly Springs Rd. and Jones Franklin Roads, not to exceed twelve (12) percent, impervious surface | | |

(2) High-Density Option

| <i>Portion of TABLE 4.4-5: MAXIMUM IMPERVIOUS SURFACE LIMITS: HIGH DENSITY OPTION</i> | | | | | |
|---|---------------------|------------------------|---|------------------------|--|
| | <i>Suburban-New</i> | | <i>Urban-New</i> | | <i>Existing Urban</i> |
| | <i>Residential</i> | <i>Non-Residential</i> | <i>Residential</i> | <i>Non-Residential</i> | <i>Residential and Non-Residential</i> |
| Swift Creek Watershed | | | | | |
| | | | Six (6.0) dwelling units per acre east of Holly Springs Rd. and Jones Franklin Roads, Greater than Six (6.0) units per acre west of Holly Springs Rd. and Jones Franklin Roads, not to exceed seventy (70) percent impervious surface area. | | |

5.2.3 USES-SPECIFIC STANDARDS: Commercial Uses

(O) Veterinary Hospital/Office

- (1) No kennel shall be maintained outside of the principal building.
 - (2) ~~The facility shall include a minimum of two hundred (200) square feet of outdoor enclosed yard for every one thousand (1,000) square feet contained within the principal structure. Where outdoor enclosed yard area is provided, such yard areas shall be enclosed by a solid, decorative fence or masonry wall at least eight (8) feet in height.~~
 - (3) The animal hospital structure shall be insulated and soundproofed, in order to minimize all loud and disturbing noises that might disturb those persons in adjoining structures or in the nearby vicinity.
-

| Portion of TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT | | | | | | | | | | | | | | | | | | | |
|--|--|-------------|-----|-----|-----|----|----|-----|-----------------|----|----|-----|---|---|-----------------|-----------------|------------------------|----|-----------|
| P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit | | | | | | | | | | | | | | | | | | | |
| ¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. | | | | | | | | | | | | | | | | | | | |
| ² Neighborhood Activity Center, as delineated on the Town-wide Land Use Plan. | | | | | | | | | | | | | | | | | | | |
| ³ Community Activity Center, as delineated on the Town-wide Land Use Plan. | | | | | | | | | | | | | | | | | | | |
| ⁴ Regional Activity Center, as delineated on the Town-wide Land Use Plan. | | | | | | | | | | | | | | | | | | | |
| Use Category | Use Type and [Use Class] | RESIDENTIAL | | | | | | | NON-RESIDENTIAL | | | | | MIXED USE OVERLAY DISTRICT ¹ | | | Use-Specific Standards | | |
| | | R80 | R40 | R20 | R12 | R8 | TR | RMF | RR | OI | GC | ORD | I | NC ² | CC ³ | RC ⁴ | | | |
| RESIDENTIAL USES | | | | | | | | | | | | | | | | | | | |
| Group Living | Nursing home | | | | | | | S | S | | | P | S | S | | P | PS | PS | 5.2.1 (G) |
| Group Living | Boarding house | | S | S | S | S | S | P | | | | | | | | S | S | S | 5.2.1 (A) |
| COMMERCIAL USES | | | | | | | | | | | | | | | | | | | |
| Recreation/ Entertainment, Indoor | Theatre, large | | | | | | | | | | | | | | | S | P | P | |
| Recreation and Entertainment, Outdoor | Athletic field, private | P | P | P | S | S | S | | P | | | | S | S | | | | S | 5.2.3 (A) |
| Recreation and Entertainment, Outdoor | Commercial outdoor recreation facility | | | | | | | | | | | S | | S | S | S | S | S | |

| | | | | | | | | | | | | | | | | | |
|---------------------------------------|-------------------------------------|---|---|--|--|--|--|-----|-----|-----|-----|-----|-----|-----|-----|-----------|-----------|
| Recreation and Entertainment, Outdoor | Outdoor amphitheater, commercial | | | | | | | | | | | S | S | | S | S | |
| Retail Sales and Service | Moped sales/rental | | | | | | | | | | S | P | P | S | S | S | 5.2.3 (Q) |
| Retail Sales and Serviced | Adult Business | | | | | | | | | | | S/P | | S | S | S | 5.2.3 (M) |
| Retail Sales and Service | Trade School | | | | | | | | S/P | S/P | P | P | S | S | S | 5.2.3 (S) | |
| Vehicles and Equipment | Motor Vehicle Sales/Rental | | | | | | | | S/P | P | P | S/P | S/P | S/P | S/P | 5.2.3 (Q) | |
| INDUSTRIAL USES | | | | | | | | | | | | | | | | | |
| Industrial Service | General industrial service | | | | | | | | | | | | P | | S | S | |
| Manufacturing and Production | Manufacturing, light | | | | | | | | | | | P | P | S | S | P | |
| Manufacturing and Production | Prototype process & production plan | | | | | | | | | | | P | P | S | S | P | |
| Telecommunications Facilities | Other free-standing towers | S | S | | | | | S/P | S/P | S/P | S/P | S/P | S/P | S/P | S/P | S/P | 5.2.4 (D) |
| Warehouse and Freight Movement | Wholesale Establishment | | | | | | | | | S | P | P | | | S | P | |

7.2.4 **Streetscape Landscaping** (provided for reference only – no changes are proposed)

(E) **Tree Placement**

Trees shall be installed on the thoroughfare side of any berm or screen planting, and no less than five (5) feet from a sidewalk or trail, or from back of curb where no sidewalk exists or is planned within the thoroughfare right-of-way. Trees should be installed in a staggered fashion, or in clusters or groupings of upper-story and/or understory trees in combination with associated plantings. Trees may be planted in a linear arrangement parallel to the street, depending upon the area (e.g., downtown areas, neotraditional developments, etc.). In order to prevent conflicts and allow for appropriate maintenance, canopy trees shall be placed at least ten (10) feet from electrical transformers and twenty (20) feet from light poles.

7.2.9 **Miscellaneous Landscaping Requirements**

(M) **Separation from Utility Appurtenances**

In order to prevent conflicts and allow for appropriate maintenance, canopy trees shall be placed at least ten (10) feet from electrical transformers and twenty (20) feet from light poles.

7.9.3 **EXTERIOR LIGHTING: Standards**

(D) **Distance from Property Line Location and Separation Requirements**

All outdoor lighting fixtures shall be located a minimum of ten (10) feet from a property or five (5) feet from a right-of-way line and should not be located within a required perimeter buffer or streetscape unless it is located at the interior edge. Where located within a streetscape or buffer, light poles shall be placed a minimum of twenty (20) feet from existing or proposed canopy trees.

7.2.11 **Time Limit for Installation of Required Landscaping**

(B) Extensions and Exceptions

The Planning Director may grant exceptions and extensions to the above time limit in the following circumstances and under the following conditions:

- (1) Exceptions may be granted due to unusual environmental conditions, such as drought, ice, over-saturated soil (deep mud), or inappropriate planting season for the plant species (plantings between June through August are strongly discouraged), provided that the developer or property owner provides the Town with a cash bond certification on a form approved by the Planning Department ensuring the installation of the remaining landscape materials. In such cases, the Planning Director may issue a conditional Certificate of Occupancy for a period of thirty (30) to one hundred eighty (180) days, depending on the Director's recommendation for the next earliest planting season. ~~The bond shall be accompanied by documentation of the estimated cost of the remaining landscaping to be completed. This documentation may be a landscaping contractor's bid or contract, a nurseryman's bill, or a similar document. The amount of the cash bond shall be one-half (1½) times the cost of the plant material yet to be installed, based on the highest estimate received.~~
- (2) Exceptions may be granted due to the substitution or unavailability of plant species or acceptable plant size as specified on the site plan, provided that the developer or property owner provides the Town with a cash bond certification on a form approved by the Planning Department to ensure that the unavailable plants will be installed on the property. In such cases, the Director may issue a temporary Certificate of Occupancy for a term of up to one hundred eighty (180) days or to the next planting season, whichever comes first. Only twenty (20) percent of the plant materials to be installed on the property may be delayed ~~and bonded~~ under this exception. All such substitutions shall be marked on the "as-built" landscaping plans submitted to the Planning Director, and must be signed, dated, and approved by that Director prior to installation.
- (3) Exceptions may be granted due to circumstances beyond the developer's or property owner's control, , such as incomplete construction or utility work to occur in a proposed landscaped area within thirty (30) days after expected site completion, provided that the developer or property owner submits a letter from the utility company stating the estimated installation date, and provides a cash bond certification on a form approved by the Planning Department to ensure installation of the required landscaping. In such cases, the Planning Inspections and Permits Department may issue a temporary conditional Certificate of Occupancy ~~for a defined period not to exceed thirty (30) days.~~