

Planning and Zoning Board Meeting
June 20, 2016

DETAILS REGARDING PROPOSED ROUND 34 LDO AMENDMENTS

ITEM A – DEVELOPMENT PLAN AND PLAT APPROVAL PROCESS

BACKGROUND

Item A proposes modifications to clarify and simplify the development plan and plat approval process and to ensure wording is more consistent throughout the LDO. The proposed amendments would:

- Remove the requirement that the Town Council or ZBOA must make quasi-judicial decisions within 90 days;
- Remove the requirement that the Town Clerk sign all subdivision plats. (The Clerk's signature is not required by statute and adds an extra layer to the review process);
- Amend the appeal process for plats denied by the Planning Director to conform to state statutes;
- Amend phasing plan requirements to clarify timing and that pedestrian and greenway improvements in each phase must also be "stand alone";
- Amend language regarding installation of utility lines to conform to the Town's Charter and to clarify that large electrical transmission lines are not required to be placed underground;
- Allow staff to accept of payments in lieu of infrastructure improvements for any amount, so long as the applicant is proposing to make a full payment in lieu. (Council would continue to hear requests for partial payments in lieu);
- Add authorization to accept payments in lieu for utility improvements (water, sewer, and reclaimed water); and
- Clarify the process for completion of required infrastructure improvements.
- Eliminate or reduce required improvements for certain development plans with limited impact.

PROPOSED TEXT

3.9.2 Common Procedures for Review and Approval of Subdivisions and Site Plans

(G) Site/Subdivision Plans Approved By Planning Director

- (1) Within ninety (90) days from the submittal or any re-submittal of the application, the Planning Director shall review the site and/or subdivision plan, and the comments and recommendations of the Development Review Committee. The Director shall either approve or deny the plan within this time period unless the applicant has caused additional delay ~~by failing or failed~~ to provide necessary or accurate information.

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

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

The application, recommendations, and comments of the Development Review Committee and other appropriate review bodies shall be forwarded to the Town Council or Zoning Board of Adjustment, as appropriate, for action. The Town Council or Zoning Board of Adjustment shall review this information, hold a quasi-judicial hearing, and approve, conditionally approve, or reject the plan ~~within ninety (90) days of receipt of the plan unless the applicant has caused additional delay beyond this ninety (90) day period by failing to provide necessary or accurate information.~~

(I) Approval Criteria

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

- (1) The plan complies with all applicable requirements of this Ordinance, including the ~~development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as~~ all applicable Town specifications and official plans and manuals or documents adopted by the Town. (Note: Plans within Planned Developments may be subject to different requirements based on the approval).

(J) Recording of ~~Deed Instrument~~ for Required Dedications

- (1) Approval of a site and/or subdivision plan shall automatically be conditioned upon the applicant ~~recording an original warranty deed containing a metes and bounds description of~~ dedicating any and all lands, interests in land, and rights-of-way required to be dedicated as part of the approved plan through an instrument in a form approved by the Town and recorded with the Wake County Register of Deeds.
- (2) For site plans, such ~~deeds instruments~~ shall be recorded prior to the issuance of a building permit. In addition, the applicant shall cause the Wake County Register of Deeds to mail a copy of the original recorded ~~deed instruments~~ to the ~~Planning~~ Transportation and Facilities Department.
- (3) For subdivision plans, ~~all lands and rights-of-way dedications~~ such instruments must be recorded prior to, or in conjunction with the recording a subdivision plat for the development unless otherwise allowed within this Ordinance. Failure to satisfy this requirement shall render approval of the plan null and void.

(K) Effect and Duration of the Plan Approval

- (1) Approval of a plan shall authorize the applicant to proceed with any applications for environmental permits, building permits, and other permits and approvals required in order to develop the property in conformity with the approved plan. A permit, certificate, or other approval may be issued by the Town only if it conforms to the approved plan, and the applicant has made all dedications and improvements required by this Ordinance, except where the non-compliance is the subject of a ~~minor change~~ modification to the plan approved pursuant to Section 3.19, Minor Modifications or is otherwise permitted by this Ordinance.
- (2) An approved plan shall become null and void if the applicant has failed to make substantial progress on the ~~site plan~~ within two (2) years after the date of approval. See Chapter 12 for a definition of "substantial progress". The Planning Director may grant an extension of this time limit, for good cause shown, upon receiving a request from the applicant before the expiration of the approved plan. The length of this extension may be up to two (2) additional years provided that no substantially new requirements need to be addressed.
- (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~~ After that 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 (5) year approval period.

3.9.3 Subdivisions of Land

(E) Review and Approval of Final Plats

(4) Staff Review and Approval of Plat

(a) Approval Criteria for Plats

The Planning Department shall approve the plat if it is in substantial conformity to the approved subdivision plan and the applicant has carried out the improvements shown on the subdivision plan and made all dedications and improvements, or payments and guarantees in lieu thereof, as associated with the approved subdivision plan and as required by Chapter 8. ~~The Development Review Committee shall review the plat for compliance with these requirements.~~

(b) Processing of Approved Plat

If all conditions and requirements for approval of the plat have been met, the Planning Director ~~or designee and Town Clerk~~ shall sign all copies of the plat for recording. The ~~Inspections and Permits~~ Planning Department shall return the approved and signed copies to the applicant, one (1) of which the applicant shall file with the Wake County Register of Deeds within thirty (30) days after approval. After the plat has been recorded at the Register of Deeds, the required number of copies of the recorded plat shall be provided to the ~~Inspections and Permit~~ Planning Department prior to the acceptance of any permit applications.

(5) Effect of Approval of a Plat

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

(6) Appeal of Denial

In the event the Planning Director denies a plat, ~~an appeal may be filed~~ any party aggrieved by that decision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S.160A-381(c) for petitions in the nature of certiorari. ~~The appeal procedure of Section 3.21 of this Ordinance shall apply, except that the appeal shall be to the Town Council, not the Zoning Board of Adjustment.~~

8.1.2 SUBDIVISION AND SITE PLAN PROVISIONS: Phasing Plan Requirements

- (C)** Each phase of a development ~~needs to~~ shall be “stand alone” in regard to utilities, fire protection, streets, pedestrian connections, greenways, and stormwater management. ...
- (D)** For residential subdivisions, Pphases should shall be created so that each phase consists of no less than twenty (20) lots. An exception ~~can~~ may be considered for the first initial phase if a model or sales home is planned, or if a phase of 20 lots is not practicable due to physical site conditions or presence of existing development or infrastructure, provided that phase meets “stand alone” requirements. ...
- (F)** Lot numbers ~~should~~ shall not be duplicated within different phases of the same subdivision.
- (H)** All ~~right-of-way and/or easements dedications~~ for public infrastructure servicing the respective phase must be recorded with the first plat for a subdivision or prior to the issuance of the first certificate of occupancy for a phased site plan.
- (I)** Water and sewer extension permit applications for each individual phase of the project are

required after plan approval.

8.1.3 SUBDIVISION AND SITE PLAN PROVISIONS: Required Improvements

(A) ~~Improvements Applicable to All Site and Subdivision Plans~~ General Requirements

The developer or applicant shall be required to do the following unless specified otherwise in this Ordinance:

- (1) Dedicate any additional right-of-way necessary to achieve the width required by the Town's Comprehensive Transportation Plan, Parks, Recreation & Cultural Resources Facilities Master Plan, and public utility plans for all streets adjoining the property;
- (2) Reserve, but not dedicate, right-of-way for controlled access highways;
- (3) Install curbs and gutters along all streets adjoining the property and to pave all streets adjoining the property, in accordance with the requirements set out in the Town's Standard Specifications and Details Manual and the Town's Comprehensive Transportation Plan;
- (4) Install sidewalks and pedestrian pathways in accordance with the requirements set out in the Town's Comprehensive Transportation Plan and Standard Specifications and Details Manual where warranted for the public safety and convenience in view of existing and expected pedestrian traffic;
- (5) Install street signs in accordance with Section 8.1.4(F) below;
- (6) Install street lighting in accordance with Section 8.1.4(G) below;
- (7) For residential development, provide open space and recreational facilities; and
- (8) Install public utilities in accordance with Section 8.1.4(E).

(B) ~~Improvements Not Applicable to Certain Site Plans~~ Exceptions to General Requirements

Development activities requiring site or subdivision plan approval that have minimal impact on transportation networks and other infrastructure systems are not required to install or provide the required improvements Section 8.1.3(A), as provided below:

(1) Development Activities Exempt From All General Requirements

Development plans meeting any of the criteria listed below shall not be required to meet the features listed in Section 8.1.3(A), with exception of utilities otherwise required per the Town Code of Ordinances, Town Policy 23, the State Building Code or Fire Code, and other applicable state or federal regulations. No structure shall be placed in the area necessary to achieve the right-of-way width required by the Town's Comprehensive Transportation Plan, Parks, Recreation & Cultural Resources Facilities Master Plan, and public utility plans for all streets adjoining the property

- (a) Development activity which requires site plan approval due only to impacts to an Urban Transition Buffer, riparian buffer or wetland, provided that the impact is classified as "exempt" or "allowable" in Table 7.2-6;
- (b) The installation or expansion of components of site infrastructure such as retaining walls, entry features, and site utilities; or
- (c) The addition of new or expanded recreational features such as tot lots, community gardens, playgrounds, trails, gazebos and similar facilities, but not including recreational facilities that function as a destination and generate additional traffic, such as sportfields and swimming pools.

Whereas right-of-way dedication is not required for the activities listed above, no structure shall be placed in the area necessary to achieve the right-of-way width required by the Town's Comprehensive Transportation Plan, Parks, Recreation &

Cultural Resources Facilities Master Plan, and public utility plans for all streets adjoining the property.

(2) Development Activities Exempt From All General Requirements Except Right-of-Way Dedication

Development plans meeting any of the following criteria shall not be required to meet the features listed in Section 8.1.3(A)(2) through (8), with exception of utilities otherwise required per the Town Code of Ordinances, Town Policy 23, the State Building Code or Fire Code, and other applicable state or federal regulations.

- (4a) A change in use of an existing building or structure that does not generate one hundred (100) or more additional peak hour trips as defined in Section 3.4.1(D)(3);
- (2b) The cumulative addition of the greater of five thousand (5,000) square feet to an existing structure, or the replacement of a demolished structure or five percent (5%) of the total square footage of the buildings on the site, provided such cumulative addition does not generate one hundred (100) or more additional peak hour trips as defined in Section 3.4.1(D)(3);
- ~~(3) The installation or expansion of components of site infrastructure such as retaining walls, entry features, and site utilities;~~
- (4c) The installation of or expansion of un-manned utility infrastructure facilities that do not generate daily traffic, such as telecommunication facilities, utility substations and water towers;
- ~~(5) The addition of new or expanded recreational features such as tot lots, community gardens, playgrounds, trails, gazebos and similar facilities, but not including recreational facilities that function as a destination and generate additional traffic, such as sportfields and swimming pools; or~~
- (6d) The cumulative addition of up to thirty (30) parking spaces; or
- (e) The creation of a one (1)-time subdivision of one (1) additional residential lot from an existing lot located in a previously approved residential subdivision containing more than three (3) lots

~~(C) Improvements Not Applicable to Certain Subdivision Plans~~

~~The creation of a one (1) time subdivision of one (1) additional residential lot from an existing lot located in a previously approved residential subdivision containing more than three (3) lots shall not be required to meet requirements listed in Section 8.1.3(A)(3) through (8), with exception of utilities otherwise required per the Town Code of Ordinances, Town Policy 23, the State Building Code or Fire Code, and other applicable state or federal regulations.~~

8.1.4 SUBDIVISION AND SITE PLAN 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~~ TDF Agreement for thoroughfare improvements in accordance with Section ~~7.11.16~~ 7.11.14 of this Ordinance. Each person entering into such a ~~developer agreement~~ TDF Agreement shall, prior to final plat approval, furnish the Town with a performance guarantee as defined by G.S. 160A-372 as now or hereafter amended guaranteeing fulfillment of the person's portion of the thoroughfare improvements agreed upon in the ~~developer agreement~~ TDF 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 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.~~

(C) Storm Drainage

- (1) Developments shall comply with the requirements set forth in Sections 7.4, Soil Erosion and Sedimentation Control, and 7.5, Flood Damage Prevention, of this Ordinance and the following standards:
 - (a) No surface water drainage from the ~~subdivision site~~ shall empty into a sanitary sewer.
 - (d) The Town shall neither have nor accept any responsibility to maintain any storm drainage ~~feature or~~ structures, except for those lying within a Town right-of-way or traversing Town-owned property. ~~However, the Town may be requested to provide limited maintenance of stormwater impoundments located in the Swift Creek watershed, in accordance with the Policy Statement entitled "Impoundment Maintenance Swift Creek Watershed," as may be amended from time to time by the Town Council. The Town also may be requested to furnish labor and equipment to assist in the maintenance of storm drainage structures, in accordance with Policy Statement No. 35 (Storm Drainage System Petitions), as may be amended from time to time by the Town Council.~~

(E) Utilities

- (1) Water mains, sanitary sewers, and functional fire protection systems shall be installed ~~by the subdivider~~ prior to the final plat approval and in accordance with adopted Town policy and the Town's Standard Specifications and Details Manual. When Town water and sanitary sewer lines are available, or will be made available to within three hundred (300) feet of any ~~subdivision site~~ within four (4) months after preliminary plan approval, the ~~subdivider~~ site shall connect to the Town utilities.
- (2) All utility or other pipes, wiring, conduits, cables, and fixtures, including but not limited to electrical, gas, telephone and telecommunications lines, fiber optic cables and the like, shall be installed underground, except for transmission lines with a voltage of 115kV or greater or in situations where such placement is prohibited or deemed determined to be impractical by the utility provider. Town Council in a quasi-judicial hearing.
- (3) Easements shall be provided to the Town for utility activities which shall include, but not be limited to, the installation, inspection, replacement, repair, operation and/or maintenance of such facilities and related appurtenances as may be necessary for the transmission of water and/or wastewater. improving, upgrading, removing, inspecting, replacing, repairing, maintaining, using and operating such pipelines, laterals, interceptors, mains, manholes, conduits, facilities and related appurtenances as may be necessary or convenient for the receipt, conveyance, transmission and distribution of water, reclaimed water, and/or wastewater and for access thereto. Where necessary, easements shall be centered along or adjacent

to lot lines to the greatest extent practicable. Easements shall be sized in accordance with the Town's Standard Specifications and Details Manual. No structures or other improvements shall be placed within any Town utility easement. Ground covers or grasses may be planted within an easement. No trees or shrubbery of any size shall be placed within any Town utility easement because of the need for access by utility maintainers and line damage that tree and shrub roots can cause. ~~Fences and landscaping~~ Any improvements installed within the easement are subject to disturbance or damage during the Town's use of the easement and may be removed if by the Town needs access for maintenance or utility line repair.

8.1.5 SUBDIVISION AND SITE PLAN PROVISIONS: 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
- (b) ~~Adverse topographic or environmental features are present that cause the road improvement to be impractical!~~ The amount of the payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements, as estimated by a registered professional engineer selected by the applicant and approved by the Transportation and Facilities Director. The amount paid for a given street frontage shall be considered total and complete payment for the improvements considered, and shall preclude the Town from assessing that frontage for additional fees in the event that the Town elects to install such improvements along that frontage at a later date.

(2) Approval by Water Resources Director

The Water Resources Director may approve payment in lieu of required utility improvements, including reclaimed water lines, provided that:

- (a) If constructed, the utility improvement would not provide immediately benefit to utility customers, but will be necessary or desirable in the future; and
- (b) The amount of the payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements, as estimated by a registered professional engineer selected by the applicant and approved by the Water Resources Director.

(3) Approval By Town Council

The Town Council may approve ~~such a~~ payment in lieu of less than one hundred (100) percent of the actual installation and construction costs of such improvements in a quasi-judicial hearing, upon determining that such improvements are not necessary or desirable at the present time but will be needed in the future and upon determining that the amount of the payment advances the goals and purposes of the

Ordinance. The applicant shall provide an estimate of the actual installation and construction cost of the improvements as estimated by a registered professional engineer selected by the applicant and approved by the Water Resources or Transportation and Facilities Director. ~~This section shall not apply, however, to street improvements that are governed by the fee provisions in Section 8.1.4(A).~~

- (B) ~~When approved by the Transportation & Facilities Director, the amount of any such payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements, as estimated by a registered professional engineer selected by the applicant and approved by the Transportation and Facilities Director. The amount paid for a given street frontage shall be considered total and complete payment for the improvements considered, and shall preclude the Town for assessing that frontage for additional fees in the event that the Town elects to install such improvements along that frontage at a later date.~~
- (C) ~~Such payment shall be secured by a written agreement executed by the owner or developer prior to the issuance of any environmental permit or building permit pursuant to an approved site plan, whichever is earlier. Full payment shall be made before the Inspections and Permits Department may issue prior to the issuance of any environmental or building permit Certificate of Occupancy for any use covered by the site development plan.~~

8.1.7 SUBDIVISION AND SITE PLAN 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 intended to be dedicated to and maintained by the Town or another government entity ("Town Publicly-maintained improvements") in accordance with the requirements of this section and the approved preliminary plat, as evidenced by issuance of a certificate of completion; or
- (2) The developer or subdivider has installed sufficient improvements to provide functional fire protection (with adequate street access and water supplies for fire-fighting equipment), has provided the Town with a schedule for the completion of the remaining ~~Town Publicly-maintained~~ improvements, and has provided the Town with ~~with~~ a performance guarantee as defined by G.S. 160A-372 as now or hereafter amended in an amount equal to one and one-quarter (1 1/4) times the estimated cost of completion of the ~~required remaining~~ Town Publicly-maintained improvements ~~remaining to be installed, as determined by the Transportation and Facilities and/or Water Resources Department(s) Town,~~ with sureties guaranteeing the installation completion of the ~~required~~ improvements.

(C) Level Required for Certificates of Occupancy

- (1) 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) Town~~ certifies that the developer or subdivider has installed all Town Publicly-maintained improvements in accordance with the requirements of this Section and the approved preliminary plat, as evidenced by a certificate of completion. ~~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)(a)~~ Such defects or deficiencies do not render the Town Publicly-maintained improvements dysfunctional;
- ~~(2)(b)~~ The improvements that have been installed provide the full level of fire protection proposed for the ~~subdivision development~~ and the Town Publicly-maintained improvements are under the one (1)-year warranty corrections period for maintenance; and
- ~~(3)(c)~~ The developer or subdivider has provided the Town with a performance guarantee as defined by G.S. 160A-372 as now or hereafter amended in an amount equal to one and one-quarter (1 1/4) times the estimated cost of completion of the required improvements remaining to be installed, as determined by the Transportation and Facilities and/or Water Resources Department(s) Town, with sureties guaranteeing the installation completion of the required Town Publicly-maintained improvements.

~~(2)~~ The Inspections and Permits Department shall issue building permits and/or Certificates of Occupancy for no more than seventy-five (75) percent of the lots within the new development boundary as identified with the associated development plan prior to (i) the issuance of a certificate of completion for Town Publicly-maintained improvements or (ii) completion of all other required improvements. The Transportation and Facilities and/or Water Resources Department(s) Town may waive either of these building permit and/or Certificate of Occupancy limits if this threshold is met during the initial corrections period for Town Publicly-maintained improvements.

(D) Inspection

- ~~(1)~~ Prior to approval of the final plat or the issuance of any Certificates of Occupancy, the Transportation and Facilities and/or Water Resources Department(s) shall inspect all improvements for conformance with the requirements of this Ordinance and the approved plats. The Transportation and Facilities and/or Water Resources Department(s) shall have sixty (60) days after the applicant has requested an inspection to inspect and certify the improvements as being constructed in accordance with the requirements of this Ordinance and the approved plats, or to provide the applicant with a list specifying all defects, deficiencies, and required repairs.
- ~~(2)~~ The installation of improvements shall in no case bind the Town to accept any such improvements for public maintenance or operation thereof, until the Transportation and Facilities and/or Water Resources Department(s), in accordance with this Section, has inspected and accepted the improvements as meeting all applicable requirements.

(E) Correction of Defects and Deficiencies

~~Any such list of defects, deficiencies, and required repairs may be delivered to the applicant in person or by mail, and shall require that the defects and deficiencies stated therein shall be satisfactorily corrected within sixty (60) days of the date the list was mailed. If the applicant fails to correct all defects and deficiencies and to make all required repairs within the sixty (60) day period, then the necessary improvements and repairs may be completed by the Town at the expense of the applicant, using funds from any guarantees provided by the applicant.~~

(F) — Completion of Work and Release of Guarantee

The Town reserves the right to hold or revoke building permits or Certificates of Occupancy and withhold or revoke subdivision and/or site plan approvals until the improvements have been completed and accepted.

Upon completion of the required improvements, the applicant may apply to the Director(s) of Transportation and Facilities and/or Water Resources Department(s) for a certificate of completion and discharge of any guarantee provided above. If the improvements conform to the requirements of this Ordinance, the approved site plan, and any minor changes to the approved site plan granted by the Planning Director pursuant to Section 3.10 of this Ordinance, then the Transportation and Facilities and/or Water Resources Department(s) shall issue such certificate and release the guarantee or, where some work covered by the guarantee remains to be completed, that portion of the guarantee covering the work that has been satisfactorily completed.

(G) — Connection of New Streets to Streets within Existing Developments

The opening of new street connections to existing streets within adjacent developments shall take place in accordance with Section 3.9.3 and this section of this Ordinance. Under certain conditions, such as the impact on an adjacent existing subdivision, the approval authority may delay the connection of the new street until up to seventy-five (75) percent of the total number of Certificates of Occupancy have been issued within the new development boundary as identified with the associated subdivision/site development plan. The decision to delay the connection must consider whether the delay will result in a public safety issue.

(HE) Construction Traffic; Use of Alternative Routes

Construction traffic from the development of new subdivisions and/or site plans may be required to use a reasonable alternative route until seventy-five (75) percent of the total Certificates of Occupancy have been issued within the new development boundary as identified with the associated subdivision/site development plan. If no reasonable alternative route exists, existing public streets may be used (e.g., infill projects, etc.).

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

(A) Limit on Number of Building Permits and Certificates of Occupancy Prior to Total Acceptance

The Inspections and Permits Department shall issue no Certificates of Occupancy until the improvements are under the one (1)-year warranty period for maintenance. The Inspections and Permits Department shall issue building permits and/or Certificates of Occupancy for no more than seventy-five (75) percent of the lots in a development prior to complete and final acceptance by the Town. The Transportation and Facilities and/or Water Resources Department(s) may waive either of these building permit and/or Certificate of Occupancy limits if this threshold is met during the initial warranty period.

Once all improvements intended to be dedicated to and maintained by the Town or another government entity ("Town Publicly-maintained improvements") have been installed and are functional, the developer or subdivider may notify the Transportation and Facilities and/or Water Resources Department(s) Town and request an inspection. If the Transportation and Facilities and/or Water Resources Department(s) Town determines that the installed improvements appear to comply with this Ordinance and all applicable Town standards, including those in the Town's Standard Specifications and Details Manual, then a one (1)-year corrections period begins.

(B) 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) 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.~~

~~If the Transportation and Facilities and/or Water Resources Department(s) Town determines that the installed Town Publicly-maintained improvements do not comply with this Ordinance and all applicable Town standards, including those in the Town's Standard Specifications and Details Manual, the Town shall deliver to the applicant a list of defects, deficiencies, and required repairs, in person or by mail, and shall require that the defects and deficiencies stated therein shall be satisfactorily corrected within sixty (60) days of the date the list was mailed. If the applicant fails to correct all defects and deficiencies and to make all required repairs within the sixty (60) day period, then the necessary improvements and repairs may be completed by the Town at the expense of the applicant, using funds from any guarantees provided by the applicant.~~

- (C) ~~At the end of the one (1)-year corrections period, the applicant shall request the Transportation and Facilities and/or Water Resources Department(s) Town to conduct a final inspection of the Town Publicly-maintained improvements. The Transportation and Facilities and/or Water Resources Department(s) Town may provide the applicant with a list of required work to be done to complete construction of the improvements as required by this Ordinance and all applicable Town standards, including those in the Town's Standard Specifications and Details Manual. Once all required work has been completed to the satisfaction of the Town, the Town shall issue a certificate of completion and release the financial guarantee, if any. If the developer or subdivider fails to complete such required work within sixty (60) days, then the Town may draw on the financial guarantee in order to perform the required work itself. In the case of NCDOT roadways (not to be maintained by the Town) the financial guarantee shall stay in place until the improvements are accepted by NCDOT.~~
- (D) ~~For purposes of this Section 8.1.8, "completion of the remaining (or required) improvements" means that the improvements have been fully installed and are functional, the one-year corrections period has ended, and any additional work required during the corrections period has been completed to the satisfaction of the Town, as evidenced by a certificate of completion.~~
- (E) ~~The Town reserves the right to hold or revoke building permits or Certificates of Occupancy and withhold or revoke subdivision and/or site plan approvals until the required Town Publicly-maintained improvements have been completed.~~
- (F) ~~The installation of improvements shall in no case bind the Town to accept any such improvements for public maintenance or operation thereof. The Town may begin to provide~~

routine maintenance of Town-maintained improvements once the one (1)-year corrections period has begun. Final acceptance of Town-maintained improvements occurs when the certificate of completion is issued.

ITEM B - TELECOMMUNICATIONS FACILITIES

BACKGROUND

The telecommunications industry is constantly evolving, and new technologies are being introduced. Amendments are suggested to:

- Clarify the purpose of the Town’s ordinance;
- Reference applicable federal legislation;
- Provide additional guidance regarding location of antennae in the right-of-way;
- Expand current application requirements; and
- Clarify definitions.

PROPOSED TEXT

5.2.4 USE-SPECIFIC STANDARDS: Industrial Uses

(D) Telecommunications Facilities

(1) Purpose

The purpose of this section is to:

- (a) Minimize the impacts of telecommunications facilities on surrounding areas by establishing standards for location, structural integrity and compatibility;
- (b) Encourage the location and co-location of telecommunications facilities equipment on existing structures thereby minimizing new visual, aesthetic and public safety impacts, and to reduce the need for additional antenna-supporting structures;
- (c) Encourage coordination between suppliers of telecommunications services in the Town of Cary and its planning jurisdiction;
- (d) Accommodate the growing demand for telecommunications services and the resulting need for telecommunications facilities;
- (e) Regulate in accordance with all applicable federal and state laws;
- (f) Establish review procedures to ensure that applications for telecommunications facilities are reviewed and acted upon within a reasonable period of time or any specific period of time required by law;
- (g) Protect the unique aesthetics of the Town while meeting the needs of its citizens and businesses to enjoy the benefits of wireless communications services; and
- (h) Encourage the use of existing buildings and structures as locations for telecommunications facilities infrastructure as a method to minimize the aesthetic impact of related infrastructure.

It is not the purpose or intent of this section to prohibit or have the effect of prohibiting wireless communication services; unreasonably discriminate among providers of functionally equivalent wireless communication services; regulate the placement, construction or modification of wireless communications facilities on the basis of the environmental effects of radio frequency emissions where it is demonstrated that the wireless communications facility does or will comply with applicable FCC regulations; or prohibit or effectively prohibit collocations or modification that the town must approve under state or federal law. The provisions of this Section 5.2.4 are in addition to, and do not replace, any obligations an applicant may have under any

franchises, licenses, encroachments, or other permits issued by the Town.

(2) Siting Hierarchy Preferences

The following list indicates the Town's preferences for facility locations, in descending order of preference:

- Antennae Co-location on Existing Tower
- Concealed (Stealth) Antennae on Existing Building/Structure
- Building-Mounted Antennae and/or Tower
- New Concealed (Stealth) Towers
- New Freestanding Non-Stealth Towers (monopoles)
- New Freestanding Non-Stealth Towers (lattice-type)

These preferences are intended as guidance for development of an application for telecommunications facilities.

(3) Antenna Co-location on Existing Tower

Co-location and eligible facilities requests, as defined in G.S. 160A-400.51 or 47 U.S.C .1455, shall be processed in accordance with G.S. 160A-400.52, and 160A-400.53, and/or federal laws and regulations as appropriate.

(4) Other BuildingStructure-Mounted Antennae

(a) Height

- (i) Structure-mounted antenna located outside of the right-of-way and not on an existing street light or utility pole shall have a maximum height as described in Table 5.2-3.

TABLE 5.2-3: MAXIMUM TOWER AND <u>STRUCTURE-MOUNTED</u> ANTENNAE HEIGHT (<u>outside of right-of-way, not on street light or utility pole</u>), NON-RESIDENTIAL BUILDINGS	
<u>Building Structure</u> Height	Maximum Tower Height (including antennae; measured from the height of the <u>buildingstructure</u>)
Over one-hundred fifty (150) feet	Fifteen (15) percent of <u>building structure</u> height
Seventy-five (75) to one hundred forty-nine (149) feet	Twenty-five (25) percent of <u>building structure</u> height
Less than seventy-five (75) feet	Forty (40) percent of <u>building structure</u> height

- (ii) Structure-mounted antennae located in the right-of-way of any public road or street shall only be located on an existing utility or street light pole, which pole does not exceed a height of 35 feet above the immediate surrounding ground.
- (iii) Antennae located on an existing utility or street light pole, whether inside or outside of the right-of-way, shall not be higher than ten feet above the highest point of the pole.

- (b) The ground-mounted components of structure-mounted antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted above ground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.

(5) Concealed (Stealth) Antennae and Towers

(a) Design Considerations and Visibility

Concealed (stealth) towers shall be designed to complement the physical landscape in which they are intended to be located. Examples of stealth towers that may be compatible include but are not limited to faux pine trees, unipoles/slick sticks, bell towers, etc. New stealth towers shall be configured and located in a manner that shall minimize adverse effects including visual impacts on the landscape, horizon, and adjacent properties. New freestanding stealth towers shall be designed to be compatible with adjacent structures and landscapes with specific design considerations such as architectural designs, scale, color, and texture.

(b) Review and Decision Authority

The decision authority and review type for applications for new concealed (stealth) towers shall be in accordance with the following:

Max. Height of Stealth Tower	Location of Proposed Stealth Tower		
	Residentially-Zoned Land Used for Residential Purposes or Vacant	Non-Residential Zoning District	Residentially-Zoned Land Used for Non-residential Purposes
up to 150 feet	A	A	A
greater than 150 feet, up to 175 feet	B	A	A
greater than 175 feet, up to max. height allowed	C	A	A

- A - Planning Director * - Permitted Use with Site Plan Review;
- B - Zoning Board of Adjustment - Special Use and Site Plan Review
- C - Town Council - Special Use and Site Plan Review

* Review and decision by the Planning Director is only permitted when no reduction in the minimum required setback(s) is requested. If a reduction of the minimum setback(s) is requested for towers that could otherwise be reviewed and decided upon by the Planning Director, review and decision by the Zoning Board of Adjustment shall be required pursuant to LDO Section 5.2.4(D)(8)(b).

(c) Setbacks

Stealth towers must comply with the minimum building setback for the zoning district in which they are located and shall also be set back as follows:

1. From all existing dwellings in a non-residential zoning district by a minimum of the height of the proposed tower;
2. From the property line of non-residentially zoned property by a distance equal to one-half (1/2) the height of the proposed tower, but in no case less than the minimum required buffer width (see Chapter 7 of this Ordinance).
3. From the property line of all residentially-zoned property that is used for residential purposes or is vacant by a minimum of the height of the proposed tower;
4. From the property line of all residentially-zoned property used for non-residential purposes by a distance equal to one-half (1/2) the height of the proposed tower, but in no case less than the minimum required buffer width (see Chapter 7 of this Ordinance); and
5. From adjacent road right-of-way boundaries by the height of the proposed tower.

(d) Height

The maximum permitted height for stealth towers is one-hundred ninety-nine (199) feet.

(e) Stealth Antennae

Stealth antennae shall be allowed as a permitted use in all non-residential zoning districts, and on residentially-zoned land used for non-residential purposes. A special use permit granted by the Town Council is required to erect or install any stealth antenna(e) in the RMF zoning district. Unless otherwise allowed above, stealth antennae shall be prohibited in all other residential zoning districts. If permitted to be located in the right-of-way of any public road or street, stealth antennae shall be located on an existing utility or street light pole which does not exceed a height of 35 feet above the immediate surrounding ground. Stealth antennae located on an existing utility or street light pole, whether inside or outside of the right-of-way, shall not be higher than ten feet above the highest point of the pole. The ground-mounted components of stealth antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted aboveground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.

(11) Submittal Requirements

- (a) In addition to the submittal requirements of Sections 3.8 (Special Uses) and 3.9 (Subdivisions and Site Plans) of this Ordinance, as may be applicable, applications for proposed telecommunications facilities shall also include maps, reports and documents as specified by the Planning Director. At a minimum, this information shall describe the facility with regard to its proposed location, design and operation.
- (b) Due to the characteristics specific to each type of proposed facility (e.g., co-location vs. new tower, stealth vs. non-stealth), the Planning Director shall have the authority to waive one (1) or more of the submittal requirements for telecommunications facilities, if requested by the applicant, if the Director determines the required information is not relevant to the review of such facility and/or does not further the intent and purpose of providing such information for review. If, as part of review by an outside expert, additional submittal information is determined to be necessary in order to review the application for compliance with this Ordinance, such information shall be required regardless of the items initially submitted with the application.
- (c) Applicant must obtain all other required permits, authorizations, approvals, or declarations that may be required for installation or modification of the proposed facility under federal, state, or local law, including but not limited to building permits and FCC approvals. An approval issued under this Section 5.2.4 is not in lieu of any other permit required under the LDO or Town Code, nor is it a franchise, license, or other authorization to occupy the right-of-way, or a license, lease or agreement authorizing occupancy of any other public or private property. It does not create a vested right in occupying any particular location, and an applicant may be required to move and remove facilities at its expense consistent with other provisions of applicable law. An approval issued in error, based on incomplete or false information submitted by an applicant or that conflicts with the provisions of the LDO, is not valid.

(12) Nonconforming Setbacks for Existing Towers

Telecommunications facilities towers that do not meet the minimum required setbacks from lots that were created after the construction of the tower shall be deemed conforming with regard to setbacks for the purposes of Section 5.2.4(D).

Note: Refer to Section 6.2.2(C) for requirements associated with creating residentially zoned lots from an existing lot or parcel that contains a telecommunications facility

tower (stealth or non-stealth).

12.3.5 USE CLASSIFICATIONS: Industrial Uses

(C) Telecommunications Facilities

Telecommunications facilities transmit analog or digital voice or communications information between or among points using electromagnetic signals via antennas, microwave dishes, and similar structures. Supporting equipment includes buildings, shelters, cabinets, towers, electrical equipment, parking areas, and other accessory development. Specific use types include:

(1) Antenna Co-Location on Existing Tower

~~Any antenna structure or device used to collect, receive, transmit, or radiate electromagnetic waves, including both directional antennas (such as panels, microwave dishes, satellite earth station antennas over two (2) meters in diameter) and omni-directional antennas (such as whips) that is placed upon an existing telecommunications tower or projection. This term does not include antennas two (2) meters or less in diameter.~~

(2) Concealed (Stealth) Antennae and Towers

Any man-made trees, clock towers, bell steeples, light poles, water towers and similar alternative design mounting structures that camouflage or conceal the presence of antennas or towers.

(3) ~~Other Building Structure-Mounted Antennae and Towers~~

~~Any antennae placed on a structure other than an existing telecommunications tower or projection tower, pole, or similar structure attached to a building that supports telecommunications antennae.~~

(4) Other Freestanding Towers

Any structure that is designed and constructed primarily for the purpose of supporting one or more antennas, including self supporting lattice towers, guy towers, or monopole towers. The term includes radio and television transmission towers, microwave towers, common carrier towers, cellular telephone towers, alternative tower structures, and the like.

12.4 OTHER KEY TERMS DEFINED

ANTENNA

Any structure or device used to collect, receive, transmit, or radiate radio or electromagnetic waves, including but not limited to both directional antennas (such as panels, microwave dishes, satellite earth station antennas over two (2) meters in diameter) and omni-directional antennas (such as whips).

STEALTH

~~For purposes of telecommunications, the technology of, or the structure containing, telecommunications or telephone communications antennae in a structure or building so that the antennae are disguised to look like something else. Examples include steeples, bell and clock towers, silos, trees, and office buildings.~~

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
		R 8 0	R 4 0	R 2 0	R 1 2	R 8	T R	R M F	R R	O I	G C	O R D	I	NC ²	CC ³	RC ⁴	
INDUSTRIAL USES																	
Telecommunication facilities	Other building structure-mounted antennae and towers [4/5/6/7]							S	P	P	P	P	P	P	P	P	5.2.4(D)

<i>Portion of TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES</i>																	
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	H MXD	MX Mid-Rise	HDR Mid-DR	HD R Garden	MD R	LD R	LD R-12	PK S/O S	CB &R	CO M	CLI	OF C/INS	INS	OF C/IND	Use Specific Stds	
Telecommunication facilities	Other building structure-mounted antennae and towers	S	S	S	S	S	S	S	S	S	P	P	P	P	P	5.2.4(D)	

ITEM C - CHAMPION TREES

BACKGROUND

The proposed amendment would specify that sweet gum trees are not considered champion trees, regardless of size. This would allow such trees to be removed during development of a site, regardless of size. Town Council has expressed concern with protection of sweet gum trees due to the impacts from its spiky seed pods and aggressive root system

PROPOSED TEXT

7.2.5 Tree Protection, Tree Surveys, and Replacement Trees

(C) Protection of Champion Trees

- (1) Intent/Purpose...**
- (2) Priority Order For Preserving Champion Trees**

When applicants are designing site and/or subdivision plans, champion trees and their critical root zone shall be preserved in the following priority order (which order shall be reviewed when the decision-making authority is making a determination as to whether a plan is in compliance with Section 7.2.5):

- (a) Tier 1 Champion Tree (excludes ~~sweet gum~~ and pine trees):
 - (i) Any champion tree grouping located in a prominent location;
 - (ii) Any single large champion tree located in a prominent location;
 - (iii) Any single small champion tree located in a prominent location;
 - (iv) Any champion tree grouping located in a non-prominent location; and
 - (v) Any single large champion tree located in a non-prominent location.

- (b) Tier 2 Champion Tree:
 - (i) Any single small champion tree, excluding pine ~~or sweet gums~~, located adjacent to other open space areas;
 - (ii) Any single small champion tree, excluding pine ~~or sweet gum~~, located in a non-prominent location;
 - (iii) Any single champion tree, excluding pine, that is forked (see champion tree definition), ~~or any champion sweet gum tree~~, located anywhere on site; and
 - (iv) Any single champion pine tree located anywhere on site.

12.4 OTHER KEY TERMS DEFINED

CHAMPION TREE

Any single tree other than a sweet gum that measures: (a) forty (40) caliper inches or greater for pines; (b) thirty-two (32) caliper inches or greater for all upper story trees other than pines; or twelve (12) caliper inches or greater for dogwood, horticultural cherry, redbud, silverbell, and serviceberry. A tree that meets the indicated size above but is dead or dying from a disease, or has an abnormal form that is not characteristic of its species (for example the habit is one-sided, or the crown is significantly misshapen or missing) as determined by a certified arborist, shall not be considered to be a Champion Tree.

ITEM D - THOROUGHFARE CORRIDOR BUFFER

BACKGROUND

- Establishment of Existing Overlay District
The Thoroughfare Corridor Overlay District was adopted prior to the 1992 adoption of the Unified Development Ordinance (precursor of the existing LDO, which was adopted in 2003), as part of a regional effort to maintain buffers along interstate and other limited/controlled access corridors. The overlay applies to fully-controlled highways including I-40, I-440, NC-540 and US-1 (*each of which are accessed only via an interchange*) and also US-64 and the portion of Cary Towne Boulevard between I-40 and NE Maynard Road (*which can be accessed via surface streets and drives*).

- An undisturbed buffer 100 feet in width is required along these highways, except at interchange ramps, where the minimum buffer width is 50 feet. Town Council may reduce the width of the buffer to no less than 30 feet after conducting a quasi-judicial public hearing.

- Concerns Regarding Applicability of Existing Overlay District
Town Council has recently questioned the applicability of the 100-foot buffer to property along Cary Towne Boulevard. Development requests along this street segment typically include a requested reduction in the buffer width, which requires action by Town Council after conducting a quasi-judicial public hearing. Reduction of the buffer to 30 feet was granted in 2012 for the Cary retirement Residence, a 128-suite senior multi-family located at 105 Convention Drive.

- Proposed Establishment of New Buffer Type To Replace Overlay District, and Elimination of Applicability Where Access is Not Fully Controlled

The proposed amendment would apply the existing 100-foot thoroughfare corridor buffer width only to fully-controlled-access highways with no direct access via surface streets or drives (US 1, I-40, I-440 and NC-540). The 100-foot buffer would no longer apply to the portion of Cary Towne Boulevard between I-40 and NE Maynard Road, or US-64 between US-1 and Lake Pine Drive. *(A streetscape buffer would be required along these segments of Cary Towne Boulevard and US-64, consistent with the requirements for other streets designated as thoroughfares on Cary's Transportation Plan. A 30' opaque buffer is required adjacent to non-residential uses, and a 50' opaque buffer is required adjacent to residential uses. The LDO also includes provisions for averaging the width of the streetscape. The Planning Director may reduce a streetscape width by 15% and Town Council may reduce the streetscape width by 30%).*

Staff proposes to implement this requirement as a new buffer type rather than as an Overlay District. Existing staff does not know why a new overlay district was created when this requirement was first established. Section 4.4.4, Thoroughfare Overlay District, would be deleted in its entirety and a new Section (7.2.15 Highway Corridor Buffer) would be added. The standards applicable in the existing overlay district would continue to apply.

Elsewhere in the Triangle, some jurisdictions apply an overlay district while others apply standards through a special buffer type. Staff recommends that the standard be applied as a simple buffer rather than an overlay district to provide consistency with treatment of other buffers along other street types and reduce duplication of ordinance provisions.

- Option to Reconsider Buffer Width and Reduction Provisions Adjacent to Fully-controlled-access Highways

Council may also wish to reconsider the required buffer width, and/or the degree to which buffer reductions could be approved by staff. There have been two recent cases where the buffer width adjacent to US-1 was reduced to 50 feet (Spring Arbor Assisted Living Facility and Paraclete Professional Park, both located on Kildaire Farm Road). In addition, the buffer adjacent to the Cary Parkway exit ramp at Waltonwood was reduced from 50 feet to 30 feet. Except for properties within a Mixed Use Overlay District (such as Paraclete Professional Park), such reduction can only be considered after conducting a quasi-judicial hearing. If so directed by council, staff will develop options for new requirements for consideration prior to the Planning and Zoning Board meeting.

PROPOSED TEXT

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

<i>Portion of</i> TABLE 3.19-1: MINOR MODIFICATIONS ALLOWED		
Standard That May be Modified	Decision-Making Body	Modification Allowed (%)
Thoroughfare Corridor buffer width [Section 4.4.4(D)]	Town Council *	Up to 70

4.4.4 ~~Thoroughfare Overlay~~ [RESERVED] *(Existing text renumbered as new Section 7.2.15, and revised as shown below).*

7.2 LANDSCAPING, BUFFERING, SCREENING, AND TREE PROTECTION

- 7.2.1 Purpose.....**
- 7.2.2 General Provisions.....**
- 7.2.3 Requirements for Perimeter Buffers and Landscape Areas.....**
- 7.2.4 Streetscape Landscaping.....**

- 7.2.5 Tree Protection, Tree Surveys, and Replacement Trees.....
- 7.2.6 Parking Lot Landscaping.....
- 7.2.7 Fences and Walls.....
- 7.2.8 Screening.....
- 7.2.9 Miscellaneous Landscaping Requirements.....
- 7.2.10 Allowable Modifications and Reductions.....
- 7.2.11 Time for Installation of Required Landscaping.....
- 7.2.12 Implementation of Landscape Plan; Inspections.....

7.2.13 Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines

(A) General Maintenance Responsibility

The owners of the property shall be responsible for the installation, preservation, and maintenance of all planting and physical features (installed or vegetated natural areas) in all buffers, streetscapes, vehicular use areas, and other landscaped areas required under Sections 7.2.1 through 7.2.12, and Section 7.2.15 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:.....

7.2.14 Urban Transition Buffer Regulations.....

7.2.15 Highway Corridor Buffer

(A) Purpose and Intent

The purpose of the ~~Thoroughfare Overlay~~ Highway Corridor Buffer is to provide orderly development along ~~controlled/limited access highways~~ US 1, I-40, I-440 and NC-540, to encourage the most appropriate use of adjacent lands, to maintain the scenic natural beauty of the area visible from ~~the controlled/limited such fully-controlled-access highway and from and adjacent lands adjacent to the overlay~~, to provide open space, and to promote the safe and efficient movement of traffic. These ~~thoroughfares highways~~ commonly establish an image of the quality of life in the Town for visitors and residents alike. Preservation of this natural beauty is required to enhance trade, capital investment, tourism, and the general welfare. All development within this ~~overlay district buffer~~ shall comply with the regulations of this Section.

(B) ~~Location of District~~ Applicability

The ~~Thoroughfare Overlay~~ Highway Corridor Buffer is established along both sides of existing and planned ~~controlled/limited fully-controlled-access highways~~, within the Town's jurisdiction and Extraterritorial Jurisdiction Area, as indicated on the Zoning Map and/or Comprehensive Transportation Plan ~~Thoroughfare Plan Maps~~. Such highways include, but are not limited to, US 1, US 64, I-40, I-440 and, NC-540 Cary Town Boulevard (between I-40 and NE Maynard Road), and the Western Wake Expressway. The ~~Thoroughfare Overlay~~ Highway Corridor Buffer covers all lands ~~within one hundred (100) feet of adjacent to~~ the right-of-way along both sides of each such fully-controlled-access highway, ~~except at interchanges, where the overlay district shall extend back to the established point of the intersecting roadway where the controlled access ends or begins (see Section 4.4.4(D) below).~~

(C) ~~Plan Approval Required~~

All development within the ~~Thoroughfare Overlay~~ shall require submission of a subdivision plan or site plan in accordance with Section 3.9 of this Ordinance, and approval of such plan by the appropriate decision-making body.

~~(D)~~ (C) Buffer Requirements

(1) General Requirement

A buffer strip, with a width extending one hundred (100) feet from and parallel to the right-of-way boundary of the fully-controlled-access highway, shall be maintained ~~on all property within the Thoroughfare Overlay.~~

(2) Interchange Requirements

A buffer strip width extending fifty (50) feet from and parallel to the right of way for interchange ramps shall be maintained ~~on all property within the Thoroughfare Overlay.~~

(3) Reductions

The Town Council may reduce the required width of this buffer strip as part of its approval of the site and/or subdivision plan, or as part of its approval of a concept plan or preliminary development plan included as a component of a rezoning request, taking into consideration: the topography of the area; surrounding land uses, particularly residential uses; the actual location of the controlled/limited access highway; the size and shape of land parcels affected by the buffer; and whether the buffer requirement would render the entire property unusable. In reducing the width of the buffer strip, the Town Council shall ensure that the applicant and/or developer will provide appropriate landscaping meeting the requirements of Section 4.4.4(D)(4) 7.2.15(C)(4) below. In no event, however, shall the Town Council reduce the required width of the buffer strip to less than thirty (30) feet. See Section 3.19, Minor Modifications.

(4) Maintenance of Existing Vegetation

Within the required buffer strip, all existing vegetation shall be maintained in a natural, undisturbed state and, unless the existing natural vegetation provides such a buffer, the applicant and/or developer shall install and maintain an Opaque Type A buffer meeting the requirements of Section 7.2.3(D) and (G) of this Ordinance. The owners of the property are responsible for maintenance of the buffer and the consequences resulting from disturbance to the buffer in accordance with Section 7.2.13, Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines. If the developer caused or is responsible for such disturbance of the buffer, and the developer is not the owner of the buffer, then the developer shall also be responsible for the consequences of such disturbance in accordance with Section 7.2.13.

(5) Development within Buffer

No development shall be allowed within the required buffer strip except as provided for ~~herein in Section 7.2.3(H)(1) and (H)(2).~~ ~~The decision-making body may, in approving a site and/or subdivision plan for the property, permit the construction of streets, including greenways, or utilities through the buffer strip upon finding that such construction is necessary for safe ingress, egress, or utility service to the site. If streets or utilities are placed in the required buffer strip, they shall be located and installed in a way that minimizes disturbance of the buffer area (not parallel but crossing within fifteen (15) degrees of perpendicular). If streets, utilities, stormwater drainage channels or piping, or other similar features are placed or are already located in the required buffer strip in any way other than crossing within fifteen (15) degrees of perpendicular, the area making up the street or utility easement or area shall be replaced with an equal amount of buffer area preferably on the site adjacent to the disturbed area. The nature and limits of such construction or disturbance shall be designated on the approved site and/or subdivision plan.~~

(6) — Enforcement

~~Disturbance of buffers required under this section shall constitute a violation of this Ordinance and shall be subject to appropriate penalties and remedies set forth in Chapter 11. For purposes of this section, "disturbance" shall be defined as any action that causes or allows development in the buffer, reduces the size of the buffer or results in injury or harm to required trees, shrubbery, or other vegetation.~~

(E) (D) Variances

No variance shall be granted that modifies the width of the buffer, or the amount or type of vegetation required under this Section, but the Town Council may grant modifications to these requirements in some circumstances (see paragraph ~~(D)~~ (C)(3) above).

(F) (E) Actions of Government or Public Utilities

The law may permit the width of this buffer strip to be reduced through the action(s) of a unit of government or Public Utility (as such term is defined by G.S. § 62-3), or may permit development within the buffer by a unit of government or Public Utility, such as but not limited to construction of highways or utility transmission facilities. In such situations, the action to reduce the buffer width or engage in development within the buffer by the government or Public Utility may not be subject to requirements of the LDO, including review or approval by the Town Council. See LDO Section 1.6.

11.5.2 GENERAL REMEDIES AND PENALTIES: Additional Remedies and Penalties for Certain Violations

(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:

- ~~(a) the removal of trees, shrubs, or vegetative cover, or land that has been subjected to;~~
- (a) any action that, results in injury or harm to required trees, shrubbery, or other vegetation;
- (b) any action that reduces the size of a required buffer or degrades or reduces the required level of screening; and/or
- (c) earthmoving activities, including the addition of fill or installation of impervious surface.

7.2.3 LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Requirements for Perimeter Buffers and Landscape Areas (No changes are proposed to this section. Text is provided for reference only).

(H) Development within Required Buffers

No grading, development, land-disturbing activities, or removal of vegetation shall occur within buffers or associated tree protection areas with exception of the following, unless otherwise explicitly permitted in this Ordinance. Where disturbance within the buffer is allowed, damage to existing vegetation shall be minimized to the extent practicable and supplemental planting shall be provided as necessary to meet the performance standard of the applicable buffer type.

- (1) Sidewalks, street-side trails and public transit amenities;
- (2) Utilities, including but not limited to water and sewer lines, stormwater drainage channels or piping, and similar features, provided that no reasonable alternative location exists; and
 - (a) they are located perpendicular to the buffer or at an angle of at least seventy-five (75) degrees; or
 - (b) they are located at an angle less than seventy-five (75) degrees, and the area contained in the disturbed area is replaced with an equal amount of buffer area meeting the applicable buffer standard, in proximity to the disturbed area.
- (3) Stormwater impoundment areas or other BMPs provided that no reasonable alternative location exists.

ITEM E - OFFICE RESEARCH AND DEVELOPMENT DISTRICT
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BACKGROUND

The current standards applicable in the ORD district were intended to provide support uses within master-planned areas at least 25 acres in size. To support the users within such office and research parks, the LDO was written to allow up to 20% of a minimum 25-acre master-planned area to be developed with uses such as personal service establishments, restaurants and retail stores. However most areas to which this could have applied (Weston and Regency Park, for example) were actually developed as Planned Development Districts (PDD) instead. Today, there are few, if any, remaining areas within the ORD zoning district that are master planned and 25 acres or more in size.

In addition, the LDO currently limits personal service establishments, to a maximum of 20% of any building within the Office/Institutional (OI) zoning district and the Office/Institutional (OFC/INS) and Office/Industrial (OFC/IND) subdistricts of the Town Center. The personal service establishment definition in the LDO covers a wide variety of uses, with varying impacts on the property and adjacent properties. Over time, staff has received requests for these districts to allow certain types of businesses that are defined as personal service establishments, yet operate similarly to office use with minimal impact.

The proposed amendment would:

1. In the ORD District, eliminate requirements and references to 25-acre master plans.

The following uses, currently allowed in the ORD district only where there is a 25-acre master plan, (and in no more than 20% of a building), would no longer be permitted:

- Convenience Stores
- Restaurants
- Retail Stores
- Vehicle Filling Stations
- Vehicle Service, Light

Day care centers and personal service establishments would be permitted with no limitation related to the size of the district or percentage of the building that could be occupied by the use.

2. In the OI District, and in the OCF/INS and OFC/IND subdistricts of the Town Center, personal service establishments would be permitted with no limitation related to the percentage of the building that could be occupied by the use.
3. Modify the definition of "Personal Service Establishment" to remove dance and martial arts studios, such that the remaining personal service uses function more similar to office rather than retail uses.
4. Clarify the definition of "Commercial Indoor Recreation" use and add dance, yoga and martial arts

studios as examples, and allow as a permitted use rather than special use in the ORD district.

- Eliminate discrepancies and overlap in definitions within the Commercial Indoor and Outdoor Recreation use categories.

These changes would eliminate outdated and moot ordinance language. In addition, opportunities would be created for personal service businesses to operate in districts that allow office use, as personal services uses are more individualized and typically operate in a manner more similar to office than retail uses.

PROPOSED TEXT

<i>Portion of</i> TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT PDD, TC & CT) AND MIXED USE OVERLAY DISTRICT																	
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use; PZ = Permitted Use Requiring Zoning Compliance Permit; AZ = Accessory Use Requiring Zoning Compliance Permit																	
¹ Where the base zoning district is Mixed Use District (MXD), a use listed herein as Special Use shall instead be a Permitted Use, subject to the same use-specific standards, provided that the use is represented on the approved Preliminary Development Plan component of the MXD district. ² 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	T R	R M F	R R	O I	G C	OR D	I	NC ²	CC ³	RC ⁴	
PUBLIC/INSTITUTIONAL USES																	
Day Care	Day care center [4/5]	S	S	S	S	S	S	S		P	P	P		P	P	P	5.2.2(B)
COMMERCIAL USES																	
Retail Sales and Service	Convenience store [6]										P	P		P	P	P	5.2.3(B)
Food and Beverage Service	Restaurant, Indoor operation [6]									P	P	P		P	P	P	5.2.3(K)
Food and Beverage Service	Restaurant, Indoor operation [6]										S			P	P	P	5.2.3(K)
Recreation/ Entertainment, Indoor	Commercial indoor recreational facility [5]									P	P	SP	S	P	P	P	5.2.3(F)
Recreation/ Entertainment, Indoor	Neighborhood recreation center, indoor/outdoor, private [4]	P	P	P	P	P	P	P						P	P	P	5.2.3(F)
Retail Sales and Service	Personal service establishment [6]									P	P	P	P	P	P	P	5.2.3(K)
Retail Sales and Service	Retail store [6]									P	P	P		P	P	P	5.2.3(K)
Vehicles and Equipment	Vehicle filling station [6]											P		P	P	P	5.2.3(N)
Vehicles and Equipment	Vehicle repair, heavy [6]												S	P	P	P	5.2.3(N)

Vehicles and Equipment	Vehicle repair, light [6]												P	S	P	P	P	5.2.3(N)
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5.2.2 USE-SPECIFIC STANDARDS: Public/Institutional -Uses

(B) Day Care Centers

- ~~(6) In the ORD district, a day care center may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted or a special use in Table 5.1-1, provided that:~~
- ~~(a) The master plan proposed for development is at least twenty-five (25) acres;~~
 - ~~(b) At least eighty (80) percent of the land area included in the master plan referenced in paragraph (d)(1) above is built and occupied with uses allowed by Table 5.1-1 prior to the development of the day care center;~~
 - ~~(c) The pedestrian and vehicular circulation for the day care center integrates all uses so that access from points which are external to the site is not required;~~
 - ~~(d) A site plan is submitted for the entire parcel pursuant to Section 3.9 that shows the intensity and location of the day care center, the pedestrian and vehicular circulation scheme for the site, and a phasing schedule (see paragraph (2) above).~~

5.2.3 USE-SPECIFIC STANDARDS: Commercial Uses

(B) Convenience Store

- ~~In the ORD district, a convenience store may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted or a special use in Table 5.1-1, provided that:~~
- ~~(1) The master plan proposed for development is at least twenty-five (25) acres;~~
 - ~~(2) At least eighty (80) percent of the land area included in the master plan referenced in (B)(1) above is built and occupied with uses allowed in Table 5.1-1 prior to the development of the convenience store;~~
 - ~~(3) The pedestrian and vehicular circulation for the convenience store integrates all uses so that access from points which are external to the site is not required;~~
 - ~~(4) A site plan is submitted for the entire parcel pursuant to Section 3.9 that shows the intensity and location of the convenience store, pedestrian and vehicular circulation scheme for the site, and a phasing schedule (see (b) above).~~

(F) Commercial Indoor Recreational Facility (~~Indoor and Outdoor~~)

- (1) All swimming pools, hot tubs, and spas
- (2) In the OI district, the use shall be allowed only if all of the following conditions are present:
 - (a) The principal use of the building is office;
 - (b) The total floor area of all such uses and/or structures is no greater than twenty (20) percent of the total gross floor area of the building;
 - (c) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use;
 - (d) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.
- ~~(3) In the ORD district, this may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted~~

or a special use in Table 5.1-1, provided that:

- ~~(a) The master plan proposed for development is at least twenty-five (25) acres;~~
- ~~(b) At least eighty (80) percent of the land area included in the master plan referenced in paragraph (a) above is built and occupied with uses allowed in Table 5.1-1 prior to the development of this ancillary use;~~
- ~~(c) The pedestrian and vehicular circulation for this proposed ancillary use integrates all uses so that access from points which are external to the site is not required;~~
- ~~(d) A site plan is submitted for the entire parcel pursuant to Section 3.9 that shows the intensity and location of the proposed ancillary use, the pedestrian and vehicular circulation scheme for the use being proposed, and a phasing schedule (see (2) above).~~

- (4) In the OFC/INS subdistrict of the TC district, this use may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted or a special use in Table 5.1-2, provided that:
 - (a) The total floor area of all such uses and/or structures is no greater than twenty (20) percent of the total gross floor area of the building;
 - (b) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use; and
 - (c) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.

(K) Personal Service Establishment; Restaurant; Retail Store

(1) OI District

In the OI district, the use shall be allowed as a permitted use only if all of the following conditions are present:

- (a) The principal use of the building is office;
- (b) The total floor area of all such uses is no greater than twenty (20) percent of the total gross floor area of the building;
- (c) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use;
- (d) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.

(2) ORD District

~~In the ORD district, any of these uses shall be permitted as an ancillary use provided that:~~

- ~~(a) The master plan proposed for development is at least twenty-five (25) acres;~~
- ~~(b) At least eighty (80) percent of the land area included in the master plan referenced in paragraph (2)(a) above is built and occupied with uses allowed in Table 5.1-1 prior to the development of the proposed ancillary use;~~
- ~~(c) The pedestrian and vehicular circulation for the ancillary use integrates all uses so that access from points which are external to the site is not required;~~
- ~~(d) A site plan is submitted for the entire parcel pursuant to Section 3.9 that shows the intensity and location of the ancillary use, the pedestrian and vehicular circulation scheme for the site, and a phasing schedule (see paragraph (b) above).~~

- (3) In the OFC/INS subdistrict of the TC district, this use may be allowed as an ancillary use whose primary purpose is to service the needs of another principal use that is allowed as either a permitted or a special use in Table 5.1-2, provided that:
 - (a) The total floor area of all such uses and/or structures is no greater than twenty

- (20) percent of the total gross floor area of the building;
- (b) Such uses combined do not have more than one (1) entrance for customers separate from that of the office use; and
- (c) The use does not have a drive-up window, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.

- (4) In the OFC/IND district, the use shall be allowed as a permitted use provided that:
 - (a) The total floor area of all such uses is no greater than thirty-three (33) percent of the total gross floor area of the building; and
 - (b) The use does not have a drive-through facility, nor an outside amphitheater, stage, or other provision for live or recorded acoustic or amplified entertainment outside of the building.

(5) Outdoor Activities

Restaurants having any outside amphitheater, stage, sports equipment, playing field or court, or any provision for live or recorded acoustic or amplified entertainment outside of the building, shall comply with the following standards:

- (a) The use shall be located no closer than one hundred (100) feet from any residential zoning district or use; and
- (b) The Town Council may establish a closing time for any outside facility that is earlier than the closing time of the activities that occur entirely within the building.

(6) CT District

Restaurants (indoor and/or outdoor) and/or retail stores shall be allowed in the Redevelopment Area and first three hundred (300) feet of Infill Area portions of the Corridor Transition District for the Walnut Street Corridor provided the following conditions are met:

- (a) The principal use of the building is office or personal services;
- (b) The total square footage of such uses (whether combined or otherwise) shall be limited to twenty (20) percent of the total building square footage;
- (c) Such uses combined do not have more than one (1) entrance for customers which is separate from that of the office use; and
- (d) Such uses do not have a drive-up window, nor an outside amphitheater, stage or other provision for live or recorded acoustic or amplified entertainment outside of the building.

(N) Vehicle Filling Station, Vehicle Repair, Vehicle Service, Car Washes, and Towing and Vehicle Storage

- ~~(4) In the ORD district, a vehicle filling station may be permitted as an ancillary use provided that:

 - ~~(a) The master plan proposed for development is at least twenty five (25) acres;~~
 - ~~(b) At least eighty (80) percent of the land area included in the master plan referenced in Section 5.2.3(N)(4)(a) above is built and occupied with uses allowed in Table 5.1-1 prior to the development of the vehicle filling station;~~
 - ~~(c) The pedestrian and vehicular circulation for the vehicle filling station integrates all uses so that access from points which are external to the site is not required;~~
 - ~~(d) A site plan is submitted for the entire parcel pursuant to Section 3.9 that shows the intensity and location of the vehicle filling station, the pedestrian and vehicular circulation scheme for the site, and a phasing schedule (see Section 5.2.3(N)(4)(b) above).~~~~

12.3.4 USE CLASSIFICATIONS: Commercial Uses

(J) Recreation/Entertainment, Indoor

Uses that provide ~~continuous~~ primarily indoor recreation or entertainment activities, ~~either indoor or outdoor~~ but may include associated outdoor activities. Accessory uses may include concessions, snack bars, parking, and maintenance facilities. Specific use types include, but are not limited to:

(2) Neighborhood Recreation Center (Indoor/Outdoor)

A building, structure, or facility available for recreational clubs and activities. Such uses commonly include clubhouses, restaurants, tennis courts and swimming pools for members and guests only, and gymnasiums. Such uses may be either public or private, but typically are intended only for the residents and guests of a particular residential development or neighborhood.

(3) Commercial Indoor/Outdoor-Recreational Facilities (Indoor/Outdoor)

A recreational facility operated as a business, and which is open to members of the general public for a fee and provides instructional classes and/or equipment and practice area for sports-related or physical fitness activities. Such uses generally include, but are not limited to: gyms, health clubs, courts, or pools and other group instruction classes such as dance, yoga, and martial arts studios.

(K) Recreation/Entertainment, Outdoor

Uses that provide ~~continuous~~ primarily outdoor recreation or entertainment activities, ~~either indoor or outdoor~~ but may include associated indoor activities. Accessory uses may include concessions, snack bars, parking, and maintenance facilities. Specific use types include, but are not limited to:.....

(L) Retail Sales and Service

Retail sales firms are involved in the sale, lease or rent of new or used products, or the provision of certain services, to the general public. No outdoor display is permitted unless specifically authorized by this Ordinance. Accessory uses may include offices, parking, storage of goods, and assembly, repackaging or repair of goods for on-site sale. Specific use types include, but are not limited to:

(7) Personal Service Establishment

A business that provides individual services related to personal needs directly to customers at the site of the business, or that receives goods from or returns goods to the customer which have been treated or processed at that location or another location. This includes businesses such as travel agencies, dry-cleaners, laundries, tailors, hair and nail salons, massage business and spa services, cosmeticians, toning or tanning salons, photocopy centers, shoe repair shops, appliance repair shops, interior design studios, ~~dance and martial arts studios~~, tutoring services, one-on-one fitness instruction and pet grooming establishments. This shall not include automobile service stations, wellness centers, or Commercial Indoor/Outdoor Recreation

ITEM F - TECHNICAL AND MINOR AMENDMENTS

SUMMARY

Proposed technical and minor amendments would:

- Allow administrative approval of changes to site plans
- Clarify wording related to building permits required for changes to approved plans; *Section 3.14.5*
- Conform language regarding vested rights to statutory language; *Section 3.17.8*
- Allow staff approval of revisions to site plans previously approved by Town Council provided that

development intensity is not increased by more than 5%; *Section 3.19.2(B)*

- Remove references to specific species for streetscape plantings required in the Walnut Street Corridor Transition District; *Table 4.2-1*
- Add golf course as a permitted use in the Resource/Recreation (R/R) zoning district; *Table 5.1-1*
- Add a Parks sub-district in the Town Center District; *Table 5.1-2*
- Remove Urban Transition Buffers and stream buffers from the definition of “potential developable area” used to determine the number of base lots allowed when developing a yield plan for conservation or cluster subdivisions; *Sections 4.4.3E and 8.4.5(A)*
- Allow sale of agricultural products grown off-site to occur on developed residential lots that contain at least 3 acres and have at least 250 feet of frontage on a major thoroughfare; *Section 5.4.6 (D)*
- Allow with mitigation (per Jordan Lake Buffer Rules), new drainage and roadside ditches and stormwater outfalls that do not provide control for nitrogen; *Table 7.2-6*
- Remove the density standard in residential sub-districts of the Town Center where both a minimum lot size and a maximum density is specified; *Table 6.1-2*
- Specify that shrubs required for landscaping and screening of fences and walls be at least 24 inches in height at the time of installation; *7.7.2(C)*
- Clarify regulations related to parking standards; and *Sections 3.19.1 and 7.8.2(H)*
- Clarify that watershed protection overlay provisions apply to lots platted prior to June 30, 1993 only when a zoning change has occurred and a new site or subdivision plan is submitted for approval. *4.4.6(B)*

PROPOSED TEXT

3.14.5 BUILDING PERMITS: Changes to Approved Plans

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

3.17.8 VESTED RIGHTS CERTIFICATE: Owner-Initiated Annexation

A petition for annexation filed with the Town under G.S. 160A-31 or G.S. 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. 160A-385.1 or G.S. 153A-344.1. A statement that declares that no zoning vested right has been established ~~or the failure to sign a statement declaring whether or not a zoning vested right has been established,~~ shall be binding on the landowner and any such zoning vested right shall be terminated.

3.19.2 MINOR MODIFICATIONS: Minor Modifications to Approved Plans, Plats, and Planned Development Master Plans

(B) Exceptions

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

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

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

Portion of 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	.....
Roofing Materials	.....
Roof Design	.....
Building Locations	.....
Building Size	.....
Building Facades	.....
Window Treatment	.....
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, Haseo Magnolia, Fosters Holly, Greenleaf Holly, Okame Cherry, or appropriate substitute).
Buffer Wall	.....
Off-Street Parking	.....
Pedestrian Access	.....
Vehicular Access	.....
Lighting	.....
Signage	.....

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.

	RESIDENTIAL	NON-RESIDENTIAL	MIXED USE OVERLAY DISTRICT¹	Use-Specific Standards

Use Category	Use Type and [Use Class]	R 8 0	R 4 0	R 2 0	R 1 2	R 8	T R	R M F	R R	O I	G C	O R D	I	NC ²	CC ³	RC ⁴
COMMERCIAL USES																
Recreation/ Entertainment, Indoor	Golf course, privately-owned	S	S	S	S	S	S		P							

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

(N) TC: Town Center District

(5) Subdistricts Created and Defined

Due to the existing character and desired types of future development in various portions of the downtown area, differing land uses, building standards, parking requirements, open space requirements, and other related development standards are spelled out in the Town Center Area Plan. In order to present the full range zoning and development requirements for each different area, this zoning district is divided into such sub-districts as delineated in the Town Center Area Plan as follows:

Subdistrict	Description
HMXD	High Intensity Mixed Use
MXD	Mixed Use
HDR Mid-Rise	High Density Residential Mid-Rise
MXDR	Mixed Density Residential
HDR Garden	High Density Residential Garden
MDR	Medium Density Residential
LDR	Low Density Residential
PKS/OS	Parks and Open Space
OFC/INS	Office/Institutional
OFC/IND	Office/Industrial
COM	Commercial
CL I	Commercial Low Intensity
CB&R	Cottage Business and Residential
INS	Institutional

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	HM XD	MX D	HDR Mid-Rise	MX DR	HD R Garden	MD R	LD R	LD R-12	PK S/O S	CB &R	CO M	CLI	OF C/INS	INS	OF C/IND	Use Specific Stds
Public/Institutional Uses																	
Government Services	Governmental office [4]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.2(B)
Government Services	Public safety station [4]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	

Government Services	Public utility facility [7]	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Government Services	Town owned/operated facilities and services	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.2(G)
Park and Open Space	Athletic field, public			S	S					P				S	S	S	5.2.2(A)
Park and Open Space	Community garden	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Park and Open Space	Outdoor amphitheater, public	S	S							P		S		S	S	S	
Park and Open Space	Park, public	P	P	P	P	P	P	P	P	P		P		P	P	P	
Park and Open Space	Neighborhood recreation center, public	P	P	P	P	P	P	P	P	P				P	P	P	5.2.2(D)
Park and Open Space	Resource conservation facility	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Public Safety Station	All	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
Non-governmental Utilities	Utility facility, major	S	S	S	S	S	S	S	S	S	S	S	S	S	S	S	
Non-governmental Utilities	Utility substation, minor	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	
COMMERCIAL USES																	
Recreation and Entertainment, Outdoor	Athletic field, private																S
Telecommunication facilities	Antenna co-location on existing tower	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	5.2.4(D)
Telecommunication facilities	Concealed (stealth) antennae and towers	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	5.2.4(D)
Telecommunication facilities	Other building-mounted antennae and towers	S	S	S	S	S	S	S	S	S	S	P	P	P	P	P	5.2.4(D)

4.4.3 OVERLAY ZONING DISTRICTS: Conservation Residential Overlay District

(E) Calculating the Base Number of Lots

The base number of lots is defined as the lot yield based on the implementation of the requirements of the underlying zoning district. The base number of lots is the starting point

from which extra lots may be permitted if non-regulatory or bonus open space, as defined below, is provided and other design requirements are met.

The applicant shall choose one (1) of the following methods for calculating the base number of lots:

- (1) The base number of lots may be determined by taking ninety (90) percent of the potential developable area of the site and multiplying by the maximum density (based on lot area requirements) for the underlying zoning district. The purpose of reducing the potential developable acreage by ten (10) percent is to account for the approximate area that would be allocated to roadways within a conventional subdivision. "Potential developable area" within this Section is defined as the total land area of the site excluding all regulatory floodplains, ~~Urban Transition Buffer/stream buffers~~, streetscapes and other required areas (see Chapter 7: Development and Design Standards). For sites that contain and/or are adjacent to the American Tobacco Trail, a buffer of at least fifty (50) feet in width is required. This minimum buffer width is considered regulatory/required area, and shall not be included in the calculation of potential developable area.
- (2) The base number of lots may be determined based on the applicant providing a sketch subdivision plan that fully complies with the development requirements of the underlying zoning district for the site.

5.4.6 TEMPORARY USES AND STRUCTURES: Specific Regulations for Certain Temporary Uses and Structures:

(D) Sale of Agricultural Products Grown Off-Site

(1) Agricultural Products Defined

For the purposes of this section, agricultural products are defined as products obtained primarily through farming or agricultural activities, including, but not necessarily limited to: pumpkins; grains and seed crops; fruits of all kinds; vegetables; nursery, floral, ornamental, and greenhouse products; trees and forest products, including Christmas trees, firewood, and pinestraw; bees and beekeeping products; seafood; and dairy products. For the purposes of this section, processed or prepared food products of any kind shall not be considered as agricultural products.

(2) Approval Criteria

- (a) The temporary sale of agricultural products grown off-site may be allowed subject to issuance of a temporary use permit pursuant to Chapter 5 of this Ordinance. Temporary sales of agricultural products shall meet all requirements for temporary sale of non-agricultural goods set forth in Section 5.4.5(C) above; however, the temporary sale of agricultural products for commercial purposes may occur from a vacant lot, a lot containing a detached dwelling provided that such residential lot contains at least three (3) acres and has a minimum of 250 feet of road frontage on a major thoroughfare, ~~in addition to~~ or a developed site where the principal use is non-residential.
- (b) The temporary sale of agricultural products grown off-site is exempt from the requirement for similar products, goods, or services to those offered by an existing principal use as required under the provisions for the temporary sale of non-agricultural products.
- (c) The temporary sale of agricultural products grown off-site may be accomplished from a vehicle, trailer, or shipping container, provided such vehicle, trailer, or container is located in accordance with the provisions of Section 5.4.6(C) of this Ordinance.

- (d) The temporary sale of agricultural products grown off-site shall be allowed on an individual parcel or site for no more than one hundred eighty (180) total days per calendar year.
- (e) The number of temporary sales of agricultural products per site per calendar year shall not exceed three (3).

TABLE 7.2-6 TOWN OF CARY GENERAL AND SPECIALIZED UTBs				
Activity	Exempt	Allowable	Allowable with Mitigation	Prohibited
Drainage ditches, roadside ditches and stormwater conveyances through buffers:				
New Drainage ditches, roadside ditches and stormwater outfalls that do not provide control for nitrogen before discharging into the UTB			X	✗

8.4.5 Calculating Base Number of Lots

The base number of lots is defined as the lot yield based on the implementation of the requirements of the underlying zoning district. The base number of lots is the starting point from which extra lots may be permitted if non-regulatory or bonus open space (see Chapter 12 for definition) is provided and other design requirements are met.

The applicant shall choose one (1) of the following methods for calculating the base number of lots:

- (A) The base number of lots may be determined by taking ninety (90) percent of the potential developable area of the site and multiplying by the maximum density (based on lot area requirements) for the underlying zoning district. The purpose of reducing the potential developable acreage by ten (10) percent is to account for the approximate area that would be allocated to roadways within a conventional subdivision. "Potential developable area" within this Section is defined as the total land area of the site excluding all regulatory floodplains, ~~Urban Transition Buffer/stream buffers~~, streetscapes and other required areas (see Chapter 7: Development and Design Standards). For sites that contain and/or are adjacent to the American Tobacco Trail, a buffer of at least fifty (50) feet in width is required. This minimum buffer width is considered regulatory/required area, and shall not be included in the calculation of potential developable area.....
- (B) The base number of lots may be determined based on a yield plan for the site, whereby the applicant presents a rough or sketch conventional subdivision development plan that fully complies with the development requirements of the underlying zoning for the site.

TABLE 6.1-2: TABLE OF DENSITY AND DIMENSIONAL STANDARDS TOWN CENTER DISTRICT					
Subdistrict	Minimum Lot Dimensions	Minimum Building Setbacks (ft)	Building Height (ft) <i>(NOTE: maximum building heights may not be exceeded regardless of setbacks.)</i>	Maximum Residential Density (units/acre)	Minimum Parking Requirements

	Area (sq.ft)	Width (ft)	Front	Side	Rear	Min. Bldg Height [1 story = 15 ft]	Max. Bldg Height		
Existing Residential Uses Constructed or Approved Prior to 7/1/03 (all subdistricts)	5,000	50 (55 for corner lot)	10 (18 feet where parking provided in front)	16 (only one req'd)	10	N/A	35	8 -N/A	N/A
MDR:									
All other uses	5,000	50 (55 for corner lot)	10 (18 feet where parking provided in front)	16 total; only one req'd	10	N/A	45	8 -N/A	2 per dwelling unit
LDR	8,000	50 (55 for corner lot)	10 (18 feet where parking provided in front)	16 (only one req'd)	10	N/A	35	4 N/A	2 per dwelling unit

7.2.7 LANDSCAPING, BUFFERING, SCREENING, AND TREE PROTECTION: Fences and Walls

(C) Landscaping and Screening of Fences and Walls

Fences and walls taller than forty-two (42) inches and located within thirty (30) feet of a thoroughfare or collector street right(s)-of-way shall meet the following landscape requirements:

- (1) One (1) shrub shall be installed for each five (5) feet of property frontage along a thoroughfare or collector street. Shrubs shall be evergreen and shall be a minimum of ~~eighteen (18)~~ to twenty-four (24) inches tall at time of installation. Shrubs may be installed in a staggered, clustered, grouped or linear fashion, and all plantings shall be installed on the side of the fence that faces the right-of-way.

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

(C) Procedure

(1) Minor Modifications Approved by Planning Director

- (a) The Planning Director may approve a minor modification allowed under this section at any time prior to submittal of the staff report on an application to another decision-making body, if a report is required, or prior to final decision, if no report is required.
- (b) Such modification shall be approved if:
 - 1. it otherwise meets all requirements of this Ordinance and applicable Town specifications; and,
 - 2. the applicant establishes that compliance with the provision sought to be modified is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure;

- and,
3. the applicant establishes that the modification requested represents the least deviation required to make compliance practicable.
- (c) The Planning Director's decision on a request for minor modification may be appealed to the Town Council.
- (d) Alternatively, the Planning Director may defer the decision on a proposed minor modification to the Town Council.

(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 the applicable approval authority takes action on a development application. The Town Council may approve the minor modification only if it finds, after conducting a quasi-judicial hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing a site. In determining if "practical difficulty" exists, the factors set forth in Section 3.20.5, "Approval Criteria" (for Variances) shall be considered. In granting a minor modification allowed under this section, the Town Council may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering.

(3) Noted on Pending Application

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

TABLE 3.19-1: MINOR MODIFICATIONS ALLOWED		
Standard That May be Modified	Decision-Making Body	Modification Allowed (%)
Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 <u>and modifications to parking standards are addressed in Section 7.8.2</u>)	Planning Director	15
Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 <u>and modification to parking standards are addressed in Section 7.8.2</u>)	Town Council	30

7.8.2 Off-Street Parking Space Requirements

(C) Computation of Off-Street Parking Requirements

(4) Commercial Parking Maximums

For uses classified as commercial, the number of spaces shown in Table 7.8-1 shall be considered the maximum allowed for such uses for the purpose of reducing unnecessary/rarely-used parking and decreasing the amount of impervious surface on sites. The Planning Director may approve an increase of up to 30% and the Town

~~Council may approve an unlimited increase in the maximum number of allowable parking spaces may only be exceeded by the Planning Director provided that the applicant provides adequate information regarding the nature of the use to justify the additional parking requested. The Planning Director or Town Council may determine that additional parking is justified based on factors including, but not limited to, the number of employees per square foot; the number of trips generated by the use, and the time of day when the use generates the most trips. needed to determine the cumulative parking needs for a site is provided by the applicant.~~

(H) Reduction in Number of Required Off-street Parking Places

- ~~(1)~~ As part of the review and approval of any procedure set forth in Chapter 3, the Planning Director may approve a reduction of up to fifteen (15) percent in the number of designated parking spaces only if the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.
- ~~(2)~~ As part of the review and approval of any procedure set forth in Chapter 3, the Town Council may allow the following reductions. Review of a parking reduction request does not change the applicable approval authority for the development plan as a whole.
 - ~~(4a)~~ As part of its review and approval of a site plan for a development, the Town Council may allow a reduction of up to ~~twenty five (25)~~ thirty (30) percent in the number of designated parking spaces upon holding a quasi-judicial hearing and finding that the such reduced number will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.
 - ~~(2b)~~ As part of its review and approval of a site plan for a development in the Town Center (TC) district, the Town Council may allow a reduction of up to fifty (50) percent in the number of designated parking spaces for a development in the Town Center (TC) zoning district upon holding a quasi-judicial hearing and finding that such reduced number will be sufficient to satisfy the demand for parking expected for the use, based on the following:
 - (a) Nature of the use;
 - (b) The number of trips generated;
 - (c) The times of day when the use generates the most trips;
 - (d) The extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments; and
 - (e) The availability of nearby on-street spaces or public parking facilities.
- (3) In cases where no site plan or other Chapter 3 approval is required, or where a site plan previously approved by the Town Council or the Planning Director remains in effect for the property, the Planning Director may grant a ~~waiver from~~ reduction of up to fifteen (15) percent of the requirements of subsection 7.8.2(D) above only if the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, and the extent to

which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.

.....
4.4.6 OVERLAY ZONING DISTRICTS: Watershed Protection Overlay

(B) Applicability

(1) Designated Watersheds

The Watershed Protection Overlay is an overlay district to be applied to all lands lying within the watershed of a public water supply. The boundaries of the Watershed Protection Overlay shall be shown on an official map kept in the Planning Department. The Watershed Protection Overlay consists of three sub-areas:

- (a) Swift Creek Watershed;
- (b) Jordan Lake Watershed; and
- (c) Jordan Lake Watershed Critical Water Quality Area.

(2) Applicability to Development Activity

- (a) The following types of development activity are exempt from the requirements of this Section 4.4.6:
 - 1. Development existing prior to June 30, 1993;
 - 2. Development on vacant lots inside of PDs approved prior to June 30, 1993;
 - 3. Development on vacant lands in subdivisions platted prior to June 30, 1993, unless such lands have undergone a zoning change after June 30, 1993 and new development is required to submit a site or subdivision plan;
and
 - 4. Redevelopment provided there is no increase in the total amount of impervious surface for a lot or development site.