Unified Development Ordinance

Town of Apex Planning Department

Adopted August 1, 2000

Codified July 19, 2016

Unified Development Ordinance

Adopted August 1, 2000

Town of Apex Board of Commissioners

Mayor	Keith J. Weatherly
Mayor Pro Tem	Michael L. Jones
Commissioner	Donald W. Grimes
Commissioner	Christine Hilt
Commissioner	Bill Jensen
Commissioner	R.D. Meckes

Town of Apex Planning Board

Chairman	Terry L. Rowe
Vice Chairman	Jeffrey Walters
Board Member	Ada Farrar
Board Member	Carolyn Gaul
Board Member	Louis Iannone
Board Member	Gene Schulze
Board Member	Staley Smith
Board Member	Jeff Tyburski

Unified Development Ordinance Advisory Committee

Scott Albourn	Stuart Jones
Clarice Atwater	Robin Oke
Melanie Brethauer	Bill Spang
Marshall Barnes, III	Susan Suggs
Carter Crawford	Deb Thompson
Louis Iannone	Jeffrey Walters

Town of Apex Staff

Town Manager	William M. Sutton
Assistant Town Manager	Michael J. Wilson
Planning Director	David R. Rowland

Codification of the Unified Development Ordinance

February 15, 2011

February 21, 2012

March 5, 2013

February 4, 2014

January 20, 2015

August 4, 2015

July 19, 2016

Amendments to the Town of Apex Unified Development Ordinance

Date of Ordinance Amendment	Sections Amended
November 21, 2000	
	13.1 through 13.20
December 19, 2000	
	2.2.8(B)
	2.2.11(B)
	2.2.11(E)
	2.3.2(D)
	2.3.6(B) and (C)
	2.3.6(E)(4)
	2.3.6(E)(7)
	2.3.6(H)
	4.2.2
	4.4.3(B)(3)(h)(i)
	5.1.2
	5.1.4
	6.1.12(C) through (K)
	6.1.13(A) through (C)
	6.2.14(H) and (I)
	6.2.15(B) and (C)
	8.2.3(C)
	8.2.4(A) and (B)
	8.2.5(B) and (C)
	8.2.6
	8.2.7(B)(5)
	8.3.2
February 6, 2001	
	3.3.2(E)
	4.2.2
	4.3.4(J)
	4.4.4(G)(3)
	5.1.1
	7.5.14 through 7.5.17
	8.1.1(A)
	8.1.1(C)
	8.1.2
	8.1.6
	8.2.7
	12.2 – Family
	12.2 – Subdivision
April 17, 2001	
	2.3.1 Table

2.3.6(D)(1)(b)(iii)
2.3.6(D)(1)(c)(iii)
2.3.15(A) through (G)
4.2.2
5.1.1
7.5.14 and 7.5.15
8.1.2(C)(2)
8.1.3(B)(4)
8.2.6(B)(4)(a) through (f)
12.2 – Person

September 18, 2001

1.10.2(A)
2.2.11(B)
2.3.6(C)(1) and (2)
2.3.10(B) and (C)
3.2.6 through 3.2.8
4.2.2
4.3.5(G)
5.2.2(B) (4)
8.1.2(D)
8.7.3(C)(2)
8.7.4(B)(1)
8.7.5(B)(1)
8.7.5(D)(3)
8.7.8(B)
13.4
13.8
13.15(C)(2)
13.15(D)
13.19
13.20(A)

October 16, 2001

2.3.14(F)
2.3.15(E)
3.2.1
3.2.5
3.2.9(A)
3.3.1(D), (E), and (F)
3.3.5(A)
4.2.2
4.3.1(D)
4.3.1(I)
4.3.1(N)
4.4.3(B)(2)
4.4.3(G)(3)(a)
4.4.5(H)(4)
4.6.1(C)(4)
5.1
5.1.1
5.2.4(A)
6.1
8.1.2(C)(4)
8.1.2(G)(1)(a)(iii)
8.2.4(A)(1)
8.2.6(B)(5)(e)

	8.2.6(C)(4)
	12.2
December 18, 2001	
	4.1.2
	4.2.1 and 4.2.2
	4.4.6(A)(1)
	4.6.1(C)(4)
	5.1.1
	8.2.8
	8.3.4(B)(1)
	8.3.6(E)(1)
	8.3.6(E)(3)
	9.3.3(G)
	12.2
March 19, 2002	
	2.3.4(G)(3)(a)(iii)(a)
	2.3.6(B)
	2.3.6(J)
	3.3.3(A)
	4.2.2
	4.3.1(E) through (P)
	4.4.1(B) through (G)
	8.2.7(D)
	8.2.7(F)(1)
	12.2
June 18, 2002	
	4.1.2(C)(3)
	4.2.2
	4.3.5(G)(16)
	4.3.5(G)(23)
	4.3.6(A)(2)
	5.1
	5.2.2(B)(4)
	8.2.7
	8.2.7(A)
	8.2.7(D)
September 17, 2002	
	8.7.1(B)(7) and (8)
	8.7.1(C)(3)(c)
	8.7.3(A)
	8.7.4
	8.7.7(A)(3)
	8.7.8(I)
	12.2
October 15, 2002	
	2.3.4(G) (2)
	2.3.6(E) (9)
	2.3.6(G) through (M)
	2.3.14(A)(1)
	3.2.4
	3.2.8 and 3.2.9
	3.3.4 and 3.3.5
	4.2.2
	4.3.5(H)(11) and (12)
	4.4.5(G)(2)(c)
	5.1.4
	5.2.3(A)

	5.2.4(A)
	5.3
	6.1.9
	6.2.16(B)(1)
	6.2.16(B)(7) and (8)
	6.3.1
	7.2.1(A)
	7.5.8
	8.2.4
	8.2.4(A)(1)
	8.2.6(B)(4)(c)
	8.2.6(C)(1)(a)
	8.3.9(A)(1)
	8.7.1(A)(7) and (8)
	12.2
November 19, 2002	
	4.2.2
	4.3.1(E)
	8.1.6(A)
	8.3.2(A)
	8.3.9(D)
February 18, 2003	
	2.3.4(G)(1)(d)
	2.3.4(G)(2)(e)
	2.3.4(G)(3)(d)
	2.3.8(G)
	2.3.15(C)(4)
	4.2.2
	4.4.5(G)(12)
	4.6.1(C)(6)
	6.3.1(D)
	8.1.6(A)
	8.2.6(B)
	8.3.2(A)
	8.3.9(D)
	9.2.2(D)
	13.15(e)
July 15, 2003	
	2.2.8
	2.2.13
	2.3.3(F)(3)
	2.3.6(C)(1)(g)(iv)
	2.3.6(C)(1)(h)
	4.2.2
	4.3.2(E)
	4.3.4(N)
	4.4.2(B)
	4.5.4(A)
	6.1.3(C)(3) and (4)
	6.1.3(E)
	6.2.18(A)
	12.2
October 21, 2003	
	2.3.4(A) through (F)
	2.3.6(C)(1)(g)(i)
	2.3.6(C)(1)(g)(iv)
	2.3.6(D)(1)(a)(i)

	2.3.6(D)(2)
	2.3.7(D)(1)(a)
	3.3.3(C)
	4.2.2
	4.3.1(O)
	4.4.1(H)
	4.4.3(B)(2)
	4.6.1(C)(5)
	5.1.1
	6.1.11(E) through (G)
	8.1.2(B)
	8.1.2(F) and (G)
	8.1.3(B)(4)
	8.1.3(C)(2)
	8.1.4(B)(3)(a) and (b)
	8.2.2(B)(3)(d)
	8.2.2(C)(2)
	8.2.2(D)
	8.2.3(C)(3)(b)
	8.2.6(C)(2)
	8.2.6(C)(5)
	8.7.1(B)(1)
	8.7.3
	8.7.5(B)(1)
	11.5.2
	11.5.4
	13.19
January 20, 2004	
	8.3.6(B)(1)
March 16, 2004	
	2.3.4(F)(1)(h)
	2.3.4(F)(2)(h)
	2.3.4(F)(3)(g)
	6.1.7(A)(2)
	6.1.7(B)(2)
May 4, 2004	
	2.3.4(F)(1)(c)
	8.7
May 18, 2004	
	3.2.2(E)
	3.2.6(E)
	3.3.2(E)
	4.1.2(A)
	4.2.2
	4.4.6(A)(2)
	5.1.2
	<u>2025 Land Use Plan</u>
	1.3.2(A)
	2.3.2(E)(7)
	2.3.3(F)(1)
	2.3.4(F)(1)(j)
	2.3.4(F)(2)(j)
	2.3.4(F)(3)(i)
	2.3.4(G)
	2.3.5(D)(1)
	2.3.6(E)(8)

	2.3.6(F)
	2.3.7(D)(2) and (3)
	6.1.1
	6.2.15(B)(8)
	7.1.5
July 20, 2004	
	4.2.2
	5.1.2
	8.2.6(B)(4)(d)
August 17, 2004	
	2.3.4(F)(1)(c)
	2.3.4(F)(1)(e)
	2.3.4(F)(1)(i)
	4.2.2
	5.1
	8.1.2
	8.1.3(C)(2)(d)
	8.1.4
September 21, 2004	
	2.2.18(B)(6)(b)
	2.3.4(F)(1)(a)(iii)
	2.3.7(D)(4)
	2.3.15(C)(1)
	4.3.1(O) and (P)
	4.3.5(G)(9)
	4.4.1(E)(9)
	4.5.4
	7.1.6(B)(1)
	8.1.2(A)
	8.1.3(B)(4)(a)
	8.2.2(E)(2)(a)
	8.2.3(D)
	8.2.6(B)(4)(c)
	8.2.6(C)(6)
	8.7.1
	8.7.1(A)(16)(b)
	8.7.1(A)(24)
	8.7.1(A)(26)(b)
	11.4.4(B)
October 5, 2004	
	8.2.6(B)(3)
November 16, 2004	
	2.2.13
	2.3.4(F)(1)(v)
	2.3.4(F)(2)
	7.2.1(A)
	7.2.1(G) and (H)
	7.2.3(A)
	7.5.4(B)(2)(d)
	7.5.4(C)
	7.5.6
	7.5.10 through 7.5.18
	8.1.2(A)
	8.1.5
	8.2.4
December 21, 2004	
	8.3.6(D)

March 15, 2005	
	4.2.2
	4.3.1(E)
	4.3.2
	5.2.2(B)(4)(d)
	5.2.3
	6.2.6
	6.2.13(C)(10)
	8.1.2 (C)(5)
	8.1.6
	8.2.2(C)(2)
	8.2.6(B)(4)(e)
	8.2.6(C)(2)
	8.2.7
	8.7.1
	8.7.1(A)(2)
	8.7.1(A)(7)
	8.7.2(P)
	8.7.3(A)(1)
	8.7.7
	8.7.7(A)(4)
	8.7.9
	13.9
September 6, 2005	
	8.7.7
	12.2 – Central Business District
November 21, 2005	
	All references to “Board of Commissioners” changed to “Town Council”
December 20, 2005	
	2.1.1(B)
	2.1.2(E)
	2.1.3(D) and (E)
	2.2.11(B)
	2.2.13 through 2.2.15
	2.3.3(E)(2)(a)(v) and 2.3.3(E)(2)(a)(vi)
	2.3.3(E)(2)(b)(v)
	2.3.3(G) through (K)
	2.3.15(C)(1)
	2.3.15(H)
	7.5.13
	8.1.3(B)(4)(a)
	12.2 – Subdivision
February 21, 2006	
	7.5.9 and 7.5.10
April 4, 2006	
	4.2.2
April 18, 2006	
	6.2
	12.2
June 20, 2006	
	2.2.7(C) through (E)
	2.2.13
	2.2.15
	2.2.18(B)(6)(b)
	2.3.1 Table
	2.3.3 and 2.3.4

	2.3.6 and 2.3.7
	2.3.14(E)(4)
	3.1 and 3.2
	3.2.5 through 3.2.8
	3.4.1 through 3.4.3
	4.2.2
	4.3.3(C)
	4.4.3(B)
	4.5.5(F)
	4.6.1(C)(6)
	6.1.11(F)(1) Table
	7.2.1(H)(2)
	7.2.1(L)
	7.5.4(C) and (D)
	7.5.6
	7.5.9(C)
	8.1.5(D)(4)
	8.1.6
	8.2.6(B)(3)
	8.3.2(A) Table 8.3-1
	8.3.4(C)
	8.6.4
	8.6.4(M)
	8.7.1(A)(21)
	8.7.1(A)(27)(b)
	13.19
July 18, 2006	
	2.1.2(D)
	2.1.4(B)(1)
	2.1.4(D)
	2.2.7
	2.3.3(K)
	2.3.4(J)
	2.3.6(C)
	2.3.10(B)(2)
	2.3.15(C)(4)
	3.2.9(C)
	3.3.5
	4.2.2
	5.1.5
	6.3
	8.1.2(C)(2)
	8.2.6
August 15, 2006	
	4.2.2
	4.3.2
	5.1.2
	8.2.6(B)(4)
	8.3.2
	8.7.1
September 19, 2006	
	8.6.2 through 8.6.6
October 17, 2006	
	1.2.2
	2.1.4(B)(2)(c)
	2.2.8(A)
	2.3.5(F)

	2.3.9(F)
	2.3.15
	4.6.1(C)(6)
	7.3.6(A)
	7.5.4(C)(2)
	7.5.4(D)(5)
	7.5.9(C)(2)(a)
	7.5.14(A)
	8.2.6(B)(5)(f)
	8.7.1(A)(19)
	8.7.1(A)(28)
December 19, 2006	
	2.3.15(B)
	6.1.3
	6.1.11
	8.7.4(A)
January 16, 2007	
	8.1.2(C)(8)
	8.1.2(F)(2)
	8.2.2(C)(2)(b) and (c)
	8.2.6(B)(5)(f)
February 20, 2007	
	7.2.1(A)(3)
March 6, 2007	
	4.2.2
April 17, 2007	
	4.1.2(C)
	7.5.4(E)
	8.1.4(A)(5)
	8.1.4(B)(1)
	8.2.3(C)(4)
	8.2.6(B)(3)
	8.2.6(B)(5)(e)
June 19, 2007	
	2.1.2(A)(6)
	2.1.4
	4.3.2(H)
	4.3.5(G)(24)
	8.7.1(19) Table
	8.7.2(J)
	8.7.9
	12.2 – Drop-in Day Care
	12.2 – Pre-school
August 7, 2007	
	2.1.6
	2.1.7
	2.2.11(C)
	2.3.4(F)(2)
	2.3.12(C)(4)
	3.2.3
	3.3.3(B)
	4.5.4(D) Figure
	6.1.15 and 6.1.16
	8.7.1(A)(28)
	11.4.5
	All references to “MEC”, “TND”, and “PUD” changed to “MEC-CZ”, TND-CZ”, and “PUD-CZ”, respectively

August 21, 2007
4.2.2
4.4.1(H)(2)
7.5.9(C)(2)(c)
8.7.1(A)(8)(b)
September 18, 2007
4.2.2
4.3.4(E)
October 16, 2007
4.2.2
4.3.3(M)
4.3.5(G)(3)
4.4.3(H)
4.5.4
5.2.7
7.2.1(H)(1)(b)
7.2.1(H)(2)(b)
7.5.4(D)(3)
8.2.7(E) Figure
8.2.7(F)
9.3.6
12.2 – Inert Debris
12.2 – Land-clearing Debris
November 20, 2007
2.2.11(E)
2.3.1 Table
2.3.4(L)
2.3.6(J)
2.3.7(D)(4)
4.2.2
4.3.5(H)(11)
4.4.3(B)
4.4.3(H)
7.2.5
7.5.4(B)(3) and 7.5.4(B)(4)
8.1.5
10.3.6
12.2 – Mass Clearing
12.2 – Mass Grading
December 18, 2007
7.5.5
10.4.1
11.5.6
February 19, 2008
6.1
8.7.1(A)(8)
8.7.1(A)(10)
12.2 – Built-upon Area
12.2 – Development
12.2 – Large Common Plan of Development or Sale
12.2 – NC DWQ Stormwater BMP Manual
12.2 – Redevelopment
12.2 – Structural BMP
12.2 – Mass Clearing
12.2 – Town Design and Development Manual
12.2 – Town Standard Specifications and Construction Design Manual

March 18, 2008	
	2.3.4(L)
	2.3.6(J)(1)
	3.3.1
	5.1.1
	5.2.3
	7.5.4(B)(4)
	7.5.5
	7.5.6(A)
	8.3.6(C)
April 15, 2008	
	4.4.3(B)(3)(d)
	5.2.2(A)(1)
	All references to “Town of Apex Standard Specifications and Construction Details” changed to “Town of Apex Standard Specifications and Standard Details”
May 20, 2008	
	5.1.1
	7.3.5 and 7.3.6
	7.3.8(A)
	13.15(b)(2)
July 15, 2008	
	4.4.5(G)(13)
	5.2.2(B)(4)(a)
	7.2.1(L)(3)
	11.5.3
August 19, 2008	
	2.3.4(F)(1)(a)(iii)
	2.3.4(F)(2)(b)(iii)
	2.3.4(F)(3)(a)(ii)
	4.2.2
	4.3.5(G)(20)
	4.3.6(A)(2)
	4.3.7(B)
	4.4.5(G)(7)
	4.5.4
	4.6.2
	5.2.2(B)(4)
	5.2.2(B)(4)(a)
	5.2.2(B)(4)(d)
	6.1.3(D)
	6.3.1(H)
	7.1.1
	7.2.1(L)(3)(b)(ii)
	7.5.4(B)(4)
	7.5.4(F)
	8.2.6(B)(4)(d)
	8.2.6(B)(4)(f)
	8.2.7(A)(4)
	8.2.7(B)(1)
	8.3.2(A) Table 8.3-1
	8.6.5(A)
	8.7.1(A)(11)(e)
	8.7.1(A)(22)
	8.7.1(A)(28)(c)
	12.2 – Principal Structure

	12.2 – Residential Yard Sale (*formerly Yard Sales*)
	12.2 – Subdivision
September 16, 2008	
	2.3.16
	4.4.3(B)(4)(g)(ii)
	4.5.5(B)
	4.6.1(C)(1)(b)
	4.6.1(C)(1)(c)
	4.6.1(C)(3)
	5.2.2(B)(4)(e)
	7.3.6(C) and (D)
	7.3.8(B)
	11.4.4(A)
October 21, 2008	
	2.3.9(C)(3)
	4.4.3(B)(2)(g)
	4.4.5(G)(13)(j)
	4.4.5(G)(13)(n)
	8.7.1
	8.7.1(A)(2)(a)
	8.7.1(A)(28)(c)(ii)
	8.7.7
	8.7.7(A)(4)
	10.3.2
December 16, 2008	
	2.3.16
	4.2.2
	4.4.1(H)(2)(b)
	4.4.3(B)
	7.2.1(H)
	8.2.7(B)(2)
	8.3.2(A) Table 8.3-1
	8.7.2(Q)
	12.2 – Historic Structure
January 20, 2009	
	2.3.17
	5.2.2(B)(4)
	6.1.7
	7.2.3(H)(4)
	7.3.3(B)
	7.5.1
	7.5.4(D)(5)
February 17, 2009	
	4.2.2
	4.3.5(G) and (H)
	4.4.5(C)
	4.4.5(G)(14)
	4.4.5(H)(6)
	5.1
	5.2.2(B)
	12.2 – Bay Window
	12.2 – Cantilever
March 17, 2009	
	4.2.2
	7.2.1(A)(2)(b)(iii)
	7.5.4(E)
	8.1.6(E)

	8.2.6(B)(3)
	8.2.7
	8.2.8(B)(1)
	8.7.9
	9.2.2(B)
	12.2
June 2, 2009	
	4.2.2
	4.4.5(G)(14) and (15)
	12.2 – Produce Stand
September 15, 2009	
	4.2.2
	4.4.5(G)(5)
	8.2.8(B)
	8.3.6(D)
	9.2.2(G)
November 15, 2009	
	4.3.5(D)(4)
	4.3.5(G)(4) and (5)
	4.4.5(D)(2)
	4.5.6(B)
	4.5.6(D)
	4.5.6(G)
	6.1.12(B)(11)
	8.3.6(D)
	8.7.8
January 19, 2010	
	4.2.2
	4.4.1(A)
	4.4.1(G)
	7.5.6(B)
	8.2.8(B)(1)
February 2, 2010	
	5.1.1
	5.1.3
	5.1.5
March 16, 2010	
	4.2.2
	4.3.1(G)
	4.4.1(D)
	4.4.4(C)(3)
	4.4.5(F)(a)
	6.1
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ARTICLE 1 GENERAL PROVISIONS

1.1 TITLE

These regulations shall be officially known as the “Apex Unified Development Ordinance,” and may be referred to as the “Unified Development Ordinance,” the “UDO,” or “this Ordinance.”

1.2 AUTHORITY

1.2.1 General

The Apex Town Council has the authority to adopt this Ordinance pursuant to the enabling authority contained in the North Carolina General Statutes (N.C.G.S.), generally Secs. 160A-360 to 160A-367; 160A-371 to 160A-377; 160A-381 to 160A-399.1; and 160A-400.1 to 160A-408, N.C.G.S.

1.2.2 Authority to Regulate Zoning, Subdivision And Building Practices in ETJ

Pursuant to the North Carolina General Statutes, the Town Council establishes the boundaries of the Town’s extraterritorial jurisdiction to enforce the following regulations: zoning ordinance; subdivision regulations; North Carolina State Building Code; minimum housing standards code; and ordinances creating the Town’s Planning Board, Planning and Community Development Department and Building Inspections and Permitting Department. The boundaries for the Town’s extraterritorial enforcement area (hereinafter “ETJ”) are delineated on the map entitled “Corporate Limits and Extraterritorial Jurisdiction Town of Apex, North Carolina,” which is incorporated herein by reference. A copy of this map and this subsection shall be on record in the office of the Town Clerk for inspection by the general public during normal business hours. The Town Clerk shall cause signs, signposts, or similarly readily identifiable markers to be installed at all points of intersection of the ETJ boundary along appropriate roads, streets, highways and railroads.

1.2.3 Reference to North Carolina General Statutes

Whenever any provision of this Ordinance refers to or cites a section of the North Carolina General Statutes and that section is later amended or superseded, this Ordinance shall be deemed amended to refer to the amended section or the section that most nearly corresponds to the superseded section.

1.3 PURPOSE

1.3.1 General

The purpose of this Ordinance is to promote and protect the public health, safety, peace, comfort, and general welfare of the citizens and residents of Apex and its extraterritorial jurisdiction (ETJ). It is a comprehensive, unified set of regulations that govern the subdivision of land, the development of land, and the use of land.

1.3.2 Specific

This Ordinance is adopted for the following particular purposes:

A) ***Implement policies of 2030 Land Use Map***

To implement the goals and policies of the Apex 2030 Land Use Map, as well as other goals and policies adopted by the Town Council related to growth and development.

B) ***Protect small-town character***

To protect and improve the established small-town character of Apex and the social and economic stability of the existing residential, commercial and other

land uses within the Town.

C) ***Promote good planning practice***
To promote good planning practice and to provide a regulatory mechanism which includes appropriate performance standards for development within the Town.

D) ***Prevent adverse impacts on environment***
To prevent the adverse impacts of development on natural resources and features and the availability of water, water quality, roads and transportation, flood plains, and steep slopes in critical areas of the Town.

E) ***Efficient use of land and public services***
To encourage a more efficient use of land and public services and to reflect changes in technology of land development.

F) ***Promote alternative land development practices***
To promote alternative land development practices which will otherwise promote the public health, safety, and general welfare.

G) ***Discourage sprawl***
To discourage sprawling development patterns such as single dimensional residential development, leap-frog development and strip commercial development.

H) ***Encourage mixed use development and interconnectivity***
To encourage mixed-use development and interconnectivity between development.

1.4 APPLICABILITY AND JURISDICTION

1.4.1 General

The provisions of this Ordinance shall apply to all development and the use of all structures on all lands and waters within the corporate limits of the Town of Apex and within the ETJ, except within the Town of Cary's zoning jurisdiction, as mutually established and adopted by the Town boards of Apex and Cary during August, 1969.

1.4.2 Application to Town

Use of all structures and land owned by the Town or by Town agencies or departments shall comply with all requirements of this Ordinance, except that the Town or Town agencies or departments may be exempt from the provisions of this Ordinance when an emergency exists such that it is impossible to submit to the normal procedures and requirements of this Ordinance and quick and instant action is necessary to secure the public health, safety, or welfare. The Town Council shall ratify such exemption after-the-fact at its next regularly scheduled meeting, and shall base its ratification on specified findings of fact related to the emergency involved.

1.4.3 No Development Until Compliance with this Ordinance

No structure, land or water shall hereafter be used and no structure, or part thereof, shall hereafter be located, erected, moved, reconstructed, extended, converted or structurally altered except for normal repairs of existing structures, without full compliance with the provisions of this Ordinance and all other applicable Town, State and Federal regulations. For the purposes of this section, development or use of land shall include land disturbance activities such as clearing and grading, or otherwise disturbing the existing vegetative cover.

1.4.4 Bonafide Farms Exempt

Bonafide farms, as defined by the North Carolina General Statutes are exempt from the provisions of this Ordinance.

1.5 OFFICIAL ZONING DISTRICT MAP

1.5.1 Official Zoning District Map

The Official Zoning District Map designates the location and boundaries of the various zoning districts established in this Ordinance within the Town and its ETJ (hereinafter "Town"), and is incorporated herein by reference. The Official Zoning District Map shall be kept on file in the office of the Planning Director and is available for public inspection during normal business hours.

1.5.2 Incorporated by Reference

The Official Zoning District Map and all the notations thereon are hereby incorporated by reference and made part of this Ordinance.

1.5.3 Zoning District Boundaries

Unless otherwise specified, zoning district boundaries are lot lines or the centerline of streets, alleys, railroad rights-of-way, or such lines extended. Where a zoning district boundary divides a land parcel under a single ownership into two districts, then the entire parcel shall be zoned for the less restrictive use by the adjustment of the boundaries, provided that the boundary adjustment is a distance of less than 100 feet.

1.5.4 Changes to Official Zoning District Map

Changes made in zoning district boundaries or other matters portrayed on the Official Zoning District Map shall be made in accordance with the provisions of this Ordinance. Changes shall be entered on the Official Zoning District Map promptly after the amendment has been approved by the Town Council with an entry on the Official Zoning District Map. No amendment to this Ordinance which involves matters portrayed on the Official Zoning District Map shall become effective until after such change entries are made on the Official Zoning District Map by the Planning Director.

1.5.5 Mapping Disputes

The Planning Director shall have the authority to interpret the Official Zoning District Map and determine where the boundaries of the different zoning districts fall, if in dispute.

1.6 INTERPRETATION AND CONFLICT

1.6.1 Meaning and Intent

All provisions, terms, phrases, and expressions contained in this Ordinance shall be construed according to this Ordinance's stated purpose and intent.

1.6.2 Text Controls

In case of any difference of meaning or implication between the text of this Ordinance and any heading, drawing, table, or figure, the text shall control.

1.6.3 Authority for Interpretation

The Planning Director is responsible for interpreting the text of this Ordinance in accordance with the standards set forth in this Section and applicable Ordinance standards and requirements. Interpretations of the Planning Director may be appealed to the Board of Adjustment.

1.6.4 Statutory References

All references to state law in this Ordinance refer to the North Carolina General Statutes, as amended.

1.6.5 Computation of Time

Periods of time defined by a number of days shall mean a number of consecutive calendar days, including all weekend days, holidays, and other non-business days; however, if the last day is a Saturday, Sunday, or legal holiday, that day shall be excluded.

1.6.6 Delegation of Authority

Whenever a provision appears requiring the head of a department or another officer or employee of the Town to perform an act or duty, that provision shall be construed as authorizing the department head or officer to delegate the responsibility to subordinates, unless the terms of the provision specify otherwise.

1.6.7 Technical and Non-Technical Words

Words and phrases not otherwise defined in this Ordinance shall be construed according to the common and approved usage of the language, but technical words and phrases not otherwise defined in this Ordinance that may have acquired a peculiar and appropriate meaning in law shall be construed and understood according to such meaning.

1.6.8 Mandatory and Discretionary Terms

The word “shall” is always mandatory, and the words “may” or “should” are always permissive.

1.6.9 Conjunctions

Unless the context clearly suggests the contrary, conjunctions shall be interpreted as follows:

A) ***“And”***
And indicates that all connected items, conditions, provisions, or events shall apply; and

B) ***“Or”***
Or indicates that one or more of the connected items, conditions, provisions, or events shall apply.

1.6.10 Tense and Usage

Words used in one tense (past, present, or future) include all other tenses, unless the context clearly indicates the contrary. The singular shall include the plural, and the plural shall include the singular.

1.6.11 Gender

The masculine shall include the feminine.

1.7 RELATIONSHIP TO OTHER REGULATIONS AND PRIVATE AGREEMENTS

1.7.1 Conflicts with Other Regulations

When the provisions of this Ordinance are inconsistent with one another or when the provisions of this Ordinance conflict with provisions found in other adopted ordinances or regulations, the more restrictive provision shall govern unless the terms of the provisions specify otherwise.

1.7.2 Relationship with Private-Party Easements, Covenants, or Agreements

In developing land, private parties are free to exceed the mandatory standards provided in this Ordinance through easements, covenants, agreements, or otherwise. However, the Town shall not be obligated to enforce private agreements.

1.7.3 Repeal of Inconsistent or Conflicting Provisions

All other ordinances or parts of ordinances of the Town inconsistent or conflicting with this Ordinance, to the extent of the inconsistency only, are hereby repealed or modified.

1.8 LIABILITY FOR DAMAGES

This Ordinance shall not be construed to hold the Town or its authorized representatives responsible for any damage to persons or property by reason of the inspection or reinspection authorized in this Ordinance, or for any actions taken by landowners or developers to comply with the procedures or standards of this Ordinance.

1.9 SEVERABILITY

It is the legislative intent of the Town Council in adopting this Ordinance that all provisions shall be liberally construed to protect and preserve the peace, health, safety, and general welfare of the inhabitants of the Town. If any Section, subsection, sentence, clause or phrase of this Ordinance is for any reason held by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remaining portions of this Ordinance. The Town Council hereby declares that it would have passed this Ordinance and any Section, subsection, sentence, clause and phrase, thereof, irrespective of the fact that any one or more Sections, subsections, sentences, clauses or phrases be declared invalid.

1.10 EFFECTIVE DATE / TRANSITIONAL PROVISIONS

1.10.1 Effective Date

This Ordinance shall be effective upon enactment.

1.10.2 Final Approval

A) ***Permits***

Any building, structure, or development for which development approval (planned unit development, traditional neighborhood district, special use permit, or site plan) was issued and had not expired prior to the effective date of this Ordinance may, at the applicant's option, be completed in conformance with the issued permit and any other applicable permits and conditions, even if such building, structure, or development does not fully comply with provisions of this Ordinance. If a building permit is not obtained according to the requirements of the prior ordinance or the applicable permit terms, the Town Council may, for good cause shown, grant an extension for the development approval for up to one year for the purpose of obtaining a building permit under the terms of the previously applicable ordinance(s). If a building permit is not obtained within the time allowed under the original ordinance or permit or any extension granted, then the building, structure, or development may be constructed, completed, or occupied only in compliance with this Ordinance.

B) ***Subdivision***

1) *General*. Any subdivision for which a master subdivision plan or minor subdivision was approved prior to the effective date of this Ordinance may, at the applicant's option, be completed according to the subdivision approval and other applicable permits and conditions, except when Sec. 1.10.2 (B) (2) applies, even if the subdivision does not fully comply with the provisions of this Ordinance. If the subdivision is not completed within the time requirements established by prior ordinance or within any schedule included in the approval of the subdivision approval, the Town Council may grant one extension of not more than one year for the completion of the subdivision under the terms of the previous ordinance(s) for good cause shown. If the subdivision is not completed

within the time required under the original approval or any extension granted, then the subdivision may be completed only in compliance with this Ordinance.

2) *Expiration*. Any master subdivision plan that was approved prior to the effective date of this Ordinance that does not have an expiration date under the prior ordinance or the specific subdivision approval shall expire two years after the effective date of this Ordinance unless required improvements are built and completed for at least one phase of the subdivision within two years of the effective date of this Ordinance. (For the purposes of this subsection, required improvements are the streets, potable water facilities, wastewater treatment facilities and sidewalks identified in the subdivision approval for the relevant phase.) If such a master subdivision plan expires, then development of the subdivision must comply with this Ordinance.

1.10.3 Complete Applications

All projects for which a complete application for site plan or master subdivision plan was submitted and accepted by the Town on or before May 1, 2000 shall be exempt from complying with all provisions of this Ordinance if the application is approved and development occurs in conformity with the permit terms and the requirements of the previously applicable ordinance(s). Such site plans are subject to Section 1.10.2 (A) and such master subdivision plans are subject to Section 1.10.2 (B) (2).

1.10.4 Violations Continue

Any violation under previous ordinances repealed by this Ordinance shall continue to be a violation under this Ordinance and be subject to penalties and enforcement under this Ordinance, unless the use, development, construction, or other activity complies with the provisions of this Ordinance.

1.10.5 Legal Nonconformities Under Previous Ordinances

Any legal nonconformity under any previous ordinances repealed by this Ordinance is also a legal nonconformity under this Ordinance, as long as the situation that resulted in the nonconforming status under the previous ordinances continues to exist.

1.10.6 Tree Clearing

The provisions of Section 8.1.3(B)(4)(a) shall not apply to activities that occurred prior to the effective date of this Ordinance and shall not apply to activities that are in direct fulfillment of obligations incurred under written contracts or deeds entered into prior to the effective date of this Ordinance.

ARTICLE 2 ADMINISTRATION

2.1 REVIEW AND DECISION-MAKING BODIES

The following review and decision-making bodies shall have the following duties and responsibilities in the administration of this Ordinance, and shall be governed by the following rules.

2.1.1 Town Council

A) ***Powers and Duties***
In addition to any authority granted the Town Council by general or special law, the Town Council shall have the following powers and duties:

1) *Review and approve or disapprove.* To review, hear, consider and approve or disapprove:

   a) The adoption of an ordinance to amend the Official Zoning District Map (Rezoning).

   b) The adoption of an ordinance to amend the text of this Ordinance (Text amendment).

2) *Review and approve, approve with conditions or disapprove.* To review, hear, consider and approve, approve with conditions or disapprove:

   a) The adoption of an ordinance to amend the Official Zoning District Map, with conditions (Conditional rezoning).

   b) The adoption of an ordinance approving a PUD-CZ, SD-CZ, TND-CZ, or MEC-CZ for zoning district designation.

   c) Applications for special use permits.

   d) Applications for site plans.

   e) Applications for master plans for subdivision.

3) *Long range plans.* To adopt or amend long range plans.

4) *Appoint hearing officers.* To designate and appoint hearing officers to make decisions as the Town Council may deem appropriate.

5) *Other.* To take any other action not delegated to the Planning Board; Board of Adjustment; the Parks, Recreation, and Cultural Advisory Committee; the Planning Director; or heads of Town departments, as the Town Council may deem desirable and necessary to implement the provisions of this Ordinance.

B) ***Interest***
Per NCGS 160A-381(d), Town Council members shall not vote on any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

Per NCGS 160A-388(e1), Town Council members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

2.1.2 Planning Board

A) ***Powers and Duties***
The Planning Board shall have the following powers and duties:

1) *Review and make recommendations to approve or disapprove.* To review, hear, consider and make recommendations to the Town Council to approve or disapprove:

   a) The adoption of an ordinance to amend the Official Zoning District Map (Rezoning).

   b) The adoption of an ordinance to amend the text of this Ordinance (Text amendment).

2) *Review and make recommendations to approve, approve with conditions, or disapprove.* To hear, review, consider and make recommendations to the Town Council to approve, approve with conditions, or disapprove:

   a) The adoption of an ordinance to amend the Official Zoning District Map, with conditions.

   b) The adoption of an ordinance approving a PUD-CZ, SD-CZ, TND-CZ, or MEC-CZ zoning district designation.

   c) Applications for master plans for subdivision.

3) *Long range plans.* To consider and/or make recommendations to the Town Council to adopt or amend long range plans.

4) *Make special knowledge and expertise available.* To make its special knowledge and expertise available upon written request and authorization of the Town Council to any official, department, board, commission or agency of the Town.

5) *Studies.* To make studies of the resources, possibilities and needs of the Town upon the authorization of the Town Council, and report its findings and recommendations, with reference thereto, to the Town Council.

6) *Recommendations of recognition of Appearance Awards.* To consider and make recommendations on nominees for Residential, Non-Residential, and Tree Appearance Awards to the Town Council.

B) ***Membership***

1) *Number.* The Planning Board shall consist of eight members.

2) *Composition between Town and ETJ.* The composition of membership between the Town and ETJ shall be as follows:

a) The composition of the members shall reflect proportional representation between the Town's corporate limits and the ETJ.

b) ETJ membership shall be based on the proportionality of population between the Town and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by eight (the total required membership), rounding up to the next whole number. Members appointed from the ETJ shall be residents of the ETJ and citizens of Wake County.

c) The balance of the Planning Board's membership shall reside within the Town's corporate limits.

d) Membership composition shall be adjusted to reflect changes in the population between the Town and the ETJ every three years.

3) *No elected official or Town employees.* No member of the Town Council or a Town employee shall serve on the Planning Board. To the greatest extent possible, a majority of membership on the Planning Board should consist of persons with special training or experience in planning, real estate and development, architecture, landscape architecture and the law.

4) *Appointment.* Members shall be appointed as follows:

a) Regular members of the Planning Board from the ETJ shall be appointed by the Board of County Commissioners of Wake County.

b) Regular members of the Planning Board from the Town shall be recommended by the mayor and appointed by the Town Council.

5) *Initial establishment.* At the initial establishment of the Planning Board, three members shall be appointed for a term of three years, three members shall be appointed for a term of two years, and two members shall be appointed for a term of one year. Thereafter, new appointments for terms of three years shall be made. No member of the Planning Board may serve more than three consecutive three year terms.

6) *Removal.* Any member of the Planning Board shall be removed for cause (neglect of duty, malfeasance, misconduct or failure to faithfully attend meetings) by the Town Council upon written charge and after a public hearing.

7) *Filling of vacancy.* Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term by the same method as the original appointment.

C) ***Officers***

1) *Chair and vice-chair.* The chair and vice-chair of the Planning Board shall be appointed by the mayor from the members of the Board and confirmed by the Town Council. The term of the chair and vice-chair shall be one year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Planning Board. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice-chair, an acting chair shall be selected for that meeting by a simple majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.

2) *Secretary.* The Planning Director shall serve as Secretary of the Planning Board and shall keep minutes of all proceedings. These minutes shall be a summary of all proceedings before the Planning Board, which shall include the vote of all members upon every consideration, and be attested to by the Secretary. The minutes shall be approved by a majority of the Planning Board members voting. In addition, the Secretary shall maintain all records of the Planning Board meetings, hearings, proceedings, and correspondence, as public records in the offices of the Planning Department.

D) ***Quorum***
No meeting of the Planning Board shall be called to order, nor may any business be transacted by the Planning Board, without a quorum consisting of the majority of the Planning Board's membership excluding vacant seats being present.

E) ***Interest***
Any member who has an interest in a matter under consideration by the Planning Board shall declare such interest prior to the vote of the Board and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Board on the matter prior to its vote, except as required by NCGS 160A-388(e1) as stated below.

Per NCGS 160A-388(e1), Planning Board members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

F) ***Staff***
The Planning Department shall be the professional staff to the Planning Board.

G) ***Rules of Procedure***
The Planning Board shall, by a majority vote of the entire membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.

H) ***Meetings***
Meetings of the Planning Board shall be held monthly to consider matters properly before the Board. Additional meetings may be called by the Chair or in writing by five members of the Board. All meetings and public hearings shall be held in the Town in a place accessible and open to the public.

I) ***Compensation***
The members of the Planning Board shall serve without compensation.

2.1.3 Board of Adjustment

A) ***Powers and Duties***
The Board of Adjustment shall have the following powers and duties:

1) *Review and approve, approve with conditions, or deny.* To review, hear, consider and approve, approve with conditions, or deny:

a) Applications for Variance Permits.

b) Conditional Use Permits.

2) *Appeals*. To review, hear, consider, and reverse or affirm, in whole or in part, or modify:

a) Written orders, decisions, interpretations, requirements, or determinations of the Planning Director or other administrative officials charged with enforcement of any other ordinance that regulates land use or development.

b) Minor Subdivision Plans.

c) Construction Plans.

d) Final Plats for Subdivision.

e) Soil Erosion and Sedimentation Control Plan

3) *Studies.* To make studies of the resources, possibilities, and needs of the Town upon the authorization of the Town Council and to report its findings and recommendations with reference thereto, from time to time, to the Town Council.

B) *Membership*

1) *Number.* The Board of Adjustment shall consist of five (5) regular members and two (2) alternate members.

2) *Composition between Town and ETJ.* The composition of membership between Town and ETJ residents shall be as follows:

a) The composition of the regular members shall reflect proportional representation between the Town's corporate limits and the ETJ.

b) ETJ membership shall be based on the proportionality of population between the Town and the ETJ. This shall be determined by estimating the total population in the ETJ as a percentage of the population in the Town's corporate limits and the ETJ and multiplying this percentage by five (5) (the total required regular membership), and rounding up to the next whole number. Members appointed from the ETJ shall be residents of the ETJ and citizens of Wake County.

c) The balance of the Board of Adjustment's membership shall reside within the Town's corporate limits.

d) Membership composition shall be adjusted to reflect changes in the population between the Town and the ETJ every three (3) years.

e) The alternate members shall be residents of the Town.

3) *No elected officials or Town employees.* No member of the Town Council or a Town employee shall serve on the Board of Adjustment.

4) *Appointment.* Members shall be appointed as follows:

a) Regular members of the Board of Adjustment from the ETJ shall be appointed by the Board of County Commissioners of Wake County.

b) Regular members of the Board of Adjustment from the Town shall be recommended by the Mayor and appointed by the Town Council.

c) Alternate members of the Board of Adjustment shall be recommended by the Mayor and appointed by the Town Council.

5) *Term.* The term of office of each member appointed shall be for three (3) years. No member of the Board of Adjustment may serve more than three (3) consecutive three (3) year terms.

6) *Removal.* Any member of the Board of Adjustment shall be removed for cause (neglect of duty, malfeasance, misconduct, or failure to faithfully attend meetings) by the Town Council upon written charge and after a public hearing.

7) *Filling vacancy.* Vacancies occurring for reasons other than expiration of terms shall be filled for the period of the unexpired term by the same method as the original appointment.

8) *Alternate members.* The alternate members shall consist of a first alternate member and a second alternate member. The alternate members shall vote in the event any member is temporarily unable to vote due to absence or conflict of interest in a case, or for any other cause. The first alternate member shall have priority to replace the first regular member that is absent or unable to vote. The second alternate member shall have priority to replace the second regular member that is absent or unable to vote. At any meeting which they are called upon to

attend, alternate members shall have and may exercise the same powers and duties as regular members.

C) *Officers*

1) *Chair and vice-chair.* The chair and vice-chair of the Board of Adjustment shall be appointed by the Mayor from the members of the Board of Adjustment. The term of the chair and vice-chair shall be one (1) year. A past chair or vice-chair may be re-appointed, even though no chair or vice-chair shall serve for more than four (4) consecutive terms. Vacancies within a term shall be filled by the same method as the original appointment. The chair shall decide all points of order on procedure, and shall take such action as shall be necessary to preserve the order and integrity of all proceedings before the Board of Adjustment. The chair, on behalf of the Board of Adjustment, is authorized to subpoena witnesses and compel the production of evidence, and to administer oaths to witnesses before the Board. In the absence of the chair, the vice-chair shall act as chair and shall have all powers of the chair. In the absence of both the chair and vice-chair, an acting chair shall be selected for that meeting by a majority of those members present. The acting chair shall have the authority and responsibilities of the chair for that meeting.

2) *Secretary.* The Planning Director shall serve as Secretary for the Board of Adjustment. The Secretary shall keep minutes of all meetings of the Board of Adjustment, and a record of all resolutions, findings, and determinations of the Board of Adjustment. These minutes shall be a summary of all proceedings before the Board of Adjustment, which shall include the vote of all members upon every consideration, and be attested to by the Secretary, and the final disposition of all appeals indicating the vote of the Board of Adjustment and the reasons for the vote. The minutes shall also indicate whether a member is absent or disqualified from voting. The minutes shall be approved by a majority of the Board of Adjustment members voting. In addition, the Secretary shall maintain all records of Board of Adjustment meetings, hearings, proceedings, and correspondence, as public records in the offices of the Planning Department.

D) *Rules of Procedure*
The Board of Adjustment shall, by a majority vote of its entire membership, adopt rules and regulations governing its procedure, as it may consider necessary or advisable.

E) *Meetings*

1) *Regular Meetings.* Meetings of the Board of Adjustment shall be held once every month, or on an as-needed basis. All meetings and public hearings shall be held in the Town in a place accessible and open to the public.

2) *Special Meetings.* Special meetings of the Board of Adjustment may be called at any time by the chairperson. At least 48 hours written notice of the time and place of the special meeting shall be given, by the secretary or by the chairperson, to each member of the Board. The Open Meetings Law requirements must be met. However, for a case to be heard, the applicable notice requirements under NCGS 160A-388(a2) must also be met.

F) *Conflict of Interest*
Any member who has an interest in a matter under consideration by the Board of Adjustment shall declare such interest prior to the vote of the Board of Adjustment and abstain from voting on the question. The member declaring the interest is not exempted from participation in the discussions of the Board on the matter prior to its vote, except as required by NCGS 160A-388(e)(2) as stated below.

Per NCGS 160A-388(e)(2), Board of Adjustment members shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

G) *Decisions*
The final decision of the Board of Adjustment shall be shown in the record of the case as entered in the minutes of the Board of Adjustment and signed by the Planning Director and the chairperson. A decision to grant the relief petitioned for must be based on substantial evidence. The decision may reverse or affirm, wholly or partly, or modify the order, requirement, decision, or determination appealed from.

H. *Compensation*
The members of the Board of Adjustment shall serve without compensation.

2.1.4 Reserved for Future Use

2.1.5 Parks, Recreation, and Cultural Resources Advisory Commission

A) ***Powers and Duties***
The Parks, Recreation, and Cultural Resources Advisory Commission shall have the following powers and duties under the provisions of this Ordinance:

1) *Recommend land for parks and playgrounds*. Recommend to the mayor and Town Council land to be set apart for use as parks, playgrounds, recreational centers, water areas, or other recreational areas and structures.

2) *Review master subdivision plans and site plans.* Review master subdivision plans and residential site plans and make recommendations about whether the master subdivision plan complies with the appropriate review standards and whether a fee–in–lieu for parks shall be provided or dedication of a park or greenway should be made.

3) *Recommendations to Mayor and Town Council.* Recommend to the mayor and Town Council regulatory control, rules and measures for use of Town-owned or controlled recreational facilities.

4) *Consult with Planning Board.* Consult with the Planning Board on all matters pertaining to recreational planning for the community.

B) ***Rules Governing Commission***
The professional staff of the Commission shall be the Parks, Recreation, and Cultural Resources Department. The rules governing the other responsibilities and procedures of the Parks, Recreation, and Cultural Resources Advisory Commission are established in Sec. 15-4, Code of Ordinances, Town of Apex, North Carolina.

2.1.6 Planning Director

A) ***Powers and Duties***
In addition to the jurisdiction, authority, and duties that may be conferred upon the Planning Director by general or special law, the Planning Director or designee shall have the following jurisdiction, powers, and duties:

1) *Consider and approve, approve with conditions or disapprove.* To consider and approve, approve with conditions, or disapprove:

a) Applications for administrative approvals of site plan exemptions.

b) Applications for final plats for subdivision.

c) Applications for minor subdivision.

d) Applications for administrative adjustments.

e) Applications for temporary use permits.

f) Applications for certificates of zoning compliance.

g) Applications for home occupation permits.

h) Master sign plans.

i) Sign permits (temporary and permanent).

j) Tree Protection Fencing permit.

k) Tree Removal permit.

l) Pond Drainage permit.

m) Wireless Facility permit.

2) *Text amendments.* To consider and make recommendations to the Town Council to adopt ordinances to amend the text of this Ordinance and the Official Zoning District Map.

3) *Interpretations.* To render interpretations of all provisions of this Ordinance, including interpretations of the text of this Ordinance; interpretation of the zoning district boundaries; and determinations of whether an unspecified use falls within a use classification or use group allowed in a zoning district.

4) *Administer Ordinance.* To establish application requirements and schedules for review of applications and appeals, to review and make recommendations to the Planning Board, Board of Adjustment and/or Town Council on all applications for development considered by those

boards, and take any other actions necessary to administer the provisions of this Ordinance.

5) *Provide expertise and technical assistance.* To provide expertise and technical assistance to the Town Council, Planning Board, and Board of Adjustment upon request.

2.1.7 Technical Review Committee

A) ***Powers and Duties***
The Technical Review Committee (TRC) shall have the following powers and duties:

1) *Minor site plan.* To review, consider, and make recommendations to approve, approve with conditions, or disapprove applications for minor site plans.

2) *PUD-CZ, SD-CZ, TND-CZ, or MEC-CZ rezoning, major site plan, residential master subdivision plan, and non-residential master subdivision plan.* To review, consider, and make recommendations to approve, approve with conditions, or disapprove applications for PUD-CZ, SD-CZ, TND-CZ, or MEC-CZ rezoning, major site plan, residential master subdivision plan, and non-residential master subdivision plan.

3) *Construction plans.* To consider and approve, approve with conditions, or disapprove applications for construction plans for subdivision, site plans, and other related construction plans.

B) ***Membership***
The TRC shall consist of a staff member, designated by the department head, from each of the following departments: Planning, Public Works and Transportation, Building Inspections and Permitting, Parks and Recreation, Police and Fire.

C) ***Chair***
The Planning Director or the Planning Director's designee shall serve as the Chair of the TRC. The Chair shall be in charge of all proceedings before the TRC and shall take such action as shall be necessary to procure order and the integrity of proceedings before the TRC.

D) ***Rules of Procedure***
The TRC shall, by a majority vote of the entire membership, adopt rules and regulations governing its procedure as it may consider necessary or advisable.

2.1.8 Hearing Officer

A) ***Creation and Appointment***
The Town Council shall confirm one or more hearing officers to hear and consider such matters as may be required to be conducted by a hearing officer under any provision of this Ordinance or as may be determined to be appropriate. Such hearing officer(s) shall serve at the pleasure of the mayor and Town Council for such period as is determined by the mayor and Town Council. Such hearing officers shall be compensated at a rate to be determined by the Town Council. Whoever shall accept an appointment as a hearing officer shall, for a period of one year from the date of termination as holder of such office, not act as agent or attorney in any proceeding, application or other matter before any decision-making body of the Town in any matter involving land that was the

subject of a proceeding which was pending during the time served as a hearing officer.

B) ***Minimum Qualifications***
A hearing officer shall have the following minimum qualifications:

1) *Professional experience.* Demonstrated knowledge of administrative, environmental and land use planning and law and procedures.

2) *No appointive or elective office.* Hold no other appointive or elective public office or position in the Town during the period of appointment.

C) ***Powers and Duties***
A hearing officer shall have the following duties:

1) *Beneficial Use Determination.* To conduct hearings on Appeals for Beneficial Use Determinations and recommend approval with conditions or disapproval to the Town Council;

2) *Subpoenas, production of documents and oaths.* To issue subpoenas to compel the attendance of witnesses and production of documents, and to administer oaths to witnesses appearing at hearings.

3) *Other.* To perform such other tasks as the Town Council may assign.

2.2 COMMON REVIEW PROCEDURES

The general provisions of this section apply to all development applications and procedures under this Ordinance, unless otherwise stated.

2.2.1 Authority to File Applications

Applications under this article shall be submitted to the Planning Director by the owner, or any other person having a recognized interest in the land for which the development is proposed, or their authorized agent.

A) ***Applicant is Not the Owner***
If the applicant is not the owner of the land, or is a contract purchaser of the land, a letter signed by the owner consenting to the submission of the application shall be submitted.

B) ***Applicant is Not the Sole Owner***
If the applicant is not the sole owner of the land, a letter signed by the other owners or an association representing the owners consenting to or joining in the application for development approval shall be submitted.

2.2.2 Planning Director Authorized to Establish Application Submission Schedule

The schedule for the submission of applications shall be established by the Planning Director and made available to the public.

2.2.3 Simultaneous Processing

Whenever two or more forms of review and approval are required under this Ordinance (e.g., a rezoning and a special use permit), the applications for those development approvals may, at the option of the Planning Director, be processed simultaneously, so long as all applicable state and local requirements are satisfied for both applications. However, whenever this Ordinance requires two types of review for the same approval (e.g., a master plan for subdivision and a final plat for subdivision), those two review and approval procedures must be completed as separate steps in the order specified.

2.2.4 Form of Application

Applications required under this article shall be submitted in a form established by the Planning Director and made available to the public.

2.2.5 Fees

A) ***Determination of Fees***

The Town Council shall determine the fees to accompany all applications submitted under this Ordinance. The Council may adjust fee amounts from time to time. The fee amount shall defray the actual cost of processing the application.

B) ***Fees to be Paid***

No application shall be processed until the established fee has been paid.

C) ***Refund of Fees***

Application fees are not refundable except where the Planning Director determines that an application was accepted in error, or the fee paid exceeded the amount due, in which case the amount of the overpayment will be refunded to the applicant.

2.2.6 Pre–Application Meeting

A) ***General Overview***

A pre-application meeting is required prior to submission of the following application types: Rezoning (including Planned Development districts), Special Use Permit, Minor or Major Site Plan, Master Subdivision Plan, Variance Permit, or any application within the Small Town Character Overlay District. The purpose of a pre-application meeting is to familiarize the applicant and the Town staff with the applicable provisions of this Ordinance required to permit the proposed development.

B) ***Initiation of Pre-Application Meeting***

Any potential applicant may request a pre-application meeting, in writing, with the Planning Director. Along with the request for the pre-application meeting, the applicant shall provide to the Planning Director a description of the character, location, and magnitude of the proposed development and any other supporting documents such as maps, drawings, models, site or sketch plan, and the type of development permit sought a minimum of five (5) working days prior to the pre-application meeting.

C) ***Pre-Application Meeting***

The Planning Director shall schedule a pre-application meeting after receipt of the written request for a pre-application meeting. At the pre-application meeting, the applicant, the Planning Director, and any other Town staff and/or State and/or federal representatives the Planning Director deems is appropriate to attend the pre-application meeting, shall discuss the proposed development, and based upon the information provided by the applicant and the provisions of this Ordinance, discuss in general what provisions of this Ordinance apply to the proposed development.

2.2.7 Neighborhood Meeting

Neighborhood meetings are required for all applications for rezonings, major site plans, residential subdivisions, excluding minor or exempt subdivisions, and special use permits. Before a public hearing or meeting may be held on a rezoning petition, residential subdivision plan, major site plan, or special use permit, the petitioner must file in the office

of the Planning Director a written report of at least one neighborhood meeting held by the petitioner. The neighborhood meeting shall comply with the following procedures.

A) ***General***
The purpose of the neighborhood meeting is to educate neighbors about the proposed development and application, to receive neighborhood comments, and to address concerns about the development proposal. At least one (1) neighborhood meeting shall be scheduled and held by the applicant or applicant's agent prior to submission of the initial application. The neighborhood meeting shall take place within six (6) months of submittal of the application; if more than six (6) months have passed at the time of application, the applicant shall hold a subsequent neighborhood meeting.

B) ***Time and Place***
The neighborhood meeting shall be held at a place that is generally accessible to neighbors that reside in close proximity to the land subject to the application.

C) ***Notification***
The applicant shall provide notification of the neighborhood meeting a minimum of 10 calendar days in advance of the meeting by mail, to all landowners within 300 feet of the land subject to the application, to any neighborhood association that represents citizens within that area and to the Town of Apex Planning and Community Development Department. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 300-foot notification area shall be measured from the property line of that entire parcel.

D) ***Conduct of Meetings***
At the neighborhood meeting, the applicant shall explain the development proposal and application, answer any questions, respond to concerns neighbors have about the application and proposed resolutions to these concerns.

E) ***Report***
The report shall include, among other things:
1) A listing of those persons and organizations contacted about the meeting and the manner and date of contact;
2) The date, time and location of the meeting;
3) An Apex Neighborhood Meeting Roster Form identifying the persons in attendance at the meeting;
4) A summary of issues discussed at the meeting; and,
5) A description of any changes made by the petitioner as a result of the meeting.

2.2.8 Application Submission

An application shall be submitted to the Planning Director pursuant to the application submittal schedule established by the Planning Director and made available to the public, along with a fee established pursuant to Sec. 2.2.5, Fees. Applications for master subdivision plans, planned developments, site plans, and construction plans shall be reviewed and commented on by the Technical Review Committee (TRC). Provided, however, that the Town shall not accept any such applications relating to any property within the Town's municipal corporate limits or extraterritorial jurisdiction on which an historic structure (as defined in Article 12) has been demolished (as defined in Article 12) within the immediately preceding 48 months, measured from the date of the Town's final inspection of such demolition activities pursuant to the North Carolina State Building Code. The relocation of historic structures shall not be considered a demolition if the relocation is conducted in accordance with Sec. 2.3.6(C)(2)(b).

A) ***Determination of Sufficiency***
The Planning Director shall determine if the application is sufficiently complete and includes data in sufficient detail to evaluate the application to determine whether it complies with the appropriate substantive requirements of this Ordinance. This process shall occur within the time frame of the application submittal schedule as established by the Planning Director. If the Planning Director determines the application is not sufficient a written notice shall be transmitted to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied.

B) ***Determination of Compliance***
When an application is determined sufficient, it shall be reviewed pursuant to the procedures and standards of this article. The Planning Director shall forward the application to each member of the TRC and any other applicable review agencies for review and comments. If the application is found not to comply with one or more aspects of this ordinance or other regulations, then the TRC Chairperson shall compile a list of comments and outstanding issues and transmit it to the applicant. The applicant shall make the requested changes and resubmit revised plans to address the comments of the TRC and any other review agency. Re-submittals of applications must occur no less than one year from the initial submittal date or no less than one year from any re-submittal date in order to be considered active. Inactive applications are null and void one year after the latest submittal or re-submittal date; any submittals made after becoming inactive will be considered a new application. The process shall repeat until the application is found to be complete and in full compliance with this ordinance and all other applicable regulations. This process shall follow the steps and the time frame of the application submittal schedule as established by the Planning Director.

2.2.9 Staff Report
Upon the TRC's finding that the application is complete and in full compliance with this ordinance and all other applicable regulations, the Planning Director shall prepare a staff report. This staff report may include a recommendation from the Town Staff for approval, approval with conditions, or denial. The Town Staff may recommend conditions for approval to eliminate any areas of noncompliance or to mitigate any adverse effects of the development proposal.

2.2.10 Scheduling Public Hearing(s)
When an application is subject to a public hearing (see Sec. 2.2.11(E), *Timing of Notice* for when a public hearing is required), the Planning Director shall ensure that the public hearing or public hearings on the application are scheduled for a regularly scheduled meeting or a meeting specially called for that purpose by the decision-making or advisory body reviewing the application. The public hearing shall be scheduled so there is sufficient time for a Staff Report to be prepared, and for the public notification requirements to be satisfied.

2.2.11 Public Notification
All applications for development approval requiring public hearings shall comply with all applicable North Carolina General Statutes including 160A-364, 160A-384, and 160A-388(a2), the table in Sec. 2.2.11(E) *Timing of Notice*, and the other provisions of this Section with regard to public notification.

A) ***Content***

1) All written notice and published notice for public hearings shall:

a) *Time and place.* Indicate the time and place of the public hearing or action;

b) *Location.* Describe the land involved by street address or by Parcel Identification Number (PIN) and nearest cross street;

c) *Describe nature and scope of application.* Describe the nature, scope and purpose of the application or proposal being advertised;

d) *Additional information.* Indicate where additional information can be obtained; and

e) *Notify interested parties they will be heard.* Include a statement that interested parties may appear at the public hearing and be heard with respect to the application.

2) All posted notice for public hearings shall:

a) Include the words “Public Hearing”;

b) Identify the Town of Apex;

c) Provide contact information where additional information can be requested.

B) ***Written (Mailed) Notice***

When the provisions of this Ordinance require that written or mailed notice be provided, the Planning Director shall be responsible for preparing the written notice and mailing the written notice. Notice shall be mailed to all owners of the land subject to the application, and all owners of land located within 300 feet of the land subject to application, unless otherwise specified in this Ordinance. However, as an alternate form of notification, NCGS 160A-384(b) may be used when a zoning map amendment directly affects more than 50 properties**,** owned by a total of at least 50 different property owners. Written notice shall be provided at the last addresses listed for such owners on the county tax abstracts. Notice shall be deemed mailed by its deposit in the United States mail, first class, properly addressed, postage paid. The applicant shall be responsible for providing the Planning Director with first class stamped envelopes (postage metering is not acceptable) addressed to all owners of the land subject to the application, all owners of land located within 300 feet of the land subject to application, and to any neighborhood association that represents citizens within the area. The applicant shall also sign and provide to the Planning Director an affidavit with a certified list of all owners of the land subject to the application and all owners of land located within 300 feet of the land subject to application. The Planning Director shall be responsible for preparing an affidavit affirming that the mailed notice met the requirements of Sec. 2.2.11(A) Content. The affidavit shall be conclusive that notice has been given pursuant to the terms of the subsection. When less than an entire parcel of land is subject to the proposed zoning map amendment, the 300-foot notification area shall be measured from the property line of that entire parcel.

C) ***Published Notice***

When the provisions of this Ordinance require that notice be published, the Planning Director shall be responsible for preparing the content of the notice and publishing the notice in either:

1) A newspaper of general circulation that has been selected by the Town once a week for two successive weeks prior to the public hearing;

2) Or by electronic means including the Town's website.

The notice shall be published the first time not less than 10 days nor more than 25 days before the date established for the public hearing.

D) ***Posted Notice***
When the provisions of this Ordinance require that notice be posted on the land subject to the application, the Planning Director shall (1) post the notice on weatherproof signs and (2) place the signs on the property that is the subject of the application, and along each public street which is adjacent to or runs through the subject property in a manner that makes them clearly visible to neighboring residents and passers-by. The sign(s) shall be set back no more than 25 feet from the public street(s) so that the lettering is visible from the street. Where the land does not have frontage on a public street, signs shall be erected on the nearest public street.

E) ***Timing of Notice***
Unless otherwise expressly provided in the North Carolina General Statutes or this Ordinance, notice shall be provided as follows:

Application for Development Permit or Other Action	Notice Required (days before hearing/action)			
	Neighborhood Meeting (Sec. 2.2.7)	Written (Sec. 2.2.11.B)	Published (Sec. 2.2.11.C)	Posted (Sec. 2.2.11.D)
Rezoning, Conditional Rezoning, PUD-CZ, SD-CZ, TND-CZ, MEC-CZ, Major Site Plan, Special Use	Written notice no less than 10 days prior to meeting date	Not more than 25 days nor less than 10 days prior to public hearing	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing	Not less than 10 days prior to public hearing
Residential Master Subdivision Plans (limited instances require Published Notice)	Written notice no less than 10 days prior to meeting	N/A	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing for 1) Changes to proposed new major subdivision preliminary plats; or 2) An increase in the size of an approved subdivision by more than 50% of the subdivision's total land area including developed and undeveloped land.	N/A
Unified Development Ordinance (limited instances require Published Notice)	N/A	N/A	Once a week for two successive weeks prior to public hearing; first publication not less than 10 days nor more than 25 days before hearing for 1) Changes that affect the permitted uses of land; or 2) Changes relating to telecommunications towers or windmills.	N/A
Variance permit	N/A	Not more than 25 days nor less than 10 days prior to public hearing	N/A	Not more than 25 days nor less than 10 days prior to public hearing
Appeals to Board of Adjustment (interpretations and decisions of Planning Director)		Not more than 25 days nor less than 10 days prior to public hearing	N/A	Not more than 25 days nor less than 10 days prior to public hearing

2.2.12 Withdrawal of Application

A) ***Submission of Application***
Any request for withdrawal of an application shall be submitted in writing to the Planning Director.

B) ***Prior to Notice of Public Hearing***
The Planning Director shall approve a request for withdrawal of an application if it has been submitted prior to notification of a public hearing on the application pursuant to Sec. 2.2.11, *Public Notification*.

C) ***Subsequent to Notice of Public Hearing***
Once notice of a public hearing has occurred pursuant to Sec. 2.2.11, *Public Notification*, the request for withdrawal of the application shall be placed on the public hearing agenda and acted upon by the appropriate decision-making body.

2.2.13 Reserved

2.2.14 Review and Recommendation of Planning Board

After submission of an application (Sec. 2.2.8) and preparation of the Staff Report (Sec. 2.2.9), scheduling of a public hearing (Sec. 2.2.10) and public notification (Sec. 2.2.11), the Planning Board shall conduct a public hearing on the application pursuant to Sec. 2.2.18, *Public Hearing Procedures*. At the public hearing, the Planning Board shall consider the application, the relevant support materials, the Staff Report, and the public testimony given at the public hearing. After the close of the public hearing, the Planning Board shall recommend to the Town Council either to approve, approve with conditions (if appropriate) or disapprove the application based on the relevant review standards, and forward the application to the Town Council.

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

Per NCGS 160A-383, the Planning Board shall advise and comment on whether the proposed zoning amendment is consistent with all applicable officially adopted plans, and provide a written recommendation to the Town Council that addresses plan consistency and other matters as deemed appropriate by the Planning Board, but a comment by the Planning Board that a proposed amendment is inconsistent with the officially adopted plans shall not preclude consideration or approval of the proposed amendment by the Town Council.

2.2.15 Action by the Town Council

After receipt of the recommendation from the Planning Board, or at the Town Council's discretion, after 30 days of consideration of proposed amendments to the zoning ordinance or zoning map by the Planning Board with no written recommendation, the scheduling of a public hearing (Sec. 2.2.10) and public notification (Sec. 2.2.11), the Town Council shall conduct a public hearing on an application pursuant to Sec. 2.2.18, Public Hearing Procedures. At the public hearing, the Town Council shall consider the application, the relevant support materials, the Staff Report, the Planning Board recommendation, and the public testimony given at the public hearing. After the close of the public hearing, the Town Council by a majority vote of the quorum present, shall approve, approve with conditions (if appropriate), or disapprove the application based on the relevant review standards.

Per NCGS 160A-381(c), when approving Special Use Permits the Town Council shall

follow quasi-judicial procedures. No vote greater than a majority vote shall be required for the Town Council to issue such permits. For the purposes of this section, vacant positions on the Town Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the board' for calculation of the requisite majority.

Per NCGS 160A-383, prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with all applicable officially adopted plans and explaining why the Council considers the action taken to be reasonable and in the public interest.

2.2.16 Decisions

All decisions shall be made part of the tape recorded or transcribed record of the public hearing and the written minutes. The decision shall include:

A) ***Information Presented***
The information presented before the decision-making body.

B) ***Documentary Evidence***
The documentary evidence submitted into the record; and

C) ***Statement of Approval, Approval with Conditions, or Disapproval***
A clear statement of approval, approval with conditions, or disapproval, whichever is appropriate.

2.2.17 Notification of Decision

Notification of a decision on a development approval or permit shall be provided by the Planning Director to the applicant by mail within 14 calendar days after the decision. A copy of the decision shall also be made available to the public at the offices of the Planning Department, during normal business hours, within a reasonable period of time after the decision**.**

2.2.18 Public Hearing Procedures

A public hearing held pursuant to this Ordinance shall comply with the following procedures:

A) ***Examination and Copying of Application and Other Documents***
At any time upon reasonable request, and during normal business hours, any person may examine an application and materials submitted in support of or in opposition to an application in the Planning Department offices. Copies of such materials shall be made available at a reasonable cost.

B) ***Conduct of Public Hearing***

1) *Burden of proof or persuasion.* The burden of demonstrating that an application complies with applicable review and approval standards is on the applicant. The burden is not on the Town or other parties to show that the standards have not been met by the applicant.

2) *Rights of all persons.* Any person may appear at a public hearing and submit evidence, either individually or as a representative of a person or an organization. Each person who appears at a public hearing shall be identified, state an address, and if appearing on behalf of a person or organization, state the name and mailing address of the person or organization being represented.

3) *Exclusion of testimony.* The body conducting the public hearing may exclude testimony or evidence that it finds to be irrelevant, immaterial or unduly repetitious.

4) *Offers of testimony.* In the event any testimony or evidence is excluded as irrelevant, immaterial or unduly repetitious, the person offering such testimony or evidence shall have an opportunity to offer such testimony or evidence for the record. Such offer shall be made at the public hearing.

5) *Continuance of public hearing*

   a) The body conducting the public hearing may, on its own motion or at the request of any person, continue the public hearing to a fixed date, time and place. An applicant shall have the right to request and be granted one continuance; however, all subsequent continuances shall be granted at the discretion of the body conducting the public hearing only upon good cause shown.

   b) A public hearing for which proper notice was given may be continued to a later date without again complying with the notice requirements of this Section, provided that the continuance is set for a date within 60 days, and the date and time of the continued hearing is announced at the time of the continuance.

6) *Order of proceedings at public hearing.* The order of the proceedings at the public hearing shall be as follows:

   a) The Planning Director shall present a narrative and/or graphic description of the application.

   b) The Planning Director shall present a Staff Report that includes a written recommendation.

   c) The applicant shall present any information the applicant deems appropriate.

   d) Public testimony shall be heard.

   e) The applicant may respond to any testimony or evidence presented by the public.

   f) The Planning Director or Planning Department staff, the Town Attorney, and any other Town staff may respond to any statement made by the applicant or the public.

7) *General procedures and findings at public hearing*

   a) All decision-making bodies and persons shall act in accord with any time limits established in this Ordinance. Action shall be taken as promptly as possible in consideration of the interests of the citizens of the Town and the applicant, and shall include a clear statement of approval, approval with conditions, or disapproval, where appropriate.

   b) In approving development applications, the decision-making body shall be authorized to impose such conditions upon the approval and land benefited by the approval as is necessary to ensure compliance with the relevant review standards, so long as the condition relates to a situation created or aggravated by the proposed use or development for which approval is granted and is roughly proportional to its impact.

c) The form of all decisions shall comply with Sec. 2.2.16, *Decisions*.

C) ***Notification of Decision***
Notification of a decision-making body's decision shall comply with Sec. 2.2.17, *Notification of Decision*.

D) ***Record***

1) *Recording of public hearing.* The body conducting the public hearing shall record the public hearing by any appropriate means. A copy of the public hearing record may be acquired by any person upon application to the Planning Director, and payment of a fee to cover the cost of transcription or duplication of the record.

2) *The record.* The record of oral proceedings, including testimony and statements of personal opinions, the minutes of the Secretary, all applications, exhibits and papers submitted in any proceeding before the decision-making body, the Staff Report and the decision of the decision-making body shall constitute the total record.

E) ***Successive Applications***
Whenever any application is disapproved, an application for all or a part of the same land shall not be considered for a period of one (1) year after the date of disapproval unless either the subsequent application involves an application that is materially different from the prior application or a simple majority of the membership of the decision-making body that made the final decision on the application determines that the prior disapproval was based on a material mistake of fact. The decision-making body charged with conducting the public hearing under such successive application shall resolve any issue concerning the similarity of a successive application or other issues that may develop under this Section.

2.3 DEVELOPMENT APPROVALS

2.3.1 General Overview

Table 2.3.1 summarizes the development review procedures for all types of applications for development approvals and other permits outlined in this article.

TABLE 2.3.1: DEVELOPMENT REVIEW PROCEDURES
D = Final Decision Maker R = Recommendation A = Appellate Body

DEVELOPMENT PERMIT	Planning Director/ Technical Review Committee	Board of Adjustment	Planning Board	Town Council
Text Amendment (UDO) (Sec. 2.3.2)	R		R	D
Rezoning (Sec. 2.3.2)	R		R	D
Conditional Zoning (CZ) District (Sec. 2.3.3)	R		R	D
Planned Unit Development District (PUD-CZ) District (Sec. 2.3.4)	R		R	D
Traditional Neighborhood District (TND-CZ) (Sec. 2.3.4)	R		R	D
Sustainable Development Conditional Zoning District (SD-CZ) (2.3.16)	R		R	D
Major Employment Center (MEC-CZ) District (Sec. 2.3.4)	R		R	D

TABLE 2.3.1: DEVELOPMENT REVIEW PROCEDURES
D = Final Decision Maker R = Recommendation A = Appellate Body

DEVELOPMENT PERMIT	Planning Director/ Technical Review Committee	Board of Adjustment	Planning Board	Town Council
Special Use (Sec. 2.3.5)	R			D
Site Plans (Major) (Sec. 2.3.6)	R			D
Site Plans (Minor) (Sec. 2.3.6)	D	A		
Master Subdivision Plan (Sec. 2.3.7 D.)	R		R	D
Construction Plans (Sec. 2.3.7 E.)	D	A		
Final Plat for Subdivision (Sec. 2.3.7 F.)	D	A		
Minor Subdivision (Sec. 2.3.7 G.)	D	A		
Variance Permit (Sec. 2.3.8)	R	D		
Administrative Adjustment (Sec. 2.3.9)	D	A		
Certificate of Zoning Compliance (Sec. 2.3.10)	D	A		
Temporary use (Sec. 2.3.11)	D	A		
Appeals not identified in Table 2.3.1 (Sec. 2.3.12)	D	A		
Beneficial use Determination (Sec. 2.3.13)		D		
Vested Rights (Sec. 2.3.14)				D
Tree Removal and/or Pond Drainage Plan (Sec. 2.3.15)	D	A		

2.3.2 Amendments to the Text of this Ordinance or Official Zoning District Map (Rezonings)

A) ***Purpose***
The purpose of this Section is to provide a means for amending the text of this Ordinance or changing the Official Zoning District Map of this Ordinance.

B) ***Authority***
The Town Council may adopt an ordinance amending the text of this Ordinance or amending the Official Zoning District Map of this Ordinance upon compliance with the provisions of this Section.

C) ***Initiation***

1) *Amendment to the text of this Ordinance.* An amendment to the text of this Ordinance may be proposed by the Town Council, the Planning Board, the Board of Adjustment, the Planning Director, or pursuant to Sec. 2.2.1, *Authority to File Applications*.

2) *Amendment to the Official Zoning District Map.* An amendment to the Official Zoning District Map of this Ordinance may be proposed by the Town Council, the Planning Board, the Planning Director, or pursuant to Sec. 2.2.1, *Authority to File Applications*.

D) ***Procedures***
The procedures for the application contents, fees, submission and review by Town staff, public notification, review by the Planning Board and then approval or disapproval by the Town Council at a public hearing shall comply with the requirements of Sec. 2.2, *Common Review Procedures*, except that a public hearing shall not be required at the Planning Board for Amendments to the Text of this Ordinance.

E) ***Standards***
The advisability of amending the text of this Ordinance or the Official Zoning District Map is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment to the text of this Ordinance or the Official Zoning District Map, the Town Council shall consider the following factors:

1) *Compatible with surrounding uses.* Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land.

2) *Changed conditions.* Whether and the extent to which there are changed conditions that require an amendment.

3) *Effect on natural environment.* Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.

4) *Community need.* Whether and the extent to which the proposed amendment addresses a demonstrated community need.

5) *Development patterns.* Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern and not constitute spot zoning.

6) *Public facilities.* Whether and the extent to which the proposed amendment would result in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).

7) *Consistency with 2030 Land Use Map.* Consistency with the 2030 Land Use Map.

2.3.3 Conditional Zoning Districts

A) ***Purpose***
Conditional Zoning (CZ) Districts are zoning districts in which the development and use of property is subject to the predetermined ordinance standards applicable to the corresponding general use district as well as additional rules, regulations, and conditions, that are imposed as part of the legislative decision creating the district. A Conditional Zoning (CZ) District allows particular uses to be established only in accordance with site specific standards and conditions pertaining to each individual development project. All site-specific standards and conditions must be consistent with the objectives of these regulations, the adopted 2030 Land Use Map and adopted area plans. The review process established in this part provides for the accommodation of such uses by a reclassification of

property into a Conditional Zoning (CZ) District, subject to site-specific standards and conditions.

B) ***Uses***
Conditional Zoning (CZ) Districts are established (Sec 3.2, *Zoning Districts Established*, bearing the designation -CZ) to correspond with each of the general use zoning districts. The uses permitted in a Conditional Zoning (CZ) District are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in the corresponding general use district.

C) ***Application***
Property may be rezoned to a Conditional Zoning (CZ) District only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. In addition to the requirements set out in Sec 2.2 *Common Review Procedures*, a petition for Conditional Zoning shall include text that specifies the actual use or uses intended for the property and any rules, regulations, site-specific standards and conditions that, in addition to all ordinance requirements applicable to the corresponding general use district, will govern the development and use of the property. The petition may also include supporting information, such as an exhibit, that illustrates the intent of a proposed condition or standard.

D) ***Required Neighborhood Meeting***
Neighborhood meetings are required to be held pursuant to Sec. 2.2.7 *Neighborhood Meeting*.

E) ***Approval of Conditional Zoning District***
Conditional Zoning (CZ) District decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. In considering a petition for a Conditional Zoning (CZ) District, the council shall act in accordance with Sec 2.2.15, *Action by Town Council*. Conditional Zoning (CZ) District decisions shall be made in accordance with the procedures and standards set forth in this section and Sec. 2.3.2, *Amendments to the Text of this Ordinance or Zoning District Map (Rezonings).*

F) ***Legislative Considerations***
The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

1) *Consistency with 2030 Land Use Map.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2030 Land Use Map.

2) *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.

3) *Zoning district supplemental standards.* The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4, *Supplemental Standards,* if applicable.

4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including

visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.

5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.

6) *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.

7) *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's affect on the health, safety, or welfare of the residents of the Town or its ETJ.

8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.

9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.

10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

G) ***Conditions to Approval of Petition***

Specific conditions applicable to this Conditional Zoning (CZ) District may be proposed by the petitioner or the Town or its agencies, but only those conditions mutually approved by the Town and the petitioner may be incorporated into the zoning regulations. Conditions and site-specific standards imposed in a Conditional Zoning (CZ) District are limited to those that address the conformance of the development and use of the site to Town ordinances, the 2030 Land Use Map or other applicable officially adopted plan, and those that address the impacts reasonably expected to be generated by the development or use of the site. Conditions shall not be in conflict with Town of Apex policies.

H) ***Written Statement***

Per NCGS 160A-383, prior to adopting or rejecting any zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with all applicable officially adopted plans and explaining why the Council considers the action taken to be reasonable and in the public interest.

I) ***Effect of Approval***

1) If a petition for a Conditional Zoning (CZ) District is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, site-specific standards and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.

2) A Conditional Zoning (CZ) District approval and the conditions imposed upon its approval shall be perpetually binding on the land unless it is subsequently amended pursuant to Sec 2.3.3 (J), *Amendments* or otherwise rezoned.

3) Any Conditional Zoning (CZ) District approved under this ordinance shall have vested rights pursuant to NCGS 160A-385.1 as set forth in Sec. 2.3.14, *Vested Rights,* of this ordinance.

J) ***Amendments to Approval***

1) Except as provided in subsection (2) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning maps and shall be processed in accordance with the procedures in this chapter.

2) Minor deviations from the approved plan may be made in accordance with Sec. 2.3.6(K) *Minor Deviations* or 2.3.4(M) *Minor Deviations*, or Sec. 2.3.16(J) *Minor Deviation to a SD Plan* or Sec. 2.3.16(K) *Modification of SD Plan*.

K) ***Transitional Provisions***

1) *Pending Applications*. Upon the applicant's request, an application for a conditional use permit/rezoning submitted, but not approved, before June 20, 2006, may proceed for approval under the former UDO Sec. 2.3.3 *Conditional Use* as Sec. 2.3.3 existed on June 20, 2006 before amendments were made to Sec. 2.3.3 on June 20, 2006 ("Former Sec. 2.3.3").

2) *Amendments to Conditional Use Permits*. A conditional use permit/rezoning approved on or before June 20, 2006 may be amended, extended or modified in accordance with the procedures and standards established under Former Sec. 2.3.3 provided the amendment request is submitted within five (5) years following the initial permit issuance / rezoning. Any amendment request submitted more than five (5) years following the initial issuance of the conditional use permit/rezoning will be considered a request to rezone in accordance with the Town's Planning ordinances as they exist at the time of the request.

3) Former Section 2.3.3 – Status. Former Sec. 2.3.3 is re-enacted and incorporated herein by reference to, and only to, the extent necessary to accomplish the purposes of Subsections (1) and (2) immediately above. Except that Former Section 2.3.3 (J) Amendments is not re-enacted in whole but is changed to read: A conditional use permit/rezoning may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

2.3.4 Planned Development Districts

A) ***General***

This Section establishes the procedures and standards for review of the Town's Planned Development (PD) Zoning Districts: the Planned Unit Development (PUD-CZ) District; the Traditional Neighborhood District (TND-CZ); and the Major Employment Center (MEC-CZ) District.

B) ***General Applicability***

Before any development shall be designated as a Planned Development PD District (either Planned Unit Development (PUD-CZ) District, Traditional Neighborhood District (TND-CZ) or Major Employment Center (MEC-CZ) District) on the Official Zoning District Map, it shall receive approval pursuant to the terms of this Section and Sec. 2.3.3 Conditional Zoning Districts.

C) ***Location***

A Planned Development (PD) District designation may be established on any land located in the Town and its ETJ that complies with all of the applicable standards of this Section.

D) ***Unified Ownership or Control***

The title to all land that is part of a Planned Development (PD) District designation shall be owned or controlled by one person. A person shall be considered to control all lands in the Planned Development (PD) District either through ownership or by written consent of all owners of said land that they will be subject to the conditions and standards of the adopting ordinance and the Planned Development (PD) Plan. This one person, who shall be identified in the Planned Development (PD) Plan document, will be the sole party from which the Town will accept decisions regarding the Planned Development (PD) Plan.

E) ***Procedures***

1) *Overview.* A Planned Development District (for Planned Unit Development (PUD-CZ), Traditional Neighborhood District (TND-CZ) or Major Employment Center (MEC-CZ)) shall constitute an amendment to the Official Zoning District Map. It shall be controlled by a PD Plan that is approved as part of the Planned Development (PD) district designation. The procedure requires review and recommendation of approval, approval with conditions or disapproval by the Planning Board and approval, approval with conditions or disapproval by the Town Council.

2) *General.* The procedures for initiation of the application, the application contents, fees, submission and review by Town staff and/or consulting firms on retainer, public notification, review by the Planning Board and then approval, approval with conditions or disapproval by the Town Council at a public hearing(s) shall comply with the requirements of Sec. 2.2 *Common Review Procedures,* Sec 2.2.7 *Neighborhood Meeting* and Sec. 2.3.4 (F) *Standards*.

F) ***Standards***

In return for greater flexibility in site design requirements, Planned Development (PD) Districts are expected to deliver exceptional quality community designs that preserve critical environmental resources; provide high quality community amenities; incorporate creative design in the layout of buildings, Resource Conservation Area and circulation; ensure compatibility with surrounding land uses and neighborhood character; provide high quality architecture; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure. The Planned Development (PD) Districts shall not be used as a means of circumventing the Town's adopted land development regulations for routine developments.

1) *Planned Unit Development (PUD-CZ) District*

In approving a Planned Development (PD) Zoning District designation for a PUD-CZ, the Town Council shall find the PUD-CZ district designation

and PD Plan for PUD-CZ demonstrates compliance with the following standards:

a) *Development parameters*

(i) The uses proposed to be developed in the PD Plan for PUD-CZ are those uses permitted in Sec. 4.2.2, *Use Table.*

(ii) The uses proposed in the PD Plan for PUD-CZ can be entirely residential, entirely non-residential, or a mix of residential and non-residential uses, provided a minimum percentage of non-residential land area is included in certain mixed use areas as specified on the 2030 Land Use Map. The location of uses proposed by the PUD-CZ must be shown in the PD Plan with a maximum density for each type of residential use and a maximum square footage for each type of non-residential use.

(iii) The dimensional standards in Sec. 5.1.3, *Table of Intensity and Dimensional Standards, Planned Development Districts* may be varied in the PD Plan for PUD-CZ. The PUD-CZ shall demonstrate compliance with all other dimensional standards of the UDO, North Carolina Building Code, and North Carolina Fire Code.

(iv) The development proposed in the PD Plan for PUD-CZ encourages cluster and compact development to the greatest extent possible that is interrelated and linked by pedestrian ways, bikeways and other transportation systems. At a minimum, the PD Plan must show sidewalk improvements as required by the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details*, and greenway improvements as required by the Town of Apex Parks, Recreation, Greenways, and Open Space Plan and the Apex Transportation Plan. In addition, sidewalks shall be provided on both sides of all streets for single-family detached homes.

(v) The design of development in the PD Plan for PUD-CZ results in land use patterns that promote and expand opportunities for walkability, connectivity, public transportation, and an efficient compact network of streets. Cul-de-sacs shall be avoided unless the design of the subdivision and the existing or proposed street system in the surrounding area indicate that a through street is not essential in the location of the proposed cul-de-sac, or where sensitive environmental areas such as streams, floodplains, and wetlands would be substantially disturbed by making road connections.

(vi) The development proposed in the PD Plan for PUD-CZ is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties.

(vii) The development proposed in the PD Plan for PUD-CZ has architectural and design standards that are exceptional and provide higher quality than routine developments. All residential uses proposed in a PD Plan for PUD-CZ shall provide architectural elevations representative of the residential structures to be built to ensure the Standards of this Section are met.

b) Off-street parking and loading. The PD Plan for PUD-CZ shall demonstrate compliance with the standards of Sec. 8.3, *Off-Street Parking and Loading*, except that variations from these standards may be permitted if a comprehensive parking and loading plan for the PUD-CZ is submitted as part of the PD Plan that is determined to be suitable for the PUD-CZ, and generally consistent with the intent and purpose of the off-street parking and loading standards.

c) *RCA.* The PD Plan for PUD-CZ shall demonstrate compliance with Sec. 8.1.2, *Resource Conservation Area*, except that the percentage of RCA required under Sec. 8.1.2 may be reduced by the Town Council by no more than two percent (2%) provided that:

(i) The PD Plan for PUD-CZ includes a non-residential component; or

(ii) The PD Plan for PUD-CZ has an overall density of 6 residential units per acre or more.

d) Landscaping. The PD Plan for PUD-CZ shall demonstrate compliance with the standards of Sec. 8.2, *Landscaping, Buffering and Screening*, except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates attractive streetscapes and parking areas and is consistent with the character of the area. In no case shall a buffer be less than one half of the width required by Sec. 8.2 or ten (10) feet in width, whichever is greater.

e) *Signs.* Signage in the PD Plan for PUD-CZ shall demonstrate compliance with Sec. 8.7, *Signs*, except that the standards can be varied as follows if a master signage plan is submitted for review and approval concurrent with the PD plan:

(i) The square footage of all permitted permanent ground and wall signage shall be allowed to be increased by ten (10%) percent of the calculated allowable square footage.

(ii) The names of up to two (2) tenants are allowed per ground sign provided that the name of the overall development is listed first and is a minimum of fifty (50%) percent larger than the tenant name(s).

f) *Public facilities.* The improvements standards and guarantees applicable to the public facilities that will serve the site shall comply with Article 7: *Subdivision*.

(i) The PD Plan for PUD-CZ demonstrates a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town. The PD Plan for PUD-CZ shall be consistent with the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details* and show required right-of-way widths and road sections. A Traffic Impact Analysis (TIA) shall be required per Sec. 13.19.

(ii) The PD Plan for PUD-CZ demonstrates a safe and adequate on-site system of potable water and wastewater lines that can accommodate the proposed development, and are efficiently integrated into off-site potable water and wastewater public improvement plans. The PD Plan shall include a proposed water and wastewater plan.

(iii) Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the development proposed in the PD Plan for PUD-CZ, and the development is conveniently located in relation to schools and police protection services.

(iv) The PD Plan shall demonstrate compliance with the parks and recreation requirements of Sec. 7.3 *Park, Recreation, and Open Space Sites* if there is a residential component in the PUD-CZ.

g) Natural resource and environmental protection. The PD Plan for PUD-CZ demonstrates compliance with the current regulatory standards of this Ordinance related to natural resource and environmental protection in Sec. 6.1 *Watershed Protection Overlay District*, Sec. 6.2 *Flood Damage Prevention Overlay District*, and Sec. 8.1 *Resource Conservation*.

h) *Storm water management.* The PD Plan shall demonstrate that the post-development rate of on-site storm water discharge from the entire site shall not exceed pre-development levels in accordance with Sec. 6.1.7 of the UDO.

i) *Phasing.* The PD Plan for PUD-CZ shall include a phasing plan for the development. If development of the PUD-CZ is proposed to occur in more than one phase, then guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.

j) *Consistency with 2030 Land Use Map.* The PD Plan for PUD-CZ demonstrates consistency with the goals and policies established in the Town's 2030 Land Use.

k) *Complies with the UDO.* The PD Plan for PUD-CZ demonstrates compliance with all other relevant portions of the UDO.

2) *Traditional Neighborhood District (TND-CZ)*

a) *General.* The purpose of the Traditional Neighborhood District is to allow for the development of fully integrated, mixed-use pedestrian oriented neighborhoods as described in Section 3.3.3(B). The intent is to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation. The TND-CZ is recommended to include the following elements:

(i) All neighborhoods have identifiable centers and edges.

(ii) Edge lots are readily accessible to retail and recreation by non-vehicular means (a distance not greater than one-fourth of a mile).

(iii) Uses and housing types are mixed and in close proximity to one another.

(iv) Street networks are interconnected and blocks are small.

(v) Civic building, if provided, is given prominent site in the neighborhood.

(vi) Neighborhoods have a discernible center such as a square or green.

(vii) A small ancillary building is permitted within the backyard of each house and may be used for one (1) accessory apartment or a place of work.

(viii) Playgrounds should be close (not more than one-eighth of a mile) so that children can walk from their dwelling.

(ix) Buildings at the neighborhood center should be placed close to the street while still allowing enough space for sidewalks, and provide a mix of uses within the building to create a strong sense of place. The neighborhood center does not have to be physically in the center of the development, but rather is encouraged to be located along a major or minor thoroughfare.

(x) Designated on-street parking is encouraged. Parking lots should be located to the side or rear of main entrances primarily accessible by alleyways. Garages should be located to the rear of the main structure.

(xi) Buildings for meetings, education, religion or culture should be located at the termination of a street or vista.

(xii) A homeowners' association should be established to decide on matters of maintenance, security and physical change.

(xiii) Most dwellings are within a five-minute walk of a neighborhood center.

(xiv) There is a variety of dwelling types within the neighborhood.

(xv) The following table provides land uses and suggested amounts of land area devoted to each use. The 2030 Land Use Map provides for a minimum percentage of non-residential land area for certain mixed-use areas.

Use	***Amount (percent)***
Public and Civic	2-5
Shopfront	2-30
Attached homes	15-30
Detached homes	30
Business	5-15

b) *Development parameters*
In approving a Planned Development (PD) Zoning District designation for a TND-CZ, the Town Council shall find the zoning district designation and PD Plan for TND-CZ complies with the following standards:

(i) The uses proposed to be developed in the PD Plan for TND-CZ are those uses permitted in Sec. 4.2.2, *Use Table*.

(ii) The uses proposed in the PD Plan for TND-CZ shall be a mix of residential types and non-residential uses, with a minimum percentage of non-residential land area for certain mixed-use areas as specified on the 2030 Land Use Map. The location of uses proposed by the TND-CZ must be shown in the PD Plan with a maximum density for each type of residential use and a maximum square footage for each type of non-residential use.

(iii) The dimensional standards in Sec. 5.1.3, *Table of Intensity and Dimensional Standards*, *Planned Development Districts* may be varied in the PD Plan for TND-CZ. The TND-CZ shall demonstrate compliance with all other dimensional standards of the UDO, North Carolina Building Code, and North Carolina Fire Code.

(iv) The development proposed in the PD Plan for TND-CZ encourages cluster and compact development to the greatest extent possible that is interrelated and linked by pedestrian ways, bikeways and other transportation systems. At a minimum, the PD Plan must show sidewalk improvements as required by the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details*, and greenway improvements as required by the Town of Apex Parks, Recreation, Greenways, and Open Space Plan and the Apex Transportation Plan.

(v) The design of development in the PD Plan for TND-CZ results in land use patterns that promote and expand opportunities for walkability, connectivity, public transportation, and an efficient compact network of streets. Cul-de-sacs shall be avoided unless the design of the subdivision and the existing or proposed street system in the surrounding area indicate that a through street is not essential in the location of the proposed cul-de-sac, or where sensitive environmental areas such as streams, floodplains, and wetlands would be substantially disturbed by making road connections.

(vi) The development proposed in the PD Plan for TND-CZ is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties.

(vii) *Off-street parking and loading.* Variations from the standards of Sec. 8.3, *Off-Street Parking and Loading*, may be permitted provided that the proposed off-street parking and loading is suitable for the TND-CZ, and is generally consistent with the intent and purpose of the off-street parking and loading standards.

(viii) *RCA.* The PD Plan for TND-CZ shall demonstrate compliance with Sec. 8.1.2, *Resource Conservation Area*, except that the percentage of RCA required under Sec. 8.1.2 may be reduced by the Town Council by no more than two (2%) percent.

(ix) *Landscaping.* The PD Plan for TND-CZ shall demonstrate compliance with the standards of Sec. 8.2, *Landscaping, Buffering and Screening*, except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates attractive streetscapes and parking areas and is consistent with the character of the area. In no case shall a buffer be less than one half of the width required by Sec. 8.2 or ten (10) feet in width, whichever is greater.

(x) *Signs*. Signage in the PD Plan for TND-CZ shall demonstrate compliance with Sec. 8.7, Signs, except that the standards can be varied as follows if a master signage plan is submitted for review and approval concurrent with the PD plan:

(a) The square footage of all permitted permanent ground and wall signage shall be allowed to be increased by ten (10%) percent.

(b) The names of up to two (2) tenants are allowed per ground sign provided that the name of the overall development is listed first and is a minimum of fifty (50%) percent larger than the tenant name(s).

(c) Historic or retro style signs (murals, neon signs, bracket signs, etc.) may be allowed if the signage enhances the character of non-residential areas within the TND-CZ.

(xi) *Public facilities.* The improvements standards and guarantees applicable to the public facilities that will serve the site shall comply with Article 7: *Subdivision*.

(xii) The PD Plan for TND-CZ demonstrates a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town. The PD Plan for TND-CZ shall be consistent with the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details* and show required right-of-way widths and road sections. A Traffic Impact Analysis (TIA) shall be required per Sec. 13.19.

(xiii) The PD Plan for TND-CZ demonstrates a safe and adequate on-site system of potable water and wastewater lines that can accommodate the proposed development, and are efficiently integrated into off-site potable water and wastewater public improvement plans. The PD Plan shall include a proposed water and wastewater plan.

(xiv) Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the development proposed in the PD Plan for TND-CZ, and the development is conveniently located in relation to schools and police protection services.

(xv) The PD Plan shall demonstrate compliance with the parks and recreation requirements of Sec. 7.3 *Park, Recreation, and Open Space Sites*.

(xvi) *Natural resource and environmental protection*. The PD Plan for TND-CZ demonstrates compliance with the current regulatory standards of this Ordinance related to natural resource and environmental protection in Sec. 6.1 *Watershed Protection Overlay District*, Sec. 6.2 *Flood Damage Prevention Overlay District*, and Sec. 8.1 *Resource Conservation*.

(xvii) *Storm water management*. The PD Plan shall demonstrate that the post-development rate of on-site storm water discharge from the entire site shall not exceed pre-development levels in accordance with Sec. 6.1.7 of the UDO.

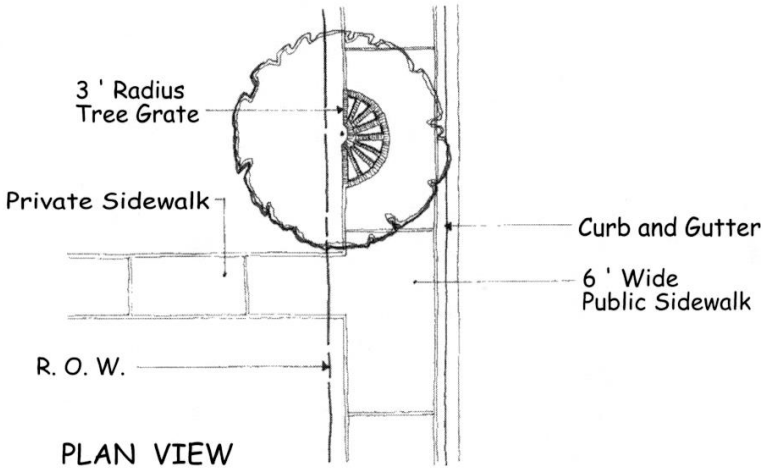
(xviii) *Phasing*. The PD Plan for TND-CZ shall include a phasing plan for the development. If development of the TND-CZ is proposed to occur in more than one phase, then guarantees shall be provided that project improvements and amenities that are necessary and

desirable for residents of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.

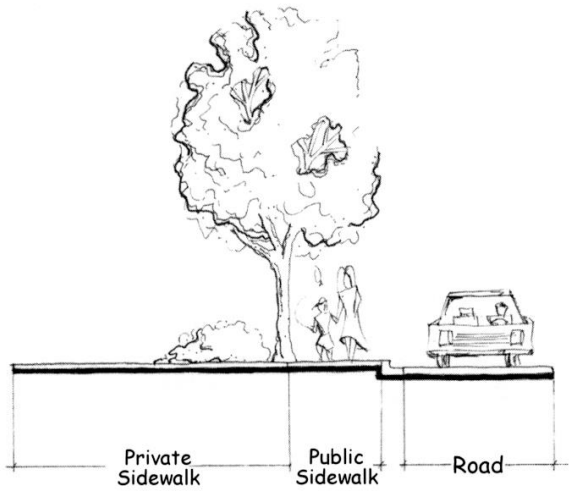
(xix) *Consistency with Apex Comprehensive Plan and 2030 Land Use Map.* The PD Plan for TND-CZ demonstrates consistency with the goals and policies established in the Apex Comprehensive Plan and 2030 Land Use Map.

(xx) *Complies with the UDO*. The PD Plan for TND-CZ demonstrates compliance with all other relevant portions of the UDO.

(xxi) The Town Council may permit special exceptions to the requirements of Sec. 2.3.4(F)(2)(b) as part of its approval of the PD Plan for TND-CZ upon finding that (1) the requested special exception will not adversely affect adjacent land in a material way, and (2) the requested special exception will be generally consistent with the purposes and intent of this Ordinance. Provided, however, that the concurring vote of four-fifths of the members of the Town Council shall be necessary to grant any such special exception.



PLAN VIEW



SECTION VIEW

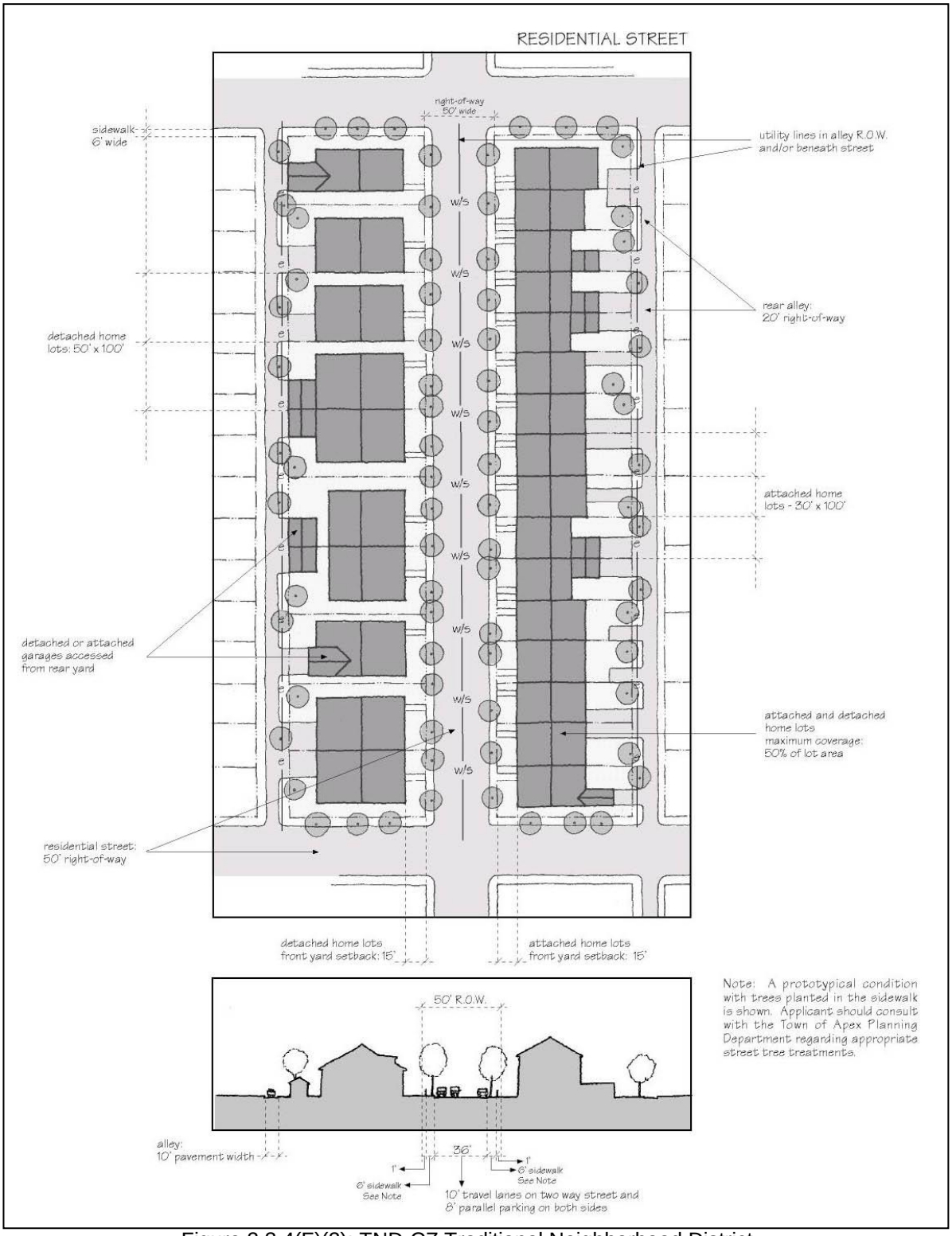


Figure 2.3.4(F)(2): TND-CZ Traditional Neighborhood District – Overview and Cross-Section of Residential Street

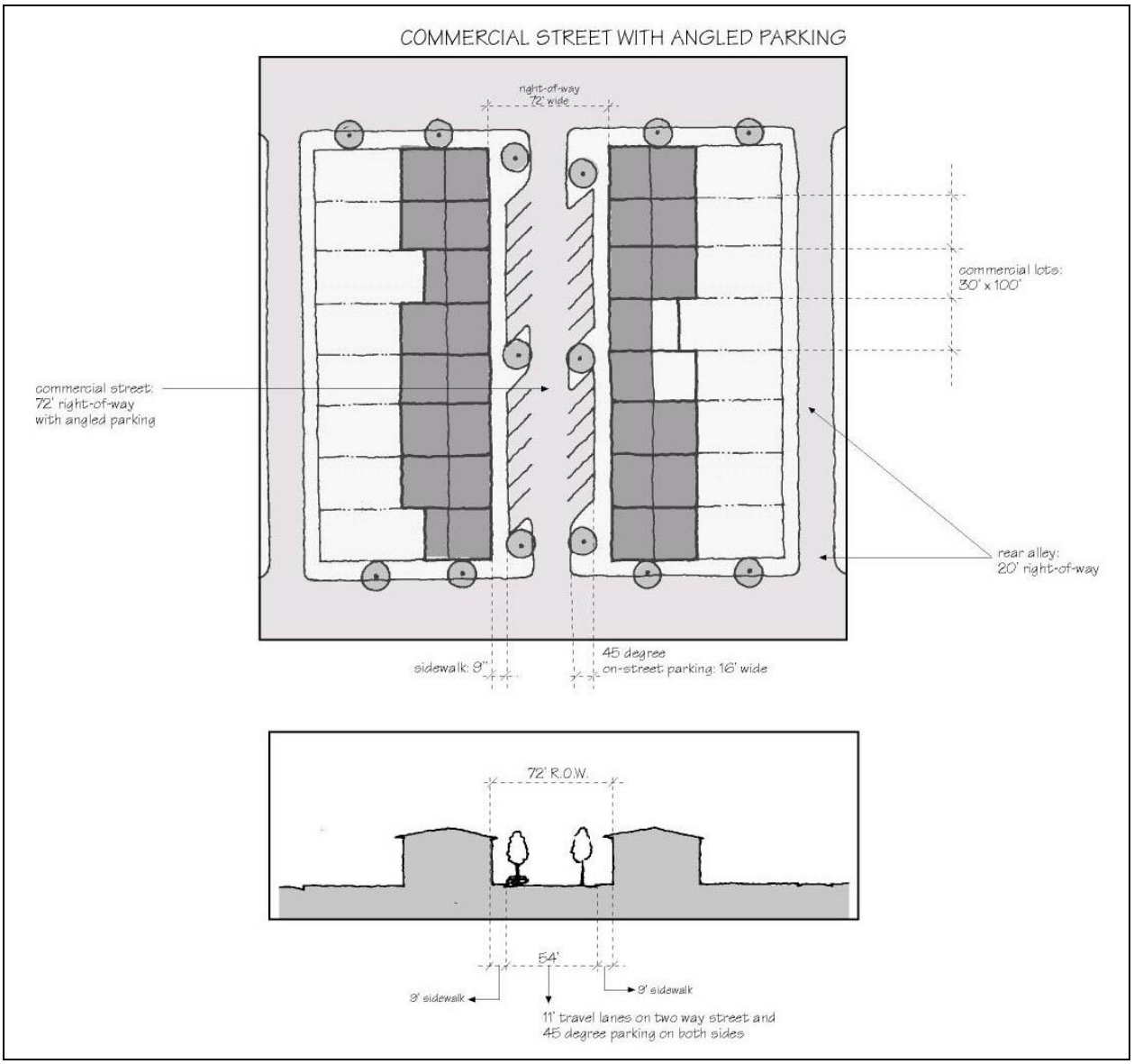


Figure 2.3.4(F)(2): Traditional Neighborhood District – Overview and Cross-Section of Commercial Street

3) *Major Employment Center (MEC-CZ) District*
In approving a Planned Development (PD) Zoning District designation for a MEC-CZ, the Town Council shall find the zoning district designation and PD Plan for MEC-CZ complies with the following standards:

a) *Development parameters.*

(i) The uses proposed to be developed in the PD Plan for MEC-CZ are those uses permitted in Sec. 4.2.2, *Use Table*.

(ii) All dimensional standards (including density/intensity standards) identified in Secs. 5.1 *Table of Intensity and Dimensional Standards* and 5.2 *General Measurement Requirements,* may be varied in the development

proposed in the PD Plan for MEC-CZ if the development plan provides for a mix of major employment center uses that are designed or located in a way that results in interconnectivity between uses. The MEC-CZ shall demonstrate compliance with all other dimensional standards of the UDO, North Carolina Building Code, and North Carolina Fire Code.

(iii) The design of development in the PD Plan for MEC-CZ results in:

(a) Integration and mixing, rather than separation of, major employment center uses, and encourages a mixture of residential uses within the major employment center uses. The 2030 Land Use Map provides for a minimum percentage of non-residential land area for certain mixed-use areas.

(b) Interconnectivity between uses.

(c) The design of development at a scale that is consistent with Apex's small-town character.

(d) Land use patterns that promote and expand opportunities for public transportation and for efficient, compact networks of streets and utilities that lower development and maintenance costs and conserve energy.

(e) The preservation of natural features and the natural environment on the site.

(f) The integration of open space into the plan for development.

(g) A design that is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties.

b) *Off-street parking and loading.* Off-street parking and loading complies with the standards of Sec. 8.3, *Off-Street Parking and Loading,* except that variations from these standards may be permitted if a comprehensive parking and loading plan for the MEC-CZ is submitted that is determined to be suitable for the MEC-CZ, and generally consistent with the intent and purpose of the off-street parking and loading standards.

c) *RCA and landscaping.* The PD Plan for MEC-CZ establishes a resource conservation area (RCA). The criteria used to establish the RCA shall comply with Sec. 8.1.2, *Resource Conservation Area*. Landscaping and illumination complies with the standards of Sec. 8.2, *Landscaping, Buffering and Screening*, and Sec. 8.7, *Exterior Lighting*, except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates

attractive streetscapes and parking areas and is consistent with the character of the area.

d) *Signs.* Signage complies with Sec. 8.7, *Signs*, except that signs within the MEC-CZ may vary if a comprehensive sign plan for the MEC-CZ is submitted that is determined to be suitable and consistent with the plan of development for the MEC-CZ, and consistent with the intent and purpose of the sign regulations.

e) *Public facilities*

(i) The PD Plan for MEC-CZ demonstrates a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town.

(ii) The PD Plan for MEC-CZ demonstrates a safe and adequate on-site system of potable water and wastewater lines that can accommodate the proposed development, and are efficiently integrated into off-site potable water and wastewater public improvement plans.

(iii) Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the development proposed in the PD Plan for MEC-CZ, and the development is conveniently located in relation to police protection services.

(iv) Detailed Design Guidelines are prepared for the PD Plan for MEC-CZ that shall control design guidelines for architecture, the development of open space, natural drainage areas, streets, utilities, and if appropriate, off-street parking and loading, landscaping and signage. The Detailed Design Guidelines shall ensure development proposed for the site is compatible with surrounding land uses, maintains Apex's small-town character, and encourages compact development and interconnectivity to the greatest extent possible through the use of interrelated and linked pedestrian ways, bike ways and other transportation systems.

f) *Natural resource and environmental protection.* The PD Plan for MEC-CZ complies with the current regulatory standards of this Ordinance related to natural resource and environmental protection.

g) *Storm water management.* The post-development rate of on-site storm water discharge from the entire site shall not exceed pre-development levels in accordance with Sec. 6.1.7 of the UDO.

h) *Phasing.* The PD Plan for MEC-CZ shall include a phasing plan for the development. If development of the MEC-CZ is proposed to occur in more than one phase, then guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents of the project, or that are of

benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.

i) *Consistency with 2030 Land Use Map.* The PD Plan for MEC-CZ shall be consistent with the goals and policies established in the Town's 2030 Land Use Map.

j) *Complies with this Ordinance.* The PD Plan for MEC-CZ complies with all other relevant potions of this Ordinance.

G) ***Conditions***
The Planning Director and the Planning Board shall have the authority to recommend and the Town Council shall have the authority to impose such conditions on a Planned Development (PD) Zoning District designation and PD Plan that are necessary to accomplish the purposes of this Section, this Article, this Ordinance and the goals and policies of the 2030 Land Use Map.

H) ***Reserved***

I) ***Placement of Planned Development District (PD) Designation on Official Zoning District Map***
After final approval of the adopting ordinance for the Planned Development (PD) Zoning District designation and the PD Plan, the Planning Director shall amend the Official Zoning District Map to show a Planned Development (PD) Zoning District designation (for Planned Unit Development (PUD-CZ) District, Traditional Neighborhood District (TND-CZ) or Major Employment Center (MEC-CZ) District, whichever is appropriate).

J) ***Reserved for Future Use***

K) ***Effect***
Approval of an adopting ordinance for Planned Development (PD) Zoning District designation and the PD Plan shall constitute an Official Zoning District Map designation and recognition by the Town that the landowner may proceed, consistent with the PD Plan, to develop the land. The next appropriate development approval for the land is a site plan or master subdivision plan.

L) ***Expiration***
The approval of the adopting ordinance for a Planned Development (PD) Zoning District designation and the PD Plan shall be null and void unless construction of required improvements is commenced and diligently pursued to completion, and a site plan or master subdivision plan is submitted for at least the initial phase of the PD Plan within five (5) years after the date of approval of the PD Plan if the use authorized by the development approval for a Major or Minor Site Plan has not commenced. No extensions are allowed.

M) ***Minor Deviations***
A minor deviation to a PD Plan may be approved by the Planning Director. A minor deviation shall be limited to technical or engineering considerations first discovered during actual development which could not reasonably be anticipated during the approval process or any other change which has no material effect on the character of the approved PD development or any of its approved terms or conditions, as long as it complies with the standards of this Ordinance. Minor deviations shall be limited to the following:

1) *Height*. An increase of building height by not more than ten (10) percent, as long as the height increase is consistent with the contextual height of the surrounding buildings and structures, the PD Plan and Article 9: *Design Standards*, or a detailed design plan (if appropriate).

2) *Alteration of the building envelope**.*** Alteration of the building envelope of up to ten (10%) percent, provided such alteration does not materially change the design of the development approved in the PD Plan, and does not change the number of stories, density or intensity.

3) *Reduction of open space.* Reduction of the total amount of open space by not more than two (2%) percent.

4) *Parking spaces*. A decrease of parking spaces by not more than five (5%) percent, if it is demonstrated that the minor deviation complies with an approved parking plan.

5) *Relocation of buildings.* Relocation of buildings or uses, as long as they maintain the same general building relationships, topography, landscaping and utility design and are consistent with the PD Plan and Article 9: *Design Standards*, or a detailed design plan (if appropriate).

N) ***Amendment***
An amendment to the Official Zoning District Map for a Planned Development (PD) District and/or a PD Plan may be amended only pursuant to the procedures and standards for its original approval.

2.3.5 Special Use

A) ***Purpose***
Special uses are those uses that are potentially incompatible with the other uses permitted in a zoning district and, therefore, require, special, individual review of their location, design, configuration, intensity, and density of use or structures. To ensure land use compatibility, conditions of approval may be imposed that are pertinent to the particular use at a particular location.

B) ***Authorization***
Only those uses authorized as special uses in Sec. 4.2.2, *Use Table* and temporary uses as set forth in Section 4.6.1(C)(7) *Temporary Use Permits issued under a Special Use Permit*, may be approved as special uses. The designation of a use as a special use in Sec. 4.2.2, *Use Table*, does not constitute an authorization that such use shall be approved as a special use pursuant to this Section. Rather, each proposed special use shall be evaluated by the Planning Board and Town Council for compliance with the standards set forth in this Section, applicable supplementary standards for the use in Sec. 4.4, *Supplemental Standards*, and standards for requested Special Use Permits set forth in Section 4.6.1(C)(7) *Temporary Use Permits issued under a Special Use Permit*.

C) ***Procedures***

1) *General*
The procedures for initiation of the application, the application contents, neighborhood meeting, its submission, the fees, the review by Town staff, public notification, and then approval, approval with conditions or disapproval by the Town Council at a public hearing(s) shall comply with the requirements of Sec. 2.2, Common Review Procedures.

2) *Town Council Quasi-judicial Hearing Procedures*
In addition, to ensure review of the application complies with quasi-judicial requirements, it shall comply with the following.

a) All persons offering testimony or evidence before the Town Council on the application shall be sworn.

b) The applicant shall have the burden of production and proof by competent testimony and/or evidence that the facts and opinions stated in the application are accurate and that the proposed special use complies with the relevant review standards. The designation of a use as a special use in the UDO does not create a legislative presumption that the use is appropriate in or compatible with any particular location or surroundings.

c) Any person who is a resident of the Town or its ETJ, any person owning land adjoining the land that is subject to the application, Town staff, or any other person the Town Council determines appropriate may also introduce competent testimony or evidence in support of or in opposition to the application.

d) At the public hearing, the Town Council shall consider the application, the relevant support materials, the Staff Report, the recommendation of the Planning Board, the testimony and/or evidence submitted by the applicant, and any testimony and/or evidence submitted by other persons.

e) After the close of the public hearing, the Town Council shall approve, approve with conditions or disapprove the application based on the review standards in Sec. 2.3.5(D). Thereafter, the Town Council shall enter its findings of fact, conclusions of law and decision into its minutes.

f) The Town Clerk shall retain possession of all exhibits submitted and recordings of all testimony on the matter heard before the Town Council, which shall constitute the record, until the time limit for appeal or petition for certiorari to the General Court of Justice has expired.

D) ***Standards***
To approve an application for a special use, the Town Council shall find that:

1) *Compatibility.* The proposed special use shall be appropriate for its proposed location and compatible with the character of surrounding land uses.

2) *Zoning district supplemental standards.* The proposed special use shall comply with Sec. 4.4, *Supplemental Standards.*

3) *Design avoids significant adverse impacts, avoids being a nuisance, and minimizes adverse impact.* The proposed special use shall not have a significant adverse impact on surrounding lands (including but not limited to) regarding trash, traffic service delivery, parking and loading, odors, noise, glare, visual impact, and vibration. The proposed special use shall not create a nuisance. The proposed special use shall be designed to minimize adverse effects of the proposed use on adjacent lands.

4) *Design minimizes environmental impact.* The proposed special use shall minimize environmental impacts and shall not cause significant deterioration of water and air resources, wildlife habitat, and other natural resources.

5) *Impact on public facilities.* The proposed special use shall not have a significant adverse impact on public facilities and services, including roads, potable water and wastewater facilities, parks, police, fire, and EMS facilities.

6) *Standards of this Ordinance.* The proposed special use shall comply with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

E) ***Conditions and Restrictions***
The Town Council may impose, in approving the special use, such restrictions and conditions on such approval, the proposed use, and the premises to be developed or used pursuant to such approval, it determines are required by the standards of this Section to prevent or minimize adverse effects from the proposed use and development on surrounding land uses. All conditions imposed on any special use shall be expressly set forth in the special use permit.

F) ***Expiration for Non-initiation of a Special Use***
If a special use authorized by a special use permit is not initiated within twenty-four (24) months of issuance of the special use permit, the special use permit shall expire and be void. A different time may be specified in the special use permit within which the special use must be initiated. For purposes of this Subsection, "initiated" means that a building permit has been issued for the special use or if the special use does not require a building permit, the special use is established, ongoing, and in operation. Time frames do not change with successive owners. Upon written request, one twelve (12) month extension of the time to initiate a special use may be granted by the Town Council for good cause shown.

G) ***Amendments***
A special use permit may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

2.3.6 Site Plan

A) ***Purpose***
Site plan review is required by this Ordinance to ensure that the proposed layout and general design of proposed development complies with Article 8: *General Development Standards*, all other appropriate portions of this Ordinance, and the proposed development is compatible with surrounding land uses.

B) ***Applicability***
All development shall be required to have an approved site plan pursuant to the procedures and standards of this Section prior to development and/or the issuance of a building permit, except for development exempted pursuant to Sec. 2.3.6(C), *Exemptions*.

C) ***Exemptions***

1) Any development or activity that is exempt from site plan review pursuant to Subsection 2.3.6(C)(2)(b),(d), (e), (f), (g), (h), or (i) below shall not be undertaken without an administrative approval by the Planning Director. Any proposed expansion exempt under 2.3.6(C)(2)(g) must meet all

applicable provisions of this Ordinance to the extent of the expansion and not increase any nonconformity. The application for administrative approval shall be in a form approved by the Planning Director.

2) The following development or activities shall be exempted from the requirements of this section:

a) *Single-family.* Single-family detached homes. However, single-family development within the Small Town Character Overlay District (see Sec. 6.3) shall refer to subsection 2.3.6(C)(2)(i);

b) Historic structures (as defined in Article 12) within the National Register Historic District may not be relocated. Historic structures not located within the National Register Historic District may be relocated to a different location within the Town of Apex Planning Jurisdiction, as identified by all current and future land classifications on the Town of Apex 2030 Land Use Map, subject to the following standards:

(i) An historic preservation easement and a rehabilitation agreement shall be granted to a qualified holder of historic preservation agreements as defined by NCGS Chapter 121, Article 4. Said easements shall be drafted, regulated, and enforced consistent with NCGS Chapter 121, Article 4 and shall be submitted to the Planning Director for review prior to being recorded by the applicant.

(ii) The historic structure shall be situated on a site that is compatible in character with its original setting. The structure's existing and proposed setback and orientation shall be considered when determining the compatibility of the proposed site. The building shall be set back no greater than twice the minimum front yard setback required by the zoning district of the property on which the building is proposed to be located.

c) *Temporary uses.* Temporary uses that do not exceed six (6) months in duration and meet all applicable provisions of Section 2.3.11 *Temporary Use*;

d) *Utilities and public works projects.* Utilities and public works projects, including, but not limited to road improvements, utility improvements, above ground utility boxes, bus shelters, and co-location of communication equipment;

e) *Preliminary testing.* Preliminary site testing, including, but not limited to soil testing, soil borings, land surveying, and tree surveying;

f) *Minor site elements and features.* Addition of minor site elements and features, including, but not limited to playground fencing, play equipment, mechanical equipment, sidewalks, expansion of seating for outdoor or indoor events, and dumpsters; and

g) *Expansion, repair or re-use.* The expansion, repair, or re-use of existing buildings, structures, or land, that does not involve any of the following:

(i) Enlargement of the building or structure by more than twenty-five (25%) percent. Demolition with reconstruction of any building or structure or portion of any building or structure will be considered an enlargement of more than twenty-five (25%) percent under this section;

(ii) Expansion of the number of parking spaces by more than ten (10);

(iii) Enlargement of the land area used by more than twenty-five (25%) percent;

(iv) A change in the land use class as defined by Section 8.2.6(B)(4) *Land Use Classes*.

(v) The addition of new buildings or structures.

h) *Central Business District.* Central Business District as defined in Sec.12.2 except that demolition (as defined in Sec. 12.2) shall be governed by Sec. 2.2.8 and new construction, additions, renovations, or redevelopment shall be governed by Sec. 6.3 *Small Town Character Overlay District*;

i) *Small Town Character Overlay District*. Small Town Character Overlay District as referenced in 3.3.5 except that demolition (as defined in Sec. 12.2) shall be governed by Sec. 2.2.8 and new construction, additions, renovations, or redevelopment shall be governed by Sec. 5.1.5. *Table of Intensity and Dimensional Standards* and Sec. 6.3. *Small Town Character Overlay District.*

D) ***Procedures***

1) *Minor Site Plans (No public hearing required, staff review and approval).* Procedures for the review of site plans that have less than 100,000 square feet of nonresidential floor area or less than twenty (20) multi-family units, or those that do not rise to the level of Major Site Plan per the criteria in Section 2.3.6(D)(2) shall be processed and reviewed as follows:

a) The procedures for initiation of an application for a Minor Site Plan, the application contents, fees, application submission, and staff review shall comply with the relevant provisions of Sec. 2.2, *Common Review Procedures*, except that:

(i) A Traffic Impact Analysis (TIA) shall be required per Sec. 13.19.

(ii) The Planning Director shall forward applications for Minor Site Plans to the TRC for review and recommendation.

(iii) Within five (5) calendar days of the recommendation of the TRC on the application, the Planning Director shall review the TRC recommendation and determine if the application complies with Sec. 2.3.6(E), *Standards.*

(iv) If the Planning Director determines the application complies with Sec. 2.3.6(E), *Standards*, a notice of approval shall be sent to the applicant. If the Planning

Director determines the application does not comply with Sec. 2.3.6(E), *Standards*, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be taken on the application until the Planning Director has received a corrected application from the applicant. The Planning Director may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Planning Director.

2) *Major Site Plans*. For the purposes of this Section and this Ordinance, Major Site Plans shall be considered site plans that propose 100,000 square feet or greater of nonresidential floor area, or twenty (20) multi-family units or more, or those site plans that rise to the level of Major Site Plan based on the following:

a) Multiple site plan applications within any three year period for one property, or portions of the same property, or neighboring properties if owned by the same entity, shall be considered as one site plan for the determination of Major Site Plan. The non-residential square footage and multi-family unit count will be added together over the three-year period, and the multiple site plan applications will be considered as one for the criteria in Sections 2.3.6(D)(2)(b),(c),(d), and (e).

b) Site plans proposing 100 or more additional parking spaces to existing development.

c) Site plans proposing to grade more than 25 acres.

d) Site plans proposing any building taller than three (3) stories.

e) Site plans proposing the mixing of architectural types, exotic architecture, or the use of non-standard materials.

3) Major Site Plans shall be processed and reviewed as follows:

a) Reserved.

b) The procedures for initiation of an application for a Major Site Plan, the application contents, fees, application submission, and staff review shall comply with the relevant provisions of Sec. 2.2, Common Review Procedures, except that:

(i) A Traffic Impact Analysis (TIA) shall be required in accordance with Sec. 13.19.

(ii) If the Planning Director determines the application complies with Sec. 2.3.6(E), *Standards*, it shall be forwarded to the Town Council for consideration. If the Planning Director determines the application does not comply with Sec. 2.3.6(E), *Standards*, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be

taken on the application until the Planning Director has received a corrected application from the applicant. The Planning Director may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Planning Director.

c) Town Council Quasi-judicial Hearing and Decision

(i) At the meeting, the Town Council shall conduct a quasi-judicial hearing and consider the application, Staff Report, and all other relevant matters and approve, approve with conditions or disapprove the application based on the standards in Sec 2.3.6(E), *Standards*. The applicant shall have the burden of production and proof that standards are met.

(ii) The Town Council may, on its own motion and for good cause shown, continue consideration of the Major Site Plan to a future meeting, fixing the date, time, and place. An applicant shall be entitled to one continuance as of right; however, all subsequent continuances shall be granted at the discretion of the Town Council only upon good cause shown.

E) ***Standards***

1) *Minor Site Plan.* In order to approve an application for a minor site plan, the Planning Director shall find the following standards are met by the proposed minor site plan:

a) *Zoning district supplemental standards*. The development and uses in the site plan comply with Sec. 4.4, *Supplemental Standards.*

b) *Site development standards*. The development proposed in the site plan and its general layout and design comply with all appropriate standards in Article 8: *General Development Standards*.

c) *Mitigation of development on steep slopes*. If appropriate, the site plan complies with the requirements of Sec. 8.1.4, *Slope Protection Standards*.

d) *Dedication of ROW for Thoroughfare Plan*. The development proposed in the site plan conforms to the requirements of Sec. 7.4. *Dedication of ROW for Thoroughfare Streets and Highways*.

e) *Required improvements*. The development proposed in the site plan conforms to the requirements of Sec. 7.5, *Required Improvements*.

f) *Other relevant standards of this Ordinance*. The development proposed in the site plan and its general layout and design comply with all other relevant standards of this Ordinance, except that a site plan is not required to comply with a setback standard if there is a permanent improvement on the site that existed prior to

August 1, 2000 that makes compliance impossible and the exception to the setback standard is the minimum necessary to accommodate the pre-existing permanent improvement.

g) *Applicable Standards of Article 7, Subdivision*. The development proposed in the site plan shall comply with the applicable standards of Article 7, *Subdivision*, including, but not limited to, street and utility improvements and park, recreation, and open space dedication or fee-in-lieu.

2) *Major Site Plan.* In order to approve an application for a major site plan, the Town Council shall find the following standards are met by the proposed major site plan:

a) *Compatibility.* The development proposed in the site plan and its general location is compatible with the character of surrounding land uses.

b) *Zoning district supplemental standards.* The development and uses in the site plan comply with Sec. 4.4, *Supplemental Standards*.

c) *Site development standards.* The development proposed in the site plan and its general layout and design comply with all appropriate standards in Article 8: *General Development Standards*.

d) *Mitigation of development on steep slopes.* If appropriate, the site plan complies with the requirements of Sec. 8.1.4, *Slope Protection Standards.*

e) Dedication of ROW for Thoroughfare Plan. The development proposed in the site plan conforms to the requirements of Sec. 7.4., *Dedication of ROW for Thoroughfare Streets and Highways*.

f) *Required improvements*. The development proposed in the site plan conforms to the requirements of Sec. 7.5, *Required Improvements.*

g) *Other relevant standards of this Ordinance.* The development proposed in the site plan and its general layout and design comply with all other relevant standards of this Ordinance, except that a site plan is not required to comply with a setback standard if there is a permanent improvement on the site that existed prior to August 1, 2000 that makes compliance impossible and the exception to the setback standard is the minimum necessary to accommodate the pre-existing permanent improvement.

h) *Applicable Standards of Article 7, Subdivision*. The development proposed in the site plan shall comply with the applicable standards of Article 7, *Subdivision*, including, but not limited to, street and utility improvements and park, recreation, and open space dedication or fee-in-lieu.

i) *Impact on public facilities.* The proposed development shall not have a significant adverse impact on public facilities and

services, including roads, potable water and wastewater facilities, parks, police, fire, and EMS facilities.

F) ***Conditions and Restrictions***
The Town Council shall have the authority to impose such conditions on a Major Site Plan that are necessary to accomplish the purposes of this Section, this Article, this Ordinance and the goals and policies of the 2030 Land Use Map. All conditions imposed on a Major Site Plan shall be expressly set forth on the site Construction Plans.

G) ***Phasing Plan***
Provisions of required public improvements, buffers, Resource Conservation Area, and recreation areas may be installed in phases as approved by the Planning Director, Planning Board and Town Council such that the improvements reasonably relate to the use intended for the site and as required by the *Town of Apex Standard Specifications and Standard Details*. A Phasing Plan clearly showing the phases and any other pertinent information required by the applicant, Planning Department, Planning Board, or Town Council shall be recorded by the applicant with the Wake County Register of Deeds.

H) ***Site Construction Plan***
After a Site Plan has been approved by the Town Council or a Minor Site Plan approved by the Planning Director, the applicant shall submit the Site Construction Plans to the Development Services Supervisor. The submission shall be in a form approved by the Assistant Town Manager. The applicant shall ensure that the Construction Plans conform to the approved Site Plan design and that all conditions imposed on the Site Plan by the Town Council, or the Planning Director for a Minor Site Plan, are met in the Construction Plans. The Construction Plans shall be reviewed by the Technical Review Committee to ensure compliance with the approved Site Plan and all applicable Town, county, state, and federal regulations and requirements, including all relevant construction standard specifications and details. Any modifications to or deviations from the approved Site Plans must be requested in writing to the Planning Director and may require additional review by the relevant permit issuing authority if deemed appropriate by the Planning Director. All Construction Plans shall bear the seal and signature of a professional engineer, landscape architect, surveyor, or architect, who is authorized to perform such work and licensed in the State of North Carolina. Once the Construction Plan is approved, it is signed by the relevant members of the Technical Review Committee and forwarded to the applicant. The applicant is responsible for returning the requisite number of copies, as determined by the Assistant Town Manager, to the Development Services Supervisor.

I) ***Final Plat***
After the Construction Plans are signed and the requisite number of copies are returned to the Development Services Supervisor, the grading permit has been issued, and all relevant fees have been paid, then the applicant may commence work on the site as per the approved construction sequence. At some point during site construction, the applicant may determine that sufficient work has been completed and that they want to proceed with recording a final plat. At that point the applicant shall submit a final plat to the Planning Department for review and approval. All incomplete or insufficient site work must be guaranteed by the provision of a sufficient surety prior to approval of the final plat. All drainage and utility easements must be centered on the as-built locations of the installed improvements. The submission shall be in a form approved by the Planning Director, and should be made at least two months prior to the time that the applicant would like to obtain the Certificate of Occupancy (CO). This will allow

the staff adequate time for review and for any necessary revision and re-review to be made to the plat submittal. The applicant shall ensure that all public utility easements, private access easements, Resource Conservation Area (with metes and bounds description), buffers, setbacks, and any other items required by the Planning Director are shown on the final plat and anchored, or described, with a metes and bounds description. Payment of all applicable fees and requisite bonding is due prior to final plat approval. The final plat must be recorded prior to a CO being issued for the project.

J) ***Expiration***

1) A development approval for a Major, Minor, or Exempt Site Plan shall automatically expire at the end of three (3) years after the date of approval if:

a) The use authorized by the development approval for a Major or Minor Site Plan has not commenced; or

b) Less than 10% of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any approved development has been completed on the site. With respect to phased development, this requirement shall only apply to the first phase.

2) No extensions are allowed.

K) ***Minor Deviations***

Minor deviations from a Site Plan may be approved by the Planning Director. Minor deviations that are authorized are those that appear necessary in light of technical or engineering considerations as long as they comply with the standards of this Ordinance (variations from the standards of this Ordinance require administrative adjustments (Sec. 2.3.9) or variance permits (Sec. 2.3.8). Minor deviations shall consist of:

1) *Floor area.* Expansion of building floor area by not more than ten (10%) percent.

2) *Height.* An increase of building height by not more than ten (10%) percent.

3) *Parking spaces.* An increase or decrease of parking spaces by not more than ten (10%) percent or 10 spaces, whichever is less.

4) *Relocation of buildings.* Minor relocation of buildings or other site elements if they maintain the same general building relationships, topography, landscaping and utility design.

5) *Minor changes.* Minor changes in building elevations and landscaping provided that the change retains the same general architectural relationships and uses equivalent building and/or landscaping materials.

L) ***Amendments***

A Site Plan may be amended, extended or modified in accordance with the procedures and standards established in Sec. 2.3.6.

M) ***Nonconformities***
Any expansion, repair, or re-use of existing legal nonconforming buildings, structures, or land that is required to have an approved Site Plan pursuant to the procedures and standards of this Section shall meet all applicable standards of this Ordinance to the extent reasonable and practicable.

2.3.7 Subdivision

A) ***Purpose***
This section and Article 7: *Subdivision*, are designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the Town by: (1) providing for the orderly growth and development of the Town; (2) coordinating streets and highways within proposed subdivisions with existing planned streets and highways and with other public facilities; (3) providing for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area; (4) providing right-of-way easements for streets and utilities; (5) avoiding congestion and overcrowding, and encouraging the proper arrangement of streets in relation to existing or planned streets; and (6) regulating such other matters as the Town Council may deem necessary in order to protect the general health, safety and welfare of the Town.

B) ***Overview***
Prior to the subdivision of a tract or parcel of land that does not constitute a Minor Subdivision pursuant to Sec. 2.3.7(G) Minor Subdivision, the landowner/subdivider shall receive approval of a Master Subdivision Plan pursuant to Sec. 2.3.7(D) Master Subdivision Plan, approval of Construction Plans pursuant to Sec. 2.3.7(E) Construction Plans for Subdivision and approval of a Final Plat for Subdivision pursuant to Sec. 2.3.7(F) Final Plat for Subdivision.

C) ***Reserved***

D) ***Master Subdivision Plan***

1) *Procedures*

a) The procedures for initiation of an application for a Master Subdivision Plan, the application contents, fees, application submission and review by Town staff and/or consulting firms on retainer shall comply with the relevant provisions of Sec. 2.2, *Common Review Procedures*, except that a Traffic Impact Analysis (TIA) shall be prepared pursuant to Sec. 13.19. The Planning Director shall forward applications for the Master Subdivision Plan to the TRC for review and comment pursuant to Sec. 2.3.7(D)(1)(b), and the Planning Director shall review and make a decision on the application pursuant to Sec. 2.3.7(D)(1)(c-d). After completion of the Staff Report pursuant to Sec. 2.2.9, *Staff Report*, the application shall be reviewed by the Planning Board pursuant to Sec. 2.2.14, *Review and Recommendation of Planning Board* and approved, approved with conditions or disapproved by the Town Council pursuant to Sec. 2.2.15, *Action by Town Council*. The application shall not be subject to a public hearing. In addition, the Planning Board shall review the master subdivision plan for no more than two

successive meetings. Failure to make a recommendation after the second meeting shall cause the Master Subdivision Plan to be forwarded to the Town Council without a recommendation. If the Planning Board recommends that the Master Subdivision Plan should be disapproved, the subdivider may recommend changes and submit a revised Master Subdivision Plan.

b) As part of staff review, the Planning Director shall forward applications for master subdivision plans to the TRC for review and comment. Additionally, prior to completion of the Staff Report, the Planning Director shall also provide a copy of any master subdivision plan for residential development to the Parks, Recreation and Cultural Advisory Commission which shall review the application and provide comments to the Planning Director about whether the proposed master subdivision plan complies with the standards of Sec. 2.3.7(D)(2), *Standards*. The Planning Director shall include the comments of the Parks, Recreation, and Cultural Advisory Commission with the Staff Report.

c) Within five calendar days of the recommendation of the TRC on the application, the Planning Director shall review the TRC recommendation and determine if the application complies with Sec. 2.3.7(D)(2), *Standards*.

d) If the Planning Director determines the application complies with Sec. 2.3.7(D)(2), *Standards*, it shall be forwarded to the Planning Board for consideration. If the Planning Director determines the application does not comply with Sec. 2.3.7(D)(2), *Standards*, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be taken on the application until the Planning Director has received a corrected application from the applicant. The Planning Director may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Planning Director.

2) *Standards*. To approve a master subdivision plan, the Town Council shall find that the master subdivision plan complies with all the standards of this Ordinance and all other relevant Town ordinances and regulations.

3) *Expiration.*

a) A development approval for a Master Subdivision Plan shall automatically expire four (4) years after the date of the Town Council's approval if:

(i) The use authorized by the development approval for the Master Subdivision Plan has not commenced; or

(ii) Less than 10% of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any approved development has been completed on the site. With respect to phased development, this requirement shall only apply to the first phase.

b) No extensions are allowed.

4) *Minor deviations.* The Planning Director, with the consent of the Public Works and Transportation Director and Water Resources Director, may approve a minor deviation to a Master Subdivision Plan. A minor deviation shall be limited to technical or engineering considerations first discovered after Master Subdivision Plan approval which have no material effect on the character of the approved Master Subdivision Plan. Minor deviations shall be limited to slight relocation of lot lines, streets and utilities, and minor changes to grading and stormwater infrastructure.

5) *Amendments.* A master plan for subdivision may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

E) ***Construction Plans for Subdivision***

1) *General.* After approval of a master subdivision plan, the subdivider may proceed with the preparation of construction plans.

2) *Procedures*. The procedures for initiation of an application (Sec. 2.2.1) for construction plans for subdivision, the application contents (Sec. 2.2.4), fees (Sec. 2.2.5), and application submission (Sec. 2.2.8) shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. Within 60 days after the application is determined sufficient, the Planning Director (acting as the subdivision administrator) and the Development Services Supervisor shall review the application, refer it to the TRC for review and comment, and approve, approve with conditions or disapprove the construction plans based on the standards in Sec. 2.3.7(E)(4) *Standards*.

3) *Appeal.* The subdivider may appeal the decision of the Planning Director, Public Works and Transportation Director, and Water Resources Director to the Board of Adjustment. In reviewing the appeal, the Board of Adjustment shall only consider the record of the decision. A decision of the Planning Director, Public Works and Transportation Director and Water Resources Director shall not be reversed or modified unless there is demonstrated evidence that the decision fails to comply with the standards in Sec. 2.3.7(E)(4) *Standards*.

4) *Standards.* Construction plans shall conform to the approved master plan, conform to *Town of Apex Standard Specifications and Standard Details*, and comply with all the standards of this Ordinance and all other relevant Town ordinances and regulations.

5) *Compliance/non-compliance*

a) If the construction plans are found to comply with the standards in Sec. 2.3.7(E)(4) *Standards,* the evidence of such compliance shall be noted by the Technical Review Committee on copies of the construction plans. One copy shall be transmitted to the subdivider and copies shall be retained by the Development Services Supervisor, Water Resources Department, Electric Department, and the Planning Director.

b) If the construction plans are found in non-compliance with the standards in Sec. 2.3.7(E)(4) *Standards*, the subdivider shall be given an opportunity to submit revised construction plans. If

revised construction plans are not submitted and the Technical Review Committee disapproves the same, the Technical Review Committee shall specify in writing the reasons for non-compliance. One copy of this statement shall be transmitted to the subdivider within 30 days of disapproval.

6) *Expiration.* A final plat for subdivision shall be applied for within one year of the date of the approval of the construction plans; otherwise, the construction plans shall automatically become null and void. Permitted time frames do not change with successive owners. Upon written request, one extension of six months may be granted by the Planning Director for good cause shown.

7) *Amendments.* A construction plan for subdivision may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

F) ***Final Plat for Subdivision***

1) *General*

a) Within one year after approval of construction plans, the subdivider shall prepare the final plat for subdivision and the installation or arrangement for required improvements in accordance with the approved construction plans and the procedures and standards of this Section.

b) The final plat for subdivision shall constitute only that portion of the master subdivision plan that the subdivider proposes to record and develop at the time. The final plat for subdivision shall contain no fewer than 15 lots except where there is a phase to be completed with fewer than 15 lots remaining or where the development contains fewer than 15 lots, in which case the application for final plat must contain all remaining lots.

2) *Procedures.* The procedures for initiation of an application for a final plat for subdivision, the application contents, fees, and application submission and review by Town staff, shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. In addition, the applicant shall submit signed certifications for final plat for subdivision in a form established in the *Town of Apex Design and Development Manual*. Within 60 days after the application is determined sufficient, the Planning Director (acting as the subdivision administrator) shall review the application and approve, approve with conditions or disapprove the final plat for subdivision based on the standards in Sec. 2.3.7(F)(3) *Standards*.

3) *Standards.* To approve a final plat for subdivision, the Planning Director shall find that the final plat for subdivision conforms with the approved master subdivision plan and the relevant construction plans, and complies with all the standards of this Ordinance and all other relevant Town ordinances and regulations. In addition, no final plat for subdivision shall be approved unless the subdivider shall have installed in the area represented on the final plat for subdivision all improvements required by Article 7: *Subdivision*, and this Ordinance, or shall have guaranteed their installation.

4) *Compliance/non-compliance*

a) If the final plat for subdivision is found to comply with the standards in Sec. 2.3.7(F)(3) *Standards*, all relevant and appropriate fees are paid pursuant to this Ordinance and the relevant bonds are posted, then approval shall be noted on each copy of the final plat for subdivision by the signed "certificate of approval for recording" within 21 days after a finding of compliance (copies of the certificate are in the *Town of Apex Design and Development Manual*). The subdivider shall record and return three mylars to the Planning Director.

b) If the final plat for subdivision is found in non-compliance with the standards in Sec. 2.3.7(F)(3), *Standards*, the subdivider shall be given an opportunity to submit a revised final plat for subdivision. If a revised final plat for subdivision is not submitted and the Planning Director disapproves the same, the Planning Director shall specify in writing the reasons for non-compliance. One copy of this statement shall be transmitted to the subdivider within 15 days of disapproval, one copy shall be transmitted to the Town Manager, and one copy shall be retained by the Planning Director.

5) *Recordation.* The subdivider shall file the approved final plat for subdivision with the register of deeds of Wake County for recording within 60 days after the date of approval of the final plat for subdivision.

6) *Effect of final plat for subdivision on dedications.* The approval of a final plat for subdivision shall not be deemed to constitute or effect the acceptance by the Town of the dedication of any street or other ground, public utility line or other public facility shown on the plat. However, the Town may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines or other public purposes when the lands or facilities are located within its subdivision regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision regulation jurisdiction, but outside the corporate limits of the Town, shall not place on the Town any duty to open, operate, repair or maintain any street, utility line or other land or facility, and the Town shall in no event be held to answer in any civil action or proceeding for failure to open, repair or maintain any street located outside its corporate limits. The Town has no obligation to open any street even after acceptance of dedication.

7) *Appeal.* The subdivider may appeal the decision of the Planning Director to the Board of Adjustment. In reviewing the appeal, the Board of Adjustment shall only consider the record of the decision. A decision of the Planning Director shall not be reversed or modified unless there is demonstrated evidence that the decision fails to comply with the standards in Sec. 2.3.7(F)(3) *Standards*.

8) *Amendments.* A Final Plat for Subdivision may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

G) ***Minor Subdivision***

1) *General.* Final plats for subdivision for a minor subdivision (See Sec.

12.2.94) shall be reviewed and approved pursuant to the procedures and standards of this Section.

2) *Limitations.* No subdivider (or successors in title) may, during any calendar year, obtain approval under this Section for more than four lots in a contiguous tract or parcel of land owned by the subdivider.

3) *Procedures.* The procedures for initiation of an application for a minor subdivision, the application contents, fees, and application submission shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*, except that the certifications for a minor subdivision found in the *Town of Apex Design and Development Manual* shall be on the final plat submitted. Within seven days after the application is determined sufficient, the Planning Director (acting as the subdivision administrator) shall review the application and approve, approve with conditions or disapprove the minor subdivision based on the standards in Sec. 2.3.7(G)(4) *Standards*. During the review of the minor subdivision, the Planning Director may appoint an engineer or surveyor to confirm the accuracy of the final plat for minor subdivision. If substantial errors are found the costs shall be charged to the subdivider, and the final plat for minor subdivision shall not be approved until such errors have been corrected.

4) *Standards.* In approving a minor subdivision the Planning Director shall find that the minor subdivision conforms with all the standards of this Ordinance and all other relevant Town ordinances and regulations. In addition, no final plat for minor subdivision shall be approved unless the subdivider shall have installed in the area represented on the final plat for minor subdivision all improvements required by Article 7: *Subdivision* and this Ordinance, or shall have guaranteed their installation.

5) *Compliance/non-compliance*

a) If the final plat for minor subdivision is found to comply with the standards in Sec. 2.3.7(G)(4) *Standards*, all relevant and appropriate fees are paid pursuant to this Ordinance and the relevant bonds are posted, then approval shall be noted on each copy of the final plat for minor subdivision by the signed “certificate of approval for recording” (copies of the certificate are in the *Town of Apex Design and Development Manual*). The subdivider shall record and return three mylars to the Planning Director.

b) If the final plat for minor subdivision is found in non-compliance with the standards in Sec. 2.3.7(G)(4) *Standards*, the Planning Director shall state in writing the specific reasons for disapproval. One copy of this statement shall be provided to the subdivider within 15 days of disapproval. One copy of the written statement shall also be transmitted to the Town Manager, and one copy shall be retained by the Planning Director. The subdivider shall be given an opportunity to submit a revised final plat for minor subdivision.

6) *Recordation.* The subdivider shall file the approved final plat for minor subdivision with the Register of Deeds of Wake County for recording within 60 days after the date of approval of the final plat for minor subdivision.

7) *Effect of final plat for minor subdivision on dedications.* The approval of a final plat for minor subdivision shall not be deemed to constitute or affect the acceptance by the Town of the dedication of any street or other ground, public utility line or other public facility shown on the plat. However, the Town may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines or other public purposes when the lands or facilities are located within its subdivision regulation jurisdiction. Acceptance or dedication of lands or facilities located within the subdivision regulation jurisdiction, but outside the corporate limits of the Town, shall not place on the Town any duty to open, operate, repair or maintain any street, utility line or other land or facility, and the Town shall in no event be held to answer in any civil action or proceeding for failure to open, repair or maintain any street located outside its corporate limits. The Town has no obligation to open any street even after acceptance of dedication.

8) *Appeal.* The subdivider may appeal the decision of the Planning Director to the Board of Adjustment. In reviewing the appeal, the Board of Adjustment shall only consider the record of the decision. A decision of the Planning Director shall not be reversed or modified unless there is demonstrated evidence that the decision fails to comply with the standards in Sec. 2.3.7(G)(4) *Standards*.

9) *Amendments.* A final plat for minor subdivision may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

2.3.8 Variance Permit

A) ***Purpose***

Variances are deviations from the dimensional standards in the applicable zoning district when owing to special circumstances or conditions (like exceptional topographical conditions, narrowness, shallowness, or the shape of a specific piece of property), the literal enforcement of the provisions of this Ordinance would result in peculiar and practical difficulties to, or exceptional and undue hardships on the owners of the property, and the deviation would not be contrary to the public interest. No variances from the schedule of permitted uses or special uses applicable in a zoning district shall be allowed pursuant to the terms of this Section.

B) ***Authority***

The Board of Adjustment, in accordance with the procedures, standards and limitations of this Section, is authorized to review and approve, approve with conditions, or disapprove an application for a variance permit.

C) ***Procedures***

1) *Initiation, submission, and review of application.* The procedures for initiation of the application for a variance permit, the application contents, fees, submission and review by Town staff, public notification, and scheduling of a public hearing shall comply with those relevant provisions in Sec. 2.2, *Common Review Procedures.*

2) *Action by Board of Adjustment.* After completion of the Staff Report on the application (Sec. 2.2.9) and public notification (Sec. 2.2.11) and scheduling of a public hearing (Sec. 2.2.10), the Board of Adjustment

shall conduct a public hearing on an application for a variance permit pursuant to Sec. 2.2.18, *Public Hearing Procedures*. At the public hearing, the Board of Adjustment shall consider the application, the Staff Report, the relevant support materials, and the public testimony given at the public hearing. Within a reasonable period of time after the close of the public hearing, the Board of Adjustment shall approve, approve with conditions, or disapprove the application for a variance permit pursuant to the standards of Sec. 2.3.8(D), *Standards*. The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to approve an application for a variance permit.

D) ***Standards***

In order to approve an application for a variance permit, the Board of Adjustment shall find the following:

1) *Unnecessary Hardship.* Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

2) *Hardship Results from Peculiar Conditions.* The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

3) *Not Result of Action by Applicant.* The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

4) *Consistency with the UDO.* The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

E) ***Conditions of Approval***

The Board of Adjustment may, in approving the variance permit, impose such restrictions and conditions on such approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to ensure compliance with the general goals, objectives, and policies of this Ordinance to prevent or minimize adverse effects from the proposed variance on the general health, safety and welfare of the Town, landowners in the Town and its residents.

F) ***Effect of Variance Permit***

Issuance of a variance permit shall authorize only the particular variation that is approved in the variance permit. A variance permit shall run with the land and not be affected by a change in ownership, provided that a new landowner shall be obligated to sign a request for transfer of the variance permit, indicating acceptance of any applicable conditions.

G) ***Subsequent Development***

Development authorized by the variance permit shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable provisions of the Town. A variance permit shall not ensure that the development approved as a variance shall receive subsequent approval for other

applications for development unless the relevant and applicable portions of this Ordinance or any other applicable provisions are met.

H) ***Amendment***
A variance permit may be amended, extended or modified only in accordance with the procedures and standards established for its original approval. A request for a change in a condition of approval of a variance permit shall be considered an amendment.

I) ***Lapse of Permit***
If development occurs pursuant to a variance permit and the development is discontinued for any reason for a period of 12 months, the variance permit shall automatically become null and void and the development may not be resumed. Upon written application during the 12-month period by the landowner and upon a showing of good cause, the Board of Adjustment may grant an extension not to exceed six months.

2.3.9 Administrative Adjustment

A) ***General***
This Section sets out the procedures and standards for administrative adjustments, which are modifications of 10 percent or less of any setback set out in Sec. 5.1, *Table of Intensity and Dimensional Standards.*

B) ***Procedures***
The procedures for initiation of an application for an administrative adjustment, the application contents, fees, and application submission shall comply with those relevant provisions in Sec. 2.2, *Common Review Procedures*. Within 30 days after the application is determined sufficient, the Planning Director shall review the application and approve, approve with conditions or disapprove the administrative adjustment based on the standards in Sec. 2.3.9(C), *Standards*.

C) ***Standards***
Administrative adjustments shall be approved by the Planning Director only upon a finding that the applicant has demonstrated that all of the following conditions are met:

1) *Existing encroachment.* The request relates to an existing encroachment into a setback.

2) *One encroachment.* The encroachment involves one encroachment into one required setback.

3) *Substantial hardship.* The encroachment cannot be corrected without substantial hardship to the property owner.

4) *Error made in good faith.* The error is not the result of negligence, recklessness or intentional conduct.

5) *Not substantially interfere with the convenient and enjoyable use of adjacent properties.* The adjustment will not substantially interfere with the convenient and enjoyable use of adjacent properties, and will not impose a danger to the public health or safety.

6) *Consistent with intent of this Ordinance.* The adjustment is consistent with the general intent and purposes of this Ordinance.

D) ***Conditions of Approval***
The Planning Director may, in approving the administrative adjustment, impose such restrictions and conditions on such approval and the premises to be developed or used pursuant to such approval as are determined are required to ensure compliance with the general goals, objectives, and policies of this Ordinance to prevent or minimize adverse effects from the proposed administrative adjustment on the general health, safety and welfare of the Town, landowners in the Town and its residents.

E) ***Effect of Administrative Adjustment***
Issuance of an administrative adjustment shall authorize only the particular modification that is approved in the administrative adjustment. An administrative adjustment shall run with the land and not be affected by a change in ownership, provided that a new landowner shall be obligated to sign a request for transfer of the administrative adjustment, indicating acceptance of any applicable conditions.

F) ***Expiration***
Unless otherwise specified in the Administrative Adjustment, the Administrative Adjustment shall expire at the end of one year after the date of its initial approval if an application for a building permit has not been approved, or if the use does not require a building permit, the use is established, ongoing, and in operation. Permitted time frames do not change with successive owners. Upon written request, one twelve (12) month extension may be granted by the Planning Director for good cause shown.

G) ***Subsequent Development***
Development authorized by the administrative adjustment shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable provisions of the Town. An administrative adjustment shall not ensure that the development approved as an administrative adjustment shall receive subsequent approval for other applications for development unless the relevant and applicable portions of this Ordinance or any other applicable provisions are met.

H) ***Amendments***
An administrative adjustment may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

2.3.10 Certificate of Zoning Compliance

A) ***Purpose***
A Certificate of Zoning Compliance shall be required in accordance with the provisions of this Section in order to ensure that proposed development complies with the standards in this Ordinance, and to otherwise protect the public health, safety and welfare of the citizens of the Town.

B) ***Applicability***
Where no other type of development permit is required by this Ordinance, a Certificate of Zoning Compliance shall be required for the following types of development, including, but not limited to:

1) Fit-ups for shopping centers, office parks, industrial parks, and other similar type uses.

2) Change of use within the same land use class (1, 2, 3, 4, 5, or 6) as defined by Section 8.2.6(B)(4) *Land Use Classes*.

C) ***Procedures***
The procedures for initiation of an application for a Certificate of Zoning Compliance, the application contents, fees, and application submission shall comply with those relevant provisions in Sec. 2.2, *Common Review Procedures*. Within 15 days after the application is determined sufficient, the Planning Director shall review the application and provide written documentation stating whether the application complies with the standards in Sec. 2.3.10(D), *Standards*. A copy of this documentation shall be provided to the applicant. If the Planning Director finds that the application complies with the standards in Sec. 2.3.10(D), *Standards*, the Certificated of Zoning Compliance shall be approved. If the Planning Director recommends disapproval of the application, the applicant shall have 30 calendar days from the date of disapproval to submit a corrected application. If a corrected application is received, the Planning Director shall approve, approve with conditions, or disapprove the application, based on the standards in Sec. 2.3.10(D), *Standards.* If the application is not resubmitted within 30 calendar days, the application shall be considered withdrawn.

D) ***Standards***
Prior to approval of a Certificate of Zoning Compliance, the Planning Director shall find that the application complies with all standards of this Ordinance.

E) ***Effect of Certificate of Zoning Compliance***
Issuance of a Certificate of Zoning Compliance shall mean that the proposed development is in compliance with the procedures and standards of this Ordinance.

F) ***Expiration***
Receipt of a Certificate of Zoning Compliance shall expire at the end of one year after the date of its initial approval if an application for a building permit has not been approved, or if the use does not require a building permit, the use is established, ongoing, and in operation. Upon written request, one 12 month extension of the Certificate of Zoning Compliance may be granted by the Planning Director for good cause shown.

G) ***Amendment***
A Certificate of Zoning Compliance may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

2.3.11 Temporary Use

A) ***Applicability***
The provisions of this Section shall apply to all proposed temporary uses as set forth in Sec. 4.6, *Temporary Uses and Structures*, unless otherwise specifically exempted.

B) ***Procedure***
The procedures for initiation of an application for a temporary use permit, the application contents, fees, and application submission shall comply with those relevant provisions in Sec. 2.2, *Common Review Procedures*. Within 30 days after the application is determined sufficient, the Planning Director shall review the application and approve, approve with conditions or disapprove the temporary use permit based on the standards in Sec. 2.2.11(C), *Standards*.

C) ***Standards***
The Planning Director shall issue a temporary use permit upon a finding that the temporary use, as proposed, will comply with the relevant standards set forth in Sec. 4.6. *Temporary Uses and Structures*.

D) ***Permit Issued***
All approved applications shall be issued a temporary use permit, except Sec. 4.6.1(C), *Yard sales*, by the Planning Director authorizing the establishment of the approved temporary use on the subject property. The temporary use permit shall be subject to the time limits and expiration provisions set forth in Sec. 4.6, *Temporary Uses and Structures*.

E) ***Compliance***
Following the issuance of the temporary use permit, the Planning Director shall ensure that establishment and discontinuance of the temporary use are undertaken in compliance with the permit.

F) ***Effective Date of the Permit***
Temporary use permits shall be effective beginning on the date of approval, and shall remain effective for the period indicated on the permit.

G) ***Expiration***
All temporary use permits shall expire within six (6) months unless expressly permitted in the Temporary Use Permit issued for a use listed in Sec. 4.6.1(C) *Uses Allowed*. Upon written request, one (1) 12-month extension may be granted by the Planning Director for good cause shown.

H) ***Amendment***
A temporary use permit may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

2.3.12 Appeals

A) ***Purpose***
Any person aggrieved by any decision or interpretation made by the Planning Director (except construction plans, final plats and minor subdivisions for subdivision) or other officials administering this Ordinance may appeal such decision to the Board of Adjustment, which shall review the decision or interpretation pursuant to the requirements of this Section.

B) ***Authorization***
On the action appealed from, the Board of Adjustment shall have the same authority as the reviewing body to make the correct order, requirement, decision or determination.

C) ***Procedures***

1) *Initiation of appeals.* Notices of Appeal shall be filed within the time prescribed in the Rules of Procedure of the Town of Apex Board of Adjustment.

2) *Contents of appeal.* The Notice of Appeal shall include a statement of the error or improper decision or interpretation made by the Planning Director or other officer, the date of that decision, and all support materials related to the decision. The specific form of the Notice of Appeal shall be established by the Planning Director.

3) *Forwarding record to the appellate body.* Upon receiving the Notice of Appeal, the Planning Director shall forward the Notice of Appeal and the record of the decision on which the appeal is based to the Board of Adjustment.

4) *Notice procedures.* Notice shall be in accordance with Sec. 2.2.11 *Public Notification.*

5) *Action by Board of Adjustment.* At the hearing on the appeal, the Appellant or the Appellant's agent shall state the grounds for the appeal and include any materials or evidence to support the appeal. The Planning Director, or a designated representative, shall be provided the opportunity to respond, as well as any other persons the Board of Adjustment deems necessary. After the conclusion of the hearing, the Board of Adjustment shall either affirm, affirm with modifications, or reverse the contested decision or interpretation, based on the standards in Sec. 2.3.12(E), *Standards*. The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination on appeal.

D) ***Stay***
An appeal shall stay all proceedings in furtherance of the action appealed, unless the Town Attorney certifies that by reason of facts stated in the appeal, a stay would cause imminent peril to life or property.

E) ***Standards***
A decision/interpretation of the Planning Director or other official under this Ordinance shall not be reversed or modified unless there is demonstrated evidence that the interpretation/decision is inconsistent with the intent and standards of this Ordinance.

F) ***Hearing on Record***
All appeals will be held solely on the record.

2.3.13 Beneficial Use Determination
If, after the submission and decision on the appropriate applications for development permits for a plan for the development of land, a landowner in the Town is of the opinion that an economically beneficial use of that landowner's land has been denied by the application of this Ordinance, then the procedures of this Section shall be used prior to seeking relief from the courts in order that any denial of economically beneficial use of land may be remedied through a non-judicial forum.

A) ***Purpose***
The purpose and intent of the Town Council is that every landowner in the Town enjoy an economically beneficial use of land. It is also the purpose and intent of this Section to provide for relief to the landowner, where appropriate, from the application of this Ordinance. The procedures set forth in this Section are intended to permit landowners who believe they have been deprived of economically beneficial use of their land to apply to the Board of Adjustment for relief sufficient to provide an economically beneficial use of the land.

B) ***Procedures***

1) *Application for an appeal for beneficial use determination.* An Appeal for a Beneficial Use Determination may be filed by a landowner at any time

to the Planning Director, along with an application fee established pursuant to Sec. 2.2.5, *Fees*.

2) *Contents of application.* The application shall be submitted in a form established by the Planning Director and made available to the public, and shall include the following:

a) The landowner's name and address.

b) A legal description and the street address (when a street address is available) of the land.

c) Documentation of the date of purchase and the purchase price of the land, and any offers to purchase the land made by any person, corporation, or association, within the last three years.

d) A description of the physical features present on the land, the land's total acreage, the present use of the land, and the use of the land at the time of the adoption of this Ordinance.

e) Evidence of any investments made by the landowner to improve the land, the date the improvements were made, and the costs of the improvements.

f) A description of what uses of land were available when the land was purchased by the landowner.

g) A description of the regulations and uses permitted which are alleged to result in an elimination of economically beneficial use of the land.

h) All appraisals, studies, and any other supporting evidence, and any actions taken by Town related to the land.

i) A description of the use which the landowner believes represents the minimum legally required economically beneficial use of the land and all documentation, studies, and other supporting evidence thereof.

3) *Determination of sufficiency.* The Planning Director shall determine if the application is sufficient and includes data in sufficient detail to evaluate the application to determine if it complies with the appropriate substantive requirements of this Section.

a) If the Planning Director determines the application is not sufficient, a written notice shall be mailed to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within 30 calendar days, the application shall be considered withdrawn, and the application fee shall be refunded.

b) When the application is determined sufficient, the Planning Director shall notify the applicant, in writing, of the application's sufficiency, and forward the application to the Hearing officer for the scheduling of a hearing.

4) *Establishment of date for hearing and notice.* Within 30 calendar days of the date that the application has been determined sufficient by the Planning Director, the Hearing Officer shall schedule a hearing on the Appeal for Beneficial Use Determination. The Planning Director shall provide the applicant and all landowners within 100 feet of the land subject to the Appeal for Beneficial Use Determination at least 20 calendar days notice of the hearing by mail.

5) *Hearing.* At the hearing, the applicant shall present the applicant's case and the Town Attorney shall represent the Town. All evidence presented shall be under oath, and the parties involved shall be permitted to cross-examine witnesses. The sworn testimony and evidence shall pertain to the standards set forth in Sec. 2.3.13(C), *Beneficial Use Standards*, as to whether the applicant has been deprived of an economically beneficial use of the land and the standards in Sec. 2.3.13(D), *Granting of Relief*, pertaining to the degree of relief needed to provide the landowner with an economically beneficial use of the land.

6) *Findings of the Hearing Officer.* Within 30 calendar days of the close of the hearing, the Hearing Officer shall prepare recommended findings of fact and a proposed order for the consideration of the Town Council. The findings and recommendations of the Hearing Officer as to whether the land is provided economically beneficial use shall be based on the evidence submitted and the standards in Sec. 2.3.13(C), *Beneficial Use Standards*. If the Hearing Officer finds that the applicant has been denied economically beneficial use of the subject land, then the Hearing Officer shall recommend a use that permits an economically beneficial use and results in a minimum change from the regulations of this Ordinance as they apply to the subject land, pursuant to the standards set forth in Sec. 2.3.13(C), *Beneficial Use Standards*, and Sec. 2.3.13, *Granting of Relief,* or other relief as is determined appropriate. The Hearing Officer's recommended findings of facts and proposed order shall be in writing and shall detail the basis of the conclusions from the record of the hearing.

7) *Action by Board of Adjustment.* The Board of Adjustment shall schedule a hearing on the application within 30 calendar days of the date the hearing officer issues the recommended findings of fact and proposed order. The Planning Director shall provide the applicant and all landowners within 100 feet of the land subject to the Appeal for Beneficial Use Determination at least 15 calendar days notice of the hearing by mail. At the hearing, the Board of Adjustment shall approve the findings of fact and proposed order of the Hearing Officer, or may attach conditions, modify, or reverse the findings of fact or proposed order of the Hearing Officer, based on the standards of Sec. 2.3.13(C), *Beneficial Use Standards*, and Sec. 2.3.13 D, *Granting of Relief*. If the Board of Adjustment attaches conditions, modifies or reverses the findings of fact or proposed order, it shall do so only where the record of the hearing indicates that the hearing officer is unsupported by the record, or that the proposed order is not in conformance with the standards of Sec.2.3.13(C), *Beneficial Use Standards*, and Sec. 2.3.13 D., *Granting of Relief*.

C) ***Beneficial Use Standards***

In determining if a landowner has been deprived of an economically beneficial use of land, the Hearing Officer and Board of Adjustment shall take into account the following factors:

1) *Economically viable use.* In making the determination of whether the land is provided an economically viable use, the Hearing Officer/Board of Adjustment shall first evaluate the uses of the land as provided by this Ordinance, and the uses of land in relation to the uses provided similarly situated lands. For the purposes of this Section, economically viable use means the opportunity to make a return equivalent to that which would have been received from a conservative financial investment. Transitory economic issues shall not be relevant to this determination.

2) *Diminution in value.* The market value of the land, as established by the comparable sales approach, prior to adoption of this Ordinance, which caused the landowner to apply for relief shall be compared to the market value of the land, as established by the comparable sales approach, with the regulations as applied. Market value of the land prior to the adoption of this Ordinance shall constitute its highest and best use on July 31, 2000 or the date of purchase of the land, whichever is later, and any other land value/appraisal information that the applicant would like to be considered. All appraisals shall be proposed by qualified licensed appraisers, and shall follow the best professional practices as established by the profession. A mere diminution in market value is not sufficient to support a determination of denial of economically beneficial use.

3) *External costs*

a) The amount or nature of any subsidy that may be required by the Town, neighbors, purchasers, tenants, or the public-at-large if the uses allowed under this ordinance are modified; or

b) Any other adverse effects on the Town or its residents.

4) *Subsidy.* The amount or nature of any subsidy that may be required by the Town, neighbors, purchasers, tenants, or the public at large if the uses allowed under this Ordinance are modified.

5) *Other adverse effects.* Any other adverse effects on the Town and its residents.

6) *Current state of the law.* The state of the law established by the United States Supreme Court, the federal Circuit Courts of Appeals, and the North Carolina Supreme Court, relevant to these standards.

D) ***Granting of Relief***

1) *Relief.* If the finding is that a landowner has been deprived economically beneficial use of land, or is otherwise entitled to relief pursuant to the standards of this Section, relief shall be granted.

2) *General.* In granting relief, the hearing officer may recommend and the Board of Adjustment may adopt any legally available incentive or measure reasonably necessary to offset any substantial economic hardship, and may condition such incentives upon approval of specific development plans. If there is a finding that the denial of the application would create a substantial economic hardship, the hearing officer may recommend and the Board may consider additional relief to provide an appropriate increase in market value or other benefit or return to the applicant sufficient to offset the substantial economic hardship. The types of incentives that the hearing officer may recommend and the Board of Adjustment may consider includes, but are not limited to, the following:

a) A rezoning of property to a more appropriate classification, issuance of a variance, approval of a development plan, or other appropriate land use regulatory action that will enable the applicant to realize a reasonable return on the property;

b) An opportunity to transfer density or cluster development on other property;

c) A waiver of permit fees;

d) Development finance assistance;

e) Approval of development on some portion of the property; or

f) Acquisition of all or a portion of the property at market value.

3) *Minimum increase.* In granting relief, the landowner shall be given the minimum increase in use density/intensity or other possible concessions from this Ordinance and Sec. 2.3.13(D)(2) in order to permit an economically viable use of the land or a use that is determined to be required by law. The highest use, or even an average or generally reasonable expectation, is not required or intended as the appropriate remedy. The following guidelines shall be used for determining the minimum economically viable use of land and, therefore, the amount of relief to be granted a landowner in order to reach that minimum.

a) A minimum economically viable use of the land should be one that does not have any governmental subsidy attached to the long-term safe occupation of the land. If such a subsidy is needed, then that should be reflected by lowering the use intensity that is considered a minimum economically viable use on a market valuation basis.

b) A use common to the Town, although it may not involve further development of the land, is considered an economically viable use. Attention shall also be given to land uses that are considered to be the lowest intensity in the Town but which uses still provide for occupation and living within the Town. These land uses, as well, shall be considered economically viable uses.

c) The actual condition of the land shall be considered. The reality of limited development potential, given the natural condition of the land, shall not be attributed to the regulations applied to the land. If the land is such that it cannot safely accommodate development with normal grading and clearing practices, this fact shall lower the intensity of use that is considered a minimum economically viable use.

d) The potential for damages to either residents or land shall be assessed in determining economically viable use. The need for a governmental subsidy to future landowners shall be considered, and the cost of such subsidies shall be deducted from the otherwise established minimum economically viable use.

e) Expectations shall, in general, not be considered. Only reasonable expectations backed by investments as required by the current state of the law, shall they be considered.

f) The current state of law established by the United States Supreme Court, the federal Circuit Court of Appeals, and the North Carolina Supreme Court, relevant to the granting of relief.

E) ***Appeal***
The decision of the Board of Adjustment may be appealed to a court of law.

2.3.14 Vested Rights

A) ***Establishment of a Vested Right***

1) *Purpose.* The purpose of this Section is to establish procedures and standards to implement the vested rights provision of Sec. 160A–385.1, N.C.G.S.

2) *General.* A vested right shall be established pursuant to this Section upon the valid approval, or conditional approval, by the Town Council, of a site-specific development plan consistent with the public hearing notification requirements and public hearing procedures established in Sec. 2.2, *Common Review Procedures*, for an amendment to the Official Zoning District Map (Rezoning).

B) ***Protect Health, Safety, and Welfare***
The Town Council may approve a site specific development plan for the purposes of establishing a vested right pursuant to this Section, upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare of the Town and its residents.

C) ***Variance Required***
Approval of a site-specific development plan with the condition that a variance be approved shall not confer a vested right pursuant to this Section until and unless the variance permit is approved pursuant to Sec. 2.3.8, *Variance Permit*.

D) ***Effective Date***
A vested right pursuant to this Section shall be deemed approved and effective upon the effective date of the Town Council action approving the site specific development plan, or if no effective date is stated in the development approval, upon the adoption of the Ordinance or motion approving the site specific development plan.

E) ***Definitions***
For the purposes of this Section, the following definitions shall apply.

1) *Approval authority.* The Town Council, Board of Adjustment, Planning Board, or other official designated by this Ordinance as being authorized to approve a site specific development plan.

2) *Landowner.* The meaning provided by Sec. 160A–385.1(b)(1), N.C.G.S.

3) *Property.* The meaning provided by Sec. 160A–385.1(b)(4), N.C.G.S.

4) *Site-specific development plan.* As defined by Sec. 160A–385.1 (b)(5), NCGS, a plan of development submitted to the Town for purposes of obtaining one of the following development approvals: site plan; master subdivision plan; a rezoning to a conditional zoning district which includes a site plan or master subdivision plan; and special use permit

including a site plan or master subdivision plan. Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.

5) *Vested right.* As defined in Sec. 160A–385.1(b)(6), N.C.G.S., the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

F) ***Application of Existing and New Regulations***

The establishment of a vested right pursuant to this Section shall not preclude the application of Sec. 6.1, *Watershed Protection Overlay Districts*, Sec. 6.2, *Flood Damage Prevention Overlay District*, Article 8: *General Development Standards,* and Article 9: *Design Standards* to the site specific development plan (except that these regulations shall not affect the allowable type or intensity of use), or ordinances or regulations that are general in nature and are applicable to all land in the Town subject to land use regulation, including but not limited to, state building, fire, plumbing, electrical, and mechanical codes and the *Town of Apex Standard Specifications and Standard Details*. Otherwise, applicable new or amended regulations shall become effective to a site-specific development plan approved pursuant to this Section upon the expiration or termination of the vested right.

G) ***Procedures***

1) *General.* Except as otherwise provided in this Section, an application for a vested right for a site specific development plan shall be processed concurrent with the application for the site specific development plan established in Article 2: *Administration*. In order for a vested right to be considered pursuant to this Section, the applicant shall state in writing in the application that a vested right is being requested pursuant to this Section.

2) *Notation.* If a vested right is granted for the site specific development plan, the development approval shall contain the following notation: “Approval of this site specific development plan establishes a vested right under Sec. 160A–385.1, N.C.G.S. Unless terminated at an earlier date, the vested right shall be valid for two (2) years after the date of approval.”

3) *Receipt of subsequent development approvals.* Following establishment of a vested right for a site specific development plan pursuant to this Section, nothing in this Section shall exempt the site specific development plan from compliance with the requirements of this Ordinance and receipt of subsequent development approvals, as long as they are consistent with the site specific development plan.

4) *Revocation.* A vested right approved pursuant to this Section, and the site specific development plan, may be revoked for failure to comply with the terms and conditions of development approval and this Ordinance, provided that prior to revocation the landowner shall be given an opportunity to be heard.

5) *Duration*

a) The duration of a vested right for a site specific development plan approved pursuant to this Section shall be for two years

from the effective date of approval of the site specific development plan unless specifically and unambiguously provided otherwise pursuant to Sec. 2.3.14(H)(5)(b). This vested right shall not be extended by any amendment to a site specific development plan unless expressly provided by the Town Council at the time the amendment to the site specific development plan is approved pursuant to the procedures and standards of this Ordinance.

b) The Town Council, in its discretion, may provide that the duration of a vested right for a site specific development plan approved pursuant to this Section may be for greater than two years but no greater than five years, where a longer period of vesting is reasonably justified in light of the circumstances relevant to the development for which the site specific development plan is approved. Reasonable justifications include, but are not limited to, the size of the development, the level of infrastructure investment needed for the development, economic cycles and other relevant market conditions.

H) ***Issuance of Building Permit***

Upon issuance of a building permit, the expiration provisions of Sec. 160A-418, N.C.G.S. and the revocation provisions of Sec. 160A-422, N.C.G.S. shall apply, except that a building permit shall not expire or be revoked because of the running of time while a vested right under this Section is outstanding.

I) ***Termination***

A vested right for a site-specific development plan pursuant to this Ordinance shall terminate:

1) *End of the vesting period.* At the end of the vesting period with respect to buildings and uses for which no valid building permit applications have been approved.

2) *Written consent.* With the written consent of the landowner of the property that has received a vested right for a site-specific development plan.

3) *Hazard poses threat if project proceeds*. Upon findings by the Town Council, by ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site-specific development plan.

4) *Payment to affected landowner*. Upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property that is caused by such action.

5) *Inaccurate information.* Upon findings by the Town Council, by ordinance after notice and a public hearing, that the landowner or the landowners' representative intentionally supplied inaccurate information or made

material misrepresentations which made a difference in the approval of the Town Council of the site specific development plan.

6) *State or federal law or regulation that preclude development*. Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the Town Council may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance, after notice and a public hearing.

J) ***Voluntary Annexation***
A petition for annexation filed with the Town pursuant to Secs. 160A-31 or 160A-58.1, N.C.G.S., shall contain a signed statement declaring whether or not any vested right with respect to the land subject to the petition has been established under Secs. 160A-385.1 or 153A-344.1, N.C.G.S. A statement that declares no vested right has been established under Secs. 160A-385.1 or 153A-433.1, N.C.G.S., or failure to sign a statement declaring whether or not a vested right has been established, shall be binding on the landowner and any such vested right shall be terminated.

K) ***Limitations***
Nothing in this Section is intended or shall be deemed to create any vested right other than those established pursuant to Sec. 160A-385.1, N.C.G.S.

2.3.15 Tree Removal and/or Pond Drainage Plan

A) ***Purpose***
Tree Removal and/or Pond Drainage Plan review is required by this Ordinance to ensure that any tree removal and/or pond drainage activities are done in a manner that protects future buffers and Resource Conservation Areas, meets the Ordinance's watershed and floodplain restrictions, and ensures that appropriate measures are taken for stormwater management and sedimentation and erosion control.

B) ***Applicability***
No person shall engage in tree removal and/or pond drainage activities unless he or she has applied for and has been issued a Tree Removal and/or Pond Drainage Permit, and all other applicable federal, state, and local permits have been issued. The Tree Removal and/or Pond Drainage Permit is issued by the Town of Apex Planning Department and authorizes tree removal and/or pond drainage activities consistent with this Ordinance. All tree removal and/or pond drainage activities shall be conducted in conformity with the approved Tree Removal and/or Pond Drainage Plan and Permit. Tree removal activities include cutting of trees. Pond drainage activities include drainage of water bodies.

The Tree Removal Plan cannot be reviewed concurrently with any other development application (including rezoning, conditional zoning, PUD-CZ, SD-CZ, TND-CZ, MEC-CZ, subdivision plan, site plan, administrative approval, etc.) and must be approved or withdrawn prior to the submission of any other development application.

The Pond Drainage Plan can be reviewed concurrently with any other development application (including but not limited to rezoning, conditional zoning, PUD-CZ, SD-CZ, TND-CZ, subdivision plan, site plan, administrative approval, etc.). Minimal tree removal and grading necessary to facilitate draining the pond and establishing sedimentation and erosion control measures shall be permitted as part of the Pond Drainage Plan.

C) ***Exemptions***

The following tree removal or non-structural development activities shall be exempted from the requirements of this section:

1) Tree removal activities which are not conducted to facilitate development and which are normal forestry activities conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes on land classified by Wake County as agricultural, forestry, or horticultural land use or that meet Sec. 8.1.3(B) *Tree and Vegetation Conservation, Exemptions for Specific Activities*.

However, if a Tree Removal and/or Pond Drainage Permit is not issued, per NCGS 160A-458.5(c)(1), no approval of a site or subdivision plan or issuance of a building permit shall occur for a period of 3 or 5 years from the date the tree removal activities are completed, based on the following:

a) Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought.

b) Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.

2) Tree removal activities which are not conducted to facilitate development and which occur on property zoned for single-family or duplex residential uses or where single-family or duplex residential uses already exist. However, if a Tree Removal and/or Pond Drainage Permit is not issued, no subdivision or development applications shall be accepted for 48 months from the date the tree removal activities are completed.

3) Tree removal and/or pond drainage activities that are specifically authorized by a development plan approved by the Town Council (including but not limited to master subdivision plan or site plan) that specifically authorizes the tree removal and/or pond drainage activities.

4) Tree removal and/or pond drainage activities that meet the criteria of Section 2.3.6(C)(2)(d), (e), (f), (g), (h) or (i) Exemptions from Site Plan approval and that are specifically authorized by an administrative approval (if applicable) by the Planning Director in accordance with Section 2.3.6(C) Exemptions.

D) ***Procedures***

1) *Application for Tree Removal and/or Pond Drainage Permit.* Applicants shall submit a form and fee specified by the Town of Apex Planning Department along with a Tree Removal and/or Pond Drainage Plan. The Tree Removal and/or Pond Drainage Plan shall specify that trees will not be removed in those areas of the site that correspond with areas that would be buffers or Resource Conservation Areas if the site were being

developed for the highest and best use permitted in the applicable zoning district. No person shall remove trees or conduct pond drainage activities in these areas.

2) *Contents of application.* The Tree Removal and/or Pond Drainage Plan shall include the following information:

a) The boundaries of the site upon which tree removal and/or pond drainage activities are proposed.

b) A tree survey locating all trees 8" caliper and larger on the site.

c) The areas where the applicant proposes to cut trees and/or drain ponds.

d) Those areas of the site that correspond with areas that would be buffers or Resource Conservation Areas (including stream corridors, wetlands, stands of large trees, etc.) if the site were being developed for the highest and best use permitted in the applicable zoning district.

3) *Action by the Technical Review Committee*. The Technical Review Committee shall review the application. If the application complies with the standards set forth in 2.3.15(E) Standards, then the Tree Removal and/or Pond Drainage Permit shall be approved. If the application does not comply with the standards set forth in 2.3.15(E) Standards, then the Tree Removal and/or Pond Drainage Permit shall be denied. The applicant shall have the opportunity to revise and resubmit the application and Tree Removal and/or Pond Drainage Plan in accordance with the published schedule provided by the Planning Department.

E) ***Standards***
Prior to approval of a Tree Removal and/or Pond Drainage Permit, the Technical Review Committee shall find that the Tree Removal and/or Pond Drainage Plan complies with all applicable sections of the Ordinance, as well as any other applicable federal, state, or local requirements. Applicable sections of the Ordinance include, but are not limited to, Sec. 2.3.15 *Tree Removal and/or Pond Drainage Plan,* Sec. 6.1 *Watershed Protection Overlay Districts*, Sec. 6.2 *Flood Damage Prevention Overlay District*, Sec. 8.1 *Resource Conservation*, and Sec. 8.2 *Landscaping, Buffering, and Screening*.

F) ***Expiration***
A Tree Removal and/or Pond Drainage Permit shall expire at the end of one year after the date of its initial approval if the use has not been established, ongoing, and in operation. Upon written request, one 6 month extension of the Tree Removal and/or Pond Drainage Permit may be granted by the Planning Director for good cause shown.

G) ***Amendment***
A Tree Removal and/or Pond Drainage Permit may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

H) ***Failure to Obtain Tree Removal and/or Pond Drainage Permit***
If a Tree Removal and/or Pond Drainage Permit is not issued prior to tree removal activities on land not exempted per Sec. 2.3.15(C) *Exemptions*, per NCGS 160A-458.5(c)(1), no approval of a site or subdivision plan or issuance of

a building permit shall occur for a period of 3 or 5 years from the date the tree removal activities are completed, based on the following:

1) Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought.

2) Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.

2.3.16 Sustainable Development Conditional Zoning District

A) ***General***
This Section establishes the procedures and standards applicable to the Town's Sustainable Development Conditional Zoning District SD-CZ.

B) ***General Applicability***
Before any development shall be designated as a Sustainable Development Conditional Zoning District SD-CZ on the Official Zoning District Map, it shall receive approval pursuant to the terms of this Section and Section 2.3.3 of this Ordinance.

C) ***Location***
A Sustainable Development Conditional Zoning District SD-CZ designation may be established on any land located in the Town and its ETJ that complies with all of the applicable standards of this Section and Section 3.3.4(B), including the requirement that a Sustainable Development Conditional Zoning District SD-CZ include a minimum of 500 contiguous acres. An SD-CZ District may include other parcels of any size within 2000 feet of such parcel of at least 500 contiguous acres.

D) ***Unified Ownership or Control***
One person shall have all the responsibility and authority to make all the developer land use planning decisions for all land that is part of a Sustainable Development Conditional Zoning District SD-CZ. A person shall be considered to have such responsibility and authority for all lands in the Sustainable Development Conditional Zoning District SD-CZ either through ownership or by written agreement by and between such person and each owner of parcels comprising said lands agreeing to the conditions and standards of the adopting ordinance and the Sustainable Development Conditional Zoning District SD-CZ and granting the person such responsibility and authority. This one person, who shall be identified in the Sustainable Development Conditional Zoning District SD-CZ Re-Zoning Application as the "Responsible Person," will be the sole person from whom the Town will accept decisions regarding the Sustainable Development (SD) Plan and Sustainable Development Conditional Zoning District SD-CZ, including amendments, modifications or supplements thereof or the addition of lands thereto. The SD Plan shall provide the process for effecting a change or succession of Responsible Person for the purposes of a specific district. A parcel or parcels (the "Parcel") of any size may be added to an existing Sustainable Development Conditional Zoning District if (i) any portion of the Parcel is within two thousand (2000) feet of such existing district, (ii) the Responsible Person of the existing district consents in writing and (iii) the Town Council approves a rezoning of the Parcel to Sustainable Development

Conditional Zoning District SD-CZ in accordance with Sections 2.3.3 and 2.3.16. In such event the SD Plan approved for the existing SD-CZ District shall be applicable to the Parcel(s) added to such existing district, and the development densities authorized in the existing SD Plan (including number of residential units and authorized square footage of other land uses) shall be increased on a pro-rata basis based on the size of the Parcel(s) added to the district, unless the Town Council provides otherwise with the consent of the Responsible Person.

E) ***Procedures***

1) *Overview.* Approval of a Sustainable Development Conditional Zoning District SD-CZ shall constitute an amendment to the Official Zoning District Map. It shall be controlled by an SD Plan that is approved as part of the Sustainable Development Conditional Zoning District SD-CZ designation and that designates the appropriate form and scale of development within the Sustainable Development Conditional Zoning District SD-CZ. The procedure requires review and recommendation of approval or disapproval by the Planning Board and approval, approval with conditions, or disapproval by the Town Council.

2) *General.* The procedures for initiation of the application, the application contents, fees, submission and review by Town staff and/or consulting firms on retainer, public notification, review by the Planning Board and then approval, approval with conditions, or disapproval by the Town Council at a public hearing(s) shall comply with the requirements of Sec. 2.2 *Common Review Procedures,* Sec. 2.2.7 *Neighborhood Meeting* and Sec. 2.3.16(F) *Sustainability Standards*.

F) ***Standards***

1) In return for greater flexibility in site design requirements, the Sustainable Development Conditional Zoning District SD-CZ is expected to deliver exceptional quality designs on a large-scale basis that:

a) facilitate the integration of a broad array of uses;

b) preserve and enhance critical environmental and natural resources, including water resources and ecosystem services in the stream network flowing through the district;

c) incorporate creativity in the design and configuration of buildings, roads, public space and infrastructure; and

d) employ innovative techniques and practices aimed at maximizing efficiency in the use of energy and materials.

In short, the Sustainable Development Conditional Zoning District SD-CZ is expected to provide a high quality of life through the creation of a healthy, living landscape within a high-intensity mixed-use community.

2) The purpose, intent and scale of the Sustainable Development Conditional Zoning District SD-CZ are unique from the other districts established in Sec. 3.2. Thus, the unique nature of the Sustainable Development Conditional Zoning District SD-CZ necessitates alternative standards, regulations, specifications, details, designs, and criteria (the “Sustainability Standards”) to meet the spirit and intent of this Ordinance.

These Sustainability Standards, which shall be set forth in the SD Plan and may be established pursuant to paragraph 3) hereafter, may:

a) specify the nature, density, maximums on development, minimums on development, development thresholds, and design characteristics proposed for the Sustainable Development Conditional Zoning District SD-CZ;

b) address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks;

c) facilitate a full diversity of building types, thoroughfare types, and public space types with appropriate characteristics for their respective locations;

d) facilitate the restoration and enhancement of the environment and natural resources through both accepted practice and innovative practices; and

e) modify and supersede the provisions of this Ordinance or any land development document referenced or incorporated therein, or other land development ordinances or policies of the Town. However, an SD Plan and development pursuant thereto shall conform to all applicable Town ordinances and policies, including the UDO, except to the extent that ordinances or policies, including the UDO, are varied in the approved SD Plan or in Sustainability Standards adopted pursuant to paragraph 3) hereafter. An SD Plan and the Sustainability Standards may not modify the requirement that an SD-CZ District include a minimum of 500 contiguous acres.

3) The Sustainability Standards and other provisions of the SD Plan, as well as Sustainability Standards established pursuant to this paragraph F) 3), shall form the basis for a development of exceptional quality and innovation that is an enhancement to the welfare of the Town's citizens. At any time, and from time to time:

a) with the consent of the Responsible Person, the Town Council may adopt additional or modified Sustainability Standards for an approved SD-CZ District following review and recommendation by the Planning Board;

b) where an SD Plan requires additional or modified Sustainability Standards for an approved SD-CZ District, site plan approval, subdivision approval, construction or grading shall not commence within such SD-CZ District unless and until the required Sustainability Standards are adopted as provided in the SD Plan; with the consent of the Responsible Person, the Town Council shall review and consider and may adopt such additional and modified Sustainability Standards following review and recommendation by the Planning Board;

c) as an amendment to this Ordinance, the Town Council may adopt elective Sustainability Standards for SD-CZ districts, which may, at the election of a Responsible Person, (i) be incorporated, in whole or in part, into an approved SD Plan for an existing SD-

CZ district or (ii) be included within an SD Plan for a proposed SD-CZ district. In the case of an approved SD Plan, the elective Sustainability Standards so incorporated may provide that they serve as a supplement to the provisions of the SD Plan and serve as an alternative to the application of any inconsistent provisions of the Plan;

d) actions by the Town Council under the foregoing subsections 2.3.16(F)(3)(a), (b) and (c) shall be taken in accordance with the provisions of Sec. 2.3.2 applicable to *Amendments to the Text of this Ordinance*. It is provided, however, that such actions may be proposed only by the Town Council, the Planning Director, or the Responsible Person; and

e) this Subsection 2.3.16 does not reduce any authority that the Town otherwise has to amend its UDO or an approved SD-CZ rezoning and SD Plan; the vested rights applicable to a SD-CZ rezoning and SD Plan shall be determined by other applicable law and by the provisions of a developer agreement if any.

G) ***SD Plan***

To the degree necessary and appropriate, the SD Plan and the Sustainability Standards shall include, but shall not be limited to, requirements related to:

1) standards a) through d) set forth in the foregoing Section 2.3.16(F)(1);

2) design guidelines;

3) parks, open space and greenways;

4) water resources and ecosystem services;

5) comprehensive signage;

6) landscaping conditions;

7) parking requirements; and

8) public infrastructure improvements and public facilities.

The SD Plan shall also include a map depicting the concept for the development of the property. To the extent that provisions of the SD Plan or Sustainability Standards vary the provisions of this Ordinance, or other ordinances or policies of the Town, the provisions of the SD Plan or Sustainability Standards shall be applicable.

H) ***Placement of Sustainable Development Conditional Zoning District SD-CZ Designation on Official Zoning District Map***

After final approval of the adopting ordinance for the Sustainable Development Conditional Zoning District SD-CZ designation and the SD Plan, the Planning Director shall amend the Official Zoning District Map to show a Sustainable Development Conditional Zoning District SD-CZ designation.

I) ***Effect***

Approval of an adopting ordinance for Sustainable Development Conditional Zoning District SD-CZ designation and the SD Plan shall constitute an Official Zoning District Map designation and recognition by the Town that the landowner

may proceed, consistent with the SD Plan, to develop the land. The next appropriate development approval for the land is a site plan or subdivision plan.

J) ***Deviation to SD Plan***
When appropriate to further the goals of an approved SD-CZ District and its SD Plan, the Planning Director may approve deviations of up to ten percent (10%) with respect to any standard, design, configuration, disposition, or matter established or quantified in an SD Plan or the Sustainability Standards, except that this authority shall not apply to density, maximums on development, minimums on development or thresholds. Any other modification, revision or supplementation of an SD Plan or the Sustainability Standards shall require the approval of the Town Council following review by the Planning Board.

K) ***Amendment to Sustainable Development Conditional Zoning District SD-CZ***
An amendment to the Official Zoning District Map for a Sustainable Development Conditional Zoning District SD-CZ may be made only pursuant to the procedures and standards for its original approval, and specifically Sec. 2.3.16(D) *Unified Ownership or Control*.

2.3.17 Site Work Prior to Development Approvals
Any work performed on a site prior to being granted an appropriate approval by the Town of Apex as outlined in Section 2.3 shall be in violation of the Unified Development Ordinance.

2.3.18 Utility Service
Development approvals as outlined in Table 2.3.1 and Section 2.3 of this Ordinance do not constitute allocation, reservation, guarantee or the provision of any utility service or capacity.

ARTICLE 3 ZONING DISTRICTS

3.1 PURPOSE AND INTENT

In order to ensure that development in the Town occurs in an orderly and consistent manner, maintains Apex's small town character and historic and cultural heritage, protects natural and scenic resources and does not result in inadequate public facilities, it is necessary and proper to establish a series of zoning districts. Each zoning district has its own purpose and has permitted uses and special uses and other regulations that control the use of land in each district. All development within each zoning district shall be consistent with the purposes stated in this article.

3.2 ZONING DISTRICTS ESTABLISHED

In order to carry out and implement the purpose and intent of this Ordinance, the following thirty-eight (38) zoning districts are hereby established:

3.2.1 Residential Districts

A) ***RA Residential Agricultural District;***
B) ***RR Rural Residential District;***
C) ***LD Low Density Residential District;***
D) ***MD Medium Density Residential District;***
E) ***HDSF High Density Single-Family Residential District;***
F) ***HDMF High Density Multi-Family Residential District;***
G) ***MH Manufactured Housing Residential District;***
H) ***MHP Mobile Home Park District; and***
I) ***MORR Mixed Office-Residential-Retail District.***

3.2.2 Business Districts

A) ***O&I Office and Institutional District;***
B) ***B1 Neighborhood Business District;***
C) ***B2 Downtown Business District;***
D) ***PC Planned Commercial District;***
E) ***TF Tech/Flex District; and***
F) ***LI Light Industrial District.***

3.2.3 Reserved

3.2.4 Other Districts

A) ***CB Conservation Buffer District.***

3.2.5 Conditional Zoning Residential Districts

A) ***RA-CZ Residential Agricultural Conditional Zoning District;***
B) ***RR-CZ Rural Residential Conditional Zoning District;***
C) ***LD-CZ Low Density Residential Conditional Zoning District;***
D) ***MD-CZ Medium Density Residential Conditional Zoning District;***
E) ***HDSF-CZ High Density Single-Family Residential Conditional Zoning District;***
F) ***HDMF-CZ High Density Multi-Family Residential Conditional Zoning District;***
G) ***MH-CZ Manufactured Housing Residential Conditional Zoning District;***
H) ***MHP-CZ Mobile Home Park Conditional Zoning District; and***

I) ***MORR-CZ Mixed Office–Residential-Retail Conditional Zoning District.***

3.2.6 Conditional Zoning Business Districts

A) ***O&I-CZ Office and Institutional Conditional Zoning District;***
B) ***B1-CZ Neighborhood Business Conditional Zoning District;***
C) ***B2-CZ Downtown Business Conditional Zoning District;***
D) ***PC-CZ Planned Commercial Conditional Zoning District;***
E) ***TF-CZ Tech/Flex Conditional Zoning District; and***
F) ***LI-CZ Light Industrial Conditional Zoning District.***

3.2.7 Conditional Zoning Planned Development Districts

A) ***MEC-CZ Major Employment Center Conditional Zoning District;***
B) ***TND-CZ Traditional Neighborhood Conditional Zoning District; and***
C) ***PUD-CZ Planned Unit Development Conditional Zoning District.***

3.2.8 Conditional Zoning Other Districts

A) ***CB-CZ Conservation Buffer Conditional Zoning District; and***
B) ***SD-CZ Sustainable Development Conditional Zoning District.***

3.2.9 Overlay Districts

A) ***Watershed Protection Overlay Districts; and***
B) ***Flood Damage Prevention Overlay District; and***
C) ***Small Town Character Overlay District.***

3.3 DISTRICT PURPOSES

The districts established have the following purposes and intent:

3.3.1 Residential Districts

The purpose and intent of the residential districts is to provide a comfortable, healthy, safe and pleasant environment for persons to live, to protect the Town's existing neighborhoods, to maintain the Town's small-town character, to maintain natural areas and open spaces within neighborhoods, to encourage the development and protection of pedestrian ways within and between neighborhoods, to encourage interconnectivity, and to ensure residential areas are served by adequate public facilities and services and sheltered from incompatible land uses.

A) ***RA Residential Agricultural District***

The purpose and intent of the RA Residential Agricultural District is to protect and enhance an agricultural and rural lifestyle by providing lands that allow for agricultural uses, and very low density rural and residential development. Single family homes in the Residential Agricultural (RA) District shall have an average lot size of 5 acres or greater per residential development.

B) ***RR Rural Residential District***

The purpose and intent of the RR Rural Residential District is to provide for lower density rural and residential development while accommodating smaller lot sizes than the RA Residential Agricultural District. Single family homes in the Rural Residential (RR) District shall have an average lot size of 1 acre or greater per residential development.

C) ***Low Density Residential District***
The purpose and intent of the LD Low Density Residential District is to provide lands for low density, single family residential uses at densities up to 3 units an acre.

D) ***Medium Density Residential District***
The purpose and intent of the MD Medium Density Residential District is to provide lands for medium density single-family and duplex residential uses at densities up to 6 units an acre.

E) ***High Density Single-Family Residential District***
The purpose and intent of the HDSF High Density Single-Family Residential District is to provide lands for high density single-family and duplex residential housing at densities up to 8 units an acre.

F) ***High Density Multi-Family Residential District***
The purpose and intent of the HDMF High Density Multi-Family Residential District is to provide lands for high-density multi-family residential uses, (townhouses, condominiums, apartments, duplexes, triplexes, and quadplexes) at densities up to 14 units an acre.

G) ***MH Manufactured Housing Residential District***
The purpose and intent of the MH Manufactured Housing Residential District is to provide lands for manufactured housing along with other multi-family (townhouse, condominium, duplex, and multi-family dwellings) and single family housing at densities of six units an acre.

H) ***MHP Mobile Home Park District***
The purpose and intent of the MH Mobile Home District is to provide lands for mobile home development in a planned environment at densities of eight units an acre.

I) ***MORR Mixed Office-Residential-Retail District***
The purpose and intent of the MORR Mixed Office-Residential-Retail District is to build on the traditional neighborhood and small-town character of Apex by providing lands that allow a mix of residential, professional office, and limited retail uses that are designed and developed consistent with neo-traditional principles. The district allows single family development on small lots, duplexes, bed and breakfasts, and small-scale professional office and retail uses built to a scale that is consistent with Apex's small-town character. Properties to be rezoned to MORR Mixed Office-Residential-Retail that are greater than or equal to 10 acres in land area shall provide the minimum percentage of non-residential land area for certain mixed-use areas as specified on the 2030 Land Use Map. Properties to be rezoned to MORR Mixed Office-Residential-Retail that are less than 10 acres in land area are exempt from the minimum non-residential percentage requirement.

3.3.2 Business Districts

The purpose and intent of the business districts is to provide lands that allow for a wide range of businesses, services and goods to the residents of Apex and the Triangle region in ways that are consistent with the Town's small-town character, encourage interconnectivity between business uses and residential areas, encourage the development and protection of pedestrian ways between business and residential districts, and ensure businesses are served by adequate public facilities.

A) ***O&I Office and Institutional District***
The purpose and intent of the O&I Office and Institutional District is to encourage development of office and institutional uses at moderate intensities, and the integration of complementary retail uses to service the office and institutional development, primarily at major and minor thoroughfares.

B) ***B1 Neighborhood Business District***
The purpose and intent of the B1 Neighborhood Business District is to encourage the development of small-scale, neighborhood serving commercial and business uses providing a wide range of goods and services, generally located at intersections.

C) ***B2 Downtown Business District***
The purpose and intent of the B2 Downtown Business District is to encourage the development of a high intensity, mixed-use, pedestrian-oriented downtown business district, with retail, financial, service, office, governmental, cultural and entertainment uses, along with residential options on the top floors of buildings.

D) ***PC Planned Commercial District***
The purpose and intent of the PC Planned Commercial District is to encourage the development of a moderate and high intensity mix of convenience and city-wide serving convenience and regional retail and related uses within a planned environment at the intersections of the Town's arterials and major collector roads.

E) ***TF Tech/Flex***
The purpose and intent of the TF Tech/Flex District is to provide locations for a wide range of employment opportunities for office, institutional, research and development and light industrial uses. The district also provides for "flex space" where different combinations of uses on a site may occur over time as the market changes and adjusts to new or different conditions.

F) ***LI Light Industrial District***
The purpose and intent of the LI Light Industrial District is to provide sufficient lands in appropriate locations for certain types of businesses, light manufacturing, or processing uses that might cause undesirable effects upon residential or commercial lands.

3.3.3 Planned Development Districts

The purpose and intent of the planned development districts is to encourage the design of a more complete and sustainable environment consistent with the Town's small-town character through the application of imaginative approaches to community design that allows and encourages mixed uses, design flexibility, pedestrian-oriented development and interconnectivity among uses, sensitivity to the natural environment and natural features, and the coordination of development with the adequacy of public facilities. The specific procedures and standards for the review of planned development districts is found in Sec. 2.3.4, *Planned Development Districts*.

A) ***MEC-CZ Major Employment Center District***
The purpose and intent of the MEC-CZ Major Employment Center District is to encourage the development of a vibrant mix of employment uses at appropriate major intersections and corridors within the Town in a planned and aesthetically pleasing way. This is done by allowing design flexibility as well as a mix of office, research, light industrial, limited neighborhood commercial, and a mixture of residential uses that are reviewed as a plan for development subject to the application of performance standards that:

1) *Integration and mixing of MEC-CZ and a mixture of residential uses.* Encourage the integration and mixing, rather than separation of, major employment center uses and a mixture of residential uses, provided a minimum percentage of non-residential land area is included for certain mixed-use areas as specified on the 2030 Land Use Map;

2) *Interconnectivity.* Encourage interconnectivity between uses;

3) *Small-town character.* Encourage the design of development at a scale that is consistent with Apex's small-town character;

4) *Opportunities for public transportation.* Establish land use patterns that promote and expand opportunities for public transportation and for efficient, compact networks of streets and utilities that lower development and maintenance costs and conserve energy;

5) *Preservation of natural features.* Encourage the preservation of natural features and the natural environment on the site;

6) *Integration of open space into plan for development.* Encourage the integration of open space into the plan for development; and

7) *Public facilities available.* Ensure that public facilities are available to serve the proposed development.

B) ***TND-CZ Traditional Neighborhood District***

The purpose and intent of the TND-CZ Traditional Neighborhood District is to encourage the development of a vibrant mix of residential, retail, and offices uses that adhere to neo-traditional neighborhood principles and that provide a minimum percentage of non-residential land area for certain mixed-use areas as specified on the 2030 Land Use Map. This is done by allowing design flexibility and a mix of residential, retail, office and recreational uses, along with schools and churches, that are reviewed as a plan for development subject to the application of performance standards that:

1) *Neo-traditional design principles.* Generally require the use of a grid pattern for the majority of development, along with back alleyways and garages and parking at the rear of buildings;

2) *Town center*. Require the development of a town center which is memorable – a square, green, and/or transit stop, with retail and offices uses connected to the mix of residential uses in a practical way;

3) *Variety of residential types in neighborhood*. Encourage a variety of dwelling types within a neighborhood;

4) *Shops and offices at edge of neighborhood*. Encourage shops and offices to be located at the edge of neighborhoods;

5) *Schools and churches*. Encourage the location of schools and churches within neighborhoods;

6) *Narrow streets*. Require streets to be relatively narrow, with street trees and sidewalks on both sides;

7) *Passive and active recreational opportunities*. Encourage the provision of both passive and active recreational opportunities. Small playgrounds

and parks should be scattered throughout the neighborhood within walking distance to most of the homes;

8) *Residential uses mixed with offices.* Encourage the location of residential uses as accessory uses on the upper floors of retail and office uses;

9) *Prominent sites*. Encourage prominent sites to be reserved for civic or important buildings

10) *Interconnectivity.* Require interconnectivity between uses;

11) *Small-town character.* Require the design of development at a scale that is consistent with Apex's small-town character;

12) *Expand opportunities for public transportation*. Establish land use patterns that promote and expand opportunities for public transportation and for efficient, compact networks of streets and utilities;

13) *Encourage preservation of natural features.* Encourage the preservation of natural features and the natural environment on the site;

14) *Encourage integration of open space into plan for development*. Encourage the integration of open space into the plan for development; and

15) *Public facilities available.* Ensure that public facilities are available to serve the proposed development.

C) ***PUD-CZ Planned Unit Development District***

The purpose of the PUD-CZ Planned Unit Development District is to permit variations in order to allow flexibility for landowners to creatively plan for a site specific, higher quality overall development of their land in a way that is not possible through the strict application of the minimum standards of this Ordinance. This is done through the application of performance standards that:

1) *Integration and mixing of uses where a mix of uses is proposed with a minimum percentage of non-residential land area for certain mixed-use areas as specified on the 2030 Land Use Map.* Ensure the integration and mixing, rather than separation of uses, so that retail, office, recreational, and educational facilities are conveniently located in relation to housing;

2) *Interconnectivity.* Ensure interconnectivity between uses and adjoining developments;

3) *Small-town character.* Ensure the design of development at a scale that is consistent with Apex's small-town character;

4) *Expand opportunities for public transportation.* Establish land use patterns that promote and expand opportunities for public transportation and for efficient, compact networks of streets and utilities that lower development and maintenance costs and conserve energy;

5) *Preservation of natural features.* Ensure the preservation of natural features and the natural environment;

6) *Integration of Resource Conservation Area into plan for development.* Ensure the integration of RCA into the plan for development; and

7) *Public facilities available.* Ensure that public facilities are available to serve the proposed development.

3.3.4 Other Districts

A) ***CB Conservation Buffer District***
The purpose and intent of the CB Conservation Buffer District is to designate lands that possess unique environmental values that are under public ownership and management.

B) ***Sustainable Development Conditional Zoning District***
The purpose and intent of the Sustainable Development Conditional Zoning District SD-CZ is to encourage the design of a sustainable community through the application of design approaches that allow and encourage flexibility, an intensity of uses, integration among uses, restoration and enhancement of the environment and natural resources, transit-oriented development, pedestrian-oriented development and the efficient use of resources, energy and materials. This shall be accomplished by allowing design flexibility and innovative approaches to environmental stewardship incorporated in a plan for development that:

1) addresses the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks;

2) facilitates a full diversity of building types, thoroughfare types, and public space types with appropriate characteristics for their respective locations; and

3) facilitates the restoration and enhancement of the environment and natural resources.

Further, because the aforementioned design standards are best implemented on a large-scale basis, a purpose and intent of the Sustainable Development Conditional Zoning District SD-CZ is to provide sufficient lands for such implementation. To this end, the Sustainable Development Conditional Zoning District SD-CZ must include a minimum of 500 contiguous acres. An SD-CZ District may include other parcels of any size within 2000 feet of such parcel of at least 500 contiguous acres.

The unique purpose and intent, and the scale and standards to which the development plan must adhere, distinguish the Sustainable Development Conditional Zoning District SD-CZ from the other districts established in Sec. 3.2. Therefore, the specific procedures and standards for the review of the Sustainable Development Conditional Zoning District SD-CZ are found in Sec. 2.3.16, *Sustainable Development Conditional Zoning District SD-CZ*.

3.3.5 Overlay Districts

A) ***Watershed Protection Overlay Districts***
The purpose and intent of the Watershed Protection Overlay Districts (Primary and Secondary) is to ensure the quality of the public drinking water supplies in the Swift Creek Watershed and the Jordan Lake Watershed are preserved and maintained for present and future residents of the Town and the Triangle region. This is done through the application of land use controls and water quality performance standards to development within each watershed.

B) ***Flood Damage Prevention Overlay District***
The purpose and intent of the Flood Damage Prevention Overlay District is to minimize public and private losses due to flood conditions in specific areas of the Town by provisions designed to:

1) Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

2) Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

3) Control the alteration of natural floodplains, stream channels, and natural protective barriers which are involved in the accommodation of floodwaters;

4) Control filling, grading, dredging, and other development which may increase erosion or flood damage; and

5) Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

C) ***Small Town Character Overlay District***
The purpose and intent of the Small Town Character Overlay District is to repeat the spirit of traditional character rather than imitate style. The Overlay identifies the architectural qualities that define the downtown character and proposes design standards to maintain that character in new and infill projects. These standards emphasize existing patterns.

3.4 OFFICIAL ZONING DISTRICT MAP AND DISTRICT BOUNDARIES

3.4.1 Establishment of Official Zoning District Map

The location and boundaries of the zoning districts established in this article shall be set forth on the Official Zoning District Map, which is incorporated herein by reference into this article as if fully described and set forth herein. A copy of the Official Zoning District Map shall be located at all times for inspection by the general public during regular business hours in the office of the Planning Director.

3.4.2 Amendment to the Official Zoning District Map

When pursuant to Sec. 2.3.2, *Amendments to the Text of this Ordinance or the Official Zoning District Map (Rezonings)*, amendments are made to the boundaries of the Official Zoning District Map, such amendments shall be entered on the Official Zoning District Map by the Planning Director promptly following its adoption.

3.4.3 Replacement of Official Zoning District Map

A) ***Official Map Lost, Damaged or Illegible***
In the event the Official Zoning District Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the Town Council shall adopt a new Official Zoning District Map that shall supersede the prior Official Zoning District Map.

B) ***New Official Zoning District Map***

The new Official Zoning District Map may correct drafting and clerical errors or omissions in the prior Official Zoning District Map, but no such corrections shall have the effect of amending the original Official Zoning District Map or subsequent amendments thereto without a duly noticed public hearing pursuant to the procedures and standards of this Ordinance.

ARTICLE 4 USE REGULATIONS

4.1 GENERAL OVERVIEW

4.1.1 General

Uses permitted by right or as a special use pursuant to Sec. 2.3.5, *Special Use*, in each zoning district shall be determined from the Use Table (Table 4.2.2). The use regulations within overlay districts shall be determined by the uses allowed in the underlying base districts, as may be modified by Article 6: *Overlay District Regulations*. Additional use regulations for the Planned Development Districts are specified in Sec. 2.3.4, *Planned Development Districts*.

4.1.2 Outside Storage and Sales

A) The purpose and intent of this section is to allow outside storage, display, and sales/rentals in the RA, MORR, O&I, B1, B2, PC, TF, LI, MEC-CZ, TND-CZ, PUD-CZ, and SD-CZ districts provided that such outside storage, display, and sales/rentals are within designated areas that are adequately screened and meet the standards listed within this section. However, this section does not apply to "Vehicle sales and rental, light".

B) Unless specifically permitted for a particular use and on a site specific development plan, no outdoor storage, display, or sales/rentals are permitted in any district.

C) In the Central Business District, outdoor storage, display, and sales/rentals located on public sidewalks must comply with the following requirements:

1) Outdoor storage, display, and sales/rentals may be located only in those areas designated as "Outdoor Storage, Display, and Sales/Rentals" on an approved site-specific development plan in a form approved by the Planning Director;

2) Outdoor storage, display, and sales/rentals must be located, situated, and conducted in a manner that maintains, and does not encroach into, a 36" clear accessible pedestrian travel path between the brick utility strip adjacent to the sidewalk and the area designated for outdoor storage, display, and sales/rentals; and

3) Outdoor seating and items used in connection with sidewalk cafés, including but not limited to chairs and tables, may not encroach into the 36" clear accessible pedestrian travel path.

D) For those uses that are permitted to have outdoor storage, display, or sales/rentals, the area to be used for outdoor storage, display, or sales/rentals:

1) Must only be those areas designated as outdoor storage, display, or sales/rentals on a site specific development approval.

2) Must meet building setbacks (see Sec. 5.1 *Table of Intensity and Dimensional Standards*).

3) *Industrial and Commercial Uses*

a) For industrial uses, must be located within the side yard and/or rear yard; no outdoor storage, display, or sales/rentals are permitted in the front yard.

b) For commercial uses, must be located within the side and/or rear yard and/or in the front yard if located entirely under the permanent primary building canopy.

For commercial uses displaying outdoor sales of plants, produce, and cut flowers, the following applies:

(i) Must not extend more than ten (10) feet out from the building or fenced outside sales/display area.
(ii) Must not exceed twenty-five percent (25%) or one hundred (100) feet of the length of the building, whichever is less.
(iii) Must not exceed six (6) feet in height.
(iv) Must not interfere with 8.4.4 *Pedestrian Flows*. Outdoor displays shall maintain five (5) feet of sidewalk clear for pedestrian flow. Sidewalks also maintaining a display area must continue to meet NC State Building Code and ADA compliance requirements.

4) Is limited to areas that are surfaced with asphalt, concrete, gravel or other materials that are equal in quality (if approved by the Planning Director).

5) In the case of storage of materials posing an environmental hazard, such as soil, fertilizer, lumber or other loose, unprotected material, shall be fully contained to prevent leaching or run-off.

6) Must be enclosed with a fence if they are secondary to the primary use or structure. In addition, the area and all goods stored, displayed, or for sale/rental must be screened from off-site view, except under the permanent primary building canopy, where goods simply cannot extend past the canopy. Screening shall be achieved through the use of opaque fencing or evergreen plants. Chain-link fencing with vinyl slats is not considered opaque fencing and is not allowed for screening purposes. Plants must be 6' tall or the height of goods stored, displayed, or for sale/rental (whichever is less) at the time of planting and must reach the height of the goods stored, displayed, or for sale/rental within 3 years of planting. Tractor trailers and similar enclosures must be located within the fenced storage, display, and sale/rental area. See also Sec. 8.2.8(A) *Screening*.

7) Must meet all parking requirements of Sec. 8.3.2 *Off-Street Parking Requirements*. In no case shall any parking space designated on a site specific development plan be used for outdoor storage, display, or sales/rentals.

8) Must not interfere with 8.4.4 *Pedestrian Flows*. Outdoor displays shall maintain five (5) feet of sidewalk clear for pedestrian flow. Sidewalks also maintaining a display area must continue to meet NC State Building Code and ADA compliance requirements.

4.2 USE TABLE

4.2.1 General

Table 4.2.2 summarizes the principal use regulations of the base zoning districts and the Planned Development Districts.

A) ***Use Categories***

All the use categories listed in the Use Table are defined in Sec. 4.3, *Use Classifications*. If a use type is listed in Table 4.2.2, Use Table, that use type is allowed only within the districts indicated. The specific subsection in Sec. 4.3, *Use Classifications*, where the use category is defined is identified in the column marked "Definitions."

B) ***P*** ***Uses Permitted By-Right***

A "P" indicates that a use is allowed as a matter-of-right in the respective zoning district, subject to compliance with all applicable regulations in this Ordinance.

C) ***S*** ***Special Uses***

A "S" indicates that a use category or specific use type is allowed only if reviewed and approved in accordance with the procedures and standards of Sec. 2.3.5, *Special Use*.

D) ***%*** ***Allowed as Percentage of Gross Square Footage***

A "%" indicates that a use category or specific use type is allowed in the corresponding zoning district only as a percentage of the total gross square footage of a permitted use ("P" or "S"). Refer to Sec. 4.4, *Supplemental Standards*, for specific standards.

E) ***Uses Not Allowed***

A blank cell indicates that a use type is not allowed in the respective zoning district, unless it is expressly allowed by other regulations of this Ordinance.

F) ***Uses Subject to General and Specific Regulations***

Numbers in the final column of the Use Table indicate that the listed use is subject to use-specific regulations in one or more districts in which the use is allowed. The numbers in the parentheses provide a cross-reference to the use specific regulations, which can be found in Sec. 4.4, *Supplemental Standards*.

G) ***New or Unlisted Uses***

If an application is submitted for a use type that is not listed as a permitted or special use in one or more of the zoning districts, the Planning Director shall be authorized to make a similar use interpretation based on the use category descriptions in Sec. 4.3, *Use Classifications*. The procedure for approving unlisted uses is as follows:

1) *Approval Procedure*

In the event a requested use is neither specifically allowed nor prohibited or restricted by this Ordinance, the Planning Director may approve the unlisted use category if the use meets the criteria listed in subsection 2) below.

2) *Approval Criteria*
The impact of a proposed use should be similar in nature, function, and duration to other uses allowed in a specific zoning district. In making this determination the Planning Director shall consider all relevant characteristics of the proposed use, including but not limited to the following:

a) The volume and type of sales, whether retail or wholesale; the size and type of items sold and nature of inventory on the premises as well as the services provided on the premises; and

b) The type, size and nature of any buildings or structures; and

c) The type of assembly, processing or manufacturing conducted on the premises, including the use of any hazardous or dangerous materials that may be used in the processing; and

d) The character and location of any storage, warehousing, shipping or distribution; and

e) The type of merchandise stored or displayed inside, outside or around the principal building; and

f) The number of employees and expected customers, the business hours, parking requirements, potential for shared parking, ratio of the number of spaces required per unit area or activity; and

g) Transportation impact, including requirements for people and freight, traffic generation to and from the premises, character and volume of the transportation; and

h) The type, frequency, amount, nature and impact of any nuisances occurring because of or generated from the premises, including but not limited to, noise, odor, fumes, light, vibration, and emissions; and

i) Utility requirements for the proposed use as well as any special or significant structures or facilities required or recommended; and

j) The impact on adjacent properties in relation to that of other uses in the zoning district.

3) *Effect of Planning Director Determination*
Upon review of the proposed use the Planning Director shall provide his/her determination in writing to the applicant. The decision will be binding unless appealed. The Planning Director may initiate an amendment to this Ordinance if the proposed use or use category is one that is likely to recur frequently or if the lack of its inclusion or prohibition in this Ordinance would create public uncertainty.

4) *Appeal of Planning Director's Decision*
The Planning Director's Decision may be appealed to the Board of Adjustment consistent with Sec. 2.3.12 of this Ordinance.

H) ***Prohibited Uses***

No hazardous or noxious uses are allowed within any zoning district established by the Unified Development Ordinance, such as, but not limited to:

1) *Abattoirs.*
2) *Acetylene gas manufacture.*
3) *Acid manufacture.*
4) *Ammonia, bleaching powder or chlorine manufacture.*
5) *Asphalt manufacture or refining.*
6) *Brick, tile or terra cotta manufacture.*
7) *Cellophane manufacture.*
8) *Cement, lime or plaster manufacture.*
9) *Creosote manufacture or treatment plants.*
10) *Distillation of bones, coal, petroleum, refuse, tar and wood.*
11) *Explosives, ammunition fireworks or gunpowder manufacture.*
12) *Fat rendering, production of fats and oils from animal or vegetable products by boiling or distillation.*
13) *Fertilizer or any other product involving the use of industry or granular products.*
14) *Garbage, offal and animal reduction and processing.*
15) *Glue and size manufacture.*
16) *Linseed oil, shellac, turpentine manufacture or refining.*
17) *Nitrogenous tankage, fish meal or manufacture of any fertilizer materials.*
18) *Oilcloth or linoleum manufacture.*
19) *Ore reduction.*
20) *Junkyards.*
21) *Pulp mills.*

4.2.2 Use Table

* Uses in the Small Town Character Overlay District (STC) designated as Permitted (P) are only allowed when also designated as Permitted (P) in the underlying zoning district. Uses requiring Special Use Permits (S) in the underlying zoning district are still required to get a Special Use Permit in the STC Overlay District.

* *Uses allowed as a matter-of-right in a Sustainable Development Conditional Zoning District shall be those uses authorized in the Sustainable Development Plan approved for such district. Standards applicable to each such use shall be as provided in this Use Table unless modified by the respective Sustainable Development Plan.

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Residential Uses																							
Accessory apartment	4.3.1.A	P	P	P	P	P				P		P	P				P	P	P		**	P*	4.5.6; 6.3
Condominium	4.3.1.B						P			P							P	P	P		**	P*	4.4.1.A ;6.3
Congregate living facility	4.3.1.C		S	S	S	S	P			S							P	P	P		**		4.4.1.B
Duplex	4.3.1.D				P	P	P			P							P	P	P		**		
Family care home	4.3.1.E	P	P	P	P	P	P	P	P	P							P	P	P		**	P*	4.4.1.C; 6.3
Farm residence	4.3.1.F	P	P																P	P	**		
Manufactured home	4.3.1.H							P													**		4.4.1.E
Mobile home	4.3.1.I								P														
Multi-family or apartment	4.3.1.K						P			P							P	P	P		**	P*	4.4.1.G;6.3
Nursing or convalescent facility	4.3.1.L	S	S	S	S	S	P			S	P			P			P	P	P		**	P*	4.4.1.H; 6.3
Security or caretaker quarters	4.3.1.M	P	P												P	P	P				**		4.4.1.I
Single-family	4.3.1.N	P	P	P	P	P		P		P							P	P	P		**	P*	6.3
Townhouse	4.3.1.O					S	P			P							P	P	P		**	P*	6.3
Townhouse, detached	4.3.1.P				S	S	P			P							P	P	P		**	S*	4.4.1.J; 6.3
Triplex or quadplex	4.3.1.Q						P			P							P	P	P		**		

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Public and Civic Uses																							
Airplane landing strip	4.3.2.A	S	S												S								
Airport	4.3.2.B	S	S												S								
Ambulatory Health-care Facility with Emergency Dept.	4.3.2.C										P								P		**		
Assembly hall, nonprofit	4.3.2.D	S	S							S	P			P	P	P			P		**	P*	6.3
Assembly hall, for-profit	4.3.2.E	S	S							S	P			P	P	P			P		**	P*	6.3
Cemetery	4.3.2.F	P	P																	P	**	P*	4.4.2.A; 6.3
Church or place of worship	4.3.2.G	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S	P/S		**	P/S *	4.4.2.B; 6.3
Day care facility	4.3.2.H	S	S	S	S	S	S	S	S	P	P	P	P	P	%	P	P	P	P		**	P*	4.4.2.C; 6.3
Drop-in or short-term day care	4.3.2.P										P	P	P	P	P	P		P	P		**	P*	4.4.2.F; 6.3
Government service	4.3.2.I	P	P							P	P	P	P	P	P	P	P	P	P		**	P*	6.3
Heliport or helipad	4.3.2.J														P		P				**		
Hospital	4.3.2.K										P						P		P		**		4.4.2.D
School, public or private	4.3.2.L	P	P	P	P	P	P	P		P	P	P				P	P	P	P		**	P*	6.3
Transportation facility	4.3.2.M													P	P	P	P	P	P		**	P*	6.3
Veterinary clinic or hospital	4.3.2.N										P	P	P	P	P	P	P	P	P		**	P*	4.4.2.E; 6.3
Vocational school	4.3.2.O										P	P			P	P	P		P		**	P*	6.3
Utilities																							
Chipping and mulching	4.3.3.A														S						**		4.4.3.A
Communication tower, commercial	4.3.3.B										S			S	S	S			S	S	**		4.4.3.B
Communication tower, constructed stealth	4.3.3.C.1	S	S				S	S	S		S			S	S	S			S	S	**		4.4.3.B.2

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Communication tower, camouflage stealth	4.3.3.C.2	S	S	S	S	S	S	S	S	S	S	S		S	S	S	S	S	S	S	**		4.4.3.B.3
Electrical power facility	4.3.3.D	S	S												S						**		4.4.3.C
Incinerator	4.3.3.E														S						**		
Recycling center	4.3.3.F														P	S					**		4.4.3.D
Recycling collection station	4.3.3.G	P	P		P	P	P	P			P			P	P	S	P	P	P	P	**		4.4.3.E
Recycling plant	4.3.3.H														S						**		4.4.3.F
Sanitary landfill	4.3.3.I														S								4.4.3.H
Utility, minor	4.3.3.J	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	**	P*	4.4.3.G; 6.3
Water reservoir	4.3.3.K	P	P	P																P	**		
Water or wastewater plant	4.3.3.L	P	P	P											P		P	P	P		**		
Land Clearing and Inert Debris Landfill	4.3.3.M														S								4.4.3.I
Wireless support structure	4.3.3.N	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	4.4.3.J
Wireless communication facility	4.3.3.O	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	4.4.3.J
Recreational Uses																							
Arena, auditorium or stadium	4.3.4.A													P	S	S	P		P		**		4.4.4.A
Beach bingo	4.3.4.B											S	S								**	S*	6.3
Botanical garden	4.3.4.C	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	**	P*	6.3
Campground	4.3.4.D	S																		S	**		4.4.4.B
Entertainment, indoor	4.3.4.E											P		P	P	P		P	P		**	P*	6.3
Entertainment, outdoor	4.3.4.F	S												S	S	S		S	S		**		4.4.4.C
Fish hatchery and fish pond	4.3.4.G	P	P																	S	**		
Game rooms and device	4.3.4.H											P									**		4.4.4.D

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Golf course	4.3.4.I	P	P	P	P	P	P												P		**		
Greenway	4.3.4.J	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	**	P*	6.3
Horse boarding and riding stable	4.3.4.K	P	P																S		**		
Park, active	4.3.4.L	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	**	P*	6.3
Park, passive	4.3.4.M	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	**	P*	6.3
Recreation facility, private	4.3.4.N	P	P	P	P	P	P	P	P	P							P	P	P		**	P*	6.3
Regional recreation complex	4.3.4.Q														P/S								4.4.4.F
Youth or day camps	4.3.4.P										P	P	P	P	P	P		P	P		**	P*	4.4.4.E; 6.3
Zoological garden	4.3.4.O	S	S																		**		
Shooting range, indoor	4.3.4.R														P	P							4.4.4.G
Shooting range, outdoor	4.3.4.S		S																				4.4.4.H
Commercial Uses Adult use																							
Adult establishment	4.3.5.A.1														S								4.4.5.A.1
Bar or nightclub	4.3.5.A.2													S				S	S		**		4.4.5.A.2
Electronic gaming operation	4.3.5.A.3														S						**		4.4.5.A.3
Tattoo parlor and body piercing	4.3.5.A.4													P									4.4.5.A.4
Communication																							
Broadcasting station (radio and television)	4.3.5.B.1														P	P	P				**		
Radio and television recording studio	4.3.5.B.2										P	P			P	P					**		
Food and beverage service	4.3.5.C																						
Restaurant, drive-through	4.3.5.C.1									P		P		P			P		P		**		4.4.5.C.1
Restaurant, general	4.3.5.C.2									P	%	P	P	P	P	S	P	P	P		**	P*	4.4.5.C.2; 6.3

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Office and research	4.3.5.D																						
Dispatching office	4.3.5.D.1														P	P			P		**		
Medical or dental office or clinic	4.3.5.D.2									P	P	P	P	P	P	P	P	P	P		**	P*	6.3
Medical or dental laboratory	4.3.5.D.3										P	S			P	P	P		P		**	P*	6.3
Office, business or professional	4.3.5.D.4									P	P	P	P	P	P	P	P	P	P		**	P*	4.4.5.D.2; 6.3
Pilot plant	4.3.5.D.5														P	S	P				**		4.4.5.D.1
Publishing office	4.3.5.D.6										P		P			P	P	P	P		**	P*	6.3
Research facility	4.3.5.D.7														P	P	P		P		**	P*	6.3
Parking, commercial	4.3.5.E																						
Parking garage, commercial	4.3.5.E.1										P	P	P		P		P	P	P		**	P*	4.4.5.E.1; 6.3
Parking lot, commercial	4.3.5.E.2										P	P	P		P		P				**	P*	4.4.5.E.1; 6.3
Public accommodation	4.3.5.F																						
Bed and breakfast	4.3.5.F.1	S	S							S	P		P	P				P	P		**	P*	4.4.5.F.1; 6.3
Hotel or motel	4.3.5.F.2												P	P			P	P	P		**	P*	4.4.5.F.2; 6.3
Retail sales and service	4.3.5.G																						
Artisan Studio	4.3.5.G.38											S	S		P	P			P		**	P/ S*	4.4.5.G.19; 6.3
Barber and beauty shop	4.3.5.G.1									P	P	P	P	P			P	P	P		**	P*	4.4.5.G.1; 6.3
Book store	4.3.5.G.2									P		P	P	P				P	P		**	P*	6.3
Building supplies, retail	4.3.5.G.3											P		P					P		**		
Convenience store	4.3.5.G.4									P		P		P		P	P	P	P		**	P*	4.4.5.G.2; 6.3
Convenience store with gas sales	4.3.5.G.5											P		P		P			P		**		4.4.5.G.2
Dry cleaners and laundry service	4.3.5.G.6									P		P	P	P			P	P	P		**	P*	6.3

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Farmer's market	4.3.5.G.7											P	P					P	P		**	P*	4.4.5.G.3; 6.3
Financial institution	4.3.5.G.8									P	P	P	P	P			P	P	P		**	P*	4.4.5.G.4; 6.3
Flea Market	4.3.5.G.9																		S		**		
Floral shop	4.3.5.G.10									P	P	P	P	P			P	P	P		**	P*	6.3
Funeral home	4.3.5.G.11										P	P	P		P				P		**	P*	6.3
Gas and fuel, retail	4.3.5.G.12													P	P				P		**		4.4.5.G.5
Glass sales	4.3.5.G.13														P	P					**		
Greenhouse or nursery, retail	4.3.5.G.14	P								P		P		P			P		P		**	P*	6.3
Grocery, general	4.3.5.G.15											P		P		P	P	P	P		**	P*	6.3
Grocery, specialty	4.3.5.G.16									P		P	P	P		P	P	P	P		**	P*	6.3
Health/fitness center or spa	4.3.5.G.17									P	P	P		P	P	P	P	P	P		**	P*	6.3
Kennel, indoor	4.3.5.G.18	S										S		P	P			P	P		**		4.4.5.G.6
Kennel, outdoor	4.3.5.G.19		S												P	S					**		4.4.5.G.7
Laundromat	4.3.5.G.21											P		P			P	P	P		**	P*	4.4.5.G.9; 6.3
Monument sales, retail	4.3.5.G.22														P	P					**		
Newsstand or gift shop	4.3.5.G.23									P	%	P	P	P			P	P	P		**	P*	4.4.5.G.10; 6.3
Personal service	4.3.5.G.24									P	%	P	P	P		P	P	P	P		**	P*	4.4.5.G.11; 6.3
Pharmacy	4.3.5.G.25									P	%	P	P	P			P	P	P		**	P*	4.4.5.G.12; 6.3
Printing and copying service	4.3.5.G.26										P	P	P	P		P	P	P	P		**	P*	6.3
Real estate sales	4.3.5.G.27									P	P	P	P	P		P	P	P	P		**	P*	6.3
Repair services, limited	4.3.5.G.28											P			P	P			P		**		
Retail sales, bulky goods	4.3.5.G.29													P	P	P			P		**		
Retail sales, general	4.3.5.G.30									P		P	P	P	%	%	P	P	P		**	P*	4.4.5.G.13; 6.3
Self-service storage	4.3.5.G.31														P	P					**		4.4.5.G.14
Studio for art	4.3.5.G.32									P	P	P	P	P	P	P		P	P		**	P*	6.3
Tailor shop	4.3.5.G.33									P		P	P	P		P	P	P	P		**	P*	6.3

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Theater	4.3.5.G.34											P	P	P			P	P	P		**	P*	4.4.5.G.15; 6.3
Upholstery shop	4.3.5.G.35											P			P	P			P		**		4.4.5.G.16
Pet services	4.3.5.G.36									P		P		P	P	P	P	P	P			P*	4.4.5.G.17
Pawn shop	4.3.5.G.37													P									4.4.5.G.18
Vehicle repair and service	4.3.5.H																						
Automotive paint or body shop	4.3.5.H.1														P	P					**		4.4.5.H.1
Automotive parts	4.3.5.H.2											P		P	P				P		**	P*	6.3
Automotive service station	4.3.5.H.3													P	P				P		**		4.4.5.H.2
Car wash or auto detailing	4.3.5.H.4													P	P	P			P		**		4.4.5.H.3
Repair and maintenance, general	4.3.5.H.5													P	P	P					**		4.4.5.H.4
Towing service	4.3.5.H.6														P						**		4.4.5.H.5
Towing service storage	4.3.5.H.7														P						**		
Truck terminal	4.3.5.H.8														P						**		
Vehicle inspection center	4.3.5.H.9											P		P		P	P		P		**		
Vehicle sales and rental, heavy	4.3.5.H.10														P						**		
Vehicle sales and rental, light	4.3.5.H.11													P	P	P					**	P*	4.4.5.H.6
Industrial Uses																							
Industrial service	4.3.6.A																						
Building supplies, wholesale	4.3.6.A.1														P	P					**		
Contractor's office and storage yard	4.3.6.A.2														P	P					**		
Gas and fuel, wholesale	4.3.6.A.3														P						**		

Use Type	Definition Section	Zoning Districts																					Standards
		Residential									Business						Planned Development			Other			
		RA	RR	LD	MD	HDSF	HDMF	MH	MHP	MORR	O&I	B1	B2	PC	LI	TF	MEC	TND	PUD	CB	SD	STC	Section(s)
Greenhouse or nursery, wholesale	4.3.6.A.4	P																			**		4.4.6.A.1
Laboratory, industrial research	4.3.6.A.5														P	P	P		P		**		
Machine or welding shop	4.3.6.A.6														P	P					**		4.4.6.A.2
Railroad facility	4.3.6.A.7														P						**		
Warehousing	4.3.6.A.8														P	P					**		
Woodworking or cabinetmaking	4.3.6.A.9														P	P					**		
Wholesaling, general	4.3.6.A.10														P	P					**		
Production	4.3.6.B																						
Asphalt or concrete plant	4.3.6.B.1														S								4.4.6.B.1
Brewery	4.3.6.B.7														P	P							4.4.6.B.2
Distillery	4.3.6.B.9														P	P							4.4.6.B.4
Dry cleaning and dyeing plant	4.3.6.B.2														S						**		
Forestry	4.3.6.B.3	P	P																		**		
Laundry plant	4.3.6.B.4														S						**		
Manufacturing and processing	4.3.6.B.5														P	S	P				**		
Microbrewery	4.3.6.B.8											P		P	P	P	P	P	P			P*	4.4.6.B.3
Microdistillery	4.3.6.B.10														P	P			P				4.4.6.B.5
Wood or lumber processing	4.3.6.B.6														S						**		
Agricultural Uses																							
Active farm	4.3.7.A	P	P																P		**		

* Uses in the Small Town Character Overlay District (STC) designated as Permitted (P) are only allowed when also designated as Permitted (P) in the underlying zoning district. Uses requiring Special Use Permits (S) in the underlying zoning district are still required to get a Special Use Permit in the STC Overlay District.

* *Uses allowed as a matter-of-right in a Sustainable Development Conditional Zoning District shall be those uses authorized in the Sustainable Development Plan approved for such district. Standards applicable to each such use shall be as provided in this Use Table unless modified by the respective Sustainable Development Plan.

4.3 Use Classifications

The list of use classifications included in the Use Table (Table 4.2.2) and defined in this subsection is intended to classify uses on the basis of common functional characteristics and land use compatibility. Other uses not specifically listed in the Use Table, but exhibiting similar characteristics to a listed use, shall be so classified by the interpretation of the Planning Director pursuant to the procedures and standards of Sec. 1.6, *Interpretation and Conflict*.

4.3.1 Residential Uses

A) ***Accessory Apartment***
A secondary dwelling unit either (1) inside of or added to an existing single-family dwelling, (2) in an accessory structure on the same lot as the principal single-family dwelling, (3) on any floor except for the ground floor of a commercial use in the B1 Neighborhood Business District, B2 Downtown Business District, MEC-CZ Major Employment Center District, TND-CZ Traditional Neighborhood District, PUD-CZ Planned Unit Development District, or (4) on any floor of a commercial use in the MORR Mixed Office-Residential-Retail District or SD-CZ Sustainable Development Conditional Zoning District. An accessory apartment is a complete, independent living facility equipped with a kitchen and with provisions for sanitation and sleeping. An accessory structure may include a loft.

B) ***Condominium***
A residential development of two or more units in one or more buildings designed and constructed for unit ownership as permitted by the North Carolina Unit-Ownership Act.

C) ***Congregate Living Facility***
A residential land use consisting of any building or section thereof, residence, private home, boarding home, or home for the aged, whether or not operated for profit, which undertakes, for a period exceeding 24 hours, housing, food service, and other related personal services for persons not related to the owner or administrator by blood or marriage. The term shall not mean "nursing home," "intermediate care facility," or similar facility that provides medical care and support services to persons not capable of independent living.

D) ***Duplex***
A structure on a single lot containing two dwelling units. No more than one structure on a single lot is permitted.

E) ***Family Care Home***
A transitional housing facility with support and supervisory personnel licensed by the State of North Carolina or operated by a nonprofit corporation chartered pursuant to Chapter 55A, North Carolina General Statutes, which provides room and board, personal care and rehabilitation services in a supportive family environment for not more than six residents, exclusive of supervisory personal, including but not limited to, handicapped persons, older adults, foster children, abused individuals, homeless persons, and those recovering from drug or alcohol abuse. This use shall include Family Care Homes, as defined in North Carolina General Statute 168-21. This use shall not serve primarily as an alternative to incarceration, shall not include individuals who are dangerous to others, as defined in North Carolina General Statute 122C-3(11)b, and shall not include persons living together as a fraternal, sororal, social, honorary, or professional organization.

F) ***Farm Residence***
A dwelling unit, excluding a mobile home or a manufactured home located on a parcel of land used for a bona fide agricultural use and occupied by the owner or operator of the farm operation.

G) ***Reserved***

H) ***Manufactured Home***

1) A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with a permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained therein (requires a permanent foundation). Manufactured home includes any structure that meets all the requirements of this subsection except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the Secretary of the United States Department of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1974, 42 U.S.C. Section 5401, et. seq.

2) For manufactured homes built prior to June 15, 1976, manufactured home means a portable manufactured housing unit designed for transportation on its own chassis and placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width. Manufactured home also means a double-wide manufactured home, which is two or more portable housing units designed for transportation on their own chassis that connect on site for placement on a temporary or semi-permanent foundation having a measurement of over 32 feet in length and over eight feet in width.

I) ***Mobile Home***
A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation (can be developed without a permanent foundation). A mobile home shall be over 32 feet in length and over 8 feet in width, and shall be for year round occupancy. Mobile home also includes a double-wide mobile home. All mobile homes referred to in this Ordinance shall be constructed in accordance with the rules and regulations set forth in “Mobile Homes, Modular Dwelling Units, and Other Factory Built Structures,” 1970 edition, as published by the North Carolina Department of Insurance, as modified by “Manufacture and Sale of Mobile Homes,” 1971, also published by the North Carolina Department of Insurance, to the extent they are not inconsistent with Secs. 143 144-143.151.1, N.C.G.S.

J) ***Reserved***

K) ***Multi-Family or Apartment***
A structure containing more than four dwelling units, excluding a mobile home or a manufactured home. More than one structure on a single lot is permitted.

L) ***Nursing or Convalescent Facility***
An establishment where, for compensation, care is offered or provided for three or more persons suffering from illness, other than a contagious disease, or

sociopathic or psychopathic behavior, which is not of sufficient severity to require hospital attention, or for three or more persons requiring further institutional care after being discharged from a hospital, other than a mental hospital. Patients usually require domiciliary care in addition to nursing care.

M) ***Security or Caretaker Quarters***
A dwelling unit, which may be a mobile home or a manufactured home located on a site for occupancy by a caretaker or security guard.

N) ***Single-Family***
The use of a single lot for one detached dwelling unit with open yards on all sides, excluding a mobile home or a manufactured home.

O) ***Townhouse***
A structure located on a single lot with two or more dwelling units that are two stories and attached by a party wall to one or more other dwelling units, each on its own lot.

P) ***Townhouse, detached***
The use of a single lot for one detached dwelling unit with open yards on all sides that is planned as an integrated development with a property owners association responsible for all exterior maintenance, excluding a mobile home, a manufactured home, or a single-family home.

Q) ***Triplexes or Quadplexes***
A structure on a single lot containing three or four dwelling units, excluding a mobile home or a manufactured home. No more than one structure on a single lot is permitted.

4.3.2 Public and Civic Uses

A) ***Airplane Landing Strip***
A private ground facility designed to accommodate landing and take-off operations of aircraft used by individual property owners.

B) ***Airport***
Any public or privately owned or operated ground facility designed to accommodate landing and take-off operations of aircraft.

C) ***Ambulatory Healthcare Facility with Emergency Department***
A facility licensed by the State of North Carolina that maintains and operates organized facilities for medical and/or surgical diagnosis and procedures, including outpatient care and emergency department. A helipad shall be considered an accessory use for an Ambulatory Healthcare Facility with Emergency Department.

D) ***Assembly Hall, Nonprofit***
The principal use of a site or facility owned or operated for a social, educational or recreational purpose, but not primarily for profit or to render a service which is customarily carried on as a business. Typical uses include fraternal organizations and union halls.

E) ***Assembly Hall, for-profit***
The principal use of a site or facility owned and/or operated for social, educational, or recreational purposes for-profit. Typical uses include but are not limited to weddings, receptions, private parties, educational/informational

workshops, and classes. No retail sales except under Sec. 4.6.1(C)(5) *Temporary Uses Promotional Event.*

F) ***Cemetery***
Land used or intended to be used for commercial burial, whether human or animal, including a mausoleum, or columbarium.

G) ***Church or Place of Worship***
A site and its buildings used primarily for religious worship and related religious services by a tax-exempt religious group. Churches may include cemeteries belonging to and operated by the church. Churches shall not include day care facilities, pre-schools, schools or homeless shelters, unless they are approved as a special use pursuant to Sec. 2.3.5, Special use.

H) ***Day Care Facility***
An establishment, licensed by an agency of the state of North Carolina, which provides non-medical daytime care or services for three or more persons on a daily or regular basis less than 24 hours a day, but not overnight. Day care facility includes child care facilities as defined by N.C.G.S., day care facilities for adults, and programs for pre-school aged children that provide care for over four hours per day per child.

I) ***Government Service***
Buildings or facilities owned or operated by a government entity that provide services for the public, excluding utility and recreational services. Typical uses include administrative offices of government agencies, post offices, public libraries, and police and fire stations.

J) ***Heliport or Helipad***
An area used for landing or take-off of helicopters, including all of the area or buildings which are appropriate to accomplish these functions, including refueling.

K) ***Hospital***
A facility licensed by the State of North Carolina that maintains and operates organized facilities for medical or surgical diagnosis and procedures, care, including overnight and outpatient care, and treatment of human illness. A helipad shall be considered an accessory use for a hospital.

L) ***School, Public or Private***
A premises or site upon which there is an institution of learning, whether public or private, that conducts regular classes and courses of study required for accreditation as an elementary, secondary, or post–secondary school by the State of North Carolina.

M) ***Transportation Facility***
A facility for loading, unloading, and the interchange of passengers, baggage, and freight or package express between modes of transportation. Typical uses include bus terminals, railroad stations and yards, and major mail-processing centers.

N) ***Veterinary Clinic or Hospital***
An establishment primarily engaged in providing medical care and treatment for animals, provided that such hospital or clinic and any treatment rooms, cages, pens or kennels are maintained in a completely enclosed soundproof building and that the veterinary clinic or hospital is operated in such a way as to produce no objectionable odors outside its walls.

O) ***Vocational School***
An establishment, for profit or not, offering regularly scheduled instruction in technical, commercial, or trade skills such as, but not limited to business, real estate, building and construction trades, electronics, computer programming and technology, automotive and aircraft mechanics and technology, or other types of vocational instruction.

P) ***Drop-In or Short-Term Child Care***
An establishment primarily engaged in the care of children for short periods of time where the parents are easily accessible or on the premises. Drop-In/Short-Term Child Care is not required to be regulated by the State.

4.3.3 Utilities

A) ***Chipping and Mulching***
A permanent facility designed to cut tree limbs and brush into small pieces for use as mulch.

B) ***Communication Tower, Commercial***
Commercial AM/FM radio, television, microwave, digital and cellular telephone transmission and reception towers and accessory equipment and buildings, which are not designed to be stealth communication towers.

C) ***Communication Tower, Stealth***

1) Constructed Stealth Tower. Commercial AM/FM radio, television, microwave, digital and cellular telephone transmission and reception towers and accessory equipment and buildings which are designed to appear like trees, flag poles, or similar uses, so that they can be located and configured to be generally consistent with the character of higher density residential land uses and/or retail land uses.

2) Camouflage Stealth Tower. Transmission and reception devices and accessory equipment which are designed to be an integral part of another permitted structure (e.g., an existing building, water tower, church steeple) will be considered a Camouflage Stealth Tower.

D) ***Electrical Power Facility***
The principal use of land for an electrical generation, distribution, or switching station.

E) ***Incinerator***
A permanent facility operated alone or in conjunction with a landfill for the purpose of burning solid waste or trash to ash.

F) ***Recycling Center***
A permanent facility designed and used for collecting, purchasing, storing, dropping-off and redistributing pre-sorted, recyclable materials that are not intended for disposal. A recycling center shall be used for limited processing of recyclable materials, such as can and glass crushing and sorting.

G) ***Recycling Collection Station***
A mobile container or bin designed and used for deposit of recyclable materials.

H) ***Recycling Plant***
A permanent facility designed and used for receiving, separating, storing, converting, baling or processing non-hazardous recyclable materials that are not intended for disposal. The use may include construction debris recycling or other intensive recycling processes such as chipping and mulching.

I) ***Sanitary Landfill***
A disposal facility employing an engineered method of disposing of solid waste on land in a manner that minimizes environmental hazards.

J) ***Utility, Minor***
Elements of utility distribution, collection, or transmission networks, other than electrical power facilities, required by their nature to be relatively dispersed throughout the service area. Typical uses include gas and water substations, water towers, sewage lift stations, electrical substations and telephone exchange buildings and substations.

K) ***Water Reservoir***
Either a natural or man–made body of water, like a lake, where water is stored for drinking.

L) ***Water or Wastewater Plant***
A central water system or a wastewater treatment facility.

M) ***Land Clearing and Inert Debris Landfill***
A disposal facility that consists of solid waste that is generated solely from land-clearing activities such as stumps and trees; and inert debris such as brick, concrete and clean soil.

N) ***Wireless Support Structure***
A new or existing structure, including but not limited to, a monopole, lattice tower, or guyed tower that is designed to support or is capable of supporting wireless communication facilities in public rights-of-way.

O) ***Wireless Communication Facility***
The set of equipment and network components in a public right-of-way, exclusive of the underlying wireless support structure, including but not limited to antennas, transmitters, receivers, base stations, power supplies, cabling, backhaul transmission equipment, distributed antenna systems, and associated equipment necessary to provide wireless data and wireless telecommunications services to a discrete geographical area.

4.3.4 Recreational Uses

A) ***Arena, Auditorium, or Stadium***
An open, partially enclosed or fully enclosed facility primarily used or intended for commercial spectator sports or entertainment. Typical uses include convention and exhibition halls, sports arenas and amphitheaters.

B) ***Beach Bingo***
An establishment that promotes bingo games which have prizes of 10 dollars or less or merchandise that is not redeemable for cash and that has a value of 10 dollars or less.

C) ***Botanical Gardens***
A large garden for the exhibition and scientific study of collected, growing plants, usually in association with greenhouses, and/or herbariums.

D) ***Campground***
Land established as a commercial campsite for recreational use and not as living quarters.

E) ***Entertainment, Indoor***
An establishment offering entertainment or games of skill to the general public for a fee or charge where the activity takes place indoors. Typical uses include bowling alleys, indoor tennis facilities, indoor swimming pools, inflatable play equipment, and racquet clubs.

F) ***Entertainment, Outdoor***
An establishment offering entertainment or games of skill to the general public for a fee or charge wherein any portion of the activity takes place in the open, excluding golf courses and public parks. Typical uses include archery ranges, athletic fields, batting cages, golf driving ranges and miniature golf courses, swimming pools and tennis courts.

G) ***Fish Hatchery and Fish Pond***
A place within a lake or river, established either for commercial or non-commercial purposes, where fish lay eggs and their young are nurtured and raised.

H) ***Game Rooms***
Any place of business primarily established to operate video games, mechanical games, pay devices, or tables for which charge in money or some other valuable is made either directly or indirectly. Game rooms include but are not limited to, poolrooms, billiard halls, amusement centers, and other businesses that primarily operate video or mechanical devices or games for profit. Accessory game rooms are permitted in establishments such as, but not limited to, community centers, restaurants, bowling alleys, and retail establishments.

I) ***Golf Course***
A facility providing a private or public golf recreation area designed for executive or regulation play along with a golf support facility. Golf course does not include a miniature golf facility.

J) ***Greenway***
Public or private lands relying on a natural or man-made resource base that provides opportunities for active recreational activities, passive recreational opportunities or open space lands.

K) ***Horse Boarding and Riding Stable***
A facility for the care and feeding of four or more horses for a fee.

L) ***Park, Active***
A park that provides opportunities for active recreational activities to the general public like ballfields, jogging trails, exercise areas, and playgrounds.

M) ***Park, Passive***
A public or private outdoor recreational use relying on a natural or man-made resource base that is developed with a low intensity of impact on the land. Typical uses include trail systems, wildlife management and demonstration areas for historical, cultural, scientific, educational or other purposes that relates to the natural qualities of the area, and support facilities for such activities. Support facilities may include caretakers quarters.

N) ***Recreation facility, private***
A private recreational facility located within a residential subdivision or multi-family development. Typical facilities include, but are not limited to, playgrounds, clubhouses, swimming pools, pool houses, tennis courts, volleyball courts, and basketball courts. These facilities may allow non-resident memberships but are primarily for the use of the residents of the subdivision or multi-family development.

O) ***Zoological Garden***
A public park or large enclosure where live animals are kept for display to the public.

P) ***Youth or Day Camps***
An establishment providing activities for groups of school-aged children such as YMCA camps and indoor or outdoor activities for children, including but not limited to, sports, arts and crafts, music instruction, entertainment, recreation, educational activities, swimming, fishing, horseback riding, and incidental food service.

Q) ***Regional Recreation Complex***
A large, for-profit facility typically composed of a variety of indoor and outdoor recreation and amusement activities such as, but not limited to, bowling, laser tag, go-carts, zip lines, ropes courses, bungee jumping, rock climbing, arcades, sports courts, skating, trampolines, and similar uses. Accessory uses may include restaurant with bar (see Section 4.4.4), concession stands, equipment rental counters, and event rooms. The use does not allow for traditional amusement parks or theme parks where the majority of the rides are outdoor thrill rides, such as roller coasters. Outdoor recreation and amusement activities that are part of a regional recreation complex must be approved under a Special Use Permit as an accessory use to an indoor facility.

R) ***Shooting Range, Indoor***
A fully enclosed building or part of a fully enclosed building specifically designed and operated for the use of rifles, shotguns, pistols, black powder, archery, or any other shooting activity.

S) ***Shooting Range, Outdoor***
An outdoor area designed and operated for the use of rifles, shotguns, pistols, black powder, archery, or any other shooting activity; provided, however, that the presence of buildings and/or accessory structures, including, but not limited to, sheltered firing lines, firing ports, stations, pavilions, sheds and canopies, on or within the outdoor area shall be permitted and the presence of such building or structures shall not cause an outdoor shooting range to be considered an indoor shooting range.

4.3.5 Commercial Uses

A) ***Adult Use***

1) *Adult establishment*. Any place defined as an adult establishment by N.C.G.S 14–202.10, as amended, except the definition of massage business shall not include any establishment or business where massage is practiced that is a health club, exercise studio, hospital, physical therapy business or similar health related business. Adult establishment specifically includes any massage business where massages are rendered by any person exhibiting “specified anatomical areas” and/or where massages are performed on any client’s “specified anatomical areas” as defined by N.C.G.S. 14–202.10, as amended.

2) *Bar or nightclub*. "Bar" and "nightclub" are synonymous and mean a non-restaurant establishment that generates more than 10% of its quarterly gross receipts from the sale of alcoholic beverages from on-premise consumption. Bars and nightclubs may include live bands, other music, and dancing as well as games of skill such as pool or darts for use by the patrons of the establishment.

3) *Electronic gaming operations*. Any business enterprise, whether as a principal or accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, whether connected to the internet or not, to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds, which have a finite pool of winners. Electronic gaming operations including, but not limited to, internet cafés, internet sweepstakes, business centers, electronic gaming machines/operations, video sweepstakes, cybercafés, or by whatever other terminology such establishment might be known. This does not include any lottery approved by the State of North Carolina. Businesses which could have legally obtained a Certificate of Zoning Compliance for accessory use of Electronic Gaming Operations and had Electronic Gaming machines on their premises prior to March 2, 2010 may legally continue operation of their Electronic Gaming Operations as an accessory use.

4) *Tattoo parlor and body piercing*. An establishment whose principal business activity is the practice of placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin and regulated by N.C.G.S. 130A-283 *Tattooing Regulated*, as amended, and N.C.G.S. 14-400 *Tattooing: Body Piercing Prohibited*, as amended. Accessory uses may include body piercing.

B) ***Communications***

1) *Broadcasting station (radio and television).* An establishment primarily engaged in the provision of commercial broadcasting services accomplished through the use of electronic mechanisms. Typical uses include radio and television broadcasting studios.

2) *Radio and television recording studio*. An establishment primarily engaged in the development and recording of programs for radio and television (but not broadcasting).

C) ***Food and Beverage Service***

1) *Restaurant, drive-through*. An establishment where the principal business is the sale of food and beverages to the customer in a ready-to-consume state and where the design or principal method of operation is that of a fast-food or drive-through restaurant offering quick food service, where orders are generally not taken at the customer's table but at a counter, where food is generally served in disposable wrapping or containers, and where food and beverages may be served directly to the customer in a motor vehicle at a drive–through window.

2) *Restaurant, general*. "Restaurant, general" means an establishment where the principal business is the sale of food and non-alcoholic beverages in a ready-to-consume state, the receipts from alcohol sales do not exceed the limit stated in UDO Subsection 4.3.5(C)(2)(e), and the design or principal method of operation consists of one or more of the following:

a) A sit-down restaurant or café where customers normally sit at a table, are provided with an individual menu, and are generally served food and beverages in non-disposable containers by a restaurant employee. Customers may also be served food and beverages by a restaurant employee at a counter; or

b) A cafeteria or cafeteria-type operation where foods and beverages generally are served in non-disposable containers and consumed within the restaurant; or

c) A restaurant, which may have characteristics of a fast food restaurant, having floor area exclusively within a shopping or office center, sharing common parking facilities with other businesses within the center, and having access to a common interior pedestrian accessway.

d) An establishment primarily engaged in the retail sale of a limited variety of baked goods, candy, coffee, ice cream or other specialty food items, which may be prepared for on-premises sale and which may be consumed on the site, but excluding any service to a customer in an automobile. Typical uses include delicatessens, retail bakeries, coffee shops, donut shops, and ice cream parlors.

e) This use may include the on-premise sale, service and consumption of alcoholic beverages as an accessory and secondary use, provided that an establishment's quarterly gross receipts from the sale of alcoholic beverages for on-premise consumption shall not exceed 49% of the establishment's quarterly total gross receipts from the sale of food, non-alcoholic beverages, and alcoholic beverages.

D) ***Office and Research***

1) *Dispatching office*. An establishment principally involved in providing services off-site to households and businesses. Typical uses include janitorial services, pest control services, and taxi, limousine, and ambulance services.

2) *Medical or dental clinic or office*. An establishment where patients, who are not lodged overnight except for emergency treatment, are admitted for examination and treatment by one (1) person or group of persons practicing any form of healing or health-building services to individuals, whether such persons be medical doctors, chiropractors, osteopaths, podiatrists, optometrists, dentists, orthodontists, naturopaths, homeopaths, nutritionists, licensed therapeutic massage therapists, psychologists, psychiatrists, rehabilitation therapists, speech and language therapists, occupational therapists, acupuncturists or any such profession, the practice of which is lawful in the State of North Carolina.

3) *Medical or dental laboratory*. A facility for the construction or repair of prosthetic devices or medical testing exclusively on the written work order of a licensed member of the dental or medical profession and not for the public.

4) *Office, business or professional*. An establishment providing executive, management, administrative or professional services, but not involving medical or dental services or the sale of merchandise, except as incidental to a permitted use. Typical uses include property and financial management firms, insurance agencies, employment agencies, travel agencies, advertising agencies, secretarial and telephone services; professional or consulting services in the fields of law, architecture, design, engineering, accounting and similar professions; and business offices of private companies, non-profit organizations, utility companies, contractor's office without storage yard, public agencies, and trade associations.

5) *Pilot plant*. A facility in which processes planned for use in production elsewhere are tested.

6) *Publishing office.* An establishment engaged in the preparation and editing of books, magazines, newsletters, and other related material for publication, and the production of that material.

7) *Research facility.* An establishment providing offices and other related facilities for high tech and drug research.

E) ***Parking, Commercial***

1) *Parking garage, commercial*. A building or other structure that provides temporary parking for motor vehicles, for profit, where some or all of the parking spaces are not accessory to another principal use.

2) *Parking lot, commercial*. A paved area intended or used for the off-street parking of motor vehicles on a temporary basis, other than accessory to a principal use, for profit.

F) ***Public Accommodation***

1) *Bed and breakfast*. An owner–occupied structure that is residential in character that offers lodging for paying guests and which serves breakfast to these guests.

2) *Hotel or motel*. An establishment providing guest rooms for lodging, typically on a less than weekly basis, with no or minimal kitchen facilities in the guest units. Guest units may be reached either from a common entrance or directly from the outside of the building. The hotel or motel may have a restaurant as an accessory use, and recreational facilities such as swimming pools and fitness centers.

G) ***Retail Sales and Service***

1) *Barber and beauty shop*. An establishment primarily engaged in the cutting and styling of hair.

2) *Book store*. An establishment primarily engaged in the retail sale of books and periodicals.

3) *Building supplies, retail*. An establishment primarily engaged in the retail sale of building supplies and home improvement products including, but not limited to, swimming pools, spas, greenhouses, and outdoor play sets. In the B2 District, this includes traditional hardware stores not exceeding 7,000 square feet in area, but not building supplies or hardware stores in excess of 7,000 square feet.

4) *Convenience store*. An establishment engaged in the retail sale of food, beverages, and other frequently or recurrently needed items for household use.

5) *Convenience store with gas sales*. An establishment engaged in the retail sale of food, beverages, and other frequently or recurrently needed items for household use, including accessory gasoline sales.

6) *Dry cleaners and laundry service*. An establishment that provides washing, drying, dry cleaning, or ironing services for customers, who drop–off and pick-up their clothes or other materials for dry cleaning or laundering.

7) *Farmer's market.* A partially enclosed establishment principally involved in the sale of locally grown fresh produce.

8) *Financial institution*. An establishment engaged in deposit banking. Typical uses include commercial banks, savings and loan institutions, and credit unions, including outdoor automated teller machine facilities.

9) *Flea market.* A building in which stalls or sales areas are set aside and rented or otherwise provided, and which are intended for use by various unrelated individuals to sell articles that are homemade, homegrown, handcrafted, old, obsolete, or antique and may include the selling of goods at retail by businesses or individuals who are generally engaged in retail trade.

10) *Floral shop*. An establishment whose principal use is the arrangement and retail sale of flowers and floral arrangements.

11) *Funeral home*. An establishment engaged in preparing the deceased for burial and arranging and managing funerals. Funeral homes may include crematories.

12) *Gas and fuel, retail*. The use of land for the retail distribution of gasoline and other fuels, primarily for vehicles.

13) *Glass sales*. An establishment primarily engaged in the retail sale of glass for residences and businesses.

14) *Greenhouse or nursery, retail*. An establishment primarily engaged in the retail sale of horticultural specialties such as flowers, shrubs, and trees, intended for ornamental or landscaping purposes.

15) *Grocery, general*. An establishment primarily engaged in the indoor retail sale of food and other related household items including but not limited to produce, meat and fish, breads, milk, juices, and other beverages (both non-alcoholic and beer and wine), frozen and concentrated foods, toiletries, and medication.

16) *Grocery, specialty*. An establishment primarily engaged in the indoor retail sale of specialty grocery items such as gourmet foods, butcher shops, fish shops, fruit and vegetable markets.

17) *Health/fitness center or spa*. A building generally containing multi-use facilities for conducting recreational activities, including but not limited to the following: aerobic exercises, weight lifting, basketball, running, swimming, racquetball, handball, tennis, squash, cheerleading, gymnastics, and dance studio. A health/fitness center or spa may also include the following customary accessory activities as long as they are primarily intended for the use of the members of the center and not for the general public: Babysitting service, bathhouse, and food services. Other services that may be provided include personal care services such as facials, manicures, body wraps, therapeutic massages, etc.

18) *Kennel, indoor*. Any enclosed building, for the raising, boarding or breeding of such domesticated animals as dogs and cats, not necessarily owned by the occupants of the premises.

19) *Kennel, outdoor*. Any facility including outdoor areas used, designed or arranged to facilitate the care of such domestic animals as dogs and cats, not necessarily owned by the occupants of the premises. Uses include but are not limited to overnight boarding, daycare, and training.

20) *Reserved*.

21) *Laundromat.* An establishment that provides home-type washing and drying facilities for persons on a self–service basis, for profit.

22) *Monument sales, retail*. An establishment primarily engaged in the retail sale of monuments, such as headstones, footstones, markers, statues, obelisks, cornerstones, and ledges, for placement on graves.

23) *Newsstand or gift shop*. A small establishment primarily engaged in the retail sale of gifts, novelties, greeting cards, newspapers, magazines, or similar items.

24) *Personal service.* An establishment primarily engaged in the provision of frequently or recurrently needed services of a personal nature, or the provision of informational, instructional, personal improvement or similar services, which may involve the limited accessory sale of retail products. Typical uses include art and music schools and driving schools.

25) *Pharmacy.* An establishment where prescription and other drugs and medications are prepared and sold, along with other related household items. A pharmacy may also include as an accessory use (in no more than 15 percent of the establishment) a soda fountain and/or coffee shop that sells drinks and prepared food.

26) *Printing and copying service*. An establishment engaged in retail photocopy, reproduction, or blueprinting services, both manual and electronic.

27) *Real estate sales*. An establishment engaged in the sale of real property consistent with the requirements of the N.C.G.S.

28) *Repair services, limited*. An establishment engaged in the repair of household appliances, furniture, and similar items, excluding repair of motor vehicles. Typical uses include small appliance repair (including

golf carts, mopeds, and lawn mowers), bicycle repair, clock and watch repair, and shoe repair shops.

29) *Retail sales, bulky goods.* An establishment providing retail sales or rental of large items, such as household or office furniture, major household appliances, mattresses; or retail sales or rental of small machines such as lawnmowers, mopeds, and motorcycles, including incidental repair services. Retail sales, bulky goods does not include mobile home sales and servicing.

30) *Retail sales, general*. An establishment providing general retail sales or rental of goods, but excluding those uses specifically classified in another use type. Typical uses include; business machine sales; the sale of electronic equipment like computers, TVs, audio visual equipment and cameras; antique stores; sporting goods stores; shoe stores; interior design businesses with retail sales; jewelry stores; rental and accessory repair stores, clothing stores, department stores, discount stores, floor covering stores, garden supply stores, office supply stores, optical retail sales, paint stores, toy stores and variety stores. Repair services for bicycles, jewelry, clocks, lamps, small appliances and similar items are also permitted when they are offered as a service by a business primarily engaged in the retail sale of that good.

31) *Self-service storage*. An enclosed storage facility of a commercial nature containing independent, fully enclosed bays that are leased to persons exclusively for storage of their household goods or personal property.

32) *Studio for art*. Studios and workplaces of photographers, musicians, and artists.

33) *Tailor shop*. An establishment engaged in the custom design, and sewing of clothes for men, women and children.

34) *Theater.* An establishment for showing motion pictures or live performances in an enclosed theater.

35) *Upholstery shop*. An establishment engaged in furniture repair and re-upholstering.

36) *Pet services*. An indoor establishment primarily engaged in services provided to live companion pets which include but are not limited to: pet day spa, pet grooming, pet daycare with no outdoor play area, pet training, pet photography, leg banding, microchip services, and other related uses.

37) *Pawn shop*. An establishment where a pawnbroker licensee is authorized to: (i) make loans on pledges of tangible personal property, (ii) deal in bullion stocks, (iii) purchase merchandise for resale from dealers, traders, and wholesale suppliers, and (iv) use its capital and funds in any lawful manner within the general scope and purpose of its creation.

38) *Artisan studio.* An establishment that is characterized by the production and sale of custom goods made primarily by hand in which the production area is no larger than 2,500 square feet, including but not limited to jewelry; pottery and other ceramics; candles; soap; art or craft products primarily made of metal, wood, glass or similar materials; woodworking; or cabinet making.

H) ***Vehicle Repair and Service***

1) *Automotive paint or body shop*. An establishment primarily engaged in the painting, repainting, or retouching of motor vehicles, or the performance of major external repairs of a non-mechanical nature for motor vehicles.

2) *Automotive parts*. An establishment primarily engaged in the sale of automotive parts, small engine parts, and other related parts.

3) *Automotive service station.* An establishment primarily engaged in the retail sale of gasoline or other motor fuels. Activities may include accessory activities such as the sale of accessories or supplies, the lubrication of motor vehicles, the minor adjustment or repair of motor vehicles, or the sale of convenience food items. Typical uses include gas stations, with or without accessory convenience food sales.

4) *Car wash or auto detailing*. An establishment primarily engaged in the washing or detailing of motor vehicles. Car washes may use production line methods with a conveyor, blower, or other mechanical devices, and/or may employ hand labor. Detailing includes hand washing and waxing, window tinting, striping, and interior cleaning.

5) *Repair and maintenance, general*. An establishment engaged in the repair and maintenance of motor vehicles or other heavy equipment or machinery, including automobiles, boats, motorcycles and trucks, excluding paint and body work. Typical uses include automobile repair garages, automobile tune-up stations, automotive glass shops, quick-lubes and muffler shops. General repair and maintenance does not include mobile home servicing.

6) *Towing service*. The use of land for the operation of a business primarily engaged in the towing of vehicles with no sales or repair activity occurring on the lot. Towing service does not include the storage of towed vehicles prior to retrieval by the owner or another party.

7) *Towing service storage*. The use of land for the temporary storage of operable or inoperable vehicles prior to retrieval by the owner or another party in conjunction with a commercial towing service. Towing service storage may include vehicle repair but not sales.

8) *Truck terminal*. A facility for loading and unloading freight or package express from trucks.

9) *Vehicle inspection center*. An establishment engaged in vehicle inspection or the testing of motor vehicle emissions, but not engaged in any vehicle repair.

10) *Vehicle sales and rental, heavy.* An establishment engaged in the retail or wholesale sale or rental, from the premises, of motorized vehicles or equipment, along with incidental service or maintenance. Typical uses include boat sales and rental; recreational vehicle sales; construction equipment rental yards; moving truck, van, and trailer rental; and farm equipment and machinery sales and rental.

11) *Vehicle sales and rental, light*. An establishment engaged in the retail sale or rental, from the premises, of new or used motorized vehicles to include cars, vans, pick-up trucks, and sport utility vehicles, along with incidental service or maintenance. It shall not include moving trucks, vans, trailers or any other vehicles used for the purpose of moving.

4.3.6 Industrial Uses

A) ***Industrial Service***

1) *Building supplies, wholesale*. An establishment primarily engaged in the sale, fabrication, and outdoor storage of lumber and allied products to contractors for the construction, maintenance, repair and improvement of land. Retail sales of lumber and allied products to the consumer may be conducted, but must be clearly accessory to the primary use.

2) *Contractor's office and storage yard*. An office and accessory storage facility used by building trade, landscape maintenance and installation, and service contractors on land other than construction sites.

3) *Gas and fuel, wholesale*. The use of land for bulk storage and wholesale distribution of 2,500 gallons or more of flammable liquid, or 2,000 gallons water capacity or more of flammable gas, excluding below-ground storage which is clearly accessory to the principal use on the site.

4) *Greenhouse or nursery, wholesale*. The cultivation for wholesale sale of horticultural specialties such as flowers, shrubs, and trees, intended for ornamental or landscaping purposes.

5) *Laboratory, industrial research*. An establishment engaged in research of an industrial or scientific nature, other than medical testing and analysis and routine product testing, which is offered as a service or which is conducted by and for a private profit-oriented firm.

6) *Machine or welding shop*. A workshop where machines, machine parts, or other metal products are fabricated. Typical uses include machine shops, welding shops and sheet metal shops.

7) *Railroad facility*. A facility for loading, unloading, and the interchange of passengers, baggage, and freight using the railroad, as well as facilities used for the repair and maintenance of railroad equipment.

8) *Warehousing.* An establishment primarily engaged in the storage of materials, equipment, or products within a building for manufacturing use or for distribution to wholesalers or retailers, as well as activities involving significant movement and storage of products or equipment. Typical uses include motor freight transportation, moving and storage facilities, cold storage, warehousing and dead storage facilities, but exclude self-service storage facilities and office–warehouse combinations.

9) *Woodworking or cabinetmaking*. An establishment engaged in the production of finished products from wood.

10) *Wholesaling, general.* An establishment primarily engaged in the display, storage, distribution and sale of goods to other firms for resale, but excluding vehicle sales, wholesale greenhouses or nurseries, wholesale of gas and fuel, and wholesale building supplies.

B) ***Production***

1) *Asphalt or concrete plant*. An establishment engaged in the manufacture, mixing or batching of asphalt, asphaltic cement, cement or concrete products.

2) *Dry cleaning and dyeing plant*. An establishment engaged in dry cleaning of clothes and other materials on site, as well as the coring of cloth for commercial purposes.

3) *Forestry.* The scientific management of forests, primarily for commercial purposes.

4) *Laundry plant*. An establishment that carries on washing, drying, dry-cleaning and ironing services on-site, for customers who drop-off and pick-up at a different location.

5) *Manufacturing and processing*. An establishment engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging of such products, and incidental storage, sales and distribution of such products, but excluding heavy industrial processing. Typical uses include food processing and beverage bottling, large-scale bakeries, electronics assembly, pharmaceuticals, monuments, tobacco products, dry cleaning plants and printing and publishing.

6) *Wood or lumber processing*. An establishment engaged in the production of lumber or similar building material products from wood.

7) *Brewery*. A facility for the brewing of beer that produces greater than 15,000 barrels per year.

8) *Microbrewery*. A small facility for the brewing of beer that produces less than 15,000 barrels per year. It may include a tasting room and retail space to sell the beer to patrons on the site.

9) *Distillery*. A facility for the distillation of spirituous liquor that produces greater than 15,000 barrels per year.

10) *Microdistillery*. A small facility for the distillation of spirituous liquor that produces less than 15,000 barrels per year. It may include a tasting room on the site.

4.3.7 Agricultural Uses

A) ***Active Farm***
Uses that are in active agricultural operations, like the raising of agricultural products, forestry products, livestock, poultry and dairying.

4.4 SUPPLEMENTAL STANDARDS

This section contains the supplementary standards for the specific uses that are identified in the Use Table (Table 4.2.2). In the case of conflict with other provisions of this Ordinance, the more restrictive standard shall apply, unless otherwise specifically provided.

4.4.1 Residential Uses

A) ***Condominium***

1) All condominium developments with one or more dumpsters or a trash compactor must provide a recycling area and a cardboard dumpster; both shall be screened with similar materials to the dumpster or compactor enclosure;

2) The overall enclosure design must comply with the standards found in the Town's *Design and Development Manual*.

B) ***Congregate Living Facility***
A congregate living facility use shall comply with the following standards:

1) *Potable water supply and sewage disposal systems*. Potable water supply and sewage disposal systems shall be provided for a congregate living facility;

2) *Compatibility / handicap access.* The facility shall:

a) Be physically designed to conform to and be compatible with the general architectural character of the neighborhood in which it is proposed to be developed in terms of its height, bulk, materials and style; and

b) Comply with all regulations regarding handicapped access pursuant to federal and State law;

3) *Reserve land for conversion other permitted use*. Additional land shall be reserved that is sufficient in area to meet future parking standards if the facility is converted to any other permitted use, based on the standards in Sec. 8.3, *Off-street Parking and Loading*. The boundaries of the reserve parking area shall be identified;

4) *Drop-off area.* A safe drop-off area shall be established for group transportation, such as vans or similar vehicles;

5) *Food dispensing and consumption*. The facility shall provide and continuously maintain central facilities for daily food dispensing and consumption. Individual kitchen facilities may be provided in the living quarters of a congregate living facility;

6) *Limited amount of commercial uses*. A limited amount of commercial uses may be developed as permitted accessory uses in a congregate living facility. Such uses shall be limited to retail and congregate living personal service uses designed to serve exclusively the residents of the facility, such as a barber or beauty shop, small convenience retail sales and banking services. No more than 10 percent of the gross floor area of the facility shall be dedicated to such commercial uses. There shall be no exterior signage or other indication of the existence of these commercial uses that may attract nonresidents; and

7) *Conversion to conventional dwelling units*. Prior to conversion to conventional dwelling units, a structure designed to accommodate a congregate living facility shall, if necessary, be structurally modified to comply with the standards of this Ordinance. Congregate living facilities

that are converted to other uses, including other residential uses, shall comply with all standards in effect at the time of application.

C) ***Family Care Home***
No new family care home is permitted within a one-half mile radius of an existing family care home.

D) ***Reserved***

E) ***Manufactured Home***
A manufactured home use shall comply with the following standards:

1) *Single family dwelling unit.* It shall only be occupied as a single family dwelling unit;

2) *Twenty-four feet in width.* It shall be a minimum of 24 feet in width (measured along the narrowest axis);

3) *Length.* Its length shall not exceed its width by three times (measured along the longest axis, excluding towing apparatus, wheels, axles and transporting lights);

4) *Set-up.* The set-up of the manufactured home shall be consistent with the predominant number of units in the surrounding neighborhood, and shall be in accordance with the standards established by the North Carolina Department of Insurance;

5) *Continuous masonry wall.* A continuous masonry wall, unpierced except for required ventilation and access, shall be installed under the perimeter of the manufactured home; it shall be constructed in accordance with the standards of the North Carolina Uniform Residential Building Code for One and Two Family Dwellings;

6) *Exterior.* The exterior of the manufactured home shall consist of one or more of the following materials:

a) Vinyl or metal siding (whose reflectivity does not exceed that of white paint);

b) Cedar or other wood siding;

c) Weather resistant press board siding;

d) Stucco siding, brick or stone siding, which shall be comparable in appearance and durability to the exterior siding commonly used in the standard residential construction of the surrounding neighborhood;

7) *Pitch of roof.* The pitch of the roof shall have a minimum vertical rise of three and one-half feet for each 12 feet of horizontal run;

8) *Roof covering.* The roof shall be finished with a roof covering that meets the minimum standards of the Federal Housing Administration;

9) *Eaves projection.* All roof structures shall provide an eaves projection of a minimum of six inches, which shall include a gutter;

10) *Entrance and exit.* Stairs, porches, entrance platforms, ramps, and other means of entrance and exit to and from the manufactured home, shall be installed or constructed in compliance with the standards of the North Carolina Building Code, and attached firmly to the primary structure and anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. Use of wood stairs without a porch is prohibited at any entrance to a manufactured home;

11) *Size.* The size of the manufactured home shall be compatible with the homes in the surrounding neighborhood. The length and size shall be no smaller than the average unit in the neighborhood; and

12) *Utilities.* All manufactured homes not connected to a Town utility system shall present proof of utility approval by the Wake County Department of Environmental Services.

F) ***Reserved***

G) ***Multi-Family or Apartment***

1) All multi-family or apartment developments with one or more dumpsters or a trash compactor must provide a recycling area and a cardboard dumpster; both shall be screened with similar materials to the dumpster or compactor enclosure;

2) The overall enclosure design must comply with the standards found in the Town's *Design and Development Manual*.

H) ***Nursing or Convalescent Facility***
A nursing or convalescent facility use shall comply with the following standards:

1) *Ambulance service*. If ambulance service is required, a nursing or convalescent facility use shall have access from a collector road designed to minimize the adverse effects on adjacent land. The environment created for a nursing or convalescent facility use should be of a pronounced residential nature and should be designed to minimize any adverse conditions that might detract from the primary convalescent purpose of the facility;

2) *Frontage*. The minimum frontage for the lot on which the nursing or convalescent facility is located shall be 100 feet, or the minimum requirement of the district, whichever is greater;

3) *Sleeping rooms*. Sleeping rooms shall be no less than 100 square feet for each patient;

4) *Central kitchen*. The preparation of food shall be accomplished at a central kitchen facility under the auspices of a trained nutritionist. Meals can be served to persons in their rooms; and

5) *Meets state requirements*. The facility shall comply with all state licensing requirements.

I) ***Security or Caretaker Quarters***
A security or caretaker quarter use shall comply with the following standards:

1) *General*. No more than one security or caretaker quarters use shall be developed upon the same lot as a permitted commercial or industrial use;

2) *Use.* The security or caretaker quarters use shall be for the exclusive use of and shall be occupied only by a guard, custodian, caretaker, owner, manager or employee of the owner of the principal use, and his family. Such person shall be actively engaged in providing security, custodial or managerial services upon the premises;

3) *Not permitted with temporary use*. Unless otherwise provided in this Ordinance, a security or caretaker quarters use shall not be permitted in association with a temporary use;

4) *No substandard lot*. A security or caretaker quarters use shall not be established upon a substandard lot, nor shall the development of such quarters cause a site to violate this Ordinance; and

5) *Principal use must survive*. A security or caretaker quarters use shall continue only so long as the principal use that it is meant to serve remains active. Upon termination of the principal use, the right to have the caretaker or security quarters shall end, and the quarters shall immediately be discontinued. Once discontinued, such quarters shall not be reestablished except in conformity with this section.

J) ***Townhouse, detached:***
A detached townhouse use shall comply with the following standards:

1) *Maintenance.* A property owners association shall be established and shall maintain everything on the outside of the townhouses, including but not limited to landscaping, siding, roofing, porches, trim, mailboxes, driveways, and alleys.

2) *Alleys and Driveways.* Each detached townhouse lot shall be required to either be rear loaded from an alleyway, or in the absence of an alley, garages must be placed in the rear with a shared driveway from the front.

   a) There shall be no more than 10 lots on a single alleyway without an intervening alleyway.

   b) The alley shall consist of a 26’-wide dedicated right-of-way with 16’ asphalt strip located entirely outside of the lots.

3) *Utilities.* Public utilities may be located in the alleyway within a public utility easement or in the public street.

4) *Architectural requirements.* No slab on grade shall be allowed. All detached townhomes shall have a crawl space or have a raised foundation which at a minimum rises at least 20 inches from average grade across the front of the house to the finished floor level at the front door.

5) *Dimensional criteria.* Detached townhouses shall meet the following requirements in addition to the requirements set forth in Sec. 5.1.1 “Table of Intensity and Dimensional Standards” “Residential Districts”:

a) Minimum lot size is 26’ wide and 110’ deep.

b) Front setback is a minimum of 10’ and a maximum of 15’.

c) Side setback shall be a minimum of 3’.

d) Garages, if provided, shall be located a minimum of 13’ off rear property line in the rear yard.

6) *Parking.* A minimum of two (2) on-site parking spaces shall be provided per townhouse and shall be located in the rear yard. Parking spaces within garages do count toward the off-street parking requirement.

4.4.2 Public and Civic Uses

A) ***Cemetery***
An accessory building in a cemetery use shall be located not less than 300 feet from any lot line.

B) ***Church or Place of Worship***

1) A church or place of worship in the B2 Downtown Business District shall be freestanding, shall not be located on North Salem Street between Center Street and West Chatham Street, and shall not be located on Commerce Street.

2) Churches shall not include day care facilities, pre-schools, schools or homeless shelters, unless they are approved as a special use pursuant to Sec. 2.3.5, Special use.

C) ***Day Care***

1) Day care facilities in the LI District shall comply with the following standards:

a) The day care facility shall be used solely by the employees of the LI District use in which the daycare is located;

b) The day care facility shall be less than 20 percent of the gross square footage of the permitted use; and

c) The day care facility shall not have any advertising or signage.

2) Day care facilities in the B2 Downtown Business District shall not be located on North Salem Street between Center Street and West Chatham Street, and shall not be located on Commerce Street.

D) ***Hospital***
A hospital or medical center use shall comply with the following standards:

1) *Lot area*. The minimum lot area shall be five acres or the minimum requirement of the district, whichever is greater; and

2) *Frontage*. The minimum frontage for the lot shall be 300 feet or the minimum requirement of the district, whichever is greater.

E) ***Veterinary Clinic or Hospital***

1) *Treatment rooms, cages, pens or kennels*. All treatment rooms, cages, pens or kennels in a veterinary clinic or hospital in the O&I Office and Industrial District, B1 Neighborhood Business District, B2 Downtown Business District, PC Planned Commercial District, and MEC-CZ Major Employment Center District shall be designed and maintained within a completely enclosed soundproof building, and the veterinary clinic or hospital shall be operated in such a way as to produce no objectionable odors outside its walls;

2) *LI Light Industrial District*. A veterinary clinic or hospital use within the LI Light Industrial District may use outdoor runs or boarding facilities if the following standards are met:

a) The minimum lot size shall be one acre;

b) No outdoor run or boarding structure shall be located within 100 feet of any property line; and

c) Outdoor runs shall be hard surfaced or grassed with drains provided every 10 feet, and shall be connected to an approved sanitary facility. Outdoor runs shall provide a chain-link material on the walls and the top. If necessary to protect neighboring property from potential loss of use or diminishment of land value, a landscape screen of at least 75 percent opacity shall be provided around the outdoor run.

3) *B2 Downtown Business District.* Veterinary clinics or hospitals in the B2 Downtown Business District shall not be located on North Salem Street between Center Street and West Chatham Street, and shall not be located on Commerce Street.

4) *Other*. Otherwise, indoor facilities for animals shall comply with the standards in Sec. 4.4.5(G)(6), *Kennel, indoor*.

F) ***Drop-In or Short-Term Child Care***

1) Drop-in/short-term child care that also provides *Youth or Day Camps* shall also meet the requirements of Section 4.4.4(E) *Youth or Day Camps*.

2) Drop-in or short-term child care located in the B2 Downtown Business District shall have no outdoor play areas and shall have hours of operation typical to other adjacent downtown businesses.

4.4.3 Utilities

A) ***Chipping and Mulching***
A chipping and mulching use shall comply with the following standards:

1) *General.* A chipping or grinding machine shall be set back a minimum of 300 feet from any property line abutting a residential district or use. Outdoor material storage piles shall be set back a minimum of 25 feet from any property line or 50 feet from any property line abutting a residential district or use;

2) *Consent from property owners for use*. A notarized letter of approval shall be provided from the property owner verifying consent to use the property for chipping and mulching;

3) *Access road.* An access road for collection vehicles shall be provided to the entrance of the facility. Acceptable access does not include local streets. Access shall be restricted to specific entrances with gates that can be locked and that carry official notice that only authorized persons are allowed on the site;

4) *On-site storage of unprocessed material*. On-site storage of unprocessed material shall be limited to 45 days and the pile height of storage material shall be limited to 15 feet. Storage areas shall be effectively screened from view. Such screening shall be designed to ensure that storage areas cannot be seen from rights-of-way or adjacent residential districts. Outdoor material storage piles shall be set back a minimum of 25 feet from any property line or 50 feet from any property line abutting a residential district;

5) *Buffered.* The operation shall be adequately buffered to ensure its compatibility with surrounding land uses, and shall at a minimum comply with the buffer standards of Sec. 8.2.6.

6) *No encroachment into buffer*. The development shall not encroach into any buffer required by this Ordinance; and

7) *Setback*. The minimum required setback shall be the greater of any required buffer or setback (Sec. 8.2.6(B)).

B) ***Communication Tower***
A communication tower use shall comply with the following standards:

1) *Interpreted not to violate federal or state law*. These standards shall be interpreted or enforced so as not to violate any provisions of federal or state law, including but not limited to the Federal Telecommunications Act and NCGS 160A-400.50 to -400.53 effective December 1, 2007.

2) *Stealth communication tower.* A stealth communication tower shall be placed on a building or other permitted structure or as a stand-alone tower. Prior to approval of a stealth communication tower, it shall be demonstrated that:

a) The proposed facility is licensed by the FCC to provide fixed or mobile wireless communication services, or if no FCC licenses have been obtained, demonstration there is a binding commitment(s) from one or more FCC licensees to utilize the proposed wireless telecommunication facility;

b) The proposed facility is co-located or accommodated on an existing communication tower or structure within a three mile radius, or if it is not co-located, the applicant made a good faith effort to co-locate the proposed facility on an existing communication tower within a three mile radius but it is impracticable to do so.

c) Good faith effort is demonstrated by reasonable offers to purchase rights to co-locate the facility from all owners of

existing communication towers within the three mile radius, and owner rejection of the offers or a showing of impracticability;

d) Impracticality is demonstrated by the following:

(i) A written determination (made by a qualified and licensed North Carolina professional engineer) that the equipment needed for operation of proposed facility exceeds the structural capacity of existing towers, and that existing towers cannot be modified to accommodate the proposed facility at a reasonable cost;

(ii) A written determination (made by a qualified and licensed North Carolina professional engineer) that the equipment needed for operation of the proposed facility would cause interference materially effecting the operation of the existing towers which cannot be mitigated at a reasonable cost;

(iii) A written determination (made by a qualified and licensed North Carolina professional engineer) that the existing towers are not capable of accommodating the proposed facility because of the height requirements of the proposed facility;

(iv) A written determination (made by a qualified and licensed North Carolina professional engineer) that the existing towers are not capable of accommodating the proposed facility because of geographic service area requirements, or other factors that make it impossible to locate the proposed facility at an existing tower;

e) If co-location is impracticable, the new tower is designed:

(i) Structurally, electrically, and in all other relevant ways to provide for accommodation for the antenna for the proposed tower and two future users;

(ii) To allow for future rearrangement of antennas mounted at varying heights;

(iii) To allow co-location of public safety service equipment at usual and customary rates that are in addition to the sites required for future users;

(iv) To be consistent with the general character of the surrounding area and land uses, in terms of height, bulk, texture and color;

f) A minimum of $1,000,000 in general liability insurance covering any liability arising from the construction or operation of the tower is obtained by the applicant, and maintained in full force and effect until all above ground portions of the tower are removed;

g) The tower and its related development conforms to the minimum dimensional standards of the zoning district in which it is located (See Secs. 5.1.1–5.1.4), except that:

(i) The height of the tower shall not exceed 100 feet;

(ii) The tower shall be located so as to provide a minimum distance from the tower to all property lines equal to 100 percent of the height of the tower;

(iii) The tower shall be set back a minimum of 75 feet from any existing or planned street right-of-way;

(iv) The tower's peripheral supports and guy anchors my be located within required yard setbacks, provided that they shall be located entirely within the boundaries of the property on which the tower is located and shall be located no closer than five feet from any property line, and no closer than 20 feet from a property line if the tower is adjacent to a single-family residential district or residential uses;

(v) The tower's supports and peripheral anchors shall be set back a minimum of 50 feet from any existing or planned street right-of-way;

h) The tower and all related development complies with the landscaping and buffering standards in Sec. 8.2, *Landscaping, Buffering, and Screening*, and all other relevant development standards in Article 8: *General Development Standards*;

i) If located in a residential zoning district, all buildings in the tower complex are designed to appear as residential dwellings;

j) The tower does not encroach into or through any established public or private airport approach path as established by the Federal Aviation Administration;

k) The owner/operator of the tower agrees to submit an annual report to the Planning Director which includes written evidence of licensing by the FCC, the names of the users of the tower, and how many additional users can be accommodated on the tower. Failure to provide evidence of the license shall constitute grounds for revocation of the use; and

l) An obsolete or unused stealth communication tower shall be removed within 12 months of cessation of use.

3) *Camouflage Stealth Communication Tower*. A camouflage stealth communication tower shall be designed as an integral part of a permitted existing structure such as but not limited to existing buildings, water towers, or church steeples. Prior to approval of a camouflage stealth communication tower, it shall be demonstrated that:

a) The structure shall have an additional function other than as an antenna support.

b) The structure shall be compatible with the architectural style and character of buildings/structures of the surrounding area. A

determination of architectural compatibility shall include, but not be limited to color, materials, and architectural style.

c) Communications equipment or devices shall not be readily identifiable.

d) It must be demonstrated that the proposed location complies with Sec. 4.4.3(B)(2)(a) through (d).

4) *Commercial communication tower*. Prior to approval of a commercial communication tower, it shall be demonstrated that:

a) The proposed facility is licensed by the FCC to provide fixed or mobile wireless communication services, or if no FCC licenses have been obtained, demonstrated there is a binding commitment(s) from one or more FCC licensees to utilize the proposed wireless telecommunication facility;

b) The proposed facility is co-located or accommodated on an existing commercial communication tower within a three mile radius, or if it is not co-located, the applicant made a good faith effort to co-locate the facility on an existing communication tower within a three mile radius but it is impracticable to do so.

c) Good faith effort is demonstrated by reasonable offers to purchase rights to co-locate the proposed facility from all owners of existing communication towers within the three mile radius, and owner rejection of the offers or a showing of impracticability;

d) Impracticality is demonstrated by:

(i) A written determination (made by a qualified and licensed North Carolina professional engineer) that the equipment needed for operation of the proposed facility exceeds the structural capacity of existing towers, and that existing towers cannot be modified to accommodate the proposed facility at a reasonable cost;

(ii) A written determination (made by a qualified and licensed North Carolina professional engineer) that the equipment needed for operation of the proposed facility would cause interference materially effecting the operation of the existing towers which cannot be mitigated at a reasonable cost;

(iii) A written determination (made by a qualified and licensed North Carolina professional engineer) that the existing towers are not capable of accommodating the proposed facility because of the height requirements of the proposed tower; or

(iv) A written determination (made by a qualified and licensed North Carolina professional engineer) that the existing towers are not capable of accommodating the proposed facility because of geographic service area requirements, or other factors that make it impossible to locate the proposed facility at an existing tower;

e) If co-location is impracticable, the new tower is designed:

(i) Structurally, electrically, and in all other relevant ways to provide for accommodation for the antenna for the proposed tower and two future users;

(ii) To allow for future re-arrangement of antennas mounted at varying heights;

(iii) To allow co-location of public safety service equipment at usual and customary rates that are in addition to the sites required for future users;

f) A minimum of $1,000,000 in general liability insurance covering any liability arising from the construction or operation of the tower is obtained by the applicant/owner, and maintained in full force and effect until all above ground portions of the tower are removed;

g) The tower and its related development conforms to the minimum dimensional standards of the zoning district in which it is located (See Secs. 5.1.1–5.1.4), except that:

(i) The height of the tower shall not exceed 199 feet;

(ii) The tower shall be located so as to provide a minimum distance from the tower to all property lines equal to 100 percent of the height of the tower;

(iii) The tower shall be set back a minimum of 75 feet from any existing or planned street right-of-way line;

(iv) The tower's peripheral supports and guy anchors may be located within required yard setbacks, provided that they shall be located entirely within the boundaries of the property on which the tower is located and shall be located no closer than five feet from any property line, and no closer than 20 feet from a property line if the tower is adjacent to a single-family residential district or residential uses;

(v) The tower's supports and peripheral anchors shall be set back a minimum of 50 feet from any existing or planned street right-of-way line;

h) The tower and all related development complies with the landscaping and buffering standards in Secs. 8.2, *Landscaping, Buffering, and Screening*, and all other relevant development standards in Article 8: *General Development Standards*;

i) A fence or wall not less than eight feet in height from finished grade shall be constructed to encompass the tower and each guy anchor (if used). Access to the tower shall be through a locked gate;

j) If high voltage is necessary for the operation and it is present in a ground grid or in the tower, signs located every 20 feet and attached to the fence or wall shall display in large bold letters the following: "HIGH VOLTAGE-DANGER";

k) The tower shall not encroach into or through any established public or private airport approach path as established by the Federal Aviation Administration;

l) The owner/operator of the tower agrees to submit an annual report to the Planning Director that includes written evidence of licensing by the FCC, the names of the users of the tower, and how many additional users can be accommodated on the tower. Failure to provide evidence of the license shall constitute grounds for revocation of the use;

m) An obsolete or unused commercial communication tower shall be removed within 12 months of cessation of use.

C) ***Electrical Power Facility***
An electrical power facility use shall comply with the following standards:

1) *Location*. The location of the proposed electrical power facility shall be within reasonable proximity of the area to be served by the facility;

2) *Setback*. The proposed electrical power facility shall be setback a minimum of 100 feet from property lines and buffered to ensure it does not have an adverse impact on surrounding land uses;

3) *Compatibility*. If deemed necessary to ensure land use compatibility with surrounding uses, adequate setbacks, screening and buffering around the perimeter of the proposed electrical power facility use shall be provided at the time the facility is constructed or when surrounding development occurs.

D) ***Recycling Center***
A recycling center use shall comply with the following standards:

1) *Storage areas*. No storage areas shall be visible from rights-of-way, residential uses or residential districts;

2) *Recyclable materials*. Recyclable materials shall be contained within a leak-proof bin or trailer. There shall be no storage of materials on the ground;

3) *Limited sorting and separation*. Only limited sorting, separation or other processing of deposited materials shall be allowed on the site; and

4) *No collection or storage of hazardous or biodegradable wastes*. There shall be no collection or storage of hazardous or biodegradable wastes on the site. There shall be no chipping, mulching or receiving of construction debris.

E) ***Recycling Collection Station***
A recycling collection station use shall comply with the following standards:

1) *Mobility of collection bin*. The mobility of the collection bin shall be retained;

2) *Location of collection bin.* The collection bin shall be located in or adjacent to an off-street parking area, and shall not occupy more than five percent of the total on-site parking spaces;

3) *Appearance*. The bin and adjacent area shall be maintained in good appearance and free from trash;

4) *No collection or storage of hazardous or biodegradable wastes*. There shall be no collection or storage of hazardous or biodegradable wastes on the site.

F) ***Recycling Plant***
A recycling plant use shall comply with the following standards:

1) *Location and buffers*. The proposed recycling plant shall be properly located and buffered to ensure compatibility with surrounding land uses. To ensure compatibility with surrounding uses, adequate setbacks, screening and buffering around the perimeter of the proposed recycling plant shall be required at the time the facility is constructed. Required minimum lot size, setbacks, screening and buffering shall include, but not be limited to the following:

a) The minimum lot size for recycling plants shall be five acres;

b) Except for a freestanding office, no part of a recycling plant and its accessory ramps, on-site circulation system or storage areas, shall be located within 50 feet of any property line. However, if the facility is contiguous to land in the LI Light Industrial District, the setback shall be 25 feet from the contiguous property line.

c) At a minimum, the development shall comply with the standards of Sec. 8.2, *Landscaping, Buffering, and Screening.*

d) The development shall not encroach into any buffer required by this Ordinance;

e) The minimum required setback from any property line shall be the greater of any required buffer or setback (Sec. 8.2.6(B)).

f) No part of a recycling plant, its accessory ramps, on-site circulation system or storage areas shall be sited within 250 feet of a school, park, church, library or residential lot;

g) All storage areas shall be effectively screened from view by walls, fences, or buildings. Such screening shall be designed and installed to ensure that no part of a storage area can be seen from rights-of-way or adjacent lots. In no case shall the height of recyclable or recovered materials, or non-recyclable residue stored in outdoor areas exceed 20 feet or the height of the principal building on the lot, whichever is greater. For an outdoor recycling plant contiguous to land in a residential district, an opaque fence/wall a minimum of eight feet in height shall be placed along the inside border of the required landscape strip. The purpose of the fence/wall inside the landscape strip is to protect the landscape strip from the intensive activity of the recycling facility and to supplement the landscape strip as a buffer;

h) An access road that can be negotiated by loaded collection vehicles shall be provided to the entrance of the recycling plant. Access shall not be provided on a residential street. Access shall be restricted to specific entrances with gates which can be locked at all times and which carry official notice that only authorized persons are allowed on the site.

2) *Storage of recyclable materials*. All outdoor storage of recyclable materials shall be in leak-proof containers or located on a paved area that is designed to capture all potential run-off associated with the stored material. Run-off shall be handled in a manner that is in conformance with local, state and Federal regulations.

G) ***Utility, Minor***
A minor utility use shall comply with the following standards:

1) *Location*. The proposed minor utility shall be located within reasonable proximity of the area to be served by the facility; and

2) *Compatibility.* The proposed minor utility shall be properly located and buffered to ensure compatibility with surrounding land uses. If deemed necessary to ensure compatibility with surrounding uses, setbacks, screening and buffering around the perimeter of the utility shall be required at the time the facility is developed.

3) *Water towers*

a) The height of a water tower may reach up to but not more than 200 feet.

b) The perimeter of the water tower shall be screened from off-site view with large evergreen trees from the ground to a height of 8 feet at installation. No trees are required to be planted at the point of ingress and egress.

c) If a fence is erected at the base of the water tower, the large evergreen trees must be planted on the outside of the fence and the gate across the point of ingress and egress must be opaque.

d) An obsolete or unused water tower shall be removed within 12 months of cessation of use.

H) ***Sanitary Landfill***
A sanitary landfill use shall comply with the following standards:

1) *Location and buffers.* The proposed sanitary landfill shall be properly located and buffered to ensure compatibility with surrounding land uses. To ensure compatibility with surrounding uses, adequate setbacks, screening and buffering around the perimeter of the proposed sanitary landfill shall be required at the time the facility is constructed. Required minimum lot size, setbacks, screening and buffering shall include, but not be limited to the following:

a) The minimum lot size for sanitary landfills shall be eighty (80) acres;

b) Except for a freestanding office, no part of a sanitary landfill and its accessory ramps, on-site circulation system or storage areas, shall be located within 100 feet of any property line. However, if the facility is contiguous to land in the LI Light Industrial District, the setback shall be 50 feet from the contiguous property line;

c) At a minimum, the development shall comply with the standards of Sec. 8.2, *Landscaping, Buffering, and Screening*;

d) The development shall not encroach into any buffer required by this Ordinance;

e) The minimum required setback from any property line shall be the greater of any required buffer or setback (Sec. 8.2.6(B));

f) No part of a sanitary landfill, its accessory ramps, on-site circulation system or storage areas shall be sited within 500 feet of a school, child care center, park, church, library or residential lot;

g) All storage areas shall be effectively screened from view by walls, fences, or buildings. Such screening shall be designed and installed to ensure that no part of a storage area can be seen from rights-of-way or adjacent lots. In no case shall the height of waste or non-recyclable residue stored in outdoor areas exceed 30 feet or the height of the principal building on the lot, whichever is greater. The purpose of the fence/wall inside the landscape strip is to protect the landscape strip from the intensive activity of the recycling facility and to supplement the landscape strip as a buffer;

h) A paved access road that can be negotiated by loaded collection vehicles shall be provided to the entrance of the landfill. Access will only be permitted from Thoroughfares and Highways. Access shall not be provided on a residential street. Access shall be restricted to specific entrances with gates which can be locked at all times and which carry official notice that only authorized persons are allowed on the site.

2) *Storage of materials*. All outdoor storage of liquids or flammable materials shall be in leak-proof containers or located on a paved area that is designed to capture all potential run-off associated with the stored material. Run-off shall be handled in a manner that is in conformance with local, state and Federal regulations.

l) ***Land Clearing and Inert Debris Landfill***
A land clearing and inert debris landfill use shall comply with the following standards:

1) *Location and buffers.* The proposed land clearing and inert debris landfill shall be properly located and buffered to ensure compatibility with surrounding land uses. To ensure compatibility with surrounding uses, adequate setbacks, screening and buffering around the perimeter of the proposed landfill shall be required at the time the facility is constructed. Required minimum lot size, setbacks, screening and buffering shall include, but not be limited to the following:

a) The minimum lot size for a land clearing and inert debris landfill shall be five (5) acres;

b) Except for a freestanding office, no part of a land clearing and inert debris landfill and its accessory ramps, on-site circulation system or storage areas, shall be located within 100 feet of any property line. However, if the facility is contiguous to land in the LI Light Industrial District, the setback shall be 50 feet from the contiguous property line;

c) The development shall comply with the standards of Sec. 8.2, *Landscaping, Buffering, and Screening*;

d) The development shall not encroach into any buffer required by this Ordinance;

e) No part of a land clearing and inert debris landfill, its accessory ramps, on-site circulation system or storage areas shall be sited within 250 feet of a school, child care center, park, church, library or residential lot;

f) All storage areas shall be effectively screened from view by walls, fences, or buildings. Such screening shall be designed and installed to ensure that no part of a storage area can be seen from rights-of-way or adjacent lots. In no case shall the height of the debris or materials stored in outdoor areas exceed 20 feet or the height of the principal building on the lot, whichever is greater. An opaque fence/wall a minimum of eight feet in height shall be placed along the inside border of the required landscape strip. The purpose of the fence/wall inside the landscape strip is to protect the landscape strip from the intensive activity of the land clearing and inert debris landfill and to supplement the landscape strip as a buffer;

g) An access road that can be negotiated by loaded collection vehicles shall be provided to the entrance of the landfill. Access shall not be provided on a residential street. Access shall be restricted to specific entrances with gates which can be locked at all times and which carry official notice that only authorized persons are allowed on the site.

2) *Storage of debris and materials*. All outdoor storage of debris and materials shall be in leak-proof containers or located on a paved area that is designed to capture all potential run-off associated with the stored material. Run-off shall be handled in a manner that is in conformance with local, state and Federal regulations.

J) ***Wireless Support Structures and Wireless Communication Facilities***
Wireless support structures and wireless communication facilities to be located in a public right-of-way shall comply with the following standards:

1) *Purpose.* The purpose of this section is to regulate the installation, operation and maintenance of wireless support structures and wireless communications facilities in the public right-of-way. The regulations contained herein are designed to protect and promote the public health, safety, community welfare, and aesthetic qualities of the community while encouraging the managed development of wireless

communications infrastructure. These standards shall be interpreted and enforced so as not to violate any provisions of federal or state law, including but not limited to, the Federal Telecommunications Act of 1996, NCGS 160A-400.50 through 400.53, and NCGS 160A-296.

2) *Definitions applicable to this Sec. 4.4.3(J).*

Antenna: One or more panels, discs, rods, dishes or similar devices used to transmit and/or receive radio frequency or electromagnetic signals used in the provision of wireless communications services.

Base station: A station at a specific site authorized to communicate with mobile stations, generally consisting of radio receivers, antennas, coaxial cables, power supplies, and other associated electronics.

Camouflage: The incorporation of techniques designed to shield, mask or blend a wireless support structure or wireless communication facility with the surrounding environment so as to make it unnoticeable or reasonably less noticeable to observers.

Collocation/collocated: The placement of or installation of wireless transmission equipment on an existing structure for the purpose of transmitting or receiving radio frequency signals for the purpose of communication.

Commercial zone: Commercial zone shall refer to rights-of-way adjacent to the following zones: B1, B2, CB, LI, MEC, O&I, PC, SD, TF.

Eligible Facility Request: A request for modification of an existing wireless tower or base station that involves collocation of new wireless transmission equipment or replacement of wireless transmission equipment that does not result in a substantial modification.

Existing Structure: A tower, station, pole, monopole, utility structure, building, or other existing object that has been reviewed and approved under current state and local regulations.

Height: The distance measured from the finished grade to the highest point on the wireless support structure or wireless communication facility. Adjustable structures shall be measured based on the maximum height.

Least Intrusive Means: The method of designing potential wireless support structures or wireless communication facilities to minimize visual and aesthetic impacts, including camouflage and/or stealth elements and techniques suitable for the location, visual environment and surrounding uses/structures. The Least Intrusive Means addresses a significant gap in the applicant's service while doing the least harm or disservice to the Town's purpose and objectives provided in Sec. 4.4.3(J)(1).

Residential zone: Residential zone shall refer to rights-of-way adjacent to the following zones: HDMF, HDSF, MD, LD, MH, MHP, MORR, PUD, RA, RR, TND.

Stealth: The incorporation of concealment elements or techniques that render visibility of a wireless support structure or wireless communication facility generally unnoticeable and allow it to blend into its surroundings.

Substantial modification: The mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A determination of whether a modification is substantial shall be made in accordance with the criteria provided in N.C.G.S. 160A-400.51(7a).

3) *Applicability.* Sec. 4.4.3(J) applies to all applications to install, construct, operate or substantially modify a wireless support structure or wireless communication facility inside a public right-of-way. It shall also apply to collocations in the right-of-way.

4) *Submittal to Planning Director.* It shall be unlawful to construct, install, place, or substantially modify a wireless support structure or wireless communication facility without a permit. In order to receive a permit the owner or operator shall follow the process for submitting an exempt site plan in accordance with Sec. 2.3.6 of the UDO. In addition to the requirements of Sec. 2.3.6 the owner or operator shall also submit the following information to the Planning Director:

a) Certificate of Authority from the North Carolina Utilities Commission or other applicable state or federal agency to provide utility services; and

b) Name, address, telephone number, and e-mail address of the certificated utility's representative, including emergency contact information, as well as all contractors and subcontractors authorized to work on the certificated utility's behalf in the right-of-way. Contact information shall be kept current at all times; and

c) Acknowledgement of the Town's right to require the removal of a wireless support structure in the event of an emergency or when necessary to maintain the public safety; and

d) Proof of insurance acceptable to the Town; and

e) Written evidence documenting a good faith effort to locate the proposed wireless support structure or wireless communication facility in a preferred location in accordance with Sec. 4.4.3(J)(5); and

f) Scale drawings of the proposed structure as well as a site map that labels street names, right-of-way lines, existing utilities, and the location of the proposed installation with measurements from curb, driveway, and right-of-way lines; and

g) A master plan identifying the location of the proposed wireless support structure in relation to any other existing or potential facilities intended to serve the Town that are anticipated to be constructed within one (1) year of the date of the application; and

h) If the applicant is seeking a new wireless support structure the applicant shall submit clear and convincing evidence that the new structure is necessary to close a significant gap in the applicant's service coverage which cannot be accomplished through collocation; and

i) An affidavit that the proposed wireless support structure and

wireless communication facility will comply with all FCC, federal, state and local rules and regulations; and

j) Affirmation from the applicant of its willingness to allow other carriers to collocate on the proposed wireless support structure when possible; and

k) If the proposed wireless support structure is to be located in a right-of-way located in a residentially zoned area, a neighborhood meeting as described in Sec. 2.2.7 of the Unified Development Ordinance must first be conducted. The Town's standard neighborhood meeting packet must be completed and submitted to the Planning Director with the above documents; and

l) Applicants may not transfer a permit to another entity prior to the construction of the wireless support structure or wireless facility being completed.

5) *Preferred Locations.* If doing so would not conflict with federal law, wireless support structures and wireless communication facilities shall be located in the most preferential and desirable location as shown below in descending order with the most desirable location listed first:

a) Collocation on an existing facility, structure or pole in a commercial zone;

b) Location on a new wireless support structure in a commercial zone;

c) Collocation on an existing facility, structure or pole in a residential zone;

d) Location on a new wireless support structure in a residential zone.

New wireless support structures and wireless communication facilities shall be placed using the Least Intrusive Means as defined in this Ordinance and shall not be placed in a less desirable location unless the owner can demonstrate clear and convincing evidence to the Planning Director that a more desirable location cannot feasibly serve the intended area. The Planning Director may however authorize a less desirable location to avoid unwanted aesthetic impacts.

6) *Design Standards.* New wireless support structures shall be designed as follows:

a) New wireless support structures shall be set back to provide a minimum distance from the structure to any residential dwelling unit equal to 150% of the combined height of the structure and any attached wireless communication facility. Setbacks shall be measured from the dwelling unit to the closest point of the wireless support structure.

b) New wireless support structures shall be stealth when placed in a public right-of-way within 100 feet of a residential zoning district.

c) The wireless support structure and wireless communication facility combined shall not exceed 40 feet in height.

d) Wireless support structures shall be black or bronze metal and designed to blend in with the surrounding area's light poles or if there are no light poles in the area, with the surrounding environment. Standard brown utility poles are permitted in limited circumstances when directly adjacent to mature wooded areas, as determined by the Planning Director. Wireless support structures shall be stealth whenever feasible and camouflage whenever stealth is not possible.

e) Other than warning language or signage expressly permitted by the Town, no signage or advertising is permitted on the structure.

f) To the extent permitted by federal, state, and local law, all equipment associated with a wireless support structure that is not located on the structure shall be located underground. If the equipment cannot feasibly be located underground due to size, alignment or functionality, the equipment shall be screened to the fullest extent possible through the use of landscaping, fencing or other decorative features.

g) The wireless support structure and/or wireless communication facility shall not encroach into or through any established public or private airport take-off or landing approach path as established by the Federal Aviation Administration.

h) Installations shall comply with federal, state and local laws and shall be designed and installed in accordance with appropriate industry standards, applicable building codes, and the National Electric Code and National Electric Safety Code.

i) No wireless support structure, wireless communication facility, or equipment associated with either shall obstruct or alter the public's use of the public right-of-way, obstruct or block pedestrian or vehicular traffic, or create any safety hazard to the public.

j) No wireless support structure may be located within 300 feet of another wireless support structure on the same side of the street. This separation requirement does not apply to collocated equipment.

k) Wireless support structures and wireless communication facilities are prohibited in all street medians.

7) *Pole Mounted Antennas.* In addition to the design standards set forth in Sec. 4.4.3(J)(6) above, antennas mounted on poles shall comply with the following requirements:

a) To the degree it is technically feasible, antennas should be designed to blend into the environment and surrounding area as well as to be integrated within or concealed by the wireless support structure. Antennas shall be mounted as close as feasible to the pole and shall be painted and textured to match the wireless support structure.

b) Antennas shall be mounted on an existing collocated wireless support structure when available.

c) If no existing wireless support structure is available, an antenna may be located on an existing pole upon agreement with the owner or operator of the pole.

d) In the event the placement of a wireless communication facility or antenna on a Town owned utility pole would serve the intended area, an applicant may enter into a Pole Attachment Agreement with the Town that would permit the replacement of the Town utility pole with a pole that could accommodate both services in accordance with the terms of the Agreement.

e) If collocation or placement on an existing structure is not possible, the antenna may be mounted on a new pole if the owner or operator can demonstrate that there is not another effective means to provide coverage to its service area.

f) The antenna shall not extend more than 36 inches above the height of the pole. If the antenna is placed on a pole so as to extend over any road it shall be mounted at least 16 feet above the road.

g) Pole-mounted antennas shall be designed to withstand high wind loads.

h) Installation of the antenna shall comply with all federal, state and local regulations.

i) Pole-mounted antennas shall be located so as to provide a minimum distance from the pole to any residential dwelling unit equal to 150% of the combined hei*ght of the pole and antenna.*

8) *Eligible Facility Requests.* Applications seeking approval of a collocation or modification subject to an eligible facility request shall be governed by the following standards:

a) *Purpose.* This subsection is intended to comply with section 6409 of the federal Middle Class Tax Relief and Job Creation Act of 2012, 47 U.S.C. §1455(a) which provides that the Town “may not deny and shall approve any eligible facilities request for a modification of an existing wireless tower or base station that does not substantially change the physical dimensions of such tower or base station.” This subsection is intended to promote the public’s health, safety and community welfare and shall be interpreted consistently with the Telecommunications Act of 1996 and applicable Federal Communications Commission regulations.

b) *Application.* If an applicant contends that the applicant is making an eligible facility request, the application shall include the following:

(i) Site plan and elevation drawings for the wireless communication facility and support structure as proposed with all height and width measurements clearly and accurately shown; and

(ii) A visual depiction of the area of the site that labels street names, right-of-way lines, existing utilities, and the location of the proposed installation with measurements from curb, driveway, or right-of-way lines; and

(iii) Analysis providing scaled visual simulations showing unobstructed before and after views from all angles and a map showing the location of the angle.

(iv) Affidavit stating that the proposal qualifies as an eligible facility request and will not result in a substantial modification as defined in this Ordinance.

(v) An affidavit that the proposed wireless support structure and wireless communication facility will comply with all FCC, federal, state and local rules and regulations.

(vi) Such other information that the Town may require.

c) *Review.* An eligible facilities request application shall be deemed complete unless the Town provides notice in writing to the applicant within 45 days of submission that the application is incomplete and in the event of an incomplete application, identifies the deficiencies in the application. An inaccurate application or one that does not comply with federal, state and local requirements will be deemed incomplete. The Town shall issue a written decision approving a complete eligible facility request application within 45 days of the application being deemed complete.

9) *Exemptions.* The following are exempt from the application process covered in this Section:

a) Routine maintenance of existing wireless support structures and wireless communication facilities.

b) Removal or replacement of existing equipment on wireless support structures if the replacement does not result in a substantial modification.

10) *Abandonment.* Wireless support structures and wireless communication facilities that discontinue operation shall be removed by the operator or owner after the operation has ceased for a period of six (6) months. The Planning Director shall send a written notice to the owner or operator of a wireless support structure indicating the determination that a structure is no longer being operated and has remained so for a period of at least six (6) months. The operator shall respond and provide evidence that the wireless support structure is still in use within 30 days from the date of the written notice. Any structure not removed within 90 days of the written notice from the Planning Director shall be in violation of this Ordinance and the Town may remove the wireless support structure at no liability to the Town and at the cost and expense of the owner or operator.

11) *Maintenance, repair, and removal.* The owner or operator of a wireless support structure or wireless communication facility shall maintain, repair or remove the structure or facility in accordance with the following requirements:

a) The owner or operator of wireless support structure or wireless communication facility shall not alter, move, obstruct, or change any existing facility in the public right-of-way without first obtaining written consent from the Town and the owner of the facility, if not owned by the Town.

b) If an owner or operator's contractor, or the contractor's subcontractor, is performing work on a wireless support structure or wireless communication facility in a public right-of-way it shall be unlawful to refuse to identify the entity on whose behalf the contractor or subcontractor is working when requested by a Town staff member.

c) In the event a wireless support structure or wireless communication facility threatens the public safety or welfare of the community or is in violation of this Ordinance and the violation is not corrected within the time period requested, the Planning Director may require the removal of a wireless support structure or wireless communication facility located in the right-of-way. The owner or operator shall remove any such structure at its own cost and expense. Upon removal the right-of-way shall be restored to its preexisting condition. If the owner or operate does not remove the structure within the time provided by the Planning Director the Town may remove the wireless support structure at no liability to the Town and at the cost and expense of the owner or operator.

12) *Indemnification.* To the extent permitted by law, the owner or operator of a wireless support structure or wireless communication facility shall defend, pay on behalf of, indemnify, and hold-harmless the Town of Apex, its elected and appointed officials, employees, agents, and volunteers against any and all claims, demands, suits or losses, including all costs connected therewith, for any damages which may be asserted, claimed or recovered against or from the Town of Apex, its elected or appointed officials, employees, agents, and volunteers by reason of personal injury, including bodily injury or death and/or property damage, including loss of use thereof arising from the construction, location, design, condition, or operation of a wireless support structure or wireless communication facility.

13) *Violations.* The Town may revoke a Wireless Facility permit for any violation of this Ordinance. Upon revocation of a permit the wireless support structure and/or wireless communication facility shall be removed by the owner or operator within 60 days of revocation, unless removed by the Town earlier in accordance with this Section. This remedy is not exclusive and the Town may resort to any and all available remedies at law.

4.4.4 Recreational Uses

An establishment in the recreational uses category may sell unfortified wine and malt beverages provided that the establishment meets all the requirements of an Alcoholic Beverage Control Commission permit and the establishment's on-premise alcohol sales do not exceed 10% of the establishment's quarterly gross receipts.

A) ***Arena, Auditorium, or Stadium***

All arena, auditorium or stadium uses shall comply with the following standards:

1) *Distance from residential district.* Arena, auditorium or stadium uses shall be located a minimum of 500 feet from any residential district, measured from all property lines;

2) *Lot area*. The minimum lot area required for arena, auditorium or stadium uses shall be no less than five acres;

3) *Frontage*. The minimum required frontage on a public street for arena, auditorium or stadium uses at the primary point of access shall be a minimum of 600 feet in length;

4) *Vehicular access*. All points of vehicular access for arena, auditorium or stadium uses shall be from an arterial road. The access points shall be located to minimize vehicular traffic to and through local streets in residential neighborhoods; and

5) *Safety fences*. Safety fences up to a height of six feet shall be required, if determined appropriate, to protect the general health, safety and welfare.

B) ***Campground***

A campground use shall comply with the following standards:

1) *Lot area*. A campground use shall have a minimum lot area of two acres;

2) *Portion used for campground facilities*. No more than 30 percent of the entire site may be used for campground facilities.

3) *Landscape screen*. A landscape screen of at least 75 percent opacity shall be required around a recreation facility use within the campground if it is deemed necessary to protect neighboring land from potential loss of use or diminishment of land value; and

4) *Distance from property line*. No campground use shall be located within 80 feet of any property line.

C) ***Entertainment, Outdoor***

An outdoor entertainment use shall comply with the following standards:

1) *Access*. Access to an outdoor entertainment use shall be from a hard surfaced, public road. The minimum required frontage on a public road to be used for the primary point of access shall be 200 feet;

2) *Safety fence*. A safety fence up to a height of 10 feet shall be required around a recreation facility. A landscape screen of at least 75 percent opacity shall be required around a recreation facility use if it is deemed necessary to protect neighboring property from potential loss of use or diminishment of land value.

3) *Restroom facilities*. Where temporary restroom facilities will be provided; an opaque fence shall be erected to screen the temporary restrooms from adjacent residential properties and from the street. Shrubs or other plants must be planted outside the fencing to visually soften the appearance.

D) ***Game Rooms***

1) *Game Rooms as a principal use shall:*

a) Only be permitted in the B1 business district; and

b) Shall not operate Electronic Gaming Operations without meeting all of the requirements of Sections 4.3.5(A)(3) and 4.4.5(A)(3).

2) *Game Rooms as an accessory use:*

a) Shall be permitted in any district where the principal use is permitted;

b) Shall have no more than ten (10) video or mechanical games or pay tables; and

c) Shall not be larger than 20 percent of the gross square floor area of the entire use.

E) ***Youth or Day Camps***
There shall be an appropriate amount of stacking space for drop-off and pick-up lanes so that queues shall not block public streets.

F) ***Regional Recreation Complex***
All regional recreation complexes shall comply with all the following standards:

1) The square footage of the regional recreation complex shall be a minimum of 100,000 square feet of indoor activities and accessory uses;

2) The property shall be a minimum of 10 acres in size;

3) Any outdoor recreation and amusement activities must be accessory to an indoor facility sited on the same property;

4) A Special Use Permit shall be required for all outdoor recreation and amusement activities;

5) Outdoor structures shall not exceed 100 feet in height, and any outdoor structures shall have a fall zone equal to or greater than the height of the structure;

6) Structures erected to support and function as operational elements of outdoor amusement activities such as, but not limited to, bungee jumping, ropes courses, and zip-lines are not considered buildings for the purpose of applying the Town's sign ordinances;

7) Signs for the regional recreation complex use are limited to typical building mounted and ground signs per Section 8.7 *Signs* of the UDO; and

8) Identification, directional, and warning type signs are allowed to be mounted to rides and structures provided that they are designed to be for the benefit of pedestrians, internal to the site, and specific to the amusement. Signs mounted to the ride's mobile components are allowed for the purpose of identification and may be lit in accordance to Section 8.7.

G) ***Indoor Shooting Range***

1) Such use shall be within a fully-enclosed, stand-alone building.

2) The facility shall be designed with a Sound Transmission Class rate of 70 as set forth in the most recent version of Architectural Graphics Standards.

H) ***Outdoor Shooting Range***

1) Such use shall be no less than five (5) acres in size.

2) Where such use is located adjacent to a residential use or any Residential zoning district, a minimum 100 foot Type A Buffer shall be provided.

3) All shooting stations shall be at least 1,000 feet from any adjacent property. The minimum required distance of 1,000 feet between any shooting station and all lot lines may be reduced to no less than 500 feet if actual firing tests conducted by the applicant demonstrates that a lesser distance will be adequate to protect the public safety and reduce noise at the property lines. The results of such tests and the request to lessen the required distance must be submitted in writing along with the application for a Special Use Permit. For the purpose of this use, a shooting station shall be defined as the location from where weapons are fired.

4) Firearm ranges must be designed and constructed under the supervision of a design professional or certified by the National Rifle Association following construction and before the range is used.

5) All areas within the proposed range, including, but not limited to firing area(s), backstops, downrange safety zones, parking and accessory areas and the like shall be under uniform control or ownership. The downrange safety area shall be essentially fan-shaped, with its vertex being 330 feet each side of the end firing point and extending to the maximum range of the type of firearm being used, ten degrees from the firing line, plus an additional 330 feet running parallel to the ten degree line, as approved in accordance with the NRA manual and inspections per subsection 4 above. The safety area shall not encompass any public right-of-way or other property not owned by range operator or owner.

6) The site or area used as a shooting range shall be enclosed by a six-foot high fence or otherwise restricted by natural physical features (such as swamps, bodies of water, and the like) so that access to the site is controlled to ensure the safety of patrons, spectators and the public at large. Warning signs shall be posted along the fence every 100 feet.

7) No automatic assault type weapon shall be used by the general public, but will be allowed by any law enforcement, military or federal agency group, or any holder of a Federal Firearms License of a class and type that authorizes NFA weapons, duly authorized to use these style weapons. Limits on caliber size shall be in accordance with the National Rifle Association Range Manual subject to the physical constraints of the property.

8) No concussion type of explosives shall be permitted unless authorized at the time of Special Use Permit approval.

9) Limits on caliber size shall be in accordance with the National Rifle Association Range Manual subject to the physical constraints of the property.

10) The hours of operation shall be limited to 7am – 10pm, unless further restricted by the Town Council in compliance with Sec. 2.3.5 *Special Use*.

11) The proposed shooting range shall be reviewed by and comments received from the Town of Apex Police Department.

12) The operators of an outdoor range must provide proof of coverage by adequate accident and liability insurance. A minimum coverage of $2,000,000 shall be established.

13) The allowable caliber of weapons permitted and any other applicable rules shall be posted.

4.4.5 Commercial Uses

A) ***Adult Use***

1) *Adult establishment*. An adult establishment shall comply with the following standards:

a) No adult establishment shall be located within 1,000 feet of a church, public or private school, child day care center, residential district, residential development, public park, or an establishment with an on-premise North Carolina ABC license;

b) There shall be no more than one adult establishment on the same lot or property or in the same building, structure, or portion thereof;

c) No other principal or accessory use may occupy the same building, structure, property, or portion thereof as an adult establishment; and

d) Except for freestanding and façade mounted signs permitted pursuant to Sec. 8.7, *Signs,* no other advertisements, displays or signs or other promotional materials shall be visible to the public from sidewalks, walkways or vehicular use areas.

2) *Bar or nightclub*. A special use permit (Sec. 2.3.5) shall be required for all bars and nightclubs. Outside serving areas shall be prohibited in bars and nightclubs located adjacent to any residential district or an existing residential use. Limits on service and consumption of alcoholic beverages are found in UDO Section 4.3.5(A)(2).

3) *Electronic gaming operations*. Electronic gaming operations shall comply with the following standards:

a) No electronic gaming operations shall be located within 1,000 feet of a place of worship, public or private school, child day care center, residential district, residential development, public park, or an establishment with an on-premise North Carolina ABC license;

b) There shall be no more than one electronic gaming operations establishment on the same lot or property or in the same building, structure or portion thereof;

c) No other principal or accessory use may occupy the same building, structure, property, or portion thereof as an electronic gaming operations establishment;

d) Electronic gaming operations establishments shall not operate outside of the hours of 7:00 am to 12 midnight each day, seven days per week;

e) No screens, curtains, blinds, partitions or other obstruction shall be placed between the entrance to the room where electronic gaming operations occur and the rear wall of such room so that a clear view of the interior may not be had from the entrance to the room; and

f) There shall be one paved parking space for every terminal, machine and computer in addition to one paved parking space per employee.

4) *Tattoo parlor and body piercing*. Tattoo parlors shall comply with the following standards:

a) No tattoo parlor shall be located within 1,000 feet of another tattoo parlor, adult use, pawn shop, or an establishment with an on-premise North Carolina ABC license; and

b) Except for freestanding and façade mounted signs permitted pursuant to Sec. 8.7 *Signs*, no other advertisements, displays, or other signs or other promotional materials shall be visible to the public from sidewalks, walkways, or vehicular use areas..

B) ***Communication***

There are no supplemental standards for any of the commercial communication uses.

C) ***Food and Beverage Service***

1) *Restaurant, drive-through*

a) Drive-through restaurants in the B1 Neighborhood Business District shall only be permitted when the drive-through is accessory to the restaurant and not the primary method of service and or sales. Drive-through ordering shall be limited to face-to-face orders with no outdoor intercom system allowed. Queuing lanes and service windows shall be located on the side and rear only. Where use is located adjacent to residential zoning or residential use, a Type A buffer with a width per UDO Section 8.2.6 shall be required.

2) *Restaurant, general*. Limits on sales of alcoholic beverages are found in UDO Section 4.3.5(C)(2)(e).

a) Restaurants in the O&I Office and Institutional District are

permitted only when the total floor area of all barber and beauty shops, gift shops, newsstands, pharmacies, and restaurants does not occupy more than 30 percent of the gross floor area of the building.

b) Cafeterias are allowed within a permitted use in the LI Light Industrial District if the cafeteria is provided solely for employee use, it does not provide any outside signage or advertising, and it consists of less than 20 percent of the gross floor area of the building.

D) ***Office and Research***

1) *Pilot plant*. In no instance can a product produced at a pilot plant be sold for use in operations in other locations.

2) *Office, business or professional*. Contractor's office without storage yard use shall comply with the following standards:

a) No more than eight (8) contractor's vehicles (but not to exceed 10% of parking on-site) shall be parked on-site at any one time;

b) The contractor's vehicles shall be standard-sized, road-ready, and licensed vehicles which fit easily into standard parking spaces (9' by 18'). No trailers, oversized vehicles, or construction equipment allowed on-site;

c) Contractor's vehicles must be parked behind the building in which the office is located; and

d) Having more than eight standard-sized contractor's vehicles, or outside storage of any materials, equipment, trailers, oversized vehicles, or construction equipment on-site shall make the use "Contractor's office and storage yard", which is only permitted in the Light Industrial (LI) and Tech Flex (TF) zoning districts.

E) ***Parking, Commercial***

1) *Parking garage or lot, commercial*. A commercial parking garage or lot use shall comply with the following standards:

a) A commercial parking garage or lot use shall be the principal use. Parking spaces may be rented for parking. No other business of any kind shall be conducted on the lot, including repair, service, washing, display or storage of vehicles or other goods; and

b) A commercial parking garage or lot shall not be contiguous to lands in the residential districts.

c) Street frontage of a commercial parking lot in the B2 Downtown Business Districts shall be limited to 100 feet.

d) Parking garages in the B2 Downtown Business and TND-CZ Traditional Neighborhood Districts shall have retail, office, or residential uses on the bottom floor across the entire width of street frontage except for required entrances and the attendant station.

F) ***Public Accommodation***

1) *Bed and breakfast*. A bed and breakfast use shall comply with the following standards:

a) A bed and breakfast in the B2 Downtown Business District, MORR Mixed-Office-Residential-Retail District, TND-CZ Traditional Neighborhood District, the SD-CZ Sustainable Development Conditional Zoning District, and PUD-CZ Planned Unit Development District may prepare and serve food in a restaurant facility within the bed and breakfast to non-guests;

b) The owner-operator resides on the premises;

c) The bed and breakfast is located within a structure which was originally permitted within the district;

d) The individual guest rooms shall have no cooking implements, including, but not limited to, stoves, grills or ovens;

e) No meals other than breakfast are served to paying guests except in the B2 Downtown Business District, the MORR Mixed-Office-Residential-Retail District the TND-CZ Traditional Neighborhood District, the SD-CZ Sustainable Development Conditional Zoning District, or the PUD-CZ Planned Unit Development District;

f) Only exterior alterations necessary to assure safety of the structure or enhance the compatibility with the surrounding neighborhood are made for the purpose of providing a bed and breakfast;

g) One parking space shall be provided for each guest room. Parking shall not be permitted in the front yard. On–street parking shall be permitted on residential side streets. There shall be 20 feet of street frontage for every on–street parking space. On–site parking shall be screened with a landscaped buffer to reduce undue noise, odor or glare on surrounding lands. Additional off-street parking for bed and breakfasts within a PUD-CZ Planned Unit Development District, a TND-CZ Traditional Neighborhood District, the SD-CZ Sustainable Development Conditional Zoning District, or a MORR Mixed-Office-Residential-Retail District shall be provided at the rate indicated for general restaurant uses if restaurant services are provided to non-guests.

h) The bed and breakfast shall be adequately buffered to ensure its compatibility with surrounding land uses, and shall at a minimum comply with the buffer standards of Sec. 8.2.6; and

i) Outdoor advertising shall be limited to one small on-site sign nine square feet in size.

2) *Hotel or motel*. A hotel or motel use shall comply with the following standards:

a) The minimum lot area shall be one acre or the minimum required by the district, whichever is greater;

b) The minimum lot width shall be at least 100 feet or the minimum required by the district, whichever is greater; and

c) The number of sleeping units shall not exceed one per 1,000 square feet of lot area.

G) ***Retail Sales and Service***

An establishment in the retail sales and service category may sell unfortified wine and malt beverages provided that the establishment meets all the requirements of an Alcoholic Beverage Control Commission permit and the establishment's on-premise alcohol sales do not exceed 10% of the establishment's quarterly gross receipts.

1) *Barber and beauty shop*. Barber and beauty shops in the O&I Office and Institutional District are permitted only when the total floor area of all barber and beauty shops, gift shops, newsstands, pharmacies, and restaurants does not occupy more than 30 percent of the gross floor area of the building.

2) *Convenience store with and without gas sales*. Convenience stores with and without gas sales shall comply with the following standards:

a) Convenience stores shall have shingled or tiled roofs; flat roofs are prohibited;

b) Convenience stores with gas sales shall have a pitched canopy over the gasoline pumps that matches the roof of the building;

c) Gasoline pump canopies shall be located:

(i) With the shortest side of the canopy facing the primary abutting street and with the canopy no closer to the primary street than the convenience store building, or

(ii) Such that the convenience store building is located between the primary abutting street and the gasoline pump canopy.

d) The windows and doors on the front and sides of the building shall be limited in size and number resulting in a residential character;

e) Signage advertising particular items and sales shall not be posted in the windows. Signage is limited to that allowed in Sec 8.7.

3) *Farmer's market*. A farmer's market shall comply with the following standards:

a) A farmer's market shall be located on a parcel a minimum of one acre in size, except in the B2 Downtown Business District;

b) The primary access for the farmer's market shall be from an arterial road and shall not cause traffic to flow through nearby

residential areas. Back-out parking directly onto a public street shall be prohibited; and

c) The boundaries of the farmer's market shall be adequately buffered to ensure its compatibility with surrounding land uses, and shall at a minimum comply with the buffer standards of Sec. 8.2.6.

4) *Financial institution*. Drive-through facilities associated with a financial institution shall comply with the following standards:

a) Drive-through facility canopies shall be pitch-roofed consisting of materials and at an angle to match the primary building;

b) Drive-through facilities shall be situated to the side and preferably to the rear of the primary building; and

c) No drive-through facilities shall be located within the B2 Downtown District and TND-CZ Traditional Neighborhood District.

5) *Gas and fuel, retail.* Gas and fuel, retail shall comply with the following standards:

a) There shall be a pitched canopy over the gasoline pumps;

b) Gasoline pump canopies shall be located with the shortest side of the canopy facing the primary abutting street.

6) *Kennel, indoor*.

a) An indoor kennel use shall be located in an enclosed soundproof building and be designed and operated so that it does not produce objectionable odors outside its walls.

b) An outdoor exercise and bathroom area shall only be permitted according to the following conditions:

(i) Such areas shall only be used between the hours of 7am to 10pm.

(ii) Such areas shall be located at least 100 feet from the lot line when the adjacent use or zoning is residential.

(iii) Such areas shall be enclosed by a fence at least 6 feet in height.

7) *Kennel, outdoor.* An outdoor kennel use shall be subject to the following use standards:

a) The kennel use shall be limited to the raising, breeding, boarding, training, and grooming of domesticated animals such as dogs and cats;

b) The outdoor run or yard shall only be used during the hours of 7:00 am and 10:00 pm;

c) While animals are outdoors, a person must be at the facility;

d) No outdoor run or yard shall be located within 100 feet of property line where adjacent to residential uses or residential zoning districts, and no more than 50 feet where adjacent to other uses;

e) Fences no less than four feet and no more than seven feet in height shall be required on outdoor runs or yards. If necessary to protect neighboring property, a landscape screen shall be provided around the outdoor run or yard; and

f) The outdoor kennel shall be adequately buffered to ensure its compatibility with surrounding land uses, and shall at a minimum comply with the buffer standards of Sec. 8.2.6.

8) *Reserved*.

9) *Laundromat*. A laundromat shall be designed to ensure that the windows and doors on the front and sides of the building shall be consistent and compatible in size and number with surrounding land uses.

10) *Newsstands and gift shop*. A newsstand and gift shop in the O&I Office and Institutional District is permitted only when the total floor area of all barber and beauty shops, gift shops, newsstands, pharmacies, and restaurants does not occupy more than 30 percent of the gross floor area of the building.

11) *Personal service*. Personal service uses in the O&I Office and Institutional District are permitted only when the total floor area of all barber and beauty shops, gift shops, newsstands, pharmacies, personal services, and restaurants does not occupy more than 30 percent of the gross floor area of the building.

12) *Pharmacy*

a) Pharmacies in the O&I Office and Institutional District are permitted only when the total floor area of all barber and beauty shops, gift shops, newsstands, pharmacies, personal services and restaurants does not occupy more than 30 percent of the gross floor area of the building.

b) Drive-through facilities associated with pharmacies shall be comply with the following standards:

(i) Drive-through facility canopies shall be pitch-roofed consisting of materials and at an angle to match the primary building;

(ii) Drive-through facilities shall be situated to the side and preferably to the rear of the primary building; and

(iii) No drive-through facilities shall be developed in the B-2 Downtown Business District and the TND-CZ Traditional Neighborhood Districts.

13) *Retail sales, general.* Retail sales, general in the LI Light Industrial District are permitted only when the floor area of the Retail sales, general does not occupy more than 30 percent of the gross floor area of the building and provided that it is associated with the principal industrial use on the site.

14) *Self-service storage*. A self-service storage use shall comply with the following standards:

a) The only commercial uses permitted on the site of a self-service storage facility use shall be the rental of storage bays and the pickup and deposit of goods or property in dead storage. Storage bays shall not be used to manufacture, fabricate or process goods; service or repair vehicles, small engines or electrical equipment, or to conduct similar repair activities; conduct garage sales or retail sales of any kind; or conduct any other commercial or industrial activity on the site;

b) A security or caretaker quarters use may be established on the site of a self-storage facility;

c) Individual storage bays or private postal boxes within a self-service storage facility use shall not be considered premises for the purpose of assigning a legal address;

d) Except as provided in this section, all property stored on the site of a self-service storage facility use shall be entirely within enclosed buildings;

e) Open storage of recreational vehicles and dry storage of pleasure boats of the type customarily maintained by persons for their personal use shall be permitted within a self service storage facility use, provided that the following standards are met:

(i) The storage shall occur only within a designated area. The designated area shall be clearly delineated;

(ii) The storage area shall not exceed 25 percent of the buildable area of the site;

(iii) The storage area shall be entirely screened from view from adjacent residential areas and public roads by a building and/or solid fencing with landscaping on the outside of the fence;

(iv) Storage shall not occur within the area set aside for minimum building setbacks;

(v) No dry stacking of boats shall be permitted on site; and

(vi) No vehicle maintenance, washing or repair shall be permitted.

f) The minimum lot size for a self-service storage facility shall be three acres. No variance or other relief shall be granted from this standard;

g) The development shall not encroach into any buffer required by this Ordinance; the minimum required setback from any property line shall be the greater of any required buffer or setback (Sec. 8.2.6(B)).

h) If separate structures are constructed, there shall be a minimum separation of 10 feet between the buildings within the facility;

i) The maximum size of a storage bay shall be 900 square feet;

j) With the exception of a structure used as a security or caretaker quarters, the maximum height of a self-service storage facility use shall be 24 feet. In addition, a parapet wall shall be constructed to screen roof-mounted heating and air conditioning and other equipment, if any. The combined height of the building and the parapet wall shall not exceed 30 feet;

k) The following on-site circulation standards shall apply:

(i) Interior parking shall be provided in the form of aisleways adjacent to the storage bays. These aisleways shall be used both for circulation and temporary customer parking while using storage bays. The minimum width of these aisleways shall be 21 feet if only one-way traffic is permitted, and 30 feet if two-way traffic is permitted;

(ii) The one-or two-way traffic flow patterns in aisleways shall be clearly marked. Marking shall consist at a minimum of use of standard directional signage and painted lane markings with arrows;

(iii) Appropriate access and circulation by vehicles and emergency equipment shall be ensured through the design of internal turning radii of aisleways.

l) Outdoor lighting shall be the minimum necessary to discourage vandalism and theft. If a facility abuts a residential district, outdoor lighting fixtures shall be no more than 15 feet in height;

m) No exterior loudspeakers or paging equipment shall be permitted on the site;

n) All perimeter buildings shall be two (2) stories in height and designed to look like office buildings. Storage bay doors shall not face any abutting property located in a residential district, nor shall they be visible from any public road; and

o) The exterior facades of all structures shall receive uniform architectural treatment, including masonry, stucco, and painting of surfaces. The colors selected shall be compatible with the character of the neighborhood.

p) Self-service storage located in the Tech/Flex (TF) Zoning District shall meet the following standards:

(i) The use shall be part of an overall site that includes an additional Tech/Flex permitted use;

(ii) The self-storage portion of the overall site shall be situated behind other permitted uses; and

(iii) The self-service storage use shall cover no more than 60% of the overall site acreage.

15) *Theater.* A theater in the B2 Downtown Business District shall be freestanding, shall not be located on North Salem Street between Center Street and West Chatham Street, and shall not be located on Commerce Street.

16) *Upholstery shop*. When an upholstery shop is located in the B1 Neighborhood Business District or PUD Planned Unit Development District, all business shall be conducted in a building. No outside storage or repairs shall be permitted. Deliveries shall be limited to 7am until 7pm.

17) *Pet services.* Pet services shall comply with the following:

a) Services shall be limited to live companion animals, including but not limited to dogs, cats, birds, small reptiles, small rodents, and fish;

b) Services shall be provided within an enclosed building with no outdoor facilities such as kennels, runs, play areas, or other similar spaces;

c) There shall be no overnight services; and

d) Establishments shall obtain all applicable Federal, State, and Local licenses and permits required by law.

18) *Pawn shop*. A pawn shop shall comply with the following standards:

a) Pawn shops shall be regulated by the North Carolina Pawnbrokers Modernization Act of 1989 (1989, c.638, 5.2); and

b) No pawn shop shall be located within 1,000 feet of another pawn shop, tattoo parlor, or adult establishment.

19) *Artisan studio.*

a) Such use, including storage, shall be conducted entirely within a fully-enclosed building; and

b) A minimum of 10% of the square footage of the production area shall be designated as a showroom/retail space.

H) ***Vehicle Repair and Service***

1) *Automotive paint or body shop*. An automotive paint and body shop use shall be conducted within an enclosed structure.

2) *Automotive service station*. An automotive service station use shall comply with the following standards:

a) The automotive service station shall be designed to ensure proper functioning of the site as related to vehicle stacking, circulation and turning movements;

b) The operation shall be adequately buffered to ensure its compatibility with surrounding land uses, and shall at a minimum comply with the buffer standards of Sec. 8.2.6.

c) Adequate access shall be provided into and off of the site;

d) All accessory repair activities shall be conducted within an enclosed structure. No outside storage of disassembled vehicles, or parts thereof, shall be permitted on site;

e) Vehicles shall not be tested off-site on residential streets;

f) Any accessory automatic car wash facility shall utilize a 100 percent water recycling system; and

g) No outdoor speaker or public address systems that are audible off-site shall be permitted.

3) *Car wash or auto detailing*. Car wash and auto detailing uses shall comply with the following standards:

a) An automatic car wash shall be considered an accessory use to an automotive service station use when it is located on the same lot, and shall be governed by the use and property development regulations applicable to the service station use; and

b) No outdoor speaker or public address systems which are audible off-site shall be permitted.

4) *Repair and maintenance, general*. A general repair and maintenance use shall comply with the following standards:

a) All repair and maintenance activities shall be conducted within an enclosed structure in the Planned Commercial (PC) and Tech/Flex (TF) districts. In the Light Industrial (LI) district, repair and maintenance activities shall be conducted within an enclosed structure or within an area screened from the view of adjacent lands by solid fencing, dense vegetative buffers, earthen berms, and/or other effective screening;

b) Outside storage areas are only allowed in the Light Industrial (LI) district and must be fully screened from off-site view by a solid fence and landscaping on the outside of the fence, and comply with the buffer standards of Sec. 8.2.6;

c) No storage of junked vehicles or vehicles to be used for parts is allowed within the Planned Commercial (PC) or Tech/Flex (TF) districts;

d) Outside repair or maintenance activities are only allowed in the Light Industrial (LI) district and shall not be conducted within 100 feet of any property line adjacent to a residential district;

e) No service bay door shall be oriented toward any adjacent residential district or any adjacent public street;

f) No outdoor speaker or public address system that is audible off-site shall be permitted;

g) All vehicles awaiting service or repair must be parked on-site; and

h) Vehicles shall not be tested off-site on residential streets.

5) *Towing service storage*. The storage area for a towing service storage shall be completely screened from off-site view by buildings and/or solid fencing with landscaping on the outside of the fence, and shall comply with the buffering standards of Sec. 8.2.6.

6) *Vehicle sales and rental, light*. A Vehicle sales and rental, light use shall have paved parking and display areas. Within the Small Town Character Overlay District, the *Vehicle sales and rental, light use* shall only be allowed within the Planned Commercial zoning district (not Light Industrial or Tech Flex) and the following shall be required:

a) No more than 10 vehicle spaces dedicated to display, sales, or storage are allowed;

b) Vehicle display, sales, or storage shall be located a minimum of 100 feet behind the right-of-way line; and

c) The only signage allowed on the vehicle shall be located on the windshield and shall not exceed 20% of the windshield area.

4.4.6 Industrial Uses

A) ***Industrial Service***

1) *Greenhouse or nursery, wholesale*. A wholesale greenhouse or nursery use shall comply with the following standards:

a) A wholesale greenhouse or nursery use shall be located on a lot greater than 10 acres;

b) Loading or operation of heavy machinery at a wholesale greenhouse or nursery use shall not occur between the hours of 11:00 PM and 6:00 AM.

2) *Machine or welding shop.* A machine or welding shop use shall be conducted within an enclosed structure.

B) ***Production***

1) *Asphalt or Concrete Plant*. An asphalt or concrete plant shall comply with the following standards:

a) The plant shall be located no closer than 600 feet from any residentially zoned property and shall be located on a property equal to or greater than 5 acres;

b) An asphalt or concrete plant shall not be located north of US 1 Highway;

c) Any production-related silos shall not exceed a height of 85 feet and shall be a neutral color that blends into the sky. All other buildings and structures must meet the maximum height of the LI zoning district found in Section 5.1.2; and

d) A silo shall have a fall zone that is equal to or greater than the height of the silo and shall be located on the same parcel.

2) *Brewery.* A brewery producing more than 15,000 barrels per year must be located in a stand-alone building.

3) *Microbrewery.* A microbrewery located in B1 or PC is permitted as an accessory use to a *Restaurant, general*.

4) *Distillery.* A distillery producing more than 15,000 barrels per year must be located in a stand-alone building.

5) *Microdistillery.* A microdistillery in the TF district must be located in a stand-alone building.

4.5 ACCESSORY USES AND STRUCTURES

4.5.1 Purpose

This Section authorizes the establishment of accessory uses and structures that are necessary and clearly incidental and subordinate to permitted uses and approved special uses. Additional performance criteria are set forth in this Section for particular uses and structures in order to reduce potentially adverse impacts on surrounding properties.

4.5.2 Generally

Accessory uses and activities shall be subject to the same regulations as apply to principal uses in each district, unless otherwise expressly stated. Accessory uses and structures shall comply with the following:

A) ***Size***
In no case shall an accessory use exceed 25% of the total square footage of the building(s) or 25% of the total land area used.

B) ***Time of Establishment***
No accessory use shall be established and no accessory structures shall be allowed until approval of all required permits for the principal use or activity.

C) ***Operation***
Accessory uses shall be constructed, maintained and conducted to avoid production of noise, vibration, concussion, dust, dirt, smoke, odors, noxious gases, heat and glare from artificial illumination or from reflection of natural light.

D) ***Location***
Accessory uses and structures shall be located on the same property as the principal use or structure served.

4.5.3 Accessory Structures

A) ***Non-Residential Zoning Districts.***

1) Accessory structures located in non-residential zoning districts shall be constructed of the same materials and colors as used for the main building.

2) Portable storage containers, such as but not limited to PODS, are prohibited as a permanent use, unless the portable storage container is located within the rear yard behind the principal building and meets all other requirements of Sec. 4.1.2 *Outside Storage and Sales*. In no case shall the portable storage container be allowed in the side or front yards.

B) ***Residential Zoning Districts.***

1) Accessory structures located in residential zoning districts shall be constructed of similar materials and colors as used for the main dwelling unit; however, accessory structures that are 12’ by 12’ or smaller are exempt from this requirement.

2) Portable storage containers, such as but not limited to PODS, are prohibited as a permanent use.

4.5.4 Single-Family Recreational Accessory Use

A single-family recreational accessory use shall be located on a single-family lot and clearly be accessory to the principal residential use. Typical facilities include, but are not limited to, playgrounds, swimming pools, hot tubs, spas, tennis courts, badminton courts, volleyball courts, and basketball courts. A single-family recreational accessory use must meet the State of North Carolina Building Code; Section 5.2.7 “Dimensional Standards for Detached Accessory Structures”; Section 4.5.3 “Operation”; Section 8.2.7(A)(4) “Fences, Walls, and Berms - Materials”; and Section 8.2.7(B)(1) “Fence/Wall Height”. Lighting of single-family recreational accessory use by anything other than typical residential lighting is subject to regulation under Section 8.6 “Exterior Lighting”. Tennis courts and basketball courts shall install and maintain a 10’ Type A Buffer (ref. Section 8.2.6(B)(5)(a)) around the perimeter of the court(s) to be located anywhere between the court(s) and the property lines.

4.5.5 Home Occupation

A home occupation shall comply with the following standards:

A) ***Incidental***

The home occupation shall be clearly incidental and secondary to the residential use of the building and shall be confined to no more than 25 percent of the total floor area of the dwelling, or 500 square feet, whichever is less;

B) ***Specialized Services***

1) No specialized service, such as but not limited to, dance instruction, crafts, or music lessons may be provided for a group larger than five persons;

2) Family Child Care Homes shall be consistent with NC General Statutes and the policies of the North Carolina Department of Health and Human Services. The number of children cared for in the home shall not exceed the number allowed by the North Carolina Division of Child Development and Early Education for licensing of Family Child Care Homes;

3) No goods, products, or commodities bought for the express purpose of resale shall be sold at retail or wholesale on the premises; homemade items, foodstuffs, and crafts made in the home may be offered for sale on the premises in the RA Rural Agricultural and RR Rural Residential districts only;

C) ***Enclosed Building***
A home occupation shall be conducted within the principal dwelling or an enclosed accessory structure, and shall not be conducted within any open porch that is attached to and part of the principal structure;

D) ***Essential Character***
The home occupation shall not change the essential residential character of the use;

E) ***Immediate Family***
A home occupation use shall be conducted by a member of the immediate family residing in the dwelling unit;

F) ***Employees***
Members of the immediate family residing in the dwelling unit may be employed to work for the home occupation. In addition, one employee who does not reside at the premises may be employed to work at the dwelling unit;

G) ***No External Evidence***
Signs shall be limited to those permitted by Section 8.7.1(B) *Home Occupation Signs*. No further external evidence or sign shall advertise, display, or otherwise indicate the presence of the home occupation, nor shall the street address of the home occupation be advertised through signs, billboards, television, radio, or newspapers;

H) ***Sales***
A home occupation shall not involve the sale of any stock in trade, supplies, products or services on the premises;

I) ***No Displays***
No equipment or materials used in the home occupation shall be stored or displayed outside of the dwelling;

J) ***Vehicle***
Only one vehicle used in connection with the home occupation shall be stored on the premises. The vehicle shall fit in a standard 9’ x 18’ parking space and shall not be a commercial truck or vehicle, such as but not limited to a dump truck, a fuel oil truck, delivery truck, or a wrecker; and

K) ***No Mechanical, Electrical or Other Equipment Which Causes Nuisance***
No home occupation shall involve the use of any mechanical, electrical or other equipment, materials or items which produce noise, electrical or magnetic interference, vibration, heat, glare, smoke, dust, odor or other nuisance outside the residential building. There shall be no storage of hazardous or noxious materials on the site of the home occupation.

4.5.6 Accessory Apartment

Accessory apartment means a secondary dwelling unit either (1) in or added to an existing single-family dwelling, (2) in an accessory structure on the same lot as the principal single-family dwelling or (3) on all but the ground floor of a commercial use in

the B1 Neighborhood Business District, B2 Downtown Business District, MEC-CZ Major Employment Center District, TND-CZ Traditional Neighborhood District, PUD-CZ Planned Unit Development District, MORR Mixed Office-Residential-Retail District, or SD-CZ Sustainable Development District. An accessory apartment is a complete, independent living facility equipped with a kitchen and with provisions for sanitation and sleeping. An accessory apartment use shall comply with the following standards:

A) ***General***
A maximum of one apartment may be permitted as an accessory use to a principal single-family dwelling unit. The accessory apartment may be attached to the principal dwelling unit or may be freestanding. Accessory apartments may also be developed on all but the ground floor of commercial uses in the B1 Neighborhood Business District, the B2 Downtown Business District, the MEC-CZ Major Employment District, the PUD-CZ Planned Unit Development District, SD-CZ Sustainable Development District, and the TND-CZ Traditional Neighborhood District;

B) ***Accessory to Single Family***

1) In single-family homes or lots outside of the Small Town Character Overlay District where the parcel is less than ten acres, the following shall apply:

a) Accessory apartments shall contain no more than one (1) bedroom; and

b) Be no larger than 1,000 heated square feet in size.

2) In single family homes or lots outside of the Small Town Character Overlay District where the parcel is 10 or more acres, accessory apartments shall be no larger than 40% of the heated square footage of the principal single-family dwelling;

3) In the Small Town Character Overlay District the following shall apply:

a) Accessory apartments shall contain no more than one (1) bedroom; and

b) Be no larger than 50% of the heated square footage of the principal single-family dwelling or be larger than 1,000 heated square feet in size, whichever is smaller;

C) ***Similar Materials***
The accessory apartment shall be constructed of materials substantially equivalent to either the principal dwelling unit or other permanent accessory structure on the lot, provided that such materials comply with all other applicable standards of the building code;

D) ***Compatible Character***
The accessory apartment shall be compatible in character and subordinate in size to the principal dwelling unit or the commercial uses in which they are located in the B1 Neighborhood Business District, the B2 Downtown Business District, the MEC-CZ Major Employment Center District, the PUD-CZ Planned Unit Development District, SD-CZ Sustainable Development District, Small Town Character Overlay District; and the TND-CZ Traditional Neighborhood District;

E) ***Yard Setbacks***
The accessory apartment shall comply with the minimum yard setbacks applicable to the district in which it is located; and

F) ***Ownership***
The accessory apartment in the residential districts shall remain accessory to and under the same ownership as the principal single family dwelling unit. The accessory units in the B1 Neighborhood Business District, the B2 Downtown Business District, the MEC-CZ Major Employment District, the PUD-CZ Planned Unit Development District, the SD-CZ Sustainable Development District, and the TND-CZ Traditional Neighborhood District may be under separate ownership.

G) ***Dimensional Standards***
Dimensional standards for detached accessory apartments shall meet the requirements of UDO Section 5.2.7 *Dimensional Standards for Accessory Structures*.

4.6 TEMPORARY USES AND STRUCTURES

4.6.1 Permit Required

A) ***General***
A temporary use or structure for one or more of the following described uses shall be permitted in any zoning district. All temporary uses and structures shall obtain a temporary use permit pursuant to the procedures set forth in Sec. 2.3.11, *Temporary Use*.

B) ***General Regulations***
The general regulations of this subsection shall apply to all allowed temporary uses unless otherwise expressly stated.

1) *Temporary signs*. No temporary signs shall be permitted in a public right-of-way or off-premises of the temporary use. All temporary signs associated with the temporary use shall be displayed no sooner than one week prior to the commencement of the temporary use and shall be removed no later than two days after the end of the temporary use. All temporary signs shall meet the requirements of 8.7.1 *Signs, Permitted Signs: Location, Size, and Number*.

2) *Conditions of approval*. Temporary uses shall not violate any applicable conditions of approval that apply to the principal use on the site.

3) *Obtain all other applicable permits*. The operator must obtain all other required permits applicable to the temporary use.

4) *Not located in public right-of-way.* Temporary uses shall not be located within a public right-of-way.

C) ***Uses Allowed***
Temporary uses shall be allowed in accordance with the standards of this subsection.

1) *Fairs, carnivals, circuses and tent revivals and other public gatherings*. Fairs, carnivals, circuses and tent revivals and other public gatherings shall be allowed as follows:

a) In the B2 Downtown Business District, the TND-CZ Traditional Neighborhood District, the PUD-CZ Planned Unit Development District, SD-CZ Sustainable Development District, and the MEC-CZ Major Employment Center District, such uses shall be allowed for up to seven (7) consecutive days. Five (5) events are allowed per calendar year.

b) In Residential districts (except the RA Residential Agricultural and RR Rural Residential Districts) and O&I Office and Institutional District, such uses may be allowed for up to four (4) consecutive days on the site of a school or church use. Two (2) events are allowed each calendar year.

c) In the RA Residential Agricultural and RR Rural Residential Districts, such uses may be allowed for up to seven (7) consecutive days. One (1) event is allowed per calendar year.

2) *Natural disaster or other health and safety emergencies*. Temporary uses and structures needed as the result of a natural disaster or other health and safety emergencies are allowed for the duration of the emergency.

3) *Produce stands.* Produce stands are allowed as temporary uses in the RA Residential Agricultural District, the RR Rural Residential District, the B2 Downtown Business District, the TND-CZ Traditional Neighborhood District, the SD-CZ Sustainable Development Conditional Zoning District, and the PUD-CZ Planned Unit Development District for up to two (2) months at a time. Two (2) events are allowed in each calendar year.

4) *Seasonal outdoor sales.* Seasonal outdoor sales are allowed for up to one (1) month at one time. Seasonal outdoor sales shall not consist of inventory that a business typically sells. Seasonal outdoor sales include, but are not limited to, fireworks displays, Christmas tree lots, pumpkin sales, etc. Two (2) events are allowed on the same parcel each calendar year in all districts except the LD Low Density Residential District, the MD Medium Density Residential District, the HDSF High Density Single-Family Residential District, and the HDMF High Density Multi-Family Residential District. Churches and non-profit organizations are exempt from this section and can conduct seasonal outdoor sales in any zoning district and are not limited to two (2) events per calendar year.

5) *Promotional event.* For profit promotional events are allowed provided that:

a) The size and location of the promotional event shall be reasonably related to the existing business and in no case shall interfere with the day-to-day business operations of on-site or adjacent businesses. A plan showing the layout of the promotional event is required.

b) No more than three (3) promotional events shall occur at any one development per calendar year.

c) The promotional event shall be limited to fourteen (14) days in length.

6) *Temporary construction, security, and real estate sales offices*. Temporary construction, security, and real estate sales offices shall be allowed as follows:

a) The owner of a construction project may place on the construction site a temporary office for use by construction, security, and real estate sales personnel. Recreational vehicles, tents, or similar structures are prohibited for use as temporary construction, security, and real estate sales offices.

b) The temporary office shall be located on the lot on which construction or development is occurring and shall not be located within twenty-five (25) feet of any neighboring residential use within a separate development. For the purposes of this provision, phases of a development are not considered separate developments.

c) The office shall be removed within ten (10) days after final inspection of the permanent structure or expiration of the corresponding building permit, whichever event occurs first. In the case of residential development projects, the office must be removed within ten (10) days of sale or lease of all dwelling units.

7) *Temporary Use Permits issued under a Special Use Permit*. A Special Use Permit may include up to twelve (12) Temporary Use Permits per calendar year and may include any of the Temporary Use Permits as described in Section 4.6.1(C) *Uses Allowed*. The Temporary Use Permit shall be limited by the number and consecutive days established in the individual Special Use Permit, not as described in the applicable section. An application for a Temporary Use Permit shall be accompanied by a copy of the approved Special Use Permit and the Planning Department shall maintain a record of the number and type of permits granted each calendar year.

8) *Temporary heated pool structures*. Temporary heated pool structures, such as, but not limited to, tents are allowed provided that:

a) The pool to be covered by the temporary heated pool structure is a community pool that is used for non-commercial activities only.

b) The structure is erected for less than 180 days per year.

c) The structure is erected for the sole purpose of allowing swimming in heated pools to occur during cold weather months.

9) *Temporary health care structure*. A temporary health care structure, as defined by NCGS Sec. 160A-383.5, shall be allowed as an accessory use to a single-family detached dwelling within a Residential zoning district. Such structure shall comply with the use standards found in NCGS Sec. 160A-383.5.

10) *Reserved.*

11) *Other temporary uses*. The Planning Director may approve other temporary uses and activities or special events if it is determined that such uses would not jeopardize the health, safety, or general welfare, or be injurious or detrimental to properties adjacent to, or in the vicinity of, the proposed location of the activity.

4.6.2 No Permit Required

A) ***Residential Yard Sales***

1) Sales shall occur no more than two consecutive days and may not occur outside of the hours of 7am to 7pm.

2) There shall be no more than four (4) sales at each address during each calendar year.

3) Signs shall meet the requirements in Sec. 8.7.1(A)(31) *Yard Sale.*

ARTICLE 5 MEASUREMENTS

5.1 TABLE OF INTENSITY AND DIMENSIONAL STANDARDS

All primary and accessory structures shall be subject to the intensity and dimensional standards set forth in the following tables. These intensity and dimensional standards may be further limited or modified by other applicable sections of this Ordinance. Additional regulations are set forth immediately following the tables. Rules of measurement and exceptions are set forth in Sec. 5.2. Dimensional standards may be found for certain uses in Sec. 4.4 *Supplemental Standards*.

5.1.1 Residential Districts

Use	Average Lot Size	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max Density (Gross Units per Acre)	Additional Regulations
			Front	Side	Rear	Corner Side				
RA										
School	___	___	50	50	50	25	5 stories and 75	50	___	___
Government services	___	___	20	15	25	15	36	60	___	___
Single family	5 acres	50	30	15	25	15	36	50	0.2	Sec. 5.2.3.B
All other uses	5 acres	___	30	15	25	15	36	50	0.2	Sec. 4.4
RR										
Church or place of worship	___	___	50	50	50	25	48	50	___	___
Congregate living facility	___	___	65**	65**	65**	65**	36	50	5	Sec. 5.2.2.F
Farm residence	___	___	40	15	25	___	36	50	1	___
Government services	___	___	20	15	25	15	48	60	___	___
Single family	1 acre	50	40	15	25	15	36	50	1	Sec. 5.2.3.B
School	___	___	50	50	50	25	5 stories and 75	60	___	___
All other uses	___	___	40	15	25	15	36	50	___	___
LD										
Church or place of worship	___	___	50	50	50	25	48	60	___	___
Single family	10,000 square feet	50	25***	8 min./ 20 total	25	18	40	60	3	Sec. 5.2.3.B
School	___	___	25	25	25	25	5 stories and 75	70	___	___
All other uses	___	___	25	8 min./ 20 total	25	18	36	60	___	___
MD										
Church or place of worship	___	___	50	50	50	25	48	60	___	___
Congregate living facility	___	___	65**	65**	65**	65**	36	60	13	Sec. 5.2.2.F
Duplexes	___	___	15	6 min./ 16 total	20	15	36	60	6	___
Park, active or passive	___	___	30	30	30	15	36	60	___	___
Single family	___	50	25***	6 min./ 16 total	20	15	40	60	6	___
Townhouses, detached	___	26	10 min./ 15 max.	3	5	15	36	65	7	Sec. 4.1.1.J
School	___	___	25	25	25	25	5 stories and 75	70	___	___
All other uses	___	____	50	20	50	15	36	60	___	___

Use	Average Lot Size	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max Density (Gross Units per Acre)	Additional Regulations
			Front	Side	Rear	Corner Side				
HDSF										
Duplexes	___	___	15	8	15	15	48	65	8	___
Congregate living facility	___	___	50**	50**	50**	50	48	65	21	Sec. 5.2.2.F
Church or place of worship	___	___	50	50	50	50	48	65	___	___
Day care	___	___	25	15	25	15	36	65	___	___
Single Family	___	40	15	8	15	15	36	65	8	___
Townhouses	___	18	15	0	15	15	36	65	___	8' aggregate setback between buildings
Townhouses, detached	___	26	10 min./ 15 max.	3	5	15	36	65	7	Sec. 4.1.1.J
School	___	___	25	25	25	25	5 stories and 75	70	___	___
All other uses	___	___	25	10	25	15	36	65	8	___
HDMF										
Duplexes, Triplexes, and Quadplexes	___	___	25**	25**	25**	25**	48	65	14	Sec. 5.2.2.F
Congregate living facility, Nursing or convalescent facility	___	___	50**	50**	50**	50**	48	65	21	Sec. 5.2.2.F
Condominium, Multi-family or Apartments	___	___	50**	50**	50**	50**	48	65	14	Sec. 5.2.2.F
Church or place of worship	___	___	50	50	50	50	48	65	___	___
Day care	___	___	25	15	25	15	36	65	___	___
Townhouses	___	18	15	0	15	15	36	65	___	8' aggregate setback between buildings
Townhouses, detached	___	26	10 min./ 15 max.	3	5	15	36	65	7	Sec. 4.1.1.J
School	___	___	25	25	25	25	5 stories and 75	70	___	___
All other uses	___	___	25	10	25	15	36	65	___	___
MH										
Manufactured home	___	___	25	8	25	15	24	65	6	___
Single family home	___	___	25	8	25	15	24	65	6	___
School	___	___	25	25	25	25	5 stories and 75	70	___	___
All other uses	___	___	50	50	50	50	36	65	___	___
MHP										
Mobile home	___	50	25**	25**	25**	25**	20	65	8	Interior setbacks equal to: Front 10'; Side 6'; Rear 10'
All other uses	___	___	50	50	50	50	36	65	___	___
MORR										
Congregate living facility, Nursing or convalescent facility	___	___	35** max.	15**	25**	15**	36	70	18	Sec. 5.2.2.F
Condominium, Duplex, Multi-family, or Apartments	___	___	25** max.	5**	10**	15**	36	70	12	Sec. 5.2.2.F

Use	Average Lot Size	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max Density (Gross Units per Acre)	Additional Regulations
			Front	Side	Rear	Corner Side				
Single family	___	50	25 max.	4 min/ 15 total	10	15	36	70	8	___
Church or place of worship	___	___	35 max.	15	25	15	36	70	___	___
Day care	___	___	25 max.	5	10	15	36	70	___	___
Government services	___	___	20	15	25	15	36	70	___	___
School	___	___	50 max.	15	25	15	5 stories and 75	70	___	___
Townhouses	___	18	15	0	15	15	36	70	___	8' aggregate setback between buildings
Townhouses, detached	___	26	10 min./ 15 max.	3	5	15	36	65	7	Sec. 4.1.1.J
All other uses	___	___	25 max.	4 min/ 15 total	10	15	36	70	___	___

* See Sec 6.1, *Watershed Protection Overlay Districts*.
** These setbacks are for the perimeter of entire project only.
*** Projects submitted prior to April 1, 2008 shall be governed by the Minimum Front Setbacks in place at the time of submittal.

5.1.2 Business Districts

Use	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max. Density (Units per Acre)	Additional Regulations
		Front	Side	Rear	Corner Side				
O & I									
Ambulatory Healthcare Facility with Emergency Department	___	20	20	20	15	60	65	___	___
Nursing or Convalescent facility	___	40**	30**	40**	30**	36	65	12	Sec. 5.2.2.F
Church or place of worship	___	40	40	40	40	48	65	___	___
Government services	___	20	15	25	15	48	70	___	___
Hospital	300	75	75	75	75	48	65	___	___
Office, business or professional	___	20	20	20	20	48	70	___	___
Medical or Dental Office or Clinic	___	20	20	20	15	48	70	___	___
School	___	50	50	50	50	5 stories and 75	70	___	___
All other uses	___	20	20	30	20	36	65	___	___
B1									
Office, business or professional	___	20	20	20	20	48	70	___	___
Medical or Dental Office or Clinic	___	20	20	20	20	48	70	___	___
Government services	___	20	15	25	15	48	70	___	___
School	___	50	50	50	50	5 stories and 75	70	___	___
All other uses	___	25	15	20	15	36	65	___	___

Use	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max. Density (Units per Acre)	Additional Regulations
		Front	Side	Rear	Corner Side				
B2									
Office, business or professional	___	20	20	20	20	48	70	___	___
Medical or Dental Office or Clinic	___	20	20	20	20	48	70	___	___
Government services	___	10	10	10	10	70	70 ***	___	___
All other uses	___	10 max.	___	___	___	48	70 ***	___	___
PC									
Office, business or professional	___	20	20	20	15	48	70	___	___
Medical or Dental Office or Clinic	___	20	20	20	15	48	70	___	___
Nursing or Convalescent facility	___	40**	20**	20**	20**	48	70	21	___
All other uses	___	10	8	25	15	60	70	___	___
TF									
School	___	25	25	25	25	5 stories and 75	70	___	___
All other uses	___	20	20	20	20	48	65	___	___
LI									
Regional Recreation Complex	___	20	20	20	20	60	70	___	___
All other uses	___	20	20	20	20	48	70	___	___

* See Sec 6.1, *Watershed Protection Overlay Districts*.
** These setbacks are for the perimeter of entire project only.
*** The Central Business District (as defined in Sec. 12.2) is excluded from the Maximum Built-Upon Area requirements.

5.1.3 Planned Development Districts

Use	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max. Density (Gross Units per Acre)	Additional Regulations
		Front	Side	Rear	Corner Side				
MEC-CZ									
Single family	30	See Sec. 2.3.4	5	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	___	Sec. 2.3.4
Townhouses	18	See Sec. 2.3.4	0	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	___	8' aggregate setback between buildings; Sec. 2.3.4
Townhouses, detached	26	See Sec. 2.3.4	3	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	7	Sec. 2.3.4; Sec 4.4.1.J
All other uses	See Sec. 2.3.4						70	___	Sec. 2.3.4
PUD-CZ									
Single family	30	See Sec. 2.3.4	5	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	___	Sec. 2.3.4
Townhouses	18	See Sec. 2.3.4	0	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	___	8' aggregate setback between buildings; Sec. 2.3.4

Use	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max. Density (Gross Units per Acre)	Additional Regulations
		Front	Side	Rear	Corner Side				
Townhouses, detached	26	See Sec. 2.3.4	3	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	7	Sec. 2.3.4; Sec. 4.4.1.J
All other uses	See Sec. 2.3.4						70	___	Sec. 2.3.4
TND-CZ									
Single family	30	See Sec. 2.3.4	5	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	___	Sec. 2.3.4
Townhouses	18	See Sec. 2.3.4	0	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	___	8' aggregate setback between buildings; Sec. 2.3.4
Townhouses, detached	26	See Sec. 2.3.4	3	See Sec. 2.3.4	See Sec. 2.3.4	See Sec. 2.3.4	70	7	Sec. 2.3.4; Sec. 4.4.1.J
All other uses	See Sec. 2.3.4						70	___	Sec. 2.3.4
* See Sec 6.1, *Watershed Protection Overlay Districts*.									

5.1.4 Other Development Districts

Use	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max. Density (Units per Acre)	Additional Regulations
		Front	Side	Rear	Corner Side				
CB									
All uses	___	25	25	25	25	36	60	___	See Sec. 4.4
SD									
All uses	All Intensity and Dimensional Standards shall be as set forth in the Sustainable Development Plan approved for the respective Sustainable Development Conditional Zoning District								
* See Sec 6.1, *Watershed Protection Overlay Districts*.									

5.1.5 Small Town Character Overlay District

Use	Average Lot Size	Minimum Lot Width (Feet)	Minimum Setbacks (Feet)				Max. Height (Feet)	Max. Built-Upon Area (%)*	Max. Density (Gross Units per Acre)	Additional Regulations
			Front	Side	Rear	Corner Side				
Central Business District	___	___	10 max.	0	10	10 max.	2 stories and 36	100	___	___
Non-Residential	___	___	25 max.	8	10	25 max.	36	70	___	___
Single-family	___	60	20	8, 10 on side with driveway in front yard	15	10	36	50	6	___
Multi-family / Condominium	___	60	20[2]	10[2]	15[2]	10[2]	36	60	14	___
Townhouse	___	20	20[2]	0	15[2]	15	36	50	12	10' aggregate setback between buildings; Sec. 2.3.4

Townhouse, detached	___	26	10 min./ 15 max.	3	5	15	36	70	7	Sec. 2.3.4; Sec. 4.4.1.J
Government services	___	___	25 max.	8	10	10	70	70	___	___
* See Sec 6.1, *Watershed Protection Overlay Districts*.										

[1] Reserved.

[2] These setbacks are for the perimeter of the entire project only, not setbacks between units or buildings.

5.2 GENERAL MEASUREMENT REQUIREMENTS

5.2.1 Density

Density shall be measured by taking the quotient of the total number of dwelling units on a site proposed for development divided by the gross acres of the site.

5.2.2 Setbacks

A) ***Measurement***

1) *General.* Required setbacks shall be measured as the distance between the closer of either the nearest lot line or nearest street right-of-way line and the foundation of a building or structure along a line at right angles to the lot line. Where no minimum front, side, or rear setbacks are specified, the setback line shall be coterminous with the corresponding lot line. Allowable projections into setback areas shall not be utilized for measurement of setbacks. Setbacks shall be established at the time of approval of a Site Plan (Sec. 2.3.6) or Master Subdivision Plan (Sec. 2.3.7.D) and the setbacks so established shall continue to apply to the area within the Site Plan or Master Subdivision Plan despite subsequent changes to the setback regulations.

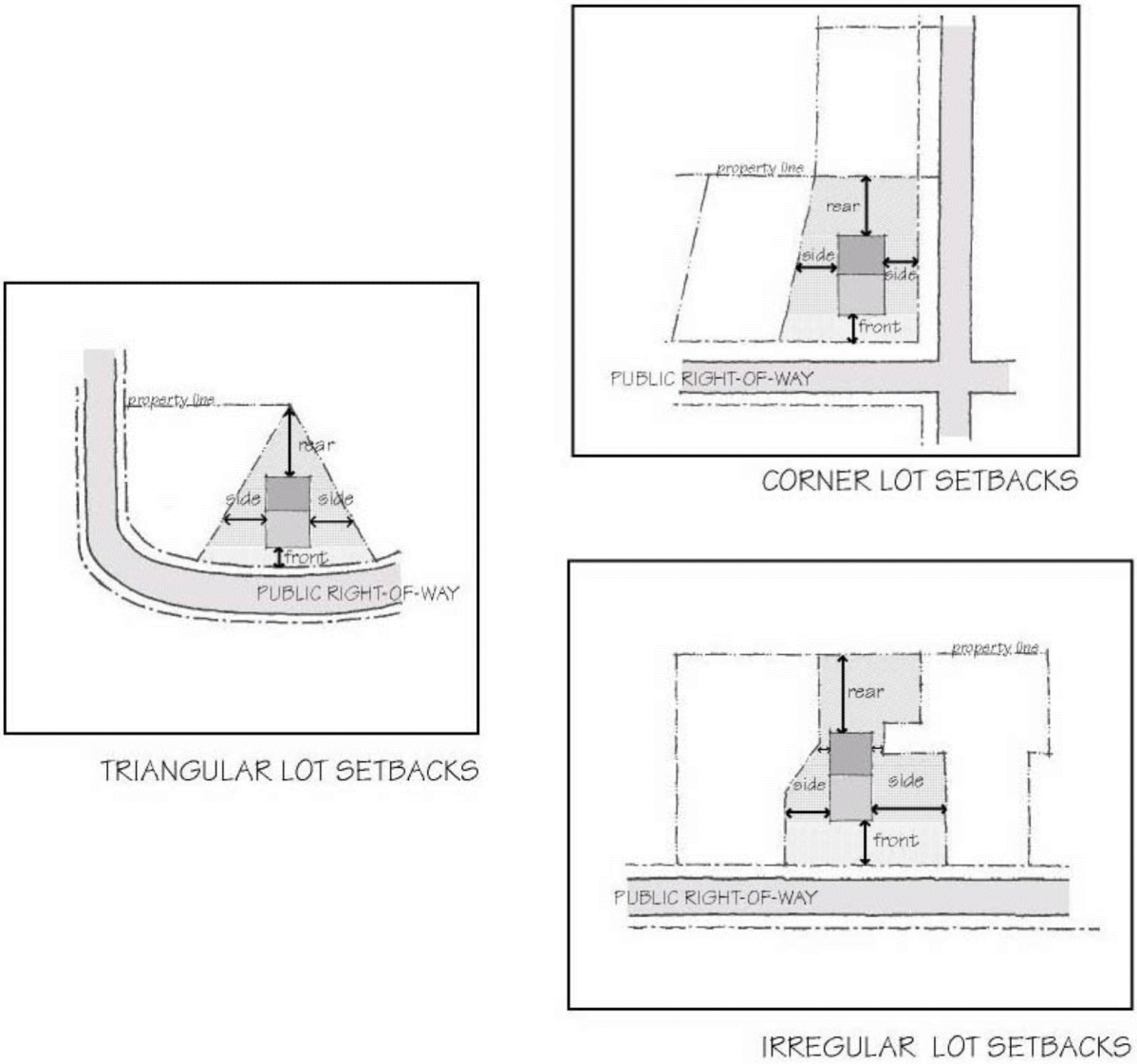


Figure 5.2.2(A)(1) Description of Setbacks

2) *Buffer required.* Where there is a buffer required pursuant to Sec. 6.1.11 *Riparian Buffers* or Sec. 8.2.6, *Buffering*, that buffer shall serve as a setback for all uses in all zoning districts but the MEC-CZ Major Employment Center District, the PUD-CZ Planned Unit Development District, the SD-CZ Sustainable Development District, and the TND-CZ Traditional Neighborhood District. See Sec. 8.2.6.B *Landscape Buffers between Land Uses* and Sec. 8.3.4.B.2 *Setbacks* for setbacks that are required from buffers. A subdivision shall also be required to place a buffer around the edge of the subdivision pursuant to Sec. 8.2.6, *Buffering*.

3) *No buffer required*. Where there is no buffer required pursuant to Sec. 8.2.6, *Buffering*, the setback shall be the setback required for the use in Secs. 5.1.1- 5.1.3, whichever is appropriate.

B) ***General***

1) *Same lot.* Except as specified below, all setbacks allocated to a building or structure shall be located on the same lot as such building or structure.

2) *Townhome lots*. Attached and detached accessory structures may be located anywhere on the lot as long as they meet all applicable building codes, with the exception of townhomes where the setbacks of accessory structures were established at the time of Site Plan, Subdivision Plan, or PUD approval.

3) *Landscape features*. Trees, shrubs, flowers, fences, walls, hedges, and other landscape features may be located within any required setback.

4) *Encroachments into setbacks.* In addition to landscape features, attached accessory structures are allowed to encroach into required setbacks as follows. However, in no case shall any accessory structure be located closer than five (5) feet to a required buffer or other protected areas. Refer to Section 5.2.7 *Dimensional Standards for Accessory Structures* for detached accessory structures.

Table 5.2.2(B)(4) Permitted Encroachments into Required Setbacks

Feature	Similar or Example Feature	Encroachments into Front Building Setbacks	Encroachments into Side Building Setbacks	Encroachments into Rear Building Setbacks
Attached decks	-	-	-	50% into rear building setback.
Patios	Terrace	-	Up to 5’ from the side property line.	Up to 5’ from the rear property line.
Unenclosed porches	-	50% into front building setback.	-	50% into rear building setback.
Enclosed porches	Sunrooms, screened or glassed-in rooms	-	-	50% into rear building setback.
Cantilevers	-	6’ into required front or rear yard setback but no closer than 3’ from any property line.	Cantilevers shall not encroach into the side yard setbacks.	6’ into required front or rear yard setback but no closer than 3’ from any property line.
Appurtenances	Including, but not limited to: • Balconies • Bay windows • Chimneys • Cornices • Eaves • Fire escapes • HVAC & mechanical units • Ornamental features • Sills • Steps	3’ into any required setback, provided that they are no closer than 3’ to any property line, meet all applicable fire and building codes, and do not encroach into any required buffer.	3’ into any required setback, provided that they are no closer than 3’ to any property line, meet all applicable fire and building codes, and do not encroach into any required buffer.	3’ into any required setback, provided that they are no closer than 3’ to any property line, meet all applicable fire and building codes, and do not encroach into any required buffer.
Accessory apartments	-	None.	-	-

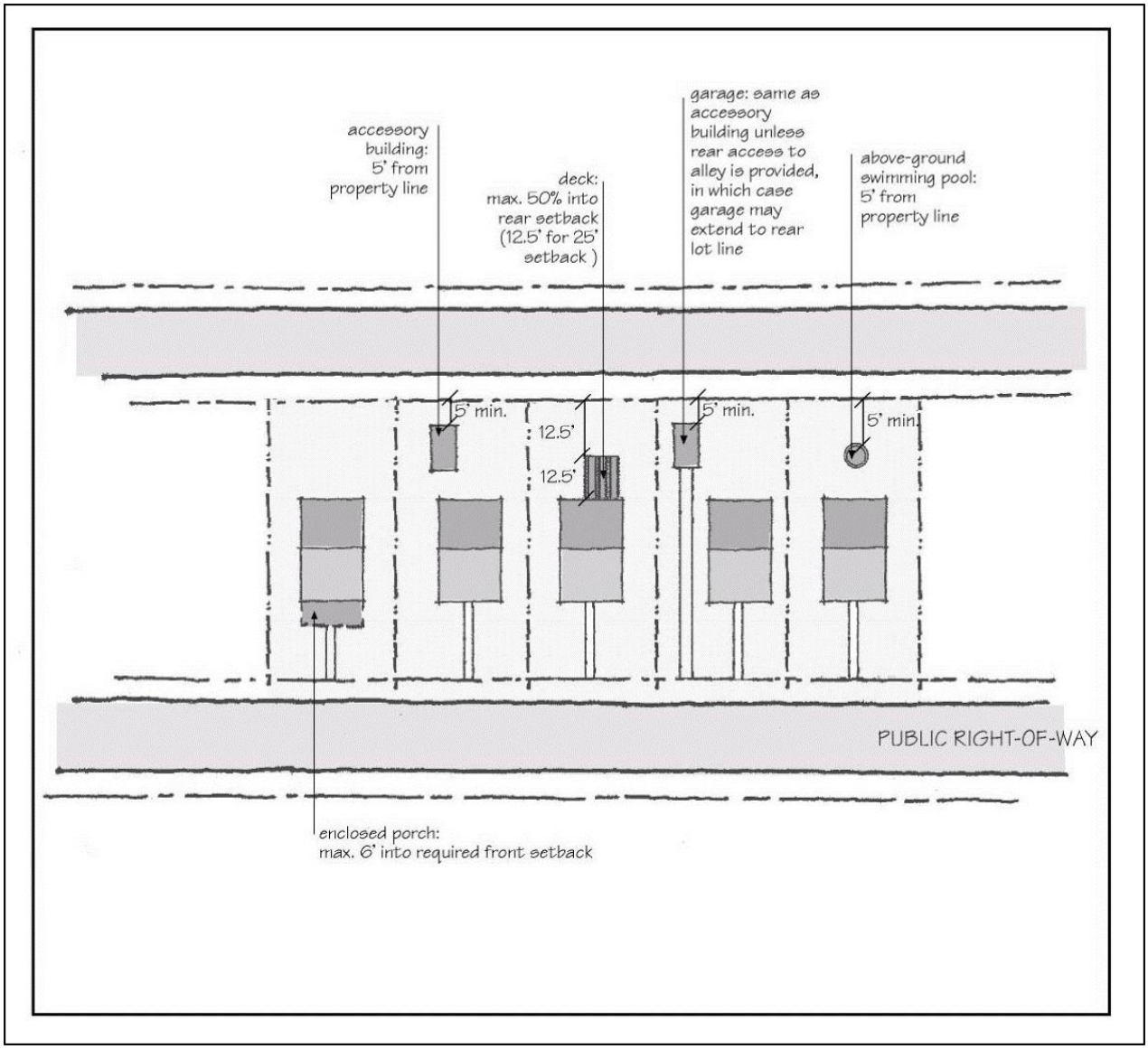


Figure 5.2.2(B)(4): Illustration of Features that May Encroach Into Required Setbacks

C) ***Front Setback***

1) *General.* A front setback extends across the full width of a site, the depth of which is the minimum horizontal distance between the front property line and a line parallel thereto on the site.

2) *Corner lot*. The front setback of a corner lot shall be measured from the side of the lot designated as the front. The front shall be the side where the front door of the building faces.

3) *Contextual front setback*. Regardless of the minimum front setback requirements imposed by this article, applicants shall be allowed to use a "contextual" front setback. A "contextual" front setback may fall at a point between the required front setback and the front setback that exists on the lots that are adjacent and oriented to the same street as the subject lot, as long as the "contextual setback" is compatible and consistent with the setbacks of the adjacent lots. If the subject lot is a corner lot, the "contextual" setback may fall at any point between the required front setback and the front setback that exists on the lot that is adjacent and oriented to the same street as the subject lot. If lots on either side of the subject lot are vacant, the setback that "exists" on such vacant lots shall be interpreted as the minimum required front setback that applies to the vacant lot. This provision shall not be interpreted as requiring a greater front setback than imposed by the underlying zoning district, and it shall not be interpreted as allowing setbacks to be reduced to a level that results in right-of-way widths dropping below established minimums.

D) ***Side Setback***
A side setback extends from the rear line of the required front setback, or the front property line of the site where no front setback is required, to the front line of the required rear setback, or the rear property line of the site where no rear setback is required, the width of which is the horizontal distance between the side property line and a line parallel thereto on the site, except that the corner side setback shall extend to the rear lot line.

E) ***Rear Setback***
A rear setback extends across the full width of a site, the depth of which is the minimum horizontal distance between the rear property line and a line parallel thereto on the site, except that on a corner lot the rear setback shall extend only to the side setback abutting the street.

F) ***Internal Building Setbacks***
Except in Sustainable Development Conditional Zoning District (SD-CZ), internal building setbacks for condominium, multi-family and apartment, congregate living facilities and nursing and convalescent facilities shall comply with the following spacing standards:

1) *Front to front*. Fifty feet from front to front;

2) *Side to side*. Sixteen feet from side to side;

3) *Side to rear*. Thirty-three feet from side to rear or rear to side; and

4) *Rear to rear*. Fifty feet from rear to rear.

5.2.3 Lot Measurement

A) ***Lot Width***
Lot width refers to the horizontal distance between side lot lines. Lot width shall be measured as the distance between the side lot lines as measured at the front building setback line.

B) ***Average Lot Size***
Average lot size refers to the size of single-family lots in the Residential Agricultural (RA), Rural Residential (RR), and Low Density (LD) Districts. The

average size of the lots shall be calculated by taking the total acreage of the area within the residential lots and dividing it by the number of lots.

5.2.4 Height Measurement and Requirements

A) ***Measurement***
Height shall be measured as the vertical distance in feet between the finished floor (not to include finished grade of a basement) to the highest point of the structure at the front elevation.

B) ***Exceptions to Height Regulations***

1) *What not to consider in determining height*. Cupolas, steeples, domes, flag poles, antennas for which a building permit is not required, chimneys, and roof structures used for ornamental or mechanical purposes, when located on a roof and collectively not exceeding in gross area 30% of the roof area, need not be included in determining the height of a building or structure.

2) *Parapet walls*. Parapet walls may extend not more than five (5) feet above the allowable height of a building.

3) *Contextual height limit*. Regardless of the maximum height limit imposed by this Article, a “contextual” height limit shall be applied. The allowed “contextual” height may fall at a point between the maximum height limit and the height of the building(s) that exist on a lot that is adjacent to the subject lot, as long as the “contextual height” is compatible and consistent with the height of the adjacent buildings. If the subject lot is a corner lot, the “contextual” height may fall at any point between the maximum height limit and the building height that exists on the lot that is adjacent to the subject lot. If lots on either side of the subject lot are vacant, the height that “exists” on such vacant lots shall be interpreted as the maximum height limit that applies to the vacant lot. This provision shall not be interpreted as requiring greater minimum heights or lower maximum heights. In any event, the height of new development shall comply with height requirements established by the Federal Aviation Administration and codified at CFR Part 77.

5.2.5 Bulk Measurement and Requirements

A) ***Built-Upon Area***
Calculation of the built-upon area within the proposed development shall include, but not be limited to, all existing public and private streets, proposed public streets, sidewalks, driveways, rooftops, parking lots, patios, and all other impervious and partially impervious surfaces, including CABC and gravel within the development. The calculation of built-upon area is expressed as a percentage of total site area. Swimming pools and wooden decks shall not be included in the calculation of the built-upon area.

B) ***Reserved***

5.2.6 Distances
Distances shall be measured on a straight line with no consideration as to intervening structures, roads or other land forms.

5.2.7 Dimensional Standards for Detached Accessory Structures

Most accessory uses take place within the primary structure on a site. Accessory uses that occur in separate, accessory structures shall comply with the standards of this section, unless otherwise expressly stated.

A) ***Location of Accessory Structures***

Accessory structures shall be considered a part of the principal building when the distance between structures is solidly covered by a breezeway, portico, or similar architectural device at least four (4) feet in width. Attached accessory structures shall meet the requirements of Section 5.2.2(B)(4).

B) ***Percentage of Required Yard Occupied and Required Setbacks***

1) Unless otherwise specified, no detached accessory building shall occupy more than 35% of the area of the required yard, nor be located closer than 10 feet to any principal building.

2) With the exception of driveways, accessory structures shall only be permitted in the front yard if the structure is at least 60’ from the front property line.

3) Wells and well houses shall be exempt from the setbacks required in Sec. 5.1 *Table of Intensity and Dimensional Standards* and shall comply with the rules established by the County.

C) ***Height of Accessory Structures***

No detached accessory building or structure shall exceed the height of the principal building or structure.

D) ***Corner Lot***

When an accessory structure is located on a corner lot in residential districts, the structure shall be set back not less than 10 feet from the side lot line abutting the street.

E) ***Encroachments into Setbacks***

Feature	Encroachments into Building Setbacks
Sheds	• Can be located no closer than 5’ from the side or rear property line.
Pools, above-ground or in-ground	• Can be located no closer than 5’ from the side or rear property line.
Hot tubs	• Can be located no closer than 5’ from the side or rear property line.
Unattached carports	• Can be located no closer than 5’ from the side or rear property line.
Unattached garages	• Can be located no closer than 5’ from the side or rear property line.
Single-family recreational accessory uses	• Must be located entirely in the rear yard and shall be set back no less than 50’ from all property lines.
Driveways	• Must be at least 1’ from the side property line. Shared driveways are exempt from this requirement.
Accessory apartments	• If attached, must comply with the

	minimum building setbacks applicable to the district in which it is located.
Temporary health care structure	• Must comply with the minimum building setbacks applicable to the district in which it is located.
All other detached structures	• Can be located no closer than 5' from the side or rear property line.

ARTICLE 6 OVERLAY DISTRICTS

6.1 WATERSHED PROTECTION OVERLAY DISTRICTS

6.1.1 Purpose, Authority, and Enactment

The purpose of the Watershed Protection Overlay Districts is to ensure the availability of public water supplies at a safe and acceptable level of water quality, to ensure protection of public water supplies for recreational and aesthetic purposes, to minimize sedimentation of streams, and to protect the environment, health, and general welfare of present and future residents of the Town and the Triangle Region under the authority set forth in Article 1, Sec. 1.2 AUTHORITY of this ordinance and in N.C.G.S. 160A-174. In addition, the Legislature of the State of North Carolina has, in Chapter 143, Article 21 of the North Carolina General Statutes, entitled Water and Air Resources, directed local governmental units to adopt regulations designed to promote the public health, safety, and general welfare pursuant to the more specific requirements set forth in 15A NCAC 2B .0100, 15A NCAC 2B .0200, and in the Jordan Water Supply Watershed Nutrient Management Strategy Rules, 15A NCAC 2B .0262 through .0273 and .0311(p). Also pursuant to the Federal Water Pollution Control Act of 1972, federal Phase II Stormwater rules promulgated under it, and N.C.G.S. 143-215.1 and S.L. 2006-246, the Town is required to obtain a Phase II National Pollutant Discharge Elimination System (NPDES) permit for stormwater management for its municipal separate storm sewer system and to adopt, among other things, requirements and procedures to control the adverse effects of increased post development stormwater runoff and nonpoint and point source pollution associated with new development and redevelopment. (Additional specific purposes may be found in the Swift Creek Land Management Plan and the 2030 Land Use Map Update.) In furtherance of these goals and under such authorities, the Town of Apex promulgated this Sec. 6.1, *Watershed Protection Overlay Districts*.

6.1.2 Primary and Secondary Watershed Protection Overlay Districts

Except for those lands and uses exempted pursuant to Sec. 6.1.3 *Exemptions*, the Watershed Protection Overlay Districts shall encompass all lands within the Town of Apex and its extraterritorial jurisdiction as established in Article 1, Sec. 1.2.2 *Authority to Regulate Zoning, Subdivision And Building Practices in ETJ*. The boundaries for the Town's extraterritorial jurisdiction area (hereinafter "ETJ") are delineated on the Town of Apex's "Official Zoning District Map." A copy of this map shall be on record in the office of the Town Clerk and in the Planning Department for inspection by the general public during normal business hours.

The Town and its ETJ shall be divided into two districts for the purpose of watershed protection. The Primary Watershed Protection District shall consist of all lands identified by the state as water supply watershed protected areas. The Secondary Watershed Protection District shall consist of the remainder of lands within the Town and its ETJ. These two districts shall be identified on the Town of Apex's "Watershed Protection Overlay District Map." A copy of this map shall be on record in the office of the Town Clerk and in the Planning Department for inspection by the general public during normal business hours. All subsequent changes to the area that is identified by the state as water supply watershed protected area are herein adopted by reference, and the Planning Department shall cause such changes to be reflected on said map. A portion of the Jordan Lake Watershed, which consists of all lands and waters draining to the B. Everette Jordan Reservoir, is located within the Town's Primary Watershed Protection District and a portion is located within the Secondary Watershed Protection District as also depicted on the Town's Watershed Protection Overlay District Map.

The Town shall also maintain a "Structural BMP Map" of the Town and its ETJ that depicts the geographic location of all the structural BMPs approved under Sec. 6.1, and

the map shall be updated as necessary to accurately reflect the location of such structures. A copy of this map shall be on record in the office of the Town Clerk and in the Planning Department for inspection by the general public during normal business hours.

6.1.3 Exemptions

This section does not apply to Sec. 6.1.11 *Riparian Buffers*.
The following activities are exempted from the requirements of Sec. 6.1 *Watershed Protection Overlay Districts:*

A) Development that cumulatively disturbs less than one acre and is not part of a larger common plan of development;

B) Redevelopment that cumulatively disturbs less than one acre and is not part of a larger common plan or development or sale;

C) ***Development Existing as of the Effective Date of this Section***

1) *Date built*. The continued use of structures that were built prior to the effective date of this Section;

2) *Substantial expenditures*. The completion of development for which the developer prior to the effective date of this Section made substantial expenditures of resources (e.g. time, labor, money) based on a good faith reliance on a valid permit received from the Town;

3) *Outstanding building permit*. The construction of any structure for which a developer has an outstanding valid building permit in compliance with N.C.G.S. Sec. 160A-385.1 prior to the original effective date of this Section.

4) *Vested right*. The completion of development for which a vested right, as defined in N.C.G.S. Sec. 160A-385.1(b)(6), was obtained prior to the original effective date of this Section.

D) ***Expansions to Existing Development***
Any expansion to a lot or project that is exempt from the requirements of Sec. 6.1 pursuant to Sec. 6.1.3(C) *Development Existing as of the Effective Date of this Section* and disturbs greater than one acre must comply with the requirements of Sec. 6.1. The built-upon area of the existing development shall be included in the built-upon area calculations for any proposed expansion to any such lot or project. Provided, however, that the built-upon area of any school facility owned by the Wake County Public School System or any qualified nonpublic school that is exempt from the requirements of Sec. 6.1 pursuant to Sec. 6.1.3(C) Development Existing as of the Effective Date of this Section is not required to be included in the built-upon area calculations for any expansion to such existing development. For purposes of this section, “school facility” means any building, structure or other facility used by the Wake County Public School System or any qualified nonpublic school for educational purposes. For purposes of this section, “qualified nonpublic school” means a school having an enrollment of one hundred (100) or more students, and that has one or more of the characteristics set out in N.C.G.S. Sec. 115C-555.

E) ***Developments and Uses Exempted by State Law***
Any use, development, or activity that has been specifically exempted by any applicable state law from local regulations of the type established by this ordinance.

F) ***Complete Applications***
All projects for which a complete application for site plan or master subdivision plan was submitted and accepted by the Town on or before the effective date of Sec. 6.1 shall be exempt from complying with all provisions of Sec. 6.1 if the application is approved and development occurs in conformity with the permit terms. However, the project is not exempt from the watershed regulations in effect at the time of submittal.

6.1.4 General

A) ***Development Review***
All development within the Watershed Protection Overlay Districts shall comply with the watershed protection standards of this Sec. 6.1 *Watershed Protection Overlay Districts*, and shall demonstrate compliance concurrent with the submission for approval of a site plan (major or minor) (Sec. 2.3.6), master plan for subdivision (Sec. 2.3.7(D)) or development plan for MEC-CZ, PUD-CZ or TND-CZ (Sec. 2.3.4), whichever occurs first.

B) ***Compliance Prior to Approval of Certificate of Occupancy***
Prior to approval of a final plat (with respect to a subdivision), issuance of a certificate of occupancy (with respect to a site plan), or commencement of a use, in addition to meeting all other requirements of this ordinance, all of the watershed protection standards required by Sec. 6.1 must be met, all required facilities must be in place, be operational, and be approved by the Stormwater and Utility Engineering Manager.

C) ***Definitions***
Certain words in this Section have meanings that are specific for the purposes of Sec. 6.1 *Watershed Protection Overlay Districts*. Such words shall be defined in Article 12, *Definitions*.

6.1.5 Uses

The uses allowed within the Watershed Protection Overlay Districts shall be governed by the use regulations permitted in the base zoning district within which the land is located as set forth in the Sec. 4.2.2 *Use Table*.

6.1.6 Low-Density Development Option

A) ***General***
All development within both the Primary Watershed Protection District and the Secondary Watershed Protection District shall be designed to comply with the standards of the low-density development option unless the Technical Review Committee or Town Council, as applicable, approves a plan of development pursuant to the procedures and standards for the high-density development option, or unless a minor or major variance is approved pursuant to Sec. 6.1.13, *Modifications by Variance.*

B) ***Standards***
All development under the low-density development option shall meet the following standards:

1) *Within the Primary Watershed Protection District*

a) *Built-Upon Area*
Within the Primary Watershed Protection District, built-upon area for a development shall not exceed 12 percent of the total lot(s) area. If the development meets the requirement of Sec. 7.5.4.B.4.b Exemptions, the built-upon area for the development shall be the State-mandated maximum for low-density development (24%) located within the Town's jurisdiction and outside of the Swift Creek Watershed, and all storm water conveyances from the proposed structures shall be discharged directly to pervious areas within the property, generally known as 'downspout disconnects'.

b) *Vegetated Conveyances*
Stormwater runoff from the development shall be transported from the development by vegetated conveyances to the maximum extent practicable provided that the standards of Article 7.5.4(B)(4) are met.

c) *Riparian Buffers for Perennial Streams*
Within the Primary Watershed Protection District, a vegetative buffer with a width of not less than 100 feet shall be maintained along each side of a perennial stream (defined for purposes of this Section in Article 12, *Definitions*). All buffers shall meet the requirements of Sec. 6.1.11 *Riparian Buffers.*

d) *Riparian Buffers for Intermittent Streams*
Within the Primary Watershed Protection District, a vegetative buffer with a width of not less than fifty (50) feet shall be maintained along each side of an intermittent stream (defined for purposes of this Section in Article 12, *Definitions*). All buffers shall meet the requirements of Sec. 6.1.11 *Riparian Buffers*.

e) *Riparian Buffers for Lakes and Ponds That Are Part of a Natural Drainage Way*
Within the Primary Watershed Protection District, a vegetative buffer with a width of not less than fifty (50) feet shall be maintained around any lake or pond, provided, however, that any lake or pond that joins with a perennial stream shall have a vegetative buffer width of not less than one hundred (100) feet around the lake or pond. All buffers shall meet the requirements of Sec. 6.1.11 *Riparian Buffers*.

2) *Within the Secondary Watershed Protection District*

a) *Built-Upon Area, Vegetated Conveyances, and Riparian Buffers for Intermittent Streams*
Within the Secondary Watershed Protection District, the standards for Built-Upon Area, Vegetated Conveyances and Riparian Buffers for Intermittent Streams for the Low Density Development option are the same as those in Sec. 6.1.6(B)(1)(a), (b) and (d) for within the Primary Watershed Protection District. As addressed below in Sec. 6.1.6(B)(2)(b) and (c), the difference in standards in the Secondary Watershed Protection District pertaining to a required vegetative buffer for

perennial streams, or a lake or pond that joins with a perennial stream, is that in the Secondary Watershed Protection District the buffer may average one hundred (100) feet.

b) *Riparian Buffers for Perennial Streams*
Within the Secondary Watershed Protection District, a vegetative buffer with an average width of not less than one hundred (100) feet shall be maintained along each side of a perennial stream. At no point shall the buffer width along each side of a perennial stream be less than fifty (50) feet. All variable width buffers must be delineated with monuments. All buffers shall meet the requirements of Sec. 6.1.11 *Riparian Buffers.*

c) *Riparian Buffers for Lakes and Ponds That Are Part of a Natural Drainage Way*
Within the Second Watershed Protection District, a vegetative buffer with a width of not less than fifty (50) feet shall be maintained around any lake or pond, provided, however, that any lake or pond that joins with a perennial stream shall have a vegetative buffer with an average width of not less than one hundred (100) feet maintained along each side of the lake or pond. At no point shall the buffer width around the lake or pond be less than fifty (50) feet. All variable width buffers must be delineated with monuments. All buffers shall meet the requirements of Sec. 6.1.11 *Riparian Buffers.*

6.1.7 High-Density Development Option

Developers wishing to exceed the built-upon limitations for low-density development within either the Primary Watershed Protection District or the Secondary Watershed Protection District, as set forth in Sec. 6.1.6(B) *Standards*, shall submit an appropriate development plan per Section 2.3 Development Approvals, which shall meet the following standards:

A) ***Within the Primary Watershed Protection District***

1) *Built-Upon Area*
Within the Primary Watershed Protection District, all development shall comply with the built-upon area limitations for the underlying district found in Sec. 5.1 *Table of Intensity and Dimensional Standards*.

2) *Vegetated Conveyances*
Stormwater runoff from the development may be transported from the development by vegetated conveyances to the maximum extent practicable provided that the standards of Article 7.5.4(B)(4) are met.

3) *Structural BMPs*
All storm water control structures shall meet the requirements in Sec. 6.1.12 *Structural BMPs*.

For water quality purposes, structural BMPs shall be used to collect and hold the runoff from the first one-inch of rainfall. This runoff volume shall be released in two to five days in accordance with Sec. 6.1.12.

The post-development peak runoff rate shall be limited to the pre-development peak runoff rate for the 1-year, 24-hour and the 10-year, 24-hour storms. Within the Upper Northwest Tributary to Williams Creek

basin (as shown on the Watershed Protection Overlay District Map), the post-development peak runoff rate shall also be limited to the pre-development peak runoff rate for the 25-year, 24-hour storm. Additionally within the basin, runoff volume for the 10-year, 24-hour storm shall be detained.

Detention volumes stored for peak flow attenuation and volume control shall drain within 72 hours to allow for subsequent storms.

A storm water impact statement shall be prepared by a qualified professional engineer registered to practice in North Carolina and submitted with the initial application for any development or activity that is not exempt from the requirements of Sec. 6.1 *Watershed Protection Overlay Districts* showing the impacts from the development site to the confluence point downstream where the area of the proposed development is less than 10% of the total drainage area (the "10% point"). The impact statement shall verify the effects of detention on the downstream hydrographs to ensure that the peaks do not increase for a given storm. The impact statement shall list the infrastructure (ditches, culverts, etc.) and indicate all the adverse effects and impacts (to roads, culverts, businesses, homes, lawns, etc.) from the development to the 10% point. If backwater from detention appears to be a problem, then the impact statement shall also consider potential effects on upstream properties for the 100-year, 24-hour storm.

4) *Riparian Buffers for Perennial Streams*
Within the Primary Watershed Protection District, a vegetative buffer of not less than 100 feet shall be maintained along each side of a perennial stream. All buffers shall meet the requirements in Sec. 6.1.11 *Riparian Buffers.*

5) *Riparian Buffers For Intermittent Streams*
Within the Primary Watershed Protection District, a vegetative buffer with a width of not less than fifty (50) feet shall be maintained along each side of an intermittent stream. All buffers shall meet the requirements in Sec. 6.1.11 *Riparian Buffers*.

6) *Riparian Buffers For Lakes and Ponds That Are Part of a Natural Drainage Way*
Within the Primary Watershed Protection District a vegetative buffer with a width of not less than fifty (50) feet shall be maintained around any lake or pond, provided, however, that any lake or pond that joins with a perennial stream shall have a vegetative buffer width of not less than one hundred (100) feet around the lake or pond. All buffers shall meet the requirements of Sec. 6.1.11 *Riparian Buffers*.

B) ***Within the Secondary Watershed Protection District***

1) *Built-Upon Area Vegetated Conveyances, Structural BMPs and Riparian Buffers For Intermittent Streams*
Within the Secondary Watershed Protection District, the standards for Built-Upon Area, Vegetated Conveyances, Structural BMPs and Riparian Buffers for Intermittent Streams for the High Density Development option are the same as those in Sec. 6.1.7(A)(1) - (3) and (5) for within the Primary Watershed Protection District. As addressed below in Sec. 6.1.7(B)(2) and (3), the difference in standards in the Secondary

Watershed Protection District pertaining to a required vegetative buffer for perennial streams, or a lake or pond that joins with a perennial stream, is that in the Secondary Watershed Protection District the buffer may average one hundred (100) feet.

2) *Riparian Buffers for Perennial Streams*
Within the Secondary Watershed Protection District, a vegetative buffer with an average width of not less than one hundred (100) feet shall be maintained along each side of a perennial stream. At no point shall the buffer width along each side of a perennial stream be less than fifty (50) feet. All variable width buffers must be delineated with monuments. All buffers shall meet the requirements in Sec. 6.1.11 *Riparian Buffers.*

3) *Riparian Buffers For Intermittent Streams*
Within the Secondary Watershed Protection District, a vegetative buffer with a width of not less than fifty (50) feet shall be maintained along each side of an intermittent stream. All buffers shall meet the requirements in Sec. 6.1.11 *Riparian Buffers*.

4) *Riparian Buffers for Lakes and Ponds*
Within the Secondary Watershed Protection District, a vegetative buffer with a width of not less than fifty (50) feet shall be maintained around any lake or pond, provided, however, that any lake or pond that joins with a perennial stream shall have a vegetative buffer with an average width of not less than one hundred (100) feet maintained along each side of the lake or pond. At no point shall the buffer width around the lake or pond be less than fifty (50) feet. All variable width buffers must be delineated with monuments. All buffers shall meet the requirements of Sec. 6.1.11 *Riparian Buffers.*

6.1.8 Clustered Development Option

Clustering of development is allowed under either the low-density development option or the high-density development option under Sec. 2.3.4 *Planned Development Districts*, if the development complies with the following additional standards:

A) ***Density***
The overall density of the development shall not exceed the density allowed in the underlying base zoning district found in Sec. 5.1 *Table of Intensity and Dimensional Standards* (for the high-density development option) or the density limitation of the low-density development option for the Primary or Secondary Watershed Protection District;

B) ***Built-Upon Areas***
Built-upon areas shall be designed and sited to minimize storm water runoff volume and velocity and the overall impact of storm water runoff on receiving streams; and

C) ***Plat Certificate***
No plat shall be approved until the developer has caused the final plat to be certified as follows:

"This is a clustered development pursuant to the *Town of Apex Unified Development Ordinance* and may not be further subdivided or developed."

6.1.9 Definition of Built-Upon Area

For the purposes of complying with the standards and requirements of the Watershed Protection Overlay Districts, calculation of the built-upon area within the proposed development shall include, but not be limited to, all existing public and private streets, proposed public streets, sidewalks, driveways, rooftops, parking lots, patios, and all other impervious and partially impervious surfaces, including CABC and gravel within the development. The water area of swimming pools and wooden slatted decks shall not be included in the calculation of the built-upon area.

6.1.10 Calculation of Built-Upon Area

For the purposes of complying with the standards and requirements of the Watershed Protection Overlay Districts, built-upon area calculations shall be made based on the total acreage of built-upon area within a proposed development, divided by the total acreage of the lot area. Density calculations for expansions shall be based on the total acreage of built-upon area proposed for expansion, divided by the total acreage of lot area proposed for expansion. A certificate of occupancy shall not be granted, nor shall any final plat be recorded until a developer has caused all information pertaining to the percentage of the built-upon area on a property to be shown on the final plat for the property.

6.1.11 Riparian Buffers

No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this section. No exemptions shall be permitted from this section except for any use, development, or activity that has been specifically exempted by any applicable state law from local regulations of the type established by this ordinance, or as provided in Sec. 6.1.11(J) *Exemption When Existing Uses are Present and Ongoing*. The following activities impacting Zone 1 and/or 2 of a riparian buffer in the Jordan Lake Watershed or in the Neuse River Basin shall be administered by the NC Department of Environmental Quality (NC DEQ): (i) activities conducted under the authority of the State, the United States, multiple jurisdictions, or local units of government, (ii) forest harvesting or (iii) agricultural activities.

A) ***Relationship to Resource Conservation Areas***

The area of land on a property that is located within the riparian buffer may be counted by the developer in accordance with Sec. 8.1.2 *Resource Conservation Area,* when calculating the amount of RCA that is required on that property by said Section.

B) ***Measurement of Riparian Buffers***

The buffer width at a particular point along a stream shall be measured on a line perpendicular to a vertical line marking the top of the stream bank to the landward edge of the buffer. For ponds and lakes the buffer shall begin at the normal water level and extend landward on a line perpendicular to a vertical line marking the normal water level.

C) ***Classification of Surface Waters on Property***

Riparian buffers shall be maintained for all perennial and intermittent streams, lakes, and ponds as set forth in Sec. 6.1.6 *Low-Density Development Option*, and Sec. 6.1.7 *High-Density Development Option* of this ordinance. Classifications of surface waters as perennial or intermittent streams, as ephemeral streams (a classification requiring no buffer under the requirements of Sec. 6.1 *Watershed Protection Overlay Districts*), or as a lake or pond shall be as indicated on the most recent version of the U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps, the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture, or a map approved by the Geographic Information Coordinating Council and the Environmental Management Commission. In the event that there

exists a discrepancy among any of these maps that would affect a required buffer, the classification requiring the most stringent buffer shall be applied. However, an alternative map approved by the Environmental Management Commission shall not be used for buffer delineation on projects that are existing and ongoing within the meaning of Sec. 6.1.11(J).

D) ***Appeals of Stream Classification***

Because the Neuse River is protected by a state-wide buffer program, which is managed by the NC DEQ, the authority to hear appeals of stream classifications for that portion of the Town of Apex and its ETJ that lies within the Neuse River Basin, which shall be indicated on the Town of Apex's "Watershed Protection Overlay District Map," rests within the sole jurisdiction of the NC DEQ unless the Town of Apex is delegated the authority to maintain its Neuse Buffer Program locally. Therefore, appeals of stream classifications shall be handled in the following manner:

1) *Within the Neuse River Basin*

When any affected party within the Neuse River Basin believes that the maps have inaccurately depicted surface waters, he or she shall consult the NC DEQ as set forth in 15A N.C.A.C. 2B.0233(3).

In the event that the Town of Apex is delegated the authority to maintain Neuse buffers locally, the Stormwater and Utility Engineering Manager shall make decisions and interpretations regarding stream classifications in accordance with all applicable state criteria and the best available scientific information. Any disputes over such on-site determination shall be referred to the Director of the NC DEQ in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B.

2) *Within the Jordan Lake Watershed*

When any affected party within the Jordan Lake Watershed believes that the maps have inaccurately depicted surface waters, the Stormwater and Utility Engineering Manager, or his or her designee, shall make decisions and interpretations regarding stream classifications in accordance with the protocol in Sec. 6.1.11(D)(4) and all applicable state criteria and the best available scientific information. Any disputes over such on-site determination made by the Town of Apex shall be referred to the Director of the NC DEQ in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B.

3) *In All Remaining Areas Within Both the Primary Watershed Protection District and the Secondary Watershed Protection District*

In all remaining areas, the Stormwater and Utility Engineering Manager, or his or her designee, shall make decisions and interpretations regarding stream classifications in accordance with the protocol in Sec. 6.1.11(D)(4) and all applicable state criteria and the best available scientific information. Any person aggrieved by a decision of the Town regarding such on-site determination may appeal such decision to the Board of Adjustment.

4) *Exemption Based On On-Site Determination*

A Town representative who makes an on-site stream classification shall have successfully completed the NC DEQ's *Surface Water Identification Training Certification* course, its successor, or other equivalent training

curriculum approved by the NC DEQ. The specific origination point of a stream shall be established using the latest version of the Division publication, *Methodology for Identification of Intermittent and Perennial Streams and Their Origins,* available at http://portal.ncdenr.org/web/wq/swp/ws/401/waterresources/streamdeterminations or from the NC DEQ – 401 Oversight Express Permitting Unit, or its successor.

Surface waters that appear on the maps used to determine surface water classifications shall not be subject to the requirements of Sec. 6.1.11 if a site evaluation reveals any of the following cases:

a) Man-made ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.

b) Ephemeral streams.

c) The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.

d) Ditches or man-made water conveyances, other than modified natural streams.

E) ***Diffuse Flow Requirement***

Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow and reestablishing vegetation.

1) Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer.

2) Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

3) As set out in Sec. 6.1.11(E) and (G)(1) of this Ordinance, Zones of the Riparian Buffer and Table of Uses respectively, no new stormwater conveyances are allowed through the buffers except for those specified in the Table of Uses, Sec. 6.1.11(G)(1) of this Ordinance.

F) ***Zones of the Riparian Buffer***

1) Perennial Streams: The protected riparian buffer for perennial streams shall have three zones as follows:

a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided in TABLE OF USES 6.1.11(G)(1). Zone 1 shall begin at the most landward limit of the top of bank and extend landward a distance of thirty (30) feet on all sides of the surface water.

b) Zone 2 shall consist of a vegetated area that is undisturbed except for uses provided in TABLE OF USES 6.1.11(G)(1). Zone

2 shall begin at the outer edge of Zone 1 and extend landward a distance of twenty (20) feet. The combined width of Zones 1 and 2 shall be fifty (50) feet on all sides of the surface water.

c) Zone 3 shall consist of a vegetated area that is undisturbed except for the same uses provided in TABLE OF USES 6.1.11(G)(1) that are permitted in Zone 2. In the Primary Watershed Protection District, Zone 3 shall begin at the outer edge of Zone 2 and extend landward a distance of fifty (50) feet. The combined width of Zones 1, 2 and 3 in the Primary Watershed Protection District shall be one hundred (100) feet on all sides of the surface water. In the Secondary Watershed Protection District, Zone 3 shall begin at the outer edge of Zone 2 and extend landward an average distance of fifty (50) feet. The combined width of Zones 1, 2 and 3 in the Secondary Watershed Protection District shall average one hundred (100) feet on all sides of the surface water.

2) Intermittent Streams: The protected riparian buffer for intermittent streams shall have two zones as follows:

a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided in TABLE OF USES 6.1.11(G)(1). Zone 1 shall begin at the most landward limit of the top of bank and extend landward a distance of thirty (30) feet on all sides of the surface water.

b) Zone 2 shall consist of a vegetated area that is undisturbed except for uses provided in TABLE OF USES 6.1.11(G)(1). Zone 2 shall begin at the outer edge of Zone 1 and extend landward a distance of twenty (20) feet. The combined width of Zones 1 and 2 shall be fifty (50) feet on all sides of the surface water.

3) Lakes and Ponds: The protected riparian buffer for lakes and ponds that are part of a natural drainage way shall have Zones 1 and 2 as described below, unless the lake or pond joins with a perennial stream in which case the riparian buffer shall have Zones 1, 2, and 3 as follows:

a) Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided in TABLE OF USES 6.1.11(G)(1). Zone 1 shall begin at the most landward limit of the top of bank and extend landward a distance of thirty (30) feet on all sides of the surface water.

b) Zone 2 shall consist of a vegetated area that is undisturbed except for uses provided in TABLE OF USES 6.1.11(G)(1). Zone 2 shall begin at the outer edge of Zone 1 and extend landward a distance of twenty (20) feet. The combined width of Zones 1 and 2 shall be fifty (50) feet on all sides of the surface water.

c) Zone 3, where a lake or pond joins a perennial stream in the Primary Watershed Protection District, shall consist of a vegetated area that is undisturbed except for the same uses provided in TABLE OF USES 6.1.11(G)(1) that are permitted in Zone 2. Zone 3 shall begin at the outer edge of Zone 2 and extend landward a distance of fifty (50) feet. The combined width

of Zones 1, 2 and 3 shall be one hundred (100) feet on all sides of the surface water. Where a lake or pond joins a perennial stream in the Secondary Watershed Protection District, Zone 3 shall begin at the outer edge of Zone 2 and extend landward an average distance of fifty (50) feet. The combined width of Zones 1, 2 and 3 shall average one hundred (100) feet on all sides of the surface water.

G) ***Uses Permitted Within the Riparian Buffer***

This section shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Sec. 6.1.11(E) upon, a riparian buffer regulated by this section. The Town shall issue an approval for new development only if the proposed development will avoid impacts to riparian buffers regulated by this section or, if an impact to any such buffer is proposed, in accordance with the requirements in Sec. 6.1.11(G)(1) or (2) below, as applicable, the applicant has demonstrated that: (i) the proposed activity is exempt, (ii) the proposed activity is allowable or allowable with mitigation, and the requirements of this section for proceeding such designated use have been met, or (iii) a variance authorizing the proposed activity has been obtained.

1) *Within Zones 1 and 2 of the Neuse River Basin*

Riparian buffers within the Neuse River Basin shall be maintained and protected per 15A NCAC 2B.0233 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers. Development activity may take place within Zone 1 or Zone 2 of a riparian buffer provided that the landowner has one of the following:

a) For any use, other than one specified as exempt, an authorization certificate that documents that the NC DEQ has approved an allowable use, or an allowable use with mitigation, as described in 15A NCAC 2B.0233 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian of Existing Riparian Buffers.

b) An opinion from the NC DEQ that vested rights has been established for that activity.

c) A letter from the NC DEQ documenting that a variance has been granted for the proposed activity.

2) *Within Zone 3 of a Riparian Buffer in the Neuse River Basin and All Other Remaining Areas of Both the Primary Watershed Protection District and the Secondary Watershed Protection District*

Within all areas, other than Zones 1 and 2 or the Neuse River Basin, the following land disturbing activities and uses shall be permitted within any required riparian buffer:

a) Those activities and uses that are specifically listed as exempt, allowable, or allowable with mitigation in THE TABLE OF USES shown below in Table 6.1.11(G)(1). The requirements for each category are given in Sec. 6.1.11(G)(4) below.

b) All uses not categorized as exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer or outside the buffer if the use would impact

the buffer, unless a variance is granted pursuant to Sec. 6.1.13 below.

Table 6.1.11(G)(1)

Use	Exempt*	Allowable*	Allowable with Mitigation*
Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:			
• Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the riparian buffer	X		
• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer		X	
Airport facilities:			
• Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X	
• Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X
• Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)[1]		X	
Archaeological activities	X		
Bridges		X	
Canoe access provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the buffer	X		
Dam maintenance activities:			
• Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3	X		
• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3		X	
Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:			
• New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to water bodies	X		
• High flow bypass from structural BMPs		X	
• Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations		X X	

Use	Exempt*	Allowable*	Allowable with Mitigation*
• New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer • New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed			X
Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Sec. 6.1.11(E) and (F) of this Ordinance is established adjacent to the new channel.	X		
Driveway crossings of streams and other surface waters subject to this Rule: • Driveway crossings on single-family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer • Driveway crossings on single-family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer • In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer • In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer	X	X X	X
Driveway impacts other than crossing of a stream or other surface waters subject to this Rule			X
Fences: • Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Ordinance • Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Ordinance	X	X	
Fertilizer application: one-time application to establish vegetation	X		
Forest harvesting – see 15A NCAC 2B .0267(14) for requirements[6]			
Grading and revegetation in Zones Two and Three provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated	X		
Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical		X	
Historic preservation	X		

Use	Exempt*	Allowable*	Allowable with Mitigation*
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading		X	
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Sec. 6.1.11(E) and (F) of this Rule are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Sec. 6.1.11(E) and (F) of this Rule are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit	X	X	X
Playground equipment: • Playground equipment on single-family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation	X	X	
Ponds created by impounding streams and not used as stormwater BMPs: • New ponds provided that a riparian buffer that meets the requirements of Sec. 6.1.11(E) and (F) of this Ordinance is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Sec. 6.1.11(E) and (F) of this Ordinance is NOT established adjacent to the pond		X	X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance			X
Railroad crossings of streams and other surface waters subject to this Ordinance: • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer	X	X	X
Recreational and accessory structures in Zones Two and Three: • Sheds and gazebos in Zones Two and Three, except along perennial waters in Neuse River Basin where high density development option is utilized ○ Total footprint less than or equal to 150 square feet per lot		X	

Use	Exempt*	Allowable*	Allowable with Mitigation*
○ Total footprint greater than 150 square feet per lot			X
• Wooden slatted decks and associated steps, provided the use meets the requirements of Sec. 6.1.11(E) and (F) of this Ordinance:			
○ Deck at least eight feet in height and no vegetation removed from Zone One		X	
○ Deck less than eight feet in height or vegetation removed from Zone One			X
Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Ordinance			X
Road crossings of streams and other surface waters subject to this Ordinance:			
• Road crossings that impact equal to or less than 40 linear feet of riparian buffer	X		
• Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X	
• Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety:			
• Less than or equal to 2,500 square feet of buffer impact		X	
• Greater than 2,500 square feet of buffer impact			X
Scientific studies and stream gauging	X		
Stormwater BMPs:			
• Wet detention, bioretention, and constructed wetlands in Zones Two and Three if diffuse flow of discharge is provided into Zone One		X	
• Wet detention, bioretention, and constructed wetlands in Zone One			X
Streambank or shoreline stabilization		X	
Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation: At the end of five years the restored buffer shall comply with the restoration criteria in Item (8) of Rule 15A NCAC 02B.0268:			
• Less than or equal to 2,500 square feet of buffer disturbance	X		
• Greater than 2,500 square feet of buffer disturbance		X	
• Associated with culvert installation or bridge construction or replacement		X	
Temporary sediment and erosion control devices, provided that the disturbed area is restored to pre-construction			

Use	Exempt*	Allowable*	Allowable with Mitigation*
topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Item (8) of Rule 15A NCAC 02B.0268:			
• In Zones Two and Three provided ground cover is established within timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone One is not compromised, and runoff is released as diffuse flow in accordance with Sec. 6.1.11(E) of this Ordinance	X		
• In Zones One, Two and Three to control impacts associated with uses approved by the local government or that have received a variance, provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer		X	
• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act	X		
• In-stream temporary erosion and sediment control measures for work within a stream channel		X	
Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this Ordinance[2,3,5]:			
• Disturb equal to or less than 150 linear feet of riparian buffer	X		
• Disturb greater than 150 linear feet of riparian buffer		X	
Utility, electric, aerial, other than perpendicular crossings[5]:			
• Impacts in Zones Two and Three		X	
• Impacts in Zone One[2,3]			X
Utility, electric, underground, perpendicular crossings[3,4,5]:			
• Disturb less than or equal to 40 linear feet of riparian buffer	X		
• Disturb greater than 40 linear feet of riparian buffer		X	
Utility, electric, underground, other than perpendicular crossings[4]:			
• Impacts in Zones Two and Three	X		
• Impacts in Zone One[1]	X		
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Ordinance[3,5]:			
• Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width	X		
• Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width		X	
• Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width		X	

Use	Exempt*	Allowable*	Allowable with Mitigation*
• Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width			X
• Disturb greater than 150 linear feet of riparian buffer			X
Utility, non-electric, other than perpendicular crossings[4,5]:			
• Impacts in Zones Two and Three		X	
• Impacts in Zone One[1]			X
Vegetation management:			
• Emergency fire control measures provided that topography is restored	X		
• Mowing or harvesting of plant products in Zones Two and Three	X		
• Planting vegetation to enhance the riparian buffer	X		
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X		
• Removal of individual trees which are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank	X		
• Removal of individual trees which are dead, diseased or damaged	X		
• Removal of poison ivy	X		
• Removal of invasive exotic vegetation as defined in: *Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30*	X		
Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet		X	
Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers		X	
Water supply reservoirs:			
• New reservoirs where a riparian buffer that meets the requirements of Sec. 6.1.11(E) and (F) of this Ordinance is established adjacent to the reservoir		X	
• New reservoirs where a riparian buffer that meets the requirements of Sec. 6.1.11(E) and (F) of this Ordinance is not established adjacent to the reservoir			X
Water wells:			
• Single-family residential water wells	X		
• All other water wells		X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers			
• Wetland, stream and buffer restoration that requires Division approval for the use of a 401 Water Quality Certification	X		
• Wetland, stream and buffer restoration that does not require Division approval for the use of a 401 Water Quality Certification		X	
Wildlife passage structures		X	

*To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Sec. 6.1.11(G)(3) of this Ordinance.

[1]Provided that:

- No heavy equipment is used in Zone One.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones One, Two, and Three meet the requirements of Sec. 6.1.11(E) and (F) of this Ordinance.

[2] Provided that, in Zone 1 of the buffer, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternatives evaluation by the Town.

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.

Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.

- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Rip rap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[3] Provided that poles or towers shall not be installed within 10 feet of a water body unless the Town completes a no practical alternatives evaluation.

[4] Provided that, in Zone 1 of the buffer, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternatives evaluation by the Town of Apex.

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench, where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[5]Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

[6]Requirements are administered by the NC DEQ in Zones 1 and 2 in the Jordan Lake Watershed and in Zones 1 and 2 in the Neuse River Basin, but the Town shall be notified in advance of forest harvesting activity in those buffer areas. Requirements are administered by the Town in Zone 3 in the Jordan Lake Watershed and the Neuse River Basin and in Zones 1, 2 and 3 in the Cape Fear River Basin outside of the Jordan Lake Watershed. The requirements in 15A NCAC 2B .0267(14) that are applicable to Zone 2 shall also apply to Zone 3.

3) *Requirements for Categories of Uses*
Uses designated as exempt, allowable, and prohibited in Sec. 6.1.11(G)(1) *Uses Permitted Within the Riparian Buffer* shall have the following requirements:

a) EXEMPT. Uses designated as exempt are allowed within the riparian buffer without written authorization from the Town of Apex. Exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.

b) ALLOWABLE. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Sec. 6.1.11(G)(4) *Determination of "No Practical Alternatives".* This includes construction, monitoring, and maintenance activities. These uses require written authorization from the Town of Apex.

c) ALLOWABLE WITH MITIGATION. Uses designated as allowable may proceed within the riparian buffer provided that there are no practical alternatives to the requested use pursuant to Sec. 6.1.11(G)(4) *Determination of "No Practical Alternatives"* and an appropriate mitigation strategy has been approved pursuant to Sec. 6.1.14 below. These uses require written authorization from the Town of Apex.

4) *Determination of "No Practical Alternatives"*
Persons who wish to undertake uses designated as allowable, or allowable with mitigation, in TABLE OF USES 6.1.11(G)(1) shall submit a request for a "no practical alternatives" determination to the Stormwater and Utility Engineering Manager. The applicant shall certify that the project meets the criteria identified in this Sec. 6.1.11(G)(4)(a)(i)-(iii). The Town of Apex shall grant an Authorization Certificate upon making a "no practical alternatives" determination. The Town may attach conditions to the Authorization Certificate that support the purpose, spirit, and intent of Sec. 6.1.11. The procedure for making a decision whether to grant an Authorization Certificate shall be as follows:

a) For any request for a "no practical alternatives" determination for which the applicant has made a complete submission of all information set forth in Sec. 6.1.11(G)(4)(c), the Town of Apex shall review the entire project and make a finding of fact as to whether the following criteria have been met in support of such determination:

(i) The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(ii) The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.

(iii) Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

b) *Requests for* a “no practical alternatives” determination shall be reviewed and either approved or denied within 60 days of receipt of a complete submission that includes the information set forth in Sec.6.1.11(G)(4)(c). Failure to issue an approval or denial within 60 days of an applicant’s submission shall constitute a determination that the applicant has demonstrated "no practical alternatives” and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:

(i) The applicant agrees, in writing, to a longer period;

(ii) The Town of Apex determines that the applicant has failed to furnish requested information necessary to the Town’s decision;

(iii) The final decision is made pursuant to a public hearing; or

(iv) The applicant refuses access to its records or premises for the purpose of gathering information necessary for the Town’s decision. The Town may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of the riparian buffer protection program.

c) Complete submissions shall include at least the following information in support of a “no practical alternatives” determination:

(i) The name, address and phone number of the applicant*;*

(ii) The nature of the activity to be conducted by the applicant*;*

(iii) The location of the activity*;*

(iv) A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land*;*

(v) An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality*;*

(vi) Plans for any best management practices proposed to be used to control the impacts associated with the activity*; and*

(vii) The applicant's certification that the project meets all of the criteria in Sec. 6.1.11(G)(4)(a)(i)-(iii) for finding "no practical alternatives."

d) Any person aggrieved by a decision of the Stormwater and Utility Engineering Manager pertaining to issuance of an Authorization Certificate for a riparian buffer within the Jordan Lake Watershed *may appeal such decision* in writing to the Director of the NC DEQ, c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4. Appeals of an Authorization Certificate decision by the Stormwater and Utility Engineering Manager pertaining to a riparian buffer that is not within the Jordan Lake Watershed shall be to the Town of Apex Board of Adjustment.

5) *Mitigation*
Persons who wish to undertake uses designated as allowable with mitigation shall meet the following requirements in order to proceed with their proposed use:

a) Obtain an Authorization Certificate pursuant to Sec. 6.1.11(G)(4); and

b) Obtain approval for a mitigation proposal pursuant to Sec. 6.1.14.

H) ***Minimization of Impact***
All uses and activities that are permitted within any required riparian buffer shall be designed to minimize impact on water quality.

I) ***Notification on Site Plan and Subdivision Plan and Recording of Information***
Where required, stream buffers shall be shown on all site plans and subdivision plans approved pursuant to Sec. 6.1.4 of this Ordinance. A certificate in the form established in the *Town of Apex Design and Development Manual* shall be lettered on the face of the site plan or the recorded subdivision map. Prior to approval of a final plat (with respect to a subdivision), issuance of a certificate of occupancy (with respect to a site plan), or commencement of a use, a developer shall first cause all information pertaining to required riparian buffers to be shown on the final plat for the property.

J) ***Exemption When Existing Uses are Present and Ongoing***
This Sec. 6.1.11 shall not apply to uses that are existing and ongoing; however, this section shall apply at the time an existing, ongoing use is changed to another use. Change of use shall mean the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:

1) It was present within the riparian buffer as of the effective date of this Sec. 6.1.11 and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems, any of which involve specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer occupied by the

footprint of the existing use is exempt from Sec. 6.1.11. Change of ownership is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no impervious surface is added within the required buffer area where it did not previously exist as of the effective date of this section, and existing diffuse flow is maintained. Grading and revegetating Zones Two and Three is allowed provided that the health of the vegetation in Zone One is not compromised, the ground is stabilized and existing diffuse flow is maintained.

2) Projects or proposed development that are determined by the Town to meet at least one of the following criteria*:*

a) Project requires a 401 Certification/404 Permit and these were issued prior to the effective date of Sec. 6.1.11;

b) Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of Sec. 6.1.11;

c) Projects that are being reviewed through Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DEQ on avoidance and minimization by the effective date of Sec. 6.1.11; or

d) Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the Town prior to the effective date of Sec. 6.1.11.

6.1.12 Structural BMPs

A) ***Professional Design***
All structural BMPs and any alterations thereof shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required and shall be in accordance with the NC DWQ Stormwater BMP Manual, the *Town of Apex Standard Specifications and Standard Details* and, when applicable, the *Town of Apex Design and Development Manual*; these registered professionals are defined as professional engineers, landscape architects (to the extent that G.S. Chapter 89A allows), and land surveyors (to the extent that the design represents incidental drainage within a subdivision, as provided in G.S. 89C-3(7)).

B) ***Design, Location, and Landscaping of Structural BMPs***
The following specific design criteria shall be met by these systems:

1) Specific requirements for structural BMPs shall be in accordance with the NC DEQ Stormwater BMP Manual and the *Town of Apex Standard Specifications and Standard Details*;

2) Structural BMPs shall be designed to remove 85% of total suspended solids in the permanent pool and store runoff from a one-inch rainfall from the site above the permanent pool;

3) The designed runoff storage volume shall be above the permanent pool;

4) The discharge rate from these systems following the one-inch rainfall design storm shall be such that the runoff does not draw down to the permanent pool level in less than two days and that the pond is drawn down to the permanent pool level within at least five days;

5) The mean permanent pool depth shall be a minimum of three feet;

6) The inlet structures shall be designed to minimize turbulence using baffles or other appropriate design features;

7) Retention basins, detention basins, headwalls, outlet structures, concrete flow channels, rip rap channels, and other drainage improvements shall be screened with plant material and/or berms and situated in the least visible location or, if visible, incorporated into the natural curves of the land;

8) Detention and retention basin embankments and the detention or retention basin itself shall be extensively landscaped with wet tolerant plant materials with the intention of re-creating a seasonal high water wet eco-structure; a list of guidelines for preferred plant materials can be found in the *Town of Apex Design and Development Manual*;

9) Detention or retention facilities shall be sized to accommodate the future growth of vegetation planted in the basin; and

10) In lieu of peripheral fencing, detention and retention basin edges shall be contoured and shaped to form low angles at primary water line thereby ensuring greater pedestrian safety.

11) All supporting calculation submittals for each proposed structural BMP shall include and comply with the latest version of the NC DEQ BMP supplement.

C) ***Identification on Site Plan/Subdivision Plan/Final Plat of Structural BMP***
A legal description of the area containing the structural BMP shall be delineated on the site plan (major or minor), subdivision plan, and recorded final plat along with any easements necessary for access to the structural BMP. The described area shall include sufficient area to perform inspections. The described area shall include, but is not limited to, the detention pond, vegetative filters, all pipes and water control structures, berms and dikes. Prior to approval of a final plat (with respect to a subdivision), issuance of a certificate of occupancy (with respect to a site plan), or commencement of a use, a developer shall first cause all information pertaining to required structural BMPs to be shown and certified by the Stormwater and Utility Engineering Manager on the final plat for the property. Such final, approved plat to be recorded shall also contain the following language: “All future development or redevelopment activities on this property

shall be consistent with this approved plan. No changes to this plan shall be permitted without the Town of Apex's prior written approval."

D) ***Operation and Maintenance Agreement***
The owner shall have an operation and maintenance agreement for all structural BMPs approved by the Stormwater and Utility Engineering Manager prior to approval of a final plat (with respect to a subdivision) or issuance of a certificate of occupancy (with respect to a site plan) for any development upon which a structural BMP is required. The operation and maintenance agreement, which must be executed by the owner and shall be binding on all subsequent owners of the site, portions of the site, and lots or parcels served by the structural BMP, shall clearly indicate (i) what operation and maintenance actions are needed and what specific quantitative standards will be used for determining when those actions need to be taken, (ii) the steps that will be taken for restoring a structural BMP if a failure occurs, and (iii) how cost will be apportioned among lot owners served. The operation and maintenance agreement must be recorded in the Wake County Register of Deeds office and referenced on the final plat. A copy of the recorded operation and maintenance agreement shall be provided to the Stormwater and Utility Engineering Manager within 14 days following its recordation.

E) ***Changes or Amendments to Plans and Specifications and/or Operation and Maintenance Agreement***
Any changes or amendments to the plans and specifications of a structural BMP, or the operation and maintenance agreement for a structural BMP shall meet all of the requirements of this rule regarding design and approval.

F) ***Compliance Prior to Receiving Plat Approval or Certificate of Occupancy***
Subject to Subsection (G) below, prior to approval of a final plat (with respect to a subdivision), issuance of a certificate of occupancy (with respect to a site plan), or commencement of a use for any development upon which a structural BMP is required, the owner shall have installed the improvements required by this Article and shall have received the approval of the Stormwater and Utility Engineering Manager with respect to the improvements. Upon installation of the required improvements, the Stormwater and Utility Engineering Manager or his designee shall inspect the structural BMP and the owner shall demonstrate that the required structure is in place, that it is operational, that it complies with all relevant portions of Sec. 6.1.12 *Structural BMPs*, and shall submit to the Stormwater and Utility Engineering Manager actual "as built" plans for the structure, which shall include the information listed in Article 6 Overlay Districts, and Section 1.06(c) Stormwater Drainage System of the *Town of Apex Standard Specifications and Standard Details*, certifying completion of the same.

G) ***Performance Guarantees***

1) As provided in (a), (b), and (c) below, in lieu of prior performance otherwise required by this Article, the Town may accept a performance guarantee that the improvements required by this Article will be constructed according to the Town's specifications at the owner's expense. Guarantees shall comply with the requirements of this Subsection (G).

a) *Site plan:* In lieu of performance prior to the issuance of a temporary certificate of occupancy related to a site plan, a performance guarantee may be provided by the owner guaranteeing the installation of the improvements required by

this Article. Improvements guaranteed under this Subsection (a) shall be constructed by the owner within one year after issuance of the temporary certificate of occupancy. All improvements required by this Article related to a site plan, shall be constructed prior to the issuance of a permanent certificate of occupancy.

b) *Phased site plan:* In lieu of performance prior to the issuance of a temporary or permanent certificate of occupancy related to a phased site plan, a performance guarantee may be provided by the owner guaranteeing the installation of the improvements required by this Article for each phase. All improvements guaranteed under this Subsection (b) shall be completed prior to the issuance of certificates of occupancy for 90% of the buildings within that phase, or within 60 days after receipt of written notice that the Stormwater and Utility Engineering Manager has determined that the contributing drainage area to the BMP is sufficiently stabilized to install the BMP, whichever occurs first.

c) *Subdivisions:* In lieu of performance prior to approval of a final plat for subdivisions, a performance guarantee may be provided by the owner guaranteeing the installation of the improvements required by this Article. All improvements guaranteed under this Subsection (c) shall be completed prior to the issuance of certificates of occupancy for 90% of the lots within the subdivision. If the subdivision is to be phased, all improvements within or required for each phase shall be completed prior to issuance of certificate of occupancy for 90% of the lots within that phase.

2) *Performance guarantee.* Performance guarantees shall be provided by the owner in the amount equal to 125% of the total construction cost of the required structural BMP(s). The total cost of the structural BMP(s) shall include all construction costs, including but not limited to, the cost of materials, landscaping, seeding and soil stabilization, grading, excavation and fill. The owner shall submit his estimate of this amount subject to review, modification, and approval by the Stormwater and Utility Engineering Manager. Such estimate shall be signed and sealed by a licensed North Carolina professional engineer, landscape architect, or land surveyor. Guarantees required by this section may be in the form of a surety bond enforceable at the sole discretion of the Town and in the form prescribed by the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance*, certified check drawn in favor of the Town, or cash deposited with the Town.

3) *Duration of performance guarantee.* Performance guarantees shall run until the requirements in this Section 6.1.12 have been satisfied and the Stormwater and Utility Engineering Manager has given final approval of the required structural BMP(s).

4) *Default.* Failure of the owner to construct, repair, and if necessary, reconstruct the structural BMP(s) as required by this Section 6.1.12 is a default. Upon such default, the Town may obtain and use all or any portion of the performance guarantee necessary to complete the improvements.

5) *Costs in excess of performance guarantee.* In the event the Town calls the performance guarantee required by this section and the reasonable cost of performance exceeds the amount of the performance guarantee the Town may collect the difference from the owner.

H) ***Maintenance and Maintenance Guarantees***

1) *Duty to maintain and maintenance and defects guarantee*. The owner is responsible for all maintenance and repair of improvements required by this Article. In addition to the Operation and Maintenance Agreement required by UDO Subsection 6.1.12(D) prior to approval of a final plat, with respect to a subdivision, a maintenance and defects guarantee shall be provided by the owner in the amount equal to 25% of the total construction cost of the structural BMP to ensure proper maintenance and repair prior to conveyance of the improvements to a property owners association. The owner shall submit his estimate of this amount subject to review, modification, and approval by the Stormwater and Utility Engineering Manager. Such estimate shall be signed and sealed by a licensed North Carolina professional engineer, landscape architect, or land surveyor. Guarantees required by this section may be in the form of a surety bond enforceable at the sole discretion of the Town and in the form prescribed by the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance,* certified check drawn in favor of the Town, or cash deposited with the Town.

2) *Duration of maintenance and defects guarantee for subdivision.* The maintenance and defects guarantee shall be in effect for one year after certificates of occupancy have been granted for 90% of the lots within the subdivision. If the subdivision is to be phased, the maintenance and defects guarantee required for a phase shall be in effect for one year after certificates of occupancy have been granted for 90% of the lots within that phase. Subsequent phases shall be required to post new guarantees.

3) *Default.* Upon failure of the owner to maintain the structural BMP as required, the Town may obtain and use all or any portion of the maintenance and defects guarantee necessary to continue maintenance of the structure.

I) ***Inspection***

1) *Inspect once a year*. On an annual basis after completion of construction of a structural BMP, the owner shall submit to the Stormwater and Utility Engineering Manager an inspection report for that structure from a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The inspection report shall be on a form provided by the Stormwater and Utility Engineering Manager. An initial inspection report shall be provided to the Stormwater and Utility Engineering Manager beginning one year from the date of submittal of the certified as-built plans to the Town and each year thereafter on or before the date of the as-built certification.

2) *Inspection by Town of Apex*. All property within the Primary Watershed Protection District and/or the Secondary Watershed Protection District

shall also be subject to inspection by the Stormwater and Utility Engineering Manager or his designee. Such inspections may include, but are not limited to, reviewing maintenance and repair records, sampling discharges, surface water, groundwater, and material or water in structural BMPs, and evaluating the condition of structural BMPs.

3) *Corrective action.* If at any time the Town of Apex determines that corrective actions or improvements to a structural BMP are required, the Town of Apex shall notify the owner of the needed corrections and of the date by which the work is to be completed. All corrective work shall be consistent with the approved operation and maintenance agreement.

4) *Authorization prior to repair or reconstruction of structure*. With the exception of general landscaping and grounds maintenance, the owner of the structural BMP shall obtain authorization from the Town prior to any repair or reconstruction of the structure. All improvements and repairs shall be consistent with the approved maintenance and operation agreement. In a bona fide emergency, necessary measures may be taken immediately in order to minimize damage to the structure and ensure its continued operation. Such measures must be promptly reported to the Stormwater and Utility Engineering Manager.

6.1.13 Modifications by Variance

A) ***General***

Requests for minor and major variances from the standards of the Watershed Protection Overlay Districts shall be made to the Board of Adjustment, except for variance requests pertaining to impacts within Zone 1 and/or Zone 2 of a riparian buffer within the Neuse River Basin which shall be made to the Director of the NC DEQ as specified below in Sec. 6.1.13(B)(1)(b) and (B)(2)(c). Due to certain process differences in State statutes or rules for decision making and appeals based on which basin or watershed a proposed project is located, a separate variance provision is set forth below for each of the following basins or watersheds: (i) the Neuse River Basin, (ii) the Jordan Lake Watershed portion of the Cape Fear River Basin and (iii) the Cape Fear River Basin outside of the Jordan Lake Watershed.

Sec 6.1.13(F) sets forth an alternative variance process that is available for, but not required to be used by, an applicant seeking a variance from Sec. 6.1 density requirements for a project located in the Secondary Watershed Protection District and/or from Town Buffer requirements. Town Buffers and State Buffers are defined in Sec. 6.1.14(C). The purpose of this alternative variance process is to provide additional design flexibility for a project that provides a unique or additional benefit to the Town or surrounding area that would not be available from a traditional development located in areas within the Town or its ETJ where the applicable requirements of Sec. 6.1 are not part of a State authorized program, or where separate State rules do not apply.

All applications for variances made to the Board of Adjustment shall be reviewed by the Board of Adjustment, which shall approve, approve with conditions (which may include mitigation requirements), or disapprove the variance after a public hearing noticed pursuant to Sec. 2.2.11, *Public Notification*, and conducted pursuant to Sec. 2.2.18, *Public Hearing Procedures*, based on the applicable standards in Sec. 6.1.13(E) or (F).

B) ***Variances for Activities in the Neuse River Basin***

1) *Minor Variances*

a) *Minor Variance Requests that are to be Submitted to the Board of Adjustment.* A variance request for an activity in the Neuse River Basin shall be considered minor and a decision on such request shall be made by the Board of Adjustment when:

(i) In a development that is subject to the low-density option, it results in a total built-upon area of no more than 26.4 percent (which represents a 10 percent variation from the applicable state numerical standard of 24 percent); or

(ii) In a development that is subject to the high-density option, it results in a total built-upon area of no more than 73.5 percent (which represents a 5 percent variation from the applicable state numerical standard of 70 percent) and no variation in stormwater management requirements; or

(iii) It pertains to activities that will impact Zone 3 of a riparian buffer located within the Neuse River Basin. However, if the impacted area is also within the Neuse River Basin's Primary Watershed Protection District and along perennial waters within a high density development option area, the area of proposed impacts in the buffer also shall not exceed five percent of the buffer area. If such proposed activity within the Neuse River Basin requiring a variance for Zone 3 also includes impacts to Zone 2 that require a variance, then as specified in Sec. 6.1.13(B(1)(b)(i) the Director of the NC DEQ shall consider the variance request as it pertains to Zone 2 impacts, and a separate variance request shall be submitted to the Board of Adjustment pertaining to Zone 3 impacts.

An appeal of a minor variance decision made by the Board of Adjustment regarding a proposed project in the Neuse River Basin shall be subject to review in Superior Court by proceedings in the nature of certiorari in accordance with G.S. 160A-388.

b) *Minor Variance Requests that are to be Submitted to the NC DEQ.* A variance request for an activity in the Neuse River Basin shall be considered minor and a decision on such request shall be made by the NC DEQ when:

(i) It pertains to activities that will impact Zone 2 of a riparian buffer located within the Neuse River Basin. However, if the impacted area is also within the Neuse River Basin's Primary Watershed Protection District and along perennial waters within a high density development option area, the proposed impacts to the buffer also shall not exceed five percent of the buffer area. If such proposed activity within the Neuse River

Basin requiring a variance for Zone 2 also includes impacts to Zone 3 that require a variance, then the Director of the NC DEQ shall consider the variance request as it pertains to Zone 2 impacts, and as specified in Sec. 6.1.13(B)(1)(a)(iii) a separate variance request shall be submitted to the Board of Adjustment pertaining to Zone 3 impacts.

Pursuant to 15A NCAC 2B .0233(9)(b), a minor variance application for activities that will impact Zone 2 of a Neuse River Basin riparian buffer shall be submitted to the NC DEQ, and an appeal of a decision by the Director of the NC DEQ shall be to the Office of Administrative Hearings.

2) *Major Variances*

a) *Major Variance Requests Submitted to the Board of Adjustment That Will Be Decided by the Board of Adjustment.* A request for a variance for an activity in the Neuse River Basin shall be considered major, and the variance application shall be filed with the Board of Adjustment for final decision by the Board of Adjustment when it pertains to impacts within the Secondary Watershed Protection District portion of the Neuse River Basin and:

(i) In a development exercising the low-density option, it results in a total built-upon area of greater than 26.4 percent; or

(ii) In a development exercising the high-density option, it results in a total built-upon area of greater than 73.5 percent, or it consists of any variation in stormwater management requirements.

An appeal of a major variance decision made by the Board of Adjustment within the scope of this Sec. 6.1.13(B)(2)(a) shall be subject to review in Superior Court by proceedings in the nature of certiorari in accordance with G.S. 160A-388.

b) *Major Variance Requests Submitted to the Board of Adjustment That Will Be Forwarded to the Environmental Management Commission Upon Approval.* A request for a variance for an activity in the Neuse River Basin shall be considered major, and the variance application shall be filed with the Board of Adjustment for initial review and recommendation, and then forwarded to the Environmental Management Commission if the Board of Adjustment determines that the variance should be granted, when the request pertains to impacts within the Primary Watershed Protection District portion of the Neuse River Basin and;

(i) In a development exercising the low-density option, it results in a total built-upon area of greater than 26.4 percent (which represents a variation of greater than 10 percent from the applicable state numerical standard of 24 percent); or

(ii) In a development exercising the high-density option, and it results in a total built-upon area of greater than 73.5 percent (which represents a variation of greater than 5 percent from the applicable state numerical standard of 70 percent), or it consists of any variation in stormwater management requirements; or

(iii) It pertains to activities that will impact Zone 3 of a riparian buffer for perennial waters within a development exercising the high-density option, and more than five percent of the riparian buffer will be impacted.

Following a public hearing on an application within the scope of this Sec. 6.1.13(B)(2)(b), the Board of Adjustment shall provide its recommendation to the Environmental Management Commission if the Board of Adjustment determines that the variance should be granted. After the Board of Adjustment reviews and recommends approval of the application for the major variance, the Planning Director shall prepare and forward to the Environmental Management Commission for consideration the following materials relevant to the application:

(i) The application for major variance;

(ii) The public hearing notice;

(iii) The transcript of the public hearing on the application for major variance prepared by or certified by the town clerk; and

(iv) Recommendation of the Board of Adjustment on the application, including all proposed conditions, which may also include mitigation requirements.

An appeal of the Environmental Management Commission's determination shall be in accordance with the applicable state statute and rules governing the Commission's determination of that major variance request.

c) *Major Variance Requests to be Submitted Directly to the NC DEQ for Determination either by the Division or by the Environmental Management Commission.* A request for a variance for an activity in the Neuse River Basin shall be considered major, and pursuant to 15A NCAC 2B .0233(9)(c) an application shall be filed directly with the NC DEQ, and the Division will either determine that the major variance request meets the applicable requirements and submit its preliminary findings to the Environmental Management Commission, or determine that such requirements have not been met when:

(i) It pertains to activities that will impact any portion of Zone 1, or Zones 1 and 2, of a riparian buffer within the Neuse River Basin. If such proposed activity requiring a variance for Zone 1, or Zones 1 and 2, of a riparian buffer within the Neuse River Basin also includes impacts to Zone 3 that require a variance, then the

Director of the NC DEQ shall consider the variance request as it pertains to Zone 1, or Zones 1 and 2, impacts, and a separate variance request shall be submitted to the Board of Adjustment pertaining to Zone 3 impacts.

An appeal of either the Environmental Management Commission's determination, or of the NC DEQ's determination that the variance requirements have not been met, shall be to the Office of Administrative Hearings.

C) ***Variances for Activities in the Jordan Lake Watershed Portion of the Cape Fear River Basin***

1) *Minor Variances*

a) *Minor Variance Requests that are to be Submitted to the Board of Adjustment.* A variance request for an activity in the Jordan Lake Watershed Portion of the Cape Fear River Basin shall be considered minor and a decision on such request shall be made by the Board of Adjustment when:

(i) In a development that is subject to the low-density option, it results in a total built-upon area of no more than 26.4 percent (which represents a 10 percent variation from the applicable state numerical standard of 24 percent); or

(ii) In a development that is subject to the high-density option, it results in a total built-upon area of no more than 73.5 percent (which represents a 5 percent variation from the applicable state numerical standard of 70 percent) and no variation in stormwater management requirements; or

(iii) It pertains to activities that will impact Zone 2 and/or Zone 3 of a riparian buffer located in the Jordan Lake Watershed.

An appeal of a minor variance decision made by the Board of Adjustment pertaining to allowable density within the Jordan Lake Watershed, or to an activity impacting only Zone 3 of the riparian buffer in that watershed, shall be subject to review in Superior Court by proceedings in the nature of certiorari in accordance with G.S. 160A-388. An appeal of a minor variance decision made by the Board of Adjustment pertaining to an activity impacting Zone 2, or Zones 2 and 3, of a riparian buffer in the Jordan Lake Watershed shall be in writing to the Director of the NC DEQ, c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

2) *Major Variances*

a) *Major Variance Requests Submitted to the Board of Adjustment That Will Be Decided by the Board of Adjustment.* A request for a

variance for an activity in the Jordan Lake Watershed Portion of the Cape Fear River Basin shall be considered major, and the variance application shall be filed with the Board of Adjustment for final decision by the Board of Adjustment when it pertains to impacts that are within the Secondary Water Supply Watershed Protection District portion of the Jordan Lake Watershed and:

(i) In a development exercising the low-density option, it results in a total built-upon area of greater than 26.4 percent; or

(ii) In a development exercising the high-density option, it results in a total built-upon area of greater than 73.5 percent, or it consists of any variation in stormwater management requirements.

An appeal of a major variance decision made by the Board of Adjustment within the scope of this Sec. 6.1.13(C)(2)(a) shall be subject to review in Superior Court by proceedings in the nature of certiorari in accordance with G.S. 160A-388.

b) *Major Variance Requests Submitted to the Board of Adjustment That Will Be Forwarded to the Environmental Management Commission Upon Approval.* A request for a variance for an activity in the Jordan Lake Watershed Portion of the Cape Fear River Basin shall be considered major, and the variance application shall be filed with the Board of Adjustment for initial review and recommendation, and then forwarded to the Environmental Management Commission if the Board of Adjustment determines that the variance should be granted, when it pertains to impacts within the Primary Watershed Protection District portion of the Jordan Lake Watershed and:

(i) In a development exercising the low-density option, it results in a total built-upon area of greater than 26.4 percent (which represents a variation of greater than 10 percent from the applicable state numerical standard of 24 percent);

(ii) In a development exercising the high-density option, it results in a total built-upon area of greater than 73.5 percent (which represents a variation of greater than 5 percent from the applicable state numerical standard of 70 percent) or it consists of any variation in stormwater management requirements; or

(iii) It pertains to activities that will impact Zone 1, Zones 1 and 2, or Zones 1, 2 and 3, of a riparian buffer anywhere in the Jordan Lake Watershed.

Following a public hearing on an application within the scope of this Sec. 6.1.13(C)(2)(b), the Board of Adjustment shall provide its recommendation to the Environmental Management Commission if the Board of Adjustment determines that the variance should be granted. After the Board of Adjustment reviews and recommends approval of the application for the

major variance, the Planning Director shall prepare and forward to the Environmental Management Commission for consideration the following materials relevant to the application:

(i) The application for major variance;

(ii) The public hearing notice;

(iii) The transcript of the public hearing on the application for major variance prepared by or certified by the town clerk; and

(iv) Recommendation of the Board of Adjustment on the application, including all proposed conditions, which may also include mitigation requirements.

An appeal of the Environmental Management Commission's determination shall be in accordance with the applicable state statute and rules governing the Commission's determination of that major variance request.

D) ***Variances for Activities in the Cape Fear River Basin outside of the Jordan Lake Watershed***

1) *Minor Variances*

a) *Minor Variance Requests that are to be Submitted to the Board of Adjustment.* A variance request for an activity in the Cape Fear River Basin outside of the Jordan Lake Watershed shall be considered minor and a decision on such request shall be made by the Board of Adjustment when:

(i) In a development that is subject to the low-density option, it results in a total built-upon area of no more than 26.4 percent (which represents a 10 percent variation from the applicable state numerical standard of 24 percent); or

(ii) In a development that is subject to the high-density option, it results in a total built-upon area of no more than 73.5 percent (which represents a 5 percent variation from the applicable state numerical standard of 70 percent) and no variation in stormwater management requirements; or

(iii) It pertains to activities that will impact Zone 2 and/or Zone 3 of a riparian buffer located in the Cape Fear River Basin outside of the Jordan Lake Watershed.

An appeal of a minor variance decision made by the Board of Adjustment shall be subject to review in Superior Court by proceedings in the nature of certiorari in accordance with G.S. 160A-388.

2) *Major Variances*

a) *Major Variance Requests that are to be Submitted to the Board of Adjustment.* A variance request for an activity in the Cape Fear River Basin outside of the Jordan Lake Watershed shall be considered major and a decision on such request shall be made by the Board of Adjustment when:

(i) In a development exercising the low-density option, it results in a total built-upon area of greater than 26.4 percent; or

(ii) In a development exercising the high-density option, it results in a total built-upon area of greater than 73.5 percent, or it consists of any variation in stormwater management requirements; or

(iii) It pertains to activities that will impact Zone 1, or Zones 1 and 2, or Zones 1, 2 and 3, of a riparian buffer.

Appeals of major variance decisions made by the Board of Adjustment within the scope of this Sec. 6.1.13(D)(2) shall be subject to review in Superior Court by proceedings in the nature of certiorari in accordance with G.S. 160A-388.

E) ***Standards***

1) *General*. The standards set forth in Sec. 6.1.13(E)(2)-(3) shall be applicable to all variance requests submitted to the Board of Adjustment, except for a request submitted pursuant to the alternative variance process in Sec. 6.1.13(F).

2) The Board of Adjustment shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the requirements at issue. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:

a) If the applicant complies with the requirements at issue, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board of Adjustment shall consider whether the variance is the minimum possible deviation from applicable requirements that shall make reasonable use of the property possible;

b) The practical difficulties or unnecessary hardships result from application Section 6.1 to the property rather than from other factors such as deed restrictions or other hardship;

c) The practical difficulties or unnecessary hardships is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with Sec. 6.1 would not allow reasonable use of the property;

d) The applicant did not cause the practical difficulties or unnecessary hardships by knowingly or unknowingly violating Sec. 6.1;

e) The applicant did not purchase the property after the effective date of Sec. 6.1, and then request a variance; and

f) The practical difficulties or unnecessary hardships are rare or unique to the applicant's property.

3) The Board of Adjustment shall also make findings of fact as to:

a) whether the variance is in harmony with the general purpose and intent of the Town's Watershed Protection Overlay Districts and preserves its spirit; and

b) whether in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

F) ***Alternative Process and Standards for Variance From Density Requirements in Secondary Watershed Protection District and/or From Impacts to Town Buffers***

1) An applicant seeking a variance from the density requirements in Sec. 6.1, which may include stormwater management requirements, for a project located in the Secondary Watershed Protection District, and/or from buffer requirements applicable to a Town Buffer as defined in Sec. 6.1.14(C)(1), may elect to, but is not required to, seek such variance pursuant to the process and standards set forth in this Sec. 6.1.13(F). The purpose of this alternative variance process is to provide additional design flexibility for a project that provides a unique or additional benefit to the Town or surrounding area that would not be available from a traditional development in areas where the applicable Ordinance requirements are not part of a State authorized program or where separate State rules do not apply.

2) The Board of Adjustment shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the requirements at issue. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:

a) the project provides a unique or additional benefit to the Town or surrounding area that would not be available from a traditional development;

b) the strict application of the requirements of Sec. 6.1 create practical difficulties or unnecessary hardships;

c) the practical difficulties or unnecessary hardships result from the application of Sec. 6.1 to the property rather than from other factors such as deed restrictions or other hardship;

d) the applicant did not cause the practical difficulties or unnecessary hardships by knowingly or unknowingly violating Sec. 6.1;

e) the development plan for which the variance is sought (including specific proposed mitigation) provides an overall level of environmental protection that meets or exceeds that provided by the requirements in Sec. 6.1, including consideration of stormwater management, nutrient removal and stream and other surface water protection functions, sedimentation, and downstream water quality and quantity.

3) The Board of Adjustment shall also make findings of fact as to:

a) whether the variance is in harmony with the general purpose and intent of the Town's Watershed Protection Overlay Districts and preserves its spirit; and

b) whether, in granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

4) Prior Approvals Required Before Submitting a Variance Request Under Sec. 6.1.13(F)

a) Prior to submitting a variance request to the Board of Adjustment pursuant to this Sec. 6.1.13(F), the applicant shall first have obtained all required permits and approvals for the proposed development from the DEQ and/or US Army Corps of Engineers, as may be applicable, with regard to any proposed dredging or filling of surface waters within the proposed development, and with regard to any proposed impacts to State Buffers in the Neuse River Basin (i.e. Zone 1 or Zone 2) or in the Cape Fear River Basin outside of the Jordan Lake Watershed (i.e. Zone 1).

(i) Although the Board of Adjustment may approve a variance request for impacts to Zone 1 of a riparian buffer in the Cape Fear River Basin outside of the Jordan Lake Watershed pursuant to the variance process in Sec. 6.1.13(D)(2), advance DEQ approval will be required for such impacts to Zone 1 of a riparian buffer in the Cape Fear River Basin outside of the Jordan Lake Watershed if the impacts are part of a project for which a variance is being sought pursuant to this Sec. 6.1.13(F).

b) If the proposed project will impact any State Buffer in the Jordan Lake Watershed (i.e. Zone 1 or Zone 2) then, prior to submitting a variance request to the Board of Adjustment under this Sec. 6.1.13(F) for the remainder of the project, the applicant shall first submit a separate variance request to the Board of Adjustment pursuant to the applicable process and standards set forth in Sec. 6.1.13(C) and (E) pertaining to such impacts to Zone 1 and/or Zone 2, and the applicant shall have obtained approval of this request. Pursuant to Sec. 6.1.13(C)(1)(iii) a minor variance request pertaining to Zone 2 of a buffer in the Jordan Lake

Watershed will be determined by the Board of Adjustment. Pursuant to Sec. 6.1.13(C)(2)(b)(iii), a major variance request pertaining to Zone 1, or Zone 1 and 2, of a buffer in the Jordan Lake Watershed shall first be considered by the Board of Adjustment, and the Board of Adjustment shall provide its recommendation to the Environmental Management Commission for final decision if the Board determines that the variance should be granted.

5) An applicant for a variance who is electing to proceed pursuant to this Sec. 6.1.13(F) shall clearly state that intent in the application and shall provide written confirmation with the application that all prior approvals required pursuant to Sec. 6.1.13(F)(4) above have been obtained, or that no such approvals are required.

6) The application shall then be reviewed by the Board of Adjustment, which shall approve, approve with conditions (which may include mitigation requirements), or disapprove the variance after a public hearing noticed pursuant to Sec. 2.2.11, *Public Notification,* and conducted pursuant to Sec. 2.2.18, *Public Hearing Procedures,* based on the standards in Sec. 6.1.13(F)(2) and (3).

G) ***Annual Report***

Town shall make an annual report to the Environmental Management Commission, as required by the state, of all variances that have been granted within the state identified watershed protected areas including the type of variance and the reasons for granting the variance.

6.1.14 Mitigation for Riparian Buffers

A) ***Applicability***

1) This section applies to persons who wish to impact a riparian buffer within the Town or its ETJ when one of the following applies:

a) The person has received an Authorization Certificate pursuant to Sec. 6.1.11(G)(5) for a proposed use that is designated as "allowable with mitigation"; or

b) The person has received a variance pursuant to Sec. 6.1.13 and is required to perform mitigation as a condition of a variance approval.

2) The mitigation provisions of this Sec. 6.1.14 apply to all buffer requirements in the Town or its ETJ, except that in the area of the Town or its ETJ in the Neuse River Basin the buffer mitigation requirements for Zones 1 and 2 shall be administered by the NC DEQ.

B) ***Issuance of the Mitigation Approval***
The Town shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Sec. 6.1.14. The approval shall identify at a minimum the option chosen for meeting the mitigation requirement, the required area of mitigation, and either the mitigation location or the offset payment amount as applicable.

C) ***Options for Meeting the Mitigation Requirements***
The mitigation requirement may be met through one of the following options:

1) *State Buffers.* The mitigation requirements for State Buffers (defined herein as buffers required by the State laws and/or rules, or approved by the State as a State authorized program) may be met through one of options a), b), or c) below. More specifically, State Buffers are: the 50-foot buffer required in the Neuse River Basin area of the Town and its ETJ; the 50-foot buffer required in the Jordan Lake Watershed area of the Town and its ETJ; the 30-foot buffer required by Phase 2 stormwater rules throughout the Town and its ETJ; the 30-foot buffer required adjacent to perennial waters in the Primary Watershed Protection District for developments utilizing the low-density option; and the 100-foot buffer required adjacent to perennial waters in the portion of the Primary Watershed Protection District within the Neuse River Basin for developments utilizing the high-density option. All other buffers in the Town and its ETJ regulated by Sec. 6.1 are referred to as "Town Buffers."

a) Payment of a compensatory mitigation fee either (i) to the State Riparian Buffer Restoration Fund pursuant to State rules applicable to the location of the State Buffer that is lost, contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or (ii) to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently set out at http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html or from the US Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402-1890, and the applicable trading criteria in State rules applicable to the location of the impacted State Buffer;

b) Donation of real property or of an interest in real property pursuant to Sec. 6.1.14(F); or

c) Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Sec. 6.1.14(G).

2) *Town Buffers.* The mitigation requirement for Town Buffers may be met through one of the following options.

a) Construction of an alternative measure or combination of measures that reduce nutrient loading as well or better than the riparian buffer that is lost, that is located in the same river basin as the riparian buffer that is lost, and that is approved by the Town. Such measures may include stormwater best management practices and other means of capturing and controlling nutrients and other pollutants and shall be located on the site of the riparian buffer that is lost, if practicable, or as close to that location as is practicable;

b) Payment of a compensatory mitigation fee either: (i) to a Town Riparian Buffer Restoration Fund established by the Town, if such fund is established and available at the time, and such fee shall be calculated using the same fee per square foot or acre as

established in the State rules for a buffer in the same basin or watershed as the Town Buffer at issue, but the applicable multiplier to determine the required area of mitigation shall be determined pursuant to Sec. 6.1.14(D)(2), or (ii) to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently as set out at http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html or from the US Army Corps of Engineers, P.O. Box 1890, Wilmington, NC, 28402-1890, and the applicable trading criteria in State rules applicable to the location of the State Buffer that is lost;

c) Donation of real property, or of an interest in real property, pursuant to Section 6.1.14(F); or

d) Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Sec. 6.1.14(G).

D) ***The Area of Mitigation***

The Town shall determine the required area of mitigation for all mitigation options identified above in Sec. 6.1.14(C) and as further specified in the requirements for each option set out in this Sec. 6.1.14, according to the following:

1) The impacts in square feet to each zone of the riparian buffer shall be determined by the Town by adding the following information which shall be provided by the applicant:

a) The area of the footprint of the use causing the impact to the riparian buffer;

b) The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and

c) The area of any ongoing maintenance corridors the maintenance of which is not in compliance with the applicable buffer requirements within the riparian buffer associated with the use.

2) The required area of mitigation shall be determined by applying the following multipliers to the area of the impacts determined according to Sec. 6.1.14(D)(1) for each zone of the riparian buffer:

a) Impacts to Zone 1 of the riparian buffer shall be multiplied by three;

b) Impacts to Zone 2 of the riparian buffer shall be multiplied by one and one-half;

c) Impacts to Zone 3 of the riparian buffer shall be multiplied by one; and

d) Impacts to wetlands within Zones 1 and 2 of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

E) ***The Location of Mitigation of Buffer Impacts***

1) *State Buffers.* For any option chosen for mitigation of State Buffer impacts, the mitigation effort shall be located within the same subwatershed where the impacted property is located and the same distance or closer to the closest public water supply reservoir as the proposed impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the Town's corporate limits or ETJ provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected reservoir resulting from differences between the locations of the buffer impact and mitigation. Additional location requirements for the property donation option are enumerated below in Sec. 6.1.14(F)(3)(a).

2) *Town Buffers.* For any option chosen for mitigation of Town buffer impacts, the mitigation effort shall be located within the same river basin where the impacted property is located. Additional location requirements for the property donation option are enumerated below in Sec. 6.1.14(F)(3)(a).

F) ***Donation of Property***
Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

1) The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to either the State Riparian Buffer Restoration Fund for impacts to a State Buffer or to a Town Riparian Buffer Restoration Fund, if established and available at the time, for impacts to a Town Buffer. The value of the property interest shall be determined by an appraisal performed in accordance with Sec. 6.1.14(F)(4)(d). The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required mitigation fee calculated pursuant to 15A NCAC 2B .0269. If the appraised value of the donated property interest is less than the required fee, the applicant shall pay the remaining balance due.

2) A donation in the form of a conservation easement shall be accepted only if the conservation easement is granted in perpetuity.

3) Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

a) In addition to the location requirements for mitigation of buffer impacts for State Buffers and Town Buffers, as applicable in Sec. 6.1.14(E), the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the Basinwide Wetlands and Riparian Restoration Plan for the Basin developed by the NC DEQ pursuant to N.C.G.S. 143-214.10 for the basin in which the property is located;

b) The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Sec. 6.1.14(G)(4);

c) The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;

d) The size of the restorable riparian buffer on the property to be donated shall equal or exceed the area of mitigation responsibility determined pursuant to Sec. 6.1.14(D);

e) Restoration shall not require removal of man-made structures or infrastructure;

f) The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;

g) The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;

h) The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;

i) The property shall not contain any hazardous substance or solid waste;

j) The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;

k) The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and

l) The property shall not have any encumbrances or conditions on the transfer of the property that limit or impede its use for the required mitigation purposes.

4) At the expense of the applicant or donor, the following information shall be submitted to the Town with any proposal for donations or dedications of interest in real property:

a) Documentation that the property meets the requirements laid out in Sec. 6.1.14(F)(3);

b) US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;

c) A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office, as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;

d) A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and

e) A title certificate.

G) ***Riparian Buffer Restoration or Enhancement***
Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

1) The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:

a) The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Sec. 6.1.14(D): or

b) The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Sec. 6.1.14(D);

2) The location of the riparian buffer restoration or enhancement shall comply with the requirements in Sec. 6.1.14(E);

3) The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet or equal to the width of the impacted buffer, whichever is greater, as measured on a line perpendicular to the surface water;

4) Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements this Section. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, that is greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored;

5) The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of Sec. 6.1.11(G)(5), or a variance pursuant to Sec. 6.1.13. After receiving this Certificate or variance, the applicant shall submit a restoration or enhancement plan for approval by the Town. The restoration or enhancement plan shall contain the following:

a) A map of the proposed restoration or enhancement site;

b) A vegetation plan. The vegetation plan shall include a. minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;

c) A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;

d) A fertilization plan; and

e) A schedule for implementation

6) Within one year after the Town has approved the restoration or enhancement plan, the applicant shall present proof to the Town that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person shall be in violation of both the State's, where applicable, and the Town's riparian buffer protection program and shall be subject to civil penalties pursuant to Sec. 6.15;

7) The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and

8) The applicant shall submit annual reports for a period of five years after the restoration or enhancement, showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

6.1.15 Civil Penalties

A) ***Notification of Violation***
When any subdivision, development, and/or land use is found to be in violation of any provision of Sec. 6.1 *Watershed Protection Overlay Districts*, the person responsible for the violation shall be notified by the Stormwater and Utility Engineering Manager. Such notification shall take the following form:

1) It shall be made in writing.

2) It shall indicate the nature of the violation.

3) It shall order any of the following that is applicable:

a) The discontinuance of the illegal use of land, buildings or structures,

b) The removal of illegal buildings or structures,

c) The removal of additions, alterations, or structural changes to illegal buildings or structures,

d) The discontinuance of any illegal work being done, or

e) Any other action that is deemed necessary at that time to correct the violation.

B) ***Civil Penalties***
Following notification of a violation of Sec. 6.1 *Watershed Protection Overlay Districts*, civil penalties may be imposed by the Water Resources Director on the person responsible for the violation. Civil penalties will be imposed in accordance with Sec. 11.4.4 *Civil Penalties*.

6.1.16 Criminal Penalties
Violation of Sec. 6.1 *Watershed Protection Overlay Districts* shall not be a crime under G.S. §14-4 or other law.

6.1.17 Remedies
In addition to the imposition of civil penalties, the Town may take action in accordance with Sec. 11.4.1 *Permit Revocation*, Sec. 11.4.2 *Disapproval of Subsequent Permits and Development Approvals*, and/or Sec. 11.4.3 *Injunction and Abatement Order* in order to prevent, stop, penalize, restrain, correct, or abate any violation of Sec. 6.1 *Watershed Protection Overlay Districts.*

6.2 FLOOD DAMAGE PREVENTION OVERLAY DISTRICT

6.2.1 Authority
The Town is authorized to adopt the Flood Damage Prevention Overlay District pursuant to Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the N.C.G.S

6.2.2 Findings

A) ***Flood Inundation Adversely Affects Public Health, Safety and Welfare***
The flood hazard areas of the Town are subject to periodic inundation that results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures for flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

B) ***Flood Losses Caused By Cumulative Effects Of Obstructions In Floodplains***
These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities, and by the occupancy in flood hazard areas by uses vulnerable to floods or hazardous to other lands which are inadequately elevated, floodproofed, or otherwise unprotected from flood damages.

6.2.3 Purpose
It is the purpose of the Flood Damage Prevention Overlay District to promote the public health, safety, and general welfare of the Town and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:

A) ***Restrict Uses that are Dangerous due to Water or Erosion Hazards***
Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards, or which result in damaging increases in erosion or in flood heights or velocities;

B) ***Protect Uses against Flood Damage***
Require that uses vulnerable to floods, including facilities which serve such uses, be protected against flood damage at the time of initial construction;

C) ***Control the Alteration of Natural Floodplains, Stream Channels, and Natural Protective Barriers***
Control the alteration of natural floodplains, stream channels, and natural protective barriers that are involved in the accommodation of floodwaters;

D) ***Control Filling, Grading, Dredging***
Control filling, grading, dredging, and other development which may increase erosion or flood damage; and

E) ***Prevent or Regulate the Construction of Flood Barriers That Will Unnaturally Divert Floodwaters***
Prevent or regulate the construction of flood barriers which will unnaturally divert floodwaters or which may increase flood hazards to other lands.

6.2.4 Objectives
The objectives of this section are:

A) ***Protect Human Life and Health***
To protect human life and health;

B) ***Minimize Expenditure of Public Money***
To minimize expenditure of public money for costly flood control projects;

C) ***Minimize the Need for Rescue and Relief Efforts Associated with Flooding***
To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

D) ***Minimize Prolonged Business Interruptions***
To minimize prolonged business interruptions;

E) ***Minimize Damage to Public Facilities***
To minimize damage to public facilities and utilities such as water and gas mains, electric, telephone and sewer lines, streets, and bridges located in floodplains;

F) ***Maintain a Stable Tax Base***
To help maintain a stable tax base by providing for the sound use and development of flood prone areas in such a manner as to minimize flood blight areas; and,

G) ***Notification of Homebuyers***
To ensure that potential homebuyers are notified that property is in a Special Flood Hazard Area.

6.2.5 Applicability
This Flood Damage Prevention Overlay District shall apply to all Special Flood Hazard Areas within the Town and its ETJ.

6.2.6 Basis for Establishing the Special Flood Hazard Areas
The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) for Wake County dated May 2, 2006, and its accompanying Flood Insurance Rate Map Panels (0721, 0722, 0731, 0732, 0733, 0740, 0741, 0742, 0743, 0750, 0751, 0752, 0753, to include additional ETJ panels, 0608K, 0710K, 0711K, 0712K, 0713K, 0720, 0723, & 0730) which are adopted by reference and declared to be a part of this ordinance. The “Special Flood Hazard Areas” also include those defined through standard engineering analysis for private developments or by governmental agencies, but

which have not yet been incorporated in the FIRM. This includes detailed flood information generated as a requirement of Section 6.2.17(B) *Provide Flood Data*.

6.2.7 Establishment of Floodplain Development Permit
A floodplain development permit shall be required in conformance with the provisions of this section prior to the commencement of any development activities.

6.2.8 Compliance
No structure or land shall hereafter be located, extended, converted, or structurally altered without full compliance with the terms of this section and other applicable regulations.

6.2.9 Abrogation and Greater Restrictions
This section is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restriction. However, where this section and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

6.2.10 Interpretation
In the interpretation and application of this section all provisions shall be:

A) ***Minimum Requirements***
Considered as minimum requirements;

B) ***Liberally Construed***
Liberally construed in favor of the governing body; and

C) ***Deemed Neither to Limit nor Repeal Other Powers***
Deemed neither to limit nor repeal any other powers granted under state statutes.

6.2.11 Warning and Disclaimer of Liability
The degree of flood protection required by this section is considered reasonable for regulatory purposes and is based on scientific and engineering considerations. Larger floods can and will occur on rare occasions. Flood heights may be increased by man-made or natural causes. This section does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This section shall not create liability on the part of the Town or by any officer or employee thereof for any flood damages that result from reliance on this section or any administrative decision lawfully made hereunder.

6.2.12 Penalties for Violation
Violation of the provisions of this section or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance, shall constitute a misdemeanor. Any person who violates this section or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than 50 dollars ($50.00) or be imprisoned for not more than 30 days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the Town from taking such other lawful action as is necessary to present or remedy any violation.

6.2.13 Administration

A) ***Designation of Local Administrator***
The Town's Public Works and Transportation Director or a designee is appointed to administer and implement the provisions of this Flood Damage Prevention Overlay District.

B) ***Floodplain Development Permit and Certification Requirements***
Application for a floodplain development permit shall be made to the floodplain administrator on forms furnished by the Town prior to any development activities in the Flood Damage Prevention Overlay District. The floodplain development permit may include, but shall not be limited to, plans in duplicate drawn to scale showing the nature, location, dimensions, and elevations of the area in question; existing or proposed structures; and the location of fill materials, storage areas, and drainage facilities. Specifically, the following information is required:

1) *Base flood elevation data provided*. Where base flood elevation data is provided in accordance with Section 6.2.17(B), *Provide Flood Data*, and 6.2.6, *Basis for Establishing the Special Flood Hazard Areas*, the application for a floodplain development permit shall show:

a) The elevation (in relation to mean sea level) of the lowest floor (including basement of all new and substantially improved structures;

b) If the structure has been floodproofed in accordance with Sec. 6.2.16(B)(3), *Commercial, Industrial, or Nonresidential Structure*, the elevation (in relation to mean sea level) to which the structure was floodproofed.

2) *Base flood elevation data not provided*. Where the base flood elevation data is not provided, requirements of Section 6.2.17 *Standards for Streams without Established Base Flood Elevations, Floodways, and/or Non-Encroachment Areas* and Section 6.2.16 *Provisions for Flood Hazard Reduction* must be met.

3) *Watercourse will be altered or relocated*. Where any watercourse will be altered or relocated as a result of proposed development, the application for a floodplain development permit shall include: A description of the extent of watercourse alteration or relocation; an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation.

4) *Structure floodproofed*. When a structure is floodproofed, the applicant shall provide a certificate from a registered professional engineer or architect that the nonresidential flood-proofed structure meets the floodproofing standards in Sec. 6.2.16(B)(3), *Commercial, Industrial, or Nonresidential Structure*.

5) *Floor elevation or floodproofing certification required*. A floor elevation or floodproofing certification is required after the lowest floor is completed. Within 21 calendar days of establishment of the lowest floor elevation, or floodproofing by whatever construction means, whichever is applicable, it shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the lowest floor, or floodproofing elevations, whichever is applicable, as built, in relation to mean sea level. Said certification shall be prepared by or under the direct supervision of a registered land surveyor or professional engineer and certified by same. When floodproofing is utilized for a particular building said certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. Any work done

within the 21-day calendar period and prior to submission of the certification shall be at the permit holder's risk. The floodplain administrator shall review the floor elevation survey data submitted. The permit holder immediately and prior to further progressive work being permitted to proceed shall correct deficiencies detected by such review. Failure to submit the survey or failure to make said corrections required shall be cause to issue a stop-work order for the project.

C) ***Duties and Responsibilities***

The duties of the floodplain administrator shall include but are not be limited to:

1) *Reviewing all floodplain development permits*. Reviewing all floodplain development permits to assure that the requirements of this section have been satisfied.

2) *Advising permittee*. Advising the permittee that additional federal or state permits may be required, and if specific federal or state permits are known, require that copies of such permits be provided and maintained on file with the floodplain development permit.

3) *Notifying adjacent communities*. Notifying adjacent communities and the North Carolina Department of Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse and submit evidence of such notification to the Federal Emergency Management Agency.

4) *Assuring maintenance provided*. Assuring that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

5) *Preventing encroachment within floodways and non-encroachment areas*. Preventing encroachment within *floodways* and non-encroachment areas unless the certification and flood hazard reduction provisions of Secs. 6.2.16(A), *General Standards*, through 6.2.19, *Standards for Subdivisions*, are met.

6) *Actual elevations*. Obtaining actual elevation (in relation to mean sea level) of the lowest floor (including basement) of all new or substantially improved structures, in accordance with Sec. 6.2.13(B)(5), *Floor Elevation Or Floodproofing Certification Required.*

7) *Actual elevations*. Obtaining actual elevation (in relation to mean sea level) to which the new or substantially improved structures have been floodproofed, in accordance with Section 6.2.13(B)(5), *Floor Elevation or Floodproofing Certification Required.*

8) *Actual elevations*. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with Section 6.2.13(B)(5), *Floor Elevation or Floodproofing Certification Required.*

9) *Certifications.* When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Sec. 6.2.16(B)(3), *Commercial, Industrial, or Nonresidential Structure.*

10) *Interpretations.* Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given reasonable opportunity to appeal the interpretation as provided in this section.

11) *Obtain flood data*. When base flood elevation data, floodway data, or non-encroachment area data has not been provided in accordance with Section 6.2.6, *Basis for Establishing the* Special Flood Hazard Areas, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 6.2.17(B), in order to administer the provisions of this ordinance.

12) *Inspections.* Make on-site inspections of projects in accordance with Section 6.2.14, *Administrative Procedures*.

13) *Enforce.* Serve notices of violations, issue stop-work orders, revoke permits and take corrective actions in accordance with Section 6.2.14, *Administrative Procedures*.

14) *Maintain records*. Maintain all records pertaining to the administration of this section and make these records available for public inspection in the office of the floodplain administrator during normal business hours.

15) *Variance Requests.* Review, provide input, and make recommendations for variance requests.

16) *Maintain maps.* Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Section 6.2.6 of this ordinance, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

6.2.14 Administrative Procedures

A) ***Inspections of Work in Progress***
As the work pursuant to a permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of this section and the terms of the permit. In exercising this power, floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises at any reasonable hour for the purposes of inspection or other enforcement action.

B) ***Stop-Work Orders***
Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this section, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reasons for the stoppage, and the conditions under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

C) ***Revocation of Permits***
The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any permit mistakenly issued in violation of an applicable state or local law may also be revoked.

D) ***Periodic Inspections***
The floodplain administrator shall have a right, upon presentation of proper credentials, to enter on any premises at any reasonable hour for the purposes of inspection or other enforcement action.

E) ***Violations to be Corrected***
When the floodplain administrator finds violations of applicable state and local laws, it shall be the floodplain administrator's duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law on the property.

F) ***Actions in Event of Failure to Take Corrective Action***
If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the property owner written notice, by certified or registered mail to the property owner's last known address or by personal service:

1) *In violation*. That the building or property is in violation of this section;

2) *Hearing date*. That a hearing will be held before the Town Manager at a designated place and time, not later than 10 days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

3) *Order*. That following the hearing, the Town Manager may issue such order to alter, vacate, or demolish the building, or to remove fill as appears appropriate.

G) ***Order to Take Corrective Action***
If, upon a hearing held pursuant to the notice described above, the Town Manager shall find that the building or development is in violation of this section, the Town Manager shall make an order in writing to the owner, requiring the owner to remedy the violation within such period, not less than 60 days; provided that where the Town Manager finds that there is imminent danger to life or other property, the Town Manager may order that corrective action be taken in such lesser period as may be feasible.

H) ***Appeal***
Any owner who has received an order to take corrective action may appeal that order to the Board of Adjustment by giving notice of appeal in writing to the Town Manager and the town clerk within 10 days following issuance of the final order. In the absence of an appeal, the order of the Town Manager shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm or revoke the order.

I) ***Failure to Comply with Order***
If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been taken, or fails to comply with an order of the Board of Adjustment following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

6.2.15 Variance Procedures
The Board of Adjustment shall hear and decide requests for variances from the requirements of this section. Any person aggrieved by the decision of the Board of Adjustment or any taxpayer may appeal such decision to the court, as provided in Chapter 7A, N.C.G. S.

A) ***Historic Structures***
Variances may be issued for the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure.

B) ***Factors***
In passing upon such applications, the Board of Adjustment shall consider all technical evaluations, all relevant factors, all standards specified in other portions of this section, and:

1) *Danger from material*. The danger that material may be swept onto other lands to the injury of others;

2) *Danger to life and property*. The danger to life and property due to flooding or erosion damage;

3) *Flood damage*. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

4) *Importance of services to community*. The importance of the services provided by the proposed facility to the community;

5) *Necessity of waterfront location*. The necessity to the facility of a waterfront location, where applicable;

6) *Availability of alternative locations* The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

7) *Compatibility* The compatibility of the proposed use with existing and anticipated development;

8) *2030 Land Use Map*. The relationship of the proposed use to the 2030 Land Use Map and floodplain management program for that area;

9) *Impacts.* The expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and,

10) *Costs of providing governmental services*. The costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

11) No variance shall be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, or chemical storage facilities that are located in Special Flood Hazard Areas.

C) ***Attach Conditions***
Upon consideration of the factors listed above and the purposes of this section, the Board of Adjustment may attach such conditions to the granting of variances, as it deems necessary to further the purposes of this section.

D) ***No Increase in Flood Levels***
Variances shall not be issued within any designated floodway or non-encroachment area if any increase in flood levels during the base flood discharge would result.

E) ***Conditions***
Conditions for variances:

1) *No violation of law.* Variances may not be issued when the variance will make the structure in violation of other federal, state or local laws, regulations, or ordinances.

2) *Minimum necessary*. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

3) *Other.* Variances shall only be issued upon:

a) A showing of good and sufficient cause;

b) A determination that failure to grant the variance would result in exceptional hardship; and,

c) A determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or articles.

F) ***Written Notice***
Any applicant to whom a variance is granted shall be given written notice specifying the difference between the base flood elevations and the elevation to which the structure is to be built and a written statement that the cost of flood insurance will be commensurate with the increased risk resulting from the reduced lowest floor elevation. Such notification shall be maintained with a record of all variance actions.

G) ***Records***
The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency upon request.

6.2.16 Provisions for Flood Hazard Reduction

A) ***General Standards***
In all Special Flood Hazard Areas the following provisions are required:

1) *Anchored.* All new construction and substantial improvements shall be anchored to prevent flotation, collapse, or lateral movement of the structure;

2) *Material resistant to flood damage*. All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage;

3) *Construction methods and practices minimize flood damages*. All new construction or substantial improvements shall be constructed by methods and practices that minimize flood damages;

4) *Prevent water from entering or accumulating within the components during conditions of flooding*. Electrical, heating, ventilation, plumbing, air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding;

5) *Water supply systems*. All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system;

6) *Sanitary sewage systems*. New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into the floodwaters;

7) *Waste disposal systems*. Solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted;

8) *New construction*. Any alteration, repair, reconstruction, or improvements to a structure that is in compliance with the provisions of this section shall meet the requirements of “new construction” as contained in this section; and

9) *Nonconforming buildings*. Nonconforming buildings or uses may not be enlarged, replaced, or rebuilt unless such enlargement or reconstruction is accomplished in conformance with the provisions of this section. Provided, however, nothing in this section shall prevent the repair, reconstruction, or replacement of a building or structure existing on August 1, 2000 and located totally or partially within the Special Flood Hazard Area, provided that the bulk of the building or structure below the regulatory flood protection elevation in the Special Flood Hazard Area is not increased and provided that such repair, reconstruction, or replacement meets all of the other requirements of this section.

B) ***Specific Standards***

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided and in Future Conditions Flood Hazard Areas where Future Conditions Flood Elevations data has been provided, as set forth in Section 6.2.6 or Section 6.2.17, the following provisions, in addition to the provisions of Section 6.2.16A, are required:

1) *Residential Construction*. No new residential structures, with the following exception:

a) Development shall be permitted on properties for which construction plans were approved by August 1, 2000 provided such development is authorized in accordance with Section 6.1.11 *Riparian Buffers*.

(i) New construction or substantial improvement of any residential structure (including manufactured homes) existing on August 1, 2000 shall have the reference floor, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 6.2.19 of this ordinance.

2) *Non-Residential Construction*. No new non-residential structures, with the following exception:

a) Development shall be permitted on properties for which SD Plans, PD Plans (for PUD, MEC, and TND), or Site Plans were approved by April 17, 2012 provided such development is authorized in accordance with Section 6.1.11 *Riparian Buffers*.

(i) New construction or substantial improvement of any commercial, industrial, or other nonresidential structure shall have the reference level, including basement, elevated no lower than the Regulatory Flood Protection Elevation, as defined in Section 6.2.19 of this ordinance.

(ii) Structures located in AE and X (Future) Zones may be floodproofed to the Regulatory Flood Protection Elevation in-lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the Regulatory Flood Protection Elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. A registered professional engineer or architect shall certify that the floodproofing standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 6.2.13(B)(5), along with the operational plan and the inspection and maintenance plan.

3) *Manufactured or mobile homes*. Manufactured or mobile homes existing on August 1, 2000.

a) Manufactured or mobile homes that are placed or substantially improved in sites:

(i) Outside a manufactured home subdivision or mobile home park;

(ii) In a new manufactured home subdivision or mobile home park;

(iii) In an expansion to an existing manufactured home subdivision or mobile home park; or

(iv) In an existing manufactured home subdivision or mobile home park on which a manufactured or mobile home has incurred "substantial damage" as the result of a flood, must be elevated on a permanent foundation such that the lowest floor of the manufactured or mobile home is elevated no lower than two feet above the base flood elevation and be securely anchored to an adequately anchored foundation system to resist flotation, collapse, and lateral movement.

b) Manufactured or mobile homes that are to be placed or substantially improved on sites in an existing manufactured home subdivision or mobile home park that are not subject to the provisions of Section 6.2.16(B)(4)(a) above must be elevated so that the lowest floor of the manufactured or mobile home is elevated no lower than two feet above the base flood elevation, and is securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement.

c) Manufactured and mobile homes shall be anchored to prevent flotation, collapse, or lateral movement. For the purpose of this requirement, manufactured or mobile homes must be anchored to resist flotation, collapse, or lateral movement in accordance with the Regulations for Mobile Homes and Modular Housing adopted by the Commissioners of Insurance pursuant to Section 143.143.15 N.C.G.S. Additionally, when the elevation would be met by an elevation of the chassis at least 36 inches or less above the grade at the site, the chassis shall be supported by reinforced piers or other foundation elements of at least equivalent strength. When the elevations of the chassis are above 36 inches in height an engineering certification is required.

d) An evacuation plan shall be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home subdivisions or mobile home parks located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local emergency management coordinator.

4) *Recreational vehicle*. A recreational vehicle is ready for highway use if it is on wheels or a jacking system, is attached to the site only by quick disconnect type utilities and security and devices, and has no permanently attached additions. Recreation vehicles placed on sites shall either:

a) Be on site for fewer than 180 consecutive days;

b) Be fully licensed and ready for highway use; or

c) Meet the requirements of Section 6.2.13(B), *Floodplain Development Permit and Certification Requirements*, Section

6.2.16(A), *General Standards*, and Section 6.2.16(B)(4), *Manufactured or Mobile Homes*.

5) *Elevated buildings*. New construction or substantial improvements of elevated buildings that include fully enclosed areas that are usable solely for the parking of vehicles, building access or storage in an area other than a basement and which are subject to flooding shall be designed to preclude finished living space and be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for entry and exit of floodwaters.

a) Designs for complying with this requirement must either be certified by a professional engineer or architect or meet the following standards:

(i) Provide a minimum of two openings having a total net area of not less than one square inch for every one square foot of enclosed area subject to flooding;

(ii) The bottom of all openings shall be no higher than one foot above grade; and

(iii) Openings may be equipped with screens, louvers, valves, or other coverings or devices provided they permit the automatic flow of floodwaters in both directions.

b) Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment used in connection with the premises (standard exterior door) or entry to the living area (stairway or elevator).

c) The interior portion of such enclosed areas shall not be partitioned or finished into separate rooms, except to enclose storage areas.

6) *Floodways and Non-Encroachment Areas*. Located within Special Flood Hazard Areas established in Section 6.2.6, *Basis for Establishing the Special Flood Hazard Areas*, Section 6.2.17(B), *Provide Flood Data*, or Section 6.2.18(D), *Base Elevation Data or Certification of No Floodplain*, are areas designated as floodways and non-encroachment areas. The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters which carry debris and potential projectiles and has erosion potential. The following provisions shall apply:

a) No encroachments shall be permitted. Substantial improvements of structures and buildings in existence on August 1, 2000 shall be permitted if it is demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood. Such certification and technical data shall be presented to the floodplain administrator.

b) If Section 6.2.16(B)(7)(a) above is satisfied, all substantial improvements shall comply with all applicable flood hazard reduction provisions of Secs. 6.2.16(A), *General Standards,* through 6.2.18, *Standards for Subdivisions.*

c) No manufactured or mobile homes shall be permitted, except in an existing manufactured home subdivision or mobile home park. A replacement manufactured or mobile home may be placed on a lot in an existing manufactured home subdivision or mobile home park provided the anchoring and the elevation standards of Section 6.2.16(B)(4), *Manufactured or Mobile Homes*, are met.

6.2.17 Standards for Streams without Established Base Flood Elevations, Floodways, and/or Non-Encroachment Areas

Located within the Special Flood Hazard Areas established in Section 6.2.6, *Basis for Establishing the Special Flood Hazard Areas*, are small streams where no base flood data has been provided or where no floodways or non-encroachment areas have been identified. The following provisions apply within such areas:

A) ***No Encroachment***

No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted within a distance of the stream bank equal to five times the width of the stream at the top of the bank or 20 feet each side from the top of the bank, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

B) ***Provide Flood Data***

A hydraulic report shall be prepared by a licensed professional engineer to define the Base Flood Elevation (BFE) for a master subdivision plan, minor subdivision plan, site plan, planned development, and other proposed development if development is greater than five (5) acres or has more than fifty (50) lots. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section 6.2.6 to be utilized in implementing this ordinance.

C) ***General***

If Section 6.2.17(A), *No Encroachment*, is satisfied and base flood elevation data is available from other sources, all new construction and substantial improvements within such areas shall comply with all applicable provisions of Secs. 6.2.16(A), *General Standards*, through 6.2.18, *Standards for Subdivisions*, and shall be elevated or floodproofed in accordance with elevations established in accordance with Section 6.2.17(B) *Provide Flood Data*. When base flood elevation data is not available from a federal, state, or other source, the lowest floor, including basement, shall be elevated at least two feet above the highest adjacent grade. No encroachment shall be permitted in an unnumbered A Zone.

6.2.18 Standards for Subdivisions

A) ***Minimize Flood Damage***

All applications for subdivision shall be consistent with the need to minimize flood damage. No residential lots shall be located within the floodplain;

B) ***Utilities Located to Minimize Flood Damage***
All applications for subdivision shall have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;

C) ***Adequate Drainage***
All applications for subdivision shall have adequate drainage provided to reduce exposure to flood hazards; and

D) ***Base Elevation Data or Certification of No Floodplain***
Base flood elevation data or certification of no floodplain shall be provided for all subdivision proposals and other proposed development.

6.2.19 Terms Defined

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"**Accessory Structure (Appurtenant Structure)**" means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

"**Addition (to an existing building)**" means an extension or increase in the floor area or height of a building or structure.

"**Appeal**" means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

"**Area of Special Flood Hazard**" see "Special Flood Hazard Area (SFHA)"

"**Basement**" means any area of the building having its floor subgrade (below ground level) on all sides.

"**Base Flood**" means the flood having a one (1) percent chance of being equaled or exceeded in any given year based on current conditions hydrology.

"**Base Flood Elevation (BFE)**" means a determination of the water surface elevations of the base flood based on current conditions hydrology as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal or State other source using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation" in Special Flood Hazard Areas.

"**Building**" see "Structure"

"**Chemical Storage Facility**" means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

"**Current Conditions Hydrology**" means the flood discharges associated with the land-use conditions existing within the drainage area of a watercourse at the time a flood study of the watercourse was conducted. Current conditions flood discharges and historical

flood study information are published in the Flood Insurance Study.

"**Development**" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"**Disposal**" means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"**Elevated Building**" means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"**Encroachment**" means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

"**Existing Manufactured Home Park or Manufactured Home Subdivision**" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community.

"**Flood" or "Flooding**" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters; and/or

(2) the unusual and rapid accumulation of runoff of surface waters from any source.

"**Flood Boundary and Floodway Map (FBFM)**" means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

"**Flood Hazard Boundary Map (FHBM)**" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

"**Flood Insurance**" means the insurance coverage provided under the National Flood Insurance Program.

"**Flood Insurance Rate Map (FIRM)**" means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas, the Future Conditions Flood Hazard Areas, and the risk premium zones applicable to the community are delineated.

"**Flood Insurance Study (FIS)**" means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

"**Flood Prone Area**" see "Floodplain"

"**Floodplain**" means any land area susceptible to being inundated by water from any source.

"**Floodplain Administrator**" is the individual appointed to administer and enforce the floodplain management regulations.

"**Floodplain Development Permit**" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

"**Floodplain Management**" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

"**Floodplain Management Regulations**" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

"**Floodproofing**" means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

"**Floodway**" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"**Flood Zone**" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

"**Freeboard**" means the height added to the Base Flood Elevation (BFE) or the Future Conditions Flood Elevation to account for the many unknown factors that could contribute to flood heights greater that the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation".

"**Future Conditions Flood**" means the flood having a one (1) percent chance of being equaled or exceeded in any given year based on future conditions hydrology.

"**Future Conditions Flood Elevation**" means a determination of the water surface elevations of the one percent (1%) annual chance flood based on future conditions hydrology as published in the Flood Insurance Study. This elevation, when combined with the freeboard, establishes the "Regulatory Flood Protection Elevation" in Future Conditions Flood Hazard Areas.

"**Future Conditions Flood Hazard Area**" means the land area that would be inundated by the one percent (1%) annual chance flood based on future conditions hydrology as determined in Section 6.2.6 of this ordinance.

"**Future Conditions Hydrology**" means the flood discharges associated with projected land-use conditions based on the Wake County June 2003 Countywide Equivalent Zoning Classification data and without consideration of projected future construction of flood detention structures or projected future hydraulic modifications within a stream or other waterway such as bridge and culvert construction, fill, and excavation. Future conditions flood discharges are published in the Flood Insurance Study.

"**Functionally Dependent Facility**" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

"**Hazardous Waste Facility**" means, as defined in NCGS Article 9 of Chapter 130A, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

"**Highest Adjacent Grade (HAG)**" means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

"**Historic Structure**" means any structure that is:

1) *Individually listed*
   Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior) or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register);

2) *Certified*
   Certified or preliminarily determined by the Secretary of the Interior as contributing to the significance of a registered district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

3) *Listed as a contributing structure*
   Listed as a contributing structure in the National Register of Historic Places as identified in the National Register Nomination for the Apex Historic District (1994); the National Register Nomination for the Apex Historic District Boundary Increase (1995); and the National Register Nomination for the Apex Historic District Boundary Increase II (2001);

4) *State inventory*
   Individually listed in the state inventory of historic places;

5) *County register*
   Listed in the Wake County Register of Historic Places;

6) *Local inventory*
   Individually listed in a local inventory of historic places in communities with historic preservation programs that have been certified:

   a) By an approved state program as determined by the Secretary of the Interior; or

   b) Directly by the Secretary of the Interior in states without approved programs.

(Town of Apex is not a Certified Local Government (CLG) Program; the Town is subject to the Wake County CLG Program)

"**Lowest Adjacent Grade (LAG)**" means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

"**Lowest Floor**" means lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"**Manufactured Home**" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"**Manufactured Home Park or Subdivision**" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"**Market Value**" means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

"**Mean Sea Level**" means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

"**New Construction**" means structures for which the "start of construction" commenced on or after the effective date of the original version of the community's Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

"**Non-Encroachment Area**" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

"**Post-FIRM**" means construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

"**Pre-FIRM**" means construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map for the area.

"**Principally Above Ground**" means that at least 51% of the actual cash value of the structure is above ground.

"**Public Safety and/or "Nuisance**" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"**Recreational Vehicle (RV)**" means a vehicle, which is:

(1) built on a single chassis;

(2) 400 square feet or less when measured at the largest horizontal projection;

(3) designed to be self-propelled or permanently towable by a light duty truck; and

(4) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

"**Reference Level**" is the top of the lowest floor for structures within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or Zone X (Future).

"**Regulatory Flood Protection Elevation**" means the elevation above mean sea level to which the reference level of all structures and other development located within Special Flood Hazard Areas and Future Conditions Flood Hazard Areas must be protected.

(1) In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard.

(2) In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

(3) In Future Conditions Flood Hazard Areas this elevation shall be the Future Conditions Flood Elevation plus two (2) feet of freeboard.

"**Remedy a Violation**" means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"**Riverine**" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"**Salvage Yard**" means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

"**Solid Waste Disposal Facility**" means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

"**Solid Waste Disposal Site**" means, as defined in (NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"**Special Flood Hazard Area (SFHA)**" means the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year based on current conditions hydrology, and future conditions hydrology as determined in Section 6.2.6 of this ordinance.

"**Start of Construction**" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair,

reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

"**Structure**" means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

"**Substantial Damage**" means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

"**Substantial Improvement**" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(1) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,

(2) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

"**Variance**" is a grant of relief from the requirements of this ordinance.

"**Violation**" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 6.2.13 and 6.2.16 is presumed to be in violation until such time as that documentation is provided.

"**Water Surface Elevation (WSE)**" means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"**Watercourse**" means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

6.3 SMALL TOWN CHARACTER OVERLAY DISTRICT

6.3.1 Small Town Character Overlay District

A) ***Purpose***
The purpose and intent of the Small Town Character Overlay District is to repeat the spirit of traditional character rather than imitate style. The Overlay identifies the architectural qualities that define the downtown character and proposes design standards to maintain that character in new and infill projects. These standards emphasize existing patterns and include: building hierarchy, building site relationship, and building massing and proportions. For multi-family and non-residential uses, this also includes building height and roof type, façade patterns, street level facades, and window patterns.

B) ***Applicability***
The requirements of the Small Town Character Overlay District shall apply to properties within the Overlay District which are proposing to develop or redevelop. Those lots that are split by the Overlay District line shall be considered to be wholly within the boundary of the Overlay District if the majority of the acreage is located within the Overlay District.

C) ***Development Approval***
Within the Small Town Character Overlay District either an Administrative Approval, Site Plan Approval, or Subdivision Plan Approval is required in accordance with Article 2 *Administration*.

D) ***Approval Criteria***
The standards in Sec. 6.3.1 and the following criteria must be met before an Administrative Approval, Subdivision Approval, or Site Plan Approval will be issued for properties within the Small Town Character Overlay District:

1) The proposed land use must be allowed in the underlying zoning district found in Sec. 4.2.2 Use Table.

2) All Watershed Protection Overlay District and Flood Damage Overlay District requirements must be met.

3) The maximum built-upon area, height, setbacks and minimum lot width, must be in compliance with the Sec. 5.1.5 *Table of Intensity and Dimensional Standards.*

4) Garage placement must be in compliance with Sec. 6.3(G)(2) below.

5) If land is to be subdivided, all requirements of Article 7 *Subdivision* shall be met.

6) No Resource Conservation Area (Sec. 8.1.2 Resource Conservation Area) or Buffers (Sec. 8.2.6 Buffering) are required.

7) All multi-family and non-residential development shall be compatible with the established architectural character of the neighborhood by using a design that is complementary to existing neighborhood architectural styles, designs, and forms. Compatibility shall be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns, and the use of building

materials that have colors, shades, and textures similar to those existing in the immediate area of the proposed development.

8) No community amenities (Sec. 8.4.3 Community Amenities) are required.

9) A pre-application meeting shall be required prior to project submittal in accordance with Sec. 2.2.6 *Pre-Application Meeting.*

E) ***Non-residential within the Central Business District***
Non-residential properties within the Central Business District must meet the following standards before an approval will be issued:

1) *Building Hierarchy*
Buildings shall have a consistent pattern to adjacent structures. There shall be a repetitive scale, massing, relationship to the street, and style to others in the area. Corner buildings shall match or exceed the height of adjacent buildings. The two facades shall be acknowledged with consistent material and patterns. Projects with public or cultural significance shall be designed to have a character that varies more from the standard pattern to distinguish them as a signature or landmark structure.

2) *Setbacks*
No setback is required and a maximum 10 foot front setback shall provide for a pedestrian street edge. The building shall be placed to maintain the street edge. The relationship of the building to the street edge shall emphasize the pedestrian not the automobile. Pedestrian spaces such as sidewalk dining or shaded seating are encouraged. Whenever possible, required parking and open space shall be maintained in the rear or sides of a building.

3) *Building Tenant Size*
Buildings shall not have a single tenant which exceeds 30,000 square feet.

4) *Massing and Proportion*
Buildings shall have vertical proportions. Segments shall be no more than 60 feet in width and each section taller than it is wide. Windows and storefront glazing shall be divided to be either square or vertical in proportion so that each section is taller than it is wide. Permitted setbacks can be used to articulate bays of a building to break up its width. Architectural features such as but not limited to columns, piers, rooflines, and brick patterns can be used to divide and create vertical orientation on building facades. In addition, infill projects shall be designed in accordance with Sec. 9.2.4(D) *Similar Size and Height for Infill Development*.

5) *Building Height and Roof Type*
Buildings in the downtown district have traditionally used straight-edged parapets with low-slope roofs behind. The maximum building height of the structure shall be in accordance with Sec. 5.1 *Table of Intensity and Dimensional Standards*. Simple parapet roof edges with varying coping and cornice shall be used. The rooflines shall vary from building to building as well as within buildings with wide street frontage. The varying heights shall follow logical building massing and shall correspond to building organization.

6) *Façade*
Each façade shall have a rhythm that is repeated through the pattern of wall and openings. The building façade shall have an identifiable base, body, and cap with horizontal elements separating these components. The body of the building shall constitute a minimum of 50% of the total building height. Buildings shall not have blank side walls creating a false front appearance. In addition, corner buildings shall have two facades which maintain a relationship to each other although they do not need to be identical.

7) *Façade at Street Level*
The street level of the facades shall provide human scaled entries including but not limited to recessed entries, sheltering elements and adjacent storefront windows. Facades shall incorporate a minimum of two (2) continuous details refined to the scale of 12 inches or less within the first 10 foot of the building wall, measured vertically at street level. Recessed arcades, entries flush with the building face and small entries without adjacent windows shall be avoided.

8) *Windows*
Windows shall be vertically oriented. The highest percentage of glazing shall be provided at the street level. A minimum of 70% of the street level facade area shall be transparent. Upper floors shall have a minimum of 35% transparency for the façade area. Simple patterns shall be used to subdivide the windows creating additional character to the buildings. Overall vertical building proportions shall be expressed in the window proportions. Expanses of vertical windows which give the overall appearance of horizontal massing shall be avoided.

9) *Drive-throughs*
Drive-throughs are prohibited within the Central Business District.

F) ***Non-residential outside of the Central Business District***

1) *Building Hierarchy*
Buildings shall have a consistent pattern to adjacent structures. There shall be a repetitive scale, massing, relationship to the street, and style to others in the area. Corner buildings shall match or exceed the height of adjacent buildings. The two facades shall be acknowledged with consistent material and patterns. Projects with public or cultural significance shall be designed to have a character that varies more from the standard pattern to distinguish them as a signature or landmark structure.

2) *Setbacks*
Infill projects shall match the setback of neighboring buildings whenever possible. The building shall be placed to maintain a consistent street edge. The relationship of the building to the street edge shall emphasize the pedestrian not the automobile. Pedestrian spaces such as sidewalk dining or shaded seating are encouraged. Whenever possible, required parking and open space shall be maintained in the rear or sides of a building.

3) *Building Tenant Size*
Buildings shall not have a single tenant which exceeds 30,000 square feet.

4) *Massing and Proportion*
Buildings shall have vertical proportions. Segments shall be no more than 60 feet in width and each section taller than it is wide. Windows and storefront glazing shall be divided to be either square or vertical in proportion so that each section is taller than it is wide. Permitted setbacks can be used to articulate bays of a building to break up its width. Architectural features such as but not limited to columns, piers, rooflines, and brick patterns can be used to divide and create vertical orientation on building facades. In addition, infill projects shall be designed in accordance with Sec. 9.2.4(D) *Similar Size and Height for Infill Development.*

5) *Building Height and Roof Type*
Buildings in the downtown district have traditionally used straight-edged parapets with low-slope roofs behind. The maximum building height of the structure shall be in accordance with Sec. 5.1 *Table of Intensity and Dimensional Standards.* Simple parapet roof edges with varying coping and cornice may be used. Development patterns shall reflect adjacent properties. The rooflines shall vary from building to building as well as within buildings with wide street frontage. The varying heights shall follow logical building massing and shall correspond to building organization.

6) *Façade*
Each façade shall have a rhythm that is repeated through the pattern of wall and openings. The building façade shall have an identifiable base, body, and cap with horizontal elements separating these components. The body of the building shall constitute a minimum of 50% of the total building height. Buildings shall not have blank side walls creating a false front appearance. In addition, corner buildings shall have two facades which maintain a relationship to each other although they do not need to be identical.

7) *Façade at Street Level*
The street level of the facades shall provide human scaled entries including but not limited to recessed entries, sheltering elements and adjacent storefront windows. Facades shall incorporate a minimum of two (2) continuous details refined to the scale of 12 inches or less within the first 10 foot of the building wall, measured vertically at street level. Recessed arcades, entries flush with the building face and small entries without adjacent windows shall be avoided.

8) *Windows*
Windows shall be vertically oriented. The highest percentage of glazing shall be provided at the street level. A minimum of 50% of the street level facade area shall be transparent. Upper floors shall have a minimum of 35% transparency for the façade area. Simple patterns shall be used to subdivide the windows creating additional character to the buildings. Overall vertical building proportions shall be expressed in the window proportions. Expanses of vertical windows which give the overall appearance of horizontal massing shall be avoided.

9) *Drive-throughs*
Drive-throughs shall be located in the rear of the building, not between the building and the main abutting street.

G) ***Residential Building Standards***

1) *Setbacks*
Setbacks shall be provided in accordance to Sec. 5.1.5 *Table of Intensity and Dimensional Standards.*

2) *Accessory Buildings*
Accessory buildings such as garages shall be placed in the rear or side yard. Whenever possible, side loading garages shall be located in the rear of the property. For condominium, multi-family or apartment uses, garages and driveways which dominate the front of the lot area are not permitted.

3) *Building Height*
Building height is measured to the highest point of the roof from existing average grade at the footprint of the building.

4) The width of the façade shall not be any wider than 1.5 feet times the depth of the principal structure. The width to depth ratio shall be no more than 1.5 feet to 1 foot.

5) No slab-on-grade foundations are permitted. Foundations around the principal structure shall be fully enclosed.

H) ***Residential Architectural Character***
The following standards shall apply to any condominium, multi-family or apartment use. It is strongly recommended that single-family and townhouse dwellings follow the architectural guidelines in the *Town of Apex Design and Development Manual*.

1) *Purpose*
Architectural character focuses on the micro-level details that greatly affect the overall appearance of residential structures in the small town character overlay district. These architectural character regulations provide direction in aspects of facade materials, porches, windows, and the enhancement of entryways. The primary goal is to define the "finishing touches" that provide the structure with a sense of permanence, style, and compatibility. The Town actively discourages proposals that have not taken these matters into account. The Town desires that all development be treated as a lasting contributor to the community and as a "good neighbor" to its surroundings. New construction, exterior renovations or additions to the front façade, or renovations of 50% or more of the entire façade are subject to this section. New construction, additions, and significant exterior renovations of an existing residential structure must be compatible with the character of quality structures located in the Small Town Character Overlay District.

2) *Standards*
These standards shall apply to all new construction, exterior renovation or additions to the front façade or to renovations of 50% or more of the entire façade. *The Town of Apex Design and Development Manual* includes illustrated renderings of the architectural and decorative features required by these standards for residential structures in the Small Town Character Overlay District.

a) *Architectural Features*
Residential structures shall have three (3) or more of the following features:

(i) Wraparound porch (entire front façade and part of one or both side façades)

(ii) Predominant porch (over 75% of front façade)

(iii) Awnings

(iv) Columns

(v) Porticos

(vi) Balconies

(vii) Broken roof lines

(viii) Dormers

(ix) Arched architectural features

(x) Brick chimney

(xi) All brick façade

(xii) Other architectural features as approved by the Planning Director

b) *Decorative Features*
Residential structures shall have four (4) or more of the following features:

(i) Decorative shake

(ii) Decorative porch railing/posts

(iii) Shutters

(iv) Decorative/functional air vents on roof or foundation

(v) Trimmed Windows

(vi) Recessed windows

(vii) Decorative/period windows

(viii) Decorative brick/stone

(ix) Decorative gables

(x) Decorative cornices

(xi) Tin/metal roof

(xii) Other decorative features as approved by the Planning Director

c) *Roofs*

(i) Roof lines shall be varied to reduce the scale of structures and add visual interest.

(ii) Roof shape (for example: flat, hip, mansard, or gable) and material shall be architecturally compatible with façade elements and the rest of the structure.

d) *Facades*

(i) Recesses and projections
The principal structure's front façade must incorporate recesses and projections along at least 50% of the length of the façade. Windows, awnings, and porch area shall total at least 50% of the façade length abutting a public street.

(ii) Repeating design patterns
Façades shall incorporate a repeating pattern of change in color, texture, and material modules.

(iii) Renovations
Façade renovations shall incorporate original building details to the maximum extent practicable.

(iv) Roof cornices
If roof cornices have been removed or damaged on an existing structure, renovations of that structure must include retaining, repairing, and replacing the roof cornices.

e) *Windows*

(i) Replacement of windows on the façade of an existing structure shall be accomplished by using windows of the same trim size and character as the original.

(ii) Blank exterior walls are prohibited; windows shall be present on all sides of the home.

(iii) Shutters on windows shall be one half the width of the window to which they are affixed.

f) *Sides Facing Abutting Street*
All sides of a principal structure that face an abutting public street shall have architectural and decorative features as described in Sec. 6.3.1(H)(1)(a) and (b).

g) *Entryways*

(i) Required features
Doors shall have built-in windows; alternatively, a solid door is allowed provided side lights (side windows) are installed immediately adjacent to the solid door.

(ii) Variation
Variations in color schemes and textures are encouraged in order to articulate entryways so as to give greater recognition to these features.

h) *Materials*

(i) Predominant exterior building materials
Predominant exterior building materials shall be high quality materials, including brick, wood, stone, fiber cement, and/or wood composite. Where an existing home has vinyl siding, the use of vinyl siding is allowed for new additions, exterior renovations, and accessory structures on the same property. Vacant property or newly subdivided lots shall only be allowed to utilize vinyl in the form of shake and trim elements and shall not have vinyl as the siding material on principal or accessory structures.

(ii) Foundation materials
Front and side porches with open foundations shall have brick or stone piers and openings shall be fully screened with evergreen plantings.

I) ***Adaptive Reuse of Historic Residential Structures***

1) *Purpose*
Adaptive Reuse maintains the character of the structures, while allowing for modifications to the structure for a different use. Certain structures, due to particular circumstances with regard to locations, type or size of building and/or architectural style may no longer be useful for the purposes for which they were originally designed and designated. Obsolescence of previous use, changing land use patterns or changing of zoning districts may initiate the change from one use to another.

2) *Applicability*
Change of use in all contributing structures originally constructed as residences within the boundaries of the National Register of Historic Places Historic District. All noncontributing structures constructed as residences within the boundaries of the National Register of Historic Places Historic District are subject to this ordinance, but are exempt from Secs. 6.3.1(I)(2)(a) and 6.3.1(I)(2)(h).

a) The following standards are to be applied to specific rehabilitation projects in a practical and reasonable manner, taking into consideration economic and technical feasibility. The structure shall not be enlarged or the exterior altered so that it is out of character with the surrounding structures and any altered structure shall meet the Secretary of the Interior Standards for Rehabilitation:

(i) A property will be used as it was historically or be given a new use that requires minimal change to its distinctive materials, features, spaces, and spatial relationships.

(ii) The historic character of a property will be retained and

preserved. The removal of distinctive materials or alteration of features, spaces, and spatial relationships that characterize a property will be avoided.

(iii) Each property will be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or elements from other historic properties, will not be undertaken.

(iv) Changes to a property that have acquired historic significance in their own right will be retained and preserved.

(v) Distinctive materials, features, finishes, and construction techniques or examples of craftsmanship that characterize a property will be preserved.

(vi) Deteriorated historic features will be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature will match the old in design, color, texture, and, where possible, materials. Replacement of missing features will be substantiated by documentary and physical evidence.

(vii) Chemical or physical treatments, if appropriate, will be undertaken using the gentlest means possible. Treatments that cause damage to historic materials will not be used.

(viii) Archeological resources will be protected and preserved in place. If such resources must be disturbed, mitigation measures will be undertaken.

(ix) New additions, exterior alterations, or related new construction will not destroy historic materials, features, and spatial relationships that characterize the property. The new work shall be differentiated from the old and will be compatible with the historic materials, features, size, scale and proportion, and massing to protect the integrity of the property and its environment.

(x) New additions and adjacent or related new construction will be undertaken in such a manner that, if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

b) Distinctive landscaping elements and existing topographic features shall not be removed or altered so as to change the visual and environmental character of the site except in cases where site modification and improvements for parking, loading, or access require the removal of trees or shrubbery. In such cases, replacement landscaping shall be installed where possible adjacent to the modified area.

c) Accessory structures, fences and other hardscape elements determined to have historic significance due to unique architecture, age, or culture shall be preserved and maintained to their current or historic style and condition, whenever possible.

d) Parking shall be provided according to regulations of the UDO, Sec. 8.3 Off-Street Parking and Loading. Striped on-street parking, shared parking agreements and municipal parking lots may be utilized to meet all or part of the parking requirements, provided that said parking is located not more than 300 feet from the subject lot or parcel. The expected use of on-street parking shall not be such that it would cause undue negative impact upon other uses within the immediate vicinity that may rely upon the availability of such parking. If parking must be provided on site, the following shall apply:

(i) The parking surface shall be gravel, concrete or pavers; asphalt is prohibited.

(ii) The parking area shall be screened with either a four-foot (4') fence or evergreen shrubbery that will reach a height of 42" in three (3) years.

(iii) If onsite parking is created then it shall comply with the Americans with Disabilities Act (ADA).

e) Site lighting shall be residential in nature and shall be compatible with the historic character of the area. If additional site lighting, other than existing lighting is provided, the following shall apply:

(i) Parking area lighting shall not exceed an average of two (2) foot candles.

(ii) No more than two (2) of the same types of fixtures shall be used, with the exception of low voltage/low intensity landscape lighting.

(iii) Parking lot lighting shall be minimal (not exceeding 100 watts or 100 watt equivalent). Commercial style fixtures, such as, but not limited to cobra heads, wall-packs, floodlights and shoe box style lights, are prohibited.

(iv) No pole lights shall be taller than seven feet (7') in height.

(v) Spillover shall not exceed 0.3 foot-candles on to residential properties or 1.0 foot-candles on to non-residential properties and public rights-of-way.

f) Outdoor display is only permitted under a covered porch, up to 50% of the length, on each side.

g) Signage shall conform to the UDO Sec. 8.7 Signs.

h) Interior renovations shall conform to the Secretary of the Interior Standards for Rehabilitation and the North Carolina Rehabilitation Code.

i) A development plan and application shall be submitted to the Planning Department in a format determined by the Planning Director.

ARTICLE 7 SUBDIVISION

7.1 GENERAL PROVISIONS

7.1.1 Authority and Exemptions

A) ***Authority***
This article is adopted under the authority of Chapter 160A, Article 19, Part 2 of the N.C.G.S.

B) ***Exemptions***
The following shall be exempt from the regulations established herein:

1) The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the municipality as shown in its subdivision regulations.

2) The division of land into parcels greater than 10 acres where no street right-of-way dedication is involved.

3) The public acquisition by purchase or condemnation of strips of land for the widening or opening of streets and for public transportation system corridors.

4) The division of a parcel of land by a new boundary line coterminous with a public street right-of-way line in circumstances where the street prevents the use of the parcel as one lot, so long as the boundaries of the parcel that are not on or within the street right-of-way are not changed.

5) The division of a tract in single ownership, the entire area of which is no greater than 2 acres, into not more than 3 lots where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the municipality.

7.1.2 Jurisdiction

The regulations contained herein, as provided in Section 160A-360, N.C.G.S., shall govern each subdivision of land within the corporate limits of the Town as now or hereafter established, and each subdivision of land situated within the extraterritorial jurisdiction of the Town as established by an ordinance and map adopted by the Town Council in accordance with Section 160A-360, N.C.G.S., which are on file in the office of the register of deeds of Wake County and as established by a mutual agreement with the Town of Cary executed on August 6, 1968.

7.1.3 Registration of Article and Plats

In accordance with Section 160A-364, N.C.G.S., the Town shall file a copy of this article with the register of deeds of Wake County upon adoption. The register of deeds shall not file or record a plat of a subdivision of land located within the Town or its extraterritorial jurisdiction that has not been approved in accordance with these provisions, nor shall the clerk of the Superior Court order or direct the recording of a plat if the recording would be repugnant to the provisions or intent of this article. The owner of land shown on a subdivision plat submitted for recording, or the owner's authorized agent, shall sign a statement on the plat stating whether any land shown is within the subdivision regulation jurisdiction of any municipality, and if so, which municipality.

7.1.4 Conformance with Article Prerequisite to Acceptance of Streets, Extension of Services

No street shall be maintained by the Town, nor street dedication accepted for ownership and maintenance, nor building permits issued, nor shall water, sewer, electric or other public facilities or services be extended to or connected with, any subdivision for which a plat is required to be approved unless and until the requirements set forth in this article have been complied with.

7.1.5 Conformance with Official Plans

All subdivisions shall comply with the principles, goals and/or objectives of the 2030 Land Use Map and all other officially adopted plans and policies of the Town. Where a proposed subdivision includes any part of a thoroughfare which has been designated as such upon the officially adopted thoroughfare plan of the Town as provided for by Sections 136-66.2, 160A-361 and 160A-363, N.C.G.S., such part of such thoroughfare shall be platted and dedicated by the subdivider in the location shown on the plan and at the width specified in this article. Similarly, where a proposed subdivision includes any part of a greenway as officially adopted by the Town, such part of such greenway shall be dedicated and platted by the subdivider in the location shown on the plan. Such dedication shall be in accordance with Section 7.3 of this article. Proposed subdivisions must comply with all requirements of this Ordinance.

7.1.6 Condominium and Townhouse Developments

A) ***Requirements for Condominium Developments***

1) Before a declaration establishing a condominium development may be recorded in the office of the Wake County register of deeds, as prescribed in the North Carolina Unit Ownership Act, the declaration and preliminary plans shall be approved as provided in this article. Such declaration and preliminary plans shall conform to applicable subdivision requirements as set forth in this article and to the zoning requirements of this Ordinance.

2) In addition, the following requirements shall be complied with:

a) The declaration shall be a complete legal document prepared strictly in accordance with the North Carolina Unit Ownership Act.

b) The plans of the buildings to be attached to the above declaration and recorded shall be prepared in accordance with the North Carolina Unit Ownership Act.

c) If any streets or utility easements are to be dedicated for public use and maintenance, a separate subdivision plat shall be submitted and recorded in accordance with requirements of this article.

d) The declaration shall contain a statement that common expenses include ad valorem taxes, public assessments or governmental liens levied on common areas, if any.

B) ***Requirements for Townhouse Developments***

1) A preliminary plat of a proposed Townhouse development and a final plat for subdivision of the development shall be submitted pursuant to the provisions of this subsection and Section 2.3.6, *Site Plans*.

2) A site plan shall show the location of the buildings, streets, alleys, walks, parking areas, recreation areas and facilities, numbered and dimensional residential or office sites. When developments are to have common areas, the site plan shall also show the common areas to be conveyed to a nonprofit corporate homeowners' association, the members of which shall be all of the owners of the residential sites within the development. Townhouse and related developments shall comply with the applicable density, setback, and buffer standards of this Ordinance and, in addition, the following requirements shall be complied with:

a) *Unit sites.* The site plan shall number and show the locations and dimensions of unit sites within the development. A unit site shall be that property intended for conveyance to a fee-simple owner after the construction thereon of a single-family residence or office and shall be sufficient in size to contain the residence or office to be constructed thereon. The unit site may be of any larger size desired by the developer. Lot "frontage" may be on open space properly restricted through a homeowners' association to ensure adequate access, if in the opinion of the Town a public street is within acceptable distance and would allow adequate community services.

b) *Common areas.* All areas that are shown on the site plan other than public streets and unit sites, shall be shown and designated as common areas, the fee-simple title to which shall be conveyed by the developer to the homeowners association. Such common areas shall not be subsequently subdivided or conveyed by the homeowners' association.

c) *Covenants and restrictions.* The developer shall file with the application for the preliminary approval a declaration of covenants and restrictions governing the common areas, if any, as required by this Ordinance, the homeowners' association, and unit sites. The restrictions shall contain (but not be limited to) provisions for the following:

(i) If the plan of development includes common areas or a common maintenance of units and lots, a homeowners' association shall be mandatory and shall be organized and in legal existence prior to the sale of any unit in the development.

(ii) If a homeowners' association is organized, membership in the homeowners' association shall be mandatory for each original purchaser and each successive purchaser of a unit site.

(iii) The homeowners' association shall be responsible for the payment of premiums for liability insurance, local taxes on common areas, maintenance of recreational and other facilities located on the common areas, payment of assessments for public and private capital

improvements made to or for the benefit of the common areas.

(iv) The homeowners' association shall be empowered to levy assessments against the owners of the unit sites within the development for the payment of expenditures made by the homeowners' association for the items set forth in subparagraph (iii) above and any such assessments not paid by the owner against whom such are assessed shall constitute a lien on the unit site of that owner.

(v) Easements over the common areas, if any, for access, ingress from and to public streets and walkways and easements for enjoyment of the common areas, as well as for parking, shall be granted to each owner of a unit site.

(vi) All walls between individual units shall conform to the requirements of the North Carolina State Building Ordinance and provision for the maintenance thereof and restoration in the event of destruction or damage shall be established

(vii) A perpetual access easement over the adjoining lot must be recorded for any unit located closer than 5 feet from a lot line.

7.1.7 Substitution of Fees in Lieu of Public Improvements

A) Where, because of topographical features or other conditions peculiar to the site, strict adherence to the provisions of this article requiring public improvements would cause an unnecessary hardship or provide an unwarranted or unrealistic result, the Planning Board may recommend and the Town Council authorize that the reasonable cost of such improvement if made be paid into the Town treasury in lieu of the improvement so long as same can be done without materially altering the intent of this article; provided, however, the amount of such fee paid in substitution of the public improvement shall reasonably relate to the applicant's fair share of the cost of such public improvements as determined by the Town Engineer or some other professional engineer approved by the Town; and provided, further, that the Town Council may in its discretion, use said fee to construct some other public improvement calculated to be of significant benefit to the said property of the applicant either directly or indirectly. Any such recommendation for substitution or substitution authorized as aforesaid shall be recorded in the minutes of both the Planning Board and the Town Council with a statement of the reasoning justifying the substitution.

B) In the case of required parks, recreation, and open space facilities, the Parks, Recreation, and Cultural Resources Advisory Committee shall recommend whether dedication of land is feasible in a given plat and consistent with the Town’s development plan, or rather, if fees in lieu should be paid, or if some dedication/fee combination is appropriate. See Section 7.3.1.

C) The Town shall be authorized to collect from the applicant a reasonable sum representing reimbursement for its administration costs involved in maintenance and administration of the funds created by the substitution.

D) If making a public improvement otherwise required by this article would require the relocation of all or a portion of a graveyard established prior to August 1, 1995, then a variance, without a fee in-lieu, may be granted (1) to the extent necessary to avoid the relocation of the graveyard or portion thereof, and (2) to the extent that, because of the graveyard, requiring the public improvements would cause an unnecessary hardship or provide an unwarranted or unrealistic result.

7.1.8 Penalties and Remedies for Violation of Article

Any person who, being the owner or agent of the owner of any land located within the territorial jurisdiction of the Town, hereafter subdivides such person's land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under the terms of this article and recorded in the office of the Wake County register of deeds, shall be guilty of a misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty. The Town, through its attorney or other official designated by the Town Council, may enjoin illegal subdivision, transfer or sale of land by action for injunction. Further, violators of this article shall be subject, upon conviction, to fine or imprisonment as provided by Chapter 11 of the Code of Ordinances, Town of Apex, North Carolina.

7.1.9 Inspection Fees as Prescribed

Fees for the inspection of street and related improvements shall be charged according to a schedule adopted and amended from time to time by the Town Council and posted in the Planning Department. Fees must be paid either before final plat for subdivision approval or before performance guarantees in lieu of construction are returned to the subdivider.

7.2 DESIGN STANDARDS

7.2.1 Streets

A) ***Interconnectivity***

1) **Conformity with Apex Transportation Plan.** The subdivision's street system shall conform to the Apex Transportation Plan. In areas where no thoroughfares or collector streets are represented thereon, streets shall be designed and located in proper relation to existing and proposed streets, to the topography of the area, and to natural features such as streams, hills, and stands of trees. Residential streets should further be laid out in such manner as to encourage the flow of through-traffic at slow speeds, except upon major and minor thoroughfares. All proposed street designs shall provide for the appropriate projection of principal streets in surrounding areas to permit reasonable access for surrounding properties, both for current use and future subdivision. No private streets shall be allowed to be built within developments or subdivisions approved on or after October 15, 2002.

2) **Points of Ingress/Egress**.

a) The points of ingress/egress shall comply with the Apex Transportation Plan.

b) A minimum of one point of ingress/egress shall be connected to an existing public street. Additional connections shall be required when:

(i) Necessary for the connection of existing and future principal streets, including major thoroughfares, minor thoroughfares, collector streets, and main residential streets.

(ii) A Traffic Impact Analysis shows that an additional connection or connections are needed.

(iii) More than one point of access is required per Sec. 7.5.4(E) *Public Access Requirements*.

c) *Stub streets shall be required as follows:*

(i) Stub streets shall be provided to all adjacent land-locked properties.

(ii) Stub street connections shall be provided to all existing and planned stub streets on adjacent properties.

(iii) Where severe topography or other physical features exist, the Planning Director in conjunction with the Stormwater and Utility Engineering Manager, may determine that a stub street is not required.

3) **Gates on Public Roads.** The use of gates, manned or unmanned, shall be prohibited from all residential districts in order to maintain interconnectivity, except where required by Section 7.2.1(K).

4) **Internal Connectivity.** All areas of a subdivision shall be internally connected by at least one (1) street located within the subdivision. Where severe topography or other physical features exist, the Planning Director, in conjunction with the Stormwater and Utility Engineering Manager, may determine that a multi-use path or greenway be used to meet the internal connectivity requirement. If a subdivision is not connected internally, then it shall not be considered one (1) subdivision.

B) ***Street Rights-of-Way***

1) Minimum street right-of-way widths shall be determined on the basis of the street classification shown on the Town thoroughfare plan and/or street collector plan or, where such plans do not apply, according to the nature of the street as illustrated on the plat. The subdivider shall refer to the *Town of Apex Standard Specifications and Standard Details* for standard street sections and minimum rights-of-way.

2) Subdivisions along existing streets of inadequate right-of-way width shall provide additional right-of-way to meet the minimum widths specified. The entire right-of-way shall be provided where any part of a new subdivision is on both sides of an existing street, and one-half the

required right-of-way measured from the centerline of the existing street shall be provided where a new subdivision is located only on one side of an existing street.

C) ***Pavement Widths***
Minimum pavement width shall be measured from back of curb to back of curb. The subdivider shall refer to the *Town of Apex Standard Specifications and Standard Details* for standard street sections.

D) ***Radii of Curvature***
Where a street centerline deflection of more than 10 degrees occurs, a curve shall be introduced. The subdivider shall refer to the *Town of Apex Standard Specifications and Standard Details*.

E) ***Tangents***
A centerline tangent of not less than 100 feet shall be provided between reverse curves on all streets.

F) ***Intersections***
Street intersections shall be laid out in the following manner:

1) No more than 2 streets shall intersect at a point, unless the subdivider provides sufficient evidence that a proposed intersection with a greater number of streets will be designed to adequately ensure public safety.

2) Streets shall intersect as nearly as possible at right angles and no street shall intersect any other street at an angle of less than 60 degrees.

3) Proposed public street connections along major thoroughfares shall be at least 800 feet apart from each other and shall align with existing opposite street connections to form intersections, except that small subdivisions that do not require a Traffic Impact Analysis per Sec. 13.19 *Traffic Impact Analysis Required* shall be allowed to include a right-in, right-out public street connection at a minimum of 500 feet apart from another full- or limited-movement public street. All distances for spacing requirements shall be measured from centerline to centerline.

4) Street jogs with centerline offsets of less than 100 feet shall be prohibited when the jog lies wholly within the subdivision, except when approved by the Town Engineer, and shall be avoided on the exterior boundary of the subdivision, except where external access would otherwise be denied.

5) Property lines at street intersections shall be rounded with a minimum radius of curvature of 20 feet. At an angle of intersection less than 75 degrees, a greater radius of up to 60 feet may be required, taking into consideration the functional classification of the streets, parking control, lane width, the number of lanes and similar factors.

G) ***Cul-de-sacs***

1) In general, cul-de-sacs shall be avoided unless the design of the subdivision and the existing or proposed street system in the surrounding area indicate that a through street is not essential in the location of the proposed cul-de-sac, or where sensitive environmental areas such as streams, floodplains, and wetlands would be substantially disturbed by making road connections.

2) Cul-de-sacs shall not be longer than 600 feet. The length of a cul-de-sac shall be measured from the center of the intersection at the beginning of the cul-de-sac running along the centerline to the center point of the turnaround.

3) Two or more cul-de-sacs that share a single means of ingress and egress shall not exceed 1,200 feet in length, measured cumulatively as if they were one cul-de-sac.

4) The maximum cul-de-sac length designated in Sec. 7.2.1.G.2. and 7.2.1.G.3. shall not apply to non-residential subdivisions and site plans.

H) ***Alleys***

1) ***Commercial or Industrial.*** Alleys shall conform to the following typical specifications:

a) Twenty-six (26)-foot wide private easement.

b) Refer to the *Town of Apex Standard Specifications and Standard Details* for width and pavement structure requirements.

c) Proofroll by licensed professional engineer required after laying stone and prior to paving.

d) Satisfy the requirements for Streets in Sec. 3.04 “Inspection” of the *Town of Apex Standard Specifications and Standard Details*.

2) ***Residential.*** In addition, alleys may be appropriate in residential zoning districts, and especially in TND-CZ developments, to provide rear access to houses. Where lots front major collectors, thoroughfares, or limited and controlled-access highways without driveway access, then a public alley is required. Visitor parking shall be served by an alternate adjacent street or parking area. Alleys in residential zoning districts shall conform to the following typical specifications:

a) Twenty-six (26)-foot wide dedicated right-of-way.

b) Refer to the *Town of Apex Standard Specifications and Standard Details* for width and pavement structure requirements.

c) Proofroll by licensed professional engineer required after laying stone and prior to paving.

d) Satisfy the requirements for Streets in Sec. 3.04 “Inspection” of the *Town of Apex Standard Specifications and Standard Details*.

I) ***Reserved***

J) ***Street Names***

Street names shall be coordinated with the Town Planning Department and Wake County. New street names shall not duplicate or be similar to existing street names, irrespective of the suffix appended (e.g., street, circle, boulevard, etc.). Existing street names, however, shall be projected where appropriate.

K) ***Stub Street***

An existing stub street(s) shall be extended and connected to the subdivision. In the event that the existing street(s) anticipated to be affected by the connection provides access exclusively to a controlled-access highway (including but not limited to US 64), Town Council may require a locking gate of a type subject to approval of the fire code official capable of preventing public vehicular access, provided that the proposed subdivision does not require the connection of the stub street to satisfy UDO Section 7.5.4(E) *Public Access Requirements*. The gate shall be owned and maintained by the Town of Apex. The regulation of, use of, and access through a gate constructed in accordance with this section, and the removal thereof, shall be governed by Chapter 20 of the Apex Town Code of Ordinances or other appropriate police power ordinances or actions.

L) ***Traffic Calming***

1) No development proposal shall be permitted to provide for the installation of traffic calming measures in an adjacent or nearby existing neighborhood unless the street(s) meet the criteria in Sec. 7.2.1(L)(3) of this Ordinance.

2) All new residential developments shall provide for the installation for traffic calming measure(s) on each residential street within the development where the length of the public street exceeds 1,000 feet. The location and type of traffic calming measure(s) shall be determined by the Planning Department and Public Works and Transportation Department. Traffic calming measure(s) include but are not limited to traffic circles, roundabouts, curb extensions, chicanes, splitter islands, and designated on-street parking. Speed humps are only allowed as traffic calming measures in existing neighborhoods that meet the criteria in Sec. 7.2.1(L)(3) of this Ordinance.

3) This section replaces the Town of Apex Traffic Calming Device Policy and Guidelines. The Town may install and maintain traffic calming devices on Town-maintained streets directly serving residential driveways where speeding vehicles are the primary concern. The following procedures are meant to ensure that traffic calming devices are installed and used as intended for the appropriate and consistent treatment on Town-maintained streets and receive the support of the affected neighborhood. Traffic calming devices are limited to vertical and/or horizontal changes in the vehicular travelway that may or may not involve adjustments to existing curb. Stop and yield signs are defined as traffic control devices and are not appropriate for use as traffic calming devices. Stop and yield signs are however subject to engineering evaluation by the Town's Transportation Engineer according to the Manual on Uniform Traffic Control Devices. Traffic calming requests are subject to the following qualifying criteria:

a) Streets on which traffic calming devices are requested must be residential and exhibit all of the following characteristics:

(i) Posted speed is 25 miles per hour;

(ii) Roadway is not a Collector Street or Thoroughfare;

(iii) The average speed exceeds 30 miles per hour during any one-hour period in which the number of vehicles meets or exceeds 100. The data collected to determine

average speed may be based on an average of 100 vehicles per hour or more over multiple days; and

(iv) Installation of traffic calming devices along the street is not anticipated to create unacceptable delays in emergency response times for residences served by the street in the judgment of the Town's Police Chief and Fire Chief.

b) The request must be initiated, accepted, and supported by the property owners within the affected residential neighborhood:

(i) The requesting party must submit a request to the Transportation Engineer. Requests for traffic calming devices at a particular location are limited to one request within a 24 month period. Upon consultation with the Town's Police Department, the Transportation Engineer may request a study be conducted or inform the requesting party that the location is not a candidate for traffic calming measures based on the Town's criteria. If requested, the Town's Police Department will conduct a traffic speed and volume survey and provide the results to the Transportation Engineer who will determine whether all criteria in Sec. 7.2.1(L)(3) are satisfied.

(ii) If all the required criteria in Sec. 7.2.1(L)(3) are met, the Transportation Engineer will notify the requesting party and homeowners' association (if one exists), develop a sketch plan reflecting the types and locations of the proposed traffic calming devices, and prepare a petition boundary area. The petition boundary area shall include, at a minimum, all lots adjacent to the street within the subdivision where traffic calming devices are proposed along with all cul-de-sac streets and loop streets dependent on that street for connectivity. Once the homeowners' association is provided the sketch plan and petition boundary area, the association shall have 30 calendar days to either vote against the plan in order to end the process or vote to proceed, either with the association voting to administer a petition to the Transportation Engineer or the association delegating that authority to the original requesting party. In either event, the association shall notify the Transportation Engineer of the vote. If the homeowners' association takes no action or fails to notify the Transportation Engineer of the outcome of the vote within 30 calendar days of being provided the sketch plan and petition boundary area then the requesting party may proceed with the petition. The requesting party and homeowners' association may provide Town staff with input concerning the desired types and locations of the proposed traffic calming devices, but the final decision as to all elements of the sketch plan (including but not limited to the types and locations of the proposed traffic calming devices) shall be solely within the engineering judgment of Town staff.

(iii) The requesting party or homeowners' association for the affected residential neighborhood must provide the Town with a completed petition as noted in Sec. 7.2.1(L)(3)(b)(ii) with at least 70% agreement from homeowners within the petition boundary area no later than six (6) months following the date of the traffic survey. Each signature line shall include the printed and signed name of at least one (1) of the deed holders for the residential property, the address, and date signed.

(iv) The requesting party or homeowners' association must pay the Town 20% of the estimated cost of installing the requested traffic calming devices as reflected in the sketch plan prior to the request being scheduled for consideration by the Town Council. If the Town Council does not approve the plan then the 20% cost share shall be refunded.

(v) The Town Council will consider a petition to remove traffic calming devices on Town-maintained streets upon receipt of a petition signed by at least 70% of the owners of lots within the petition boundary area as noted in Sec. 7.2.1(L)(3)(b)(ii). In the absence of a previously defined petition boundary area the Transportation Engineer shall prepare a new petition boundary area. The homeowners' association may proceed with a petition to remove traffic calming devices at any time or delegate that authority to a requesting party. In the absence of a homeowners' association or if no action is taken by the homeowners' association within 30 calendar days of receiving a request the requesting party may proceed with a petition. If a removal petition is submitted at any time within five (5) years from the date of installation thereof, the requesting party or homeowners' association must pay the Town (in advance of removal) 100% of the estimated cost of removing such device(s); provided, however, that nothing shall limit or otherwise impair the Town's discretion to remove, at the Town's initiative, any traffic calming device on Town-maintained streets.

After all of the criteria have been satisfied, the Town Council will make the final decision whether to approve the proposed installation/removal project. The Town Council reserves the right to deny any request for installation/removal of traffic calming devices on Town-maintained streets, in its sole discretion. After the project has been approved by the Town Council and submitted to the Town's Public Works and Transportation Director, the street will be rated for priority, and then scheduled for installation/removal of the traffic calming devices in accordance with the approved sketch plan.

7.2.2 Blocks

A) ***Generally***

Blocks shall be laid out with consideration given to the type of land use proposed within the block.

B) ***Length***
Residential and commercial subdivision blocks shall not exceed 1,200 feet in length, nor shall they be less than 200 feet in length.

C) ***Width***
Residential blocks shall have sufficient width to provide for 2 tiers of lots of appropriate depth except where otherwise required to separate residential development from through traffic.

D) ***Crosswalks***
A pedestrian crosswalk not less than 10 feet in width may be required near the center and entirely across any residential block 900 feet or more in length where deemed essential to provide adequate access to schools, shopping centers, churches, transportation facilities or recreational facilities. Crosswalks shall be constructed of permanent materials such as those generally used for sidewalks, including concrete, brick, asphalt and similar wear-resistant and weather-resistant surfacings.

7.2.3 Lots

A) ***Standards***
Where public water and/or sewer systems are utilized in the subdivision, lots shall conform to the dimensional and density requirements established in Section 5.1 *Table of Intensity and Dimensional Standards.* Where public water and/or sewer are not utilized, lots shall comply with the specifications and standards of the Wake County Environmental Services Department. If percolation tests performed by the Wake County Environmental Services Department indicate the necessity of larger lot sizes because of soil or geologic conditions or for the protection of surface water impoundments used for recreational or domestic water supply purposes, such larger lots may be required in connection with the use of water supply or sewage disposal methods other than connection to existing public systems.

B) ***Setbacks and Yards***
Minimum building setback lines shall conform to the requirements of Article 5, Measurements; lots shall be so designed as to provide yard spaces as required in connection with building sites by the terms of this Ordinance. Developers are, however, encouraged to place structures in varying locations behind the required setback line as a means of affording visual variety in the neighborhood.

C) ***Compliance with Development Standards***
The subdivider shall refer to the General Development Standards of Article 8 and shall apply them in the layout of subdivisions in order to avoid creating lots or patterns of lots that will make compliance with such development standards difficult or infeasible.

D) ***Access***
Every lot shall abut a public street.

E) ***Double Frontage***
With the exception of corner lots, double frontage lots shall not be created except where the land could not be otherwise developed. The final plat for subdivision shall note on such lots that access shall be limited to 1 and such access shall not be from a thoroughfare.

F) ***Orientation***
Side lot lines shall be perpendicular or radial to street right-of-way lines except where a variation will provide a better street and lot layout.

G) ***Corner Lots***
For residential use, corner lots shall have additional width sufficient to provide setbacks based upon the yard standards of Article 5, Measurements, from both front and side streets.

H) ***Flag Lots***

1) The Town discourages and restricts creation of flag lots in subdivisions. A flag lot shall be permitted if necessary to allow a property owner reasonable use and benefit of a parcel of land or to alleviate situations that would otherwise cause extreme hardship for the owner. Flag lots are prohibited except:

a) Where necessary to eliminate access onto arterial streets or thoroughfares;

b) To reasonably utilize irregularly shaped land;

c) To reasonably utilize land with severe topography;

d) To reasonably utilize land with limited sites suitable for septic tank nitrification fields; and/or

e) To provide for the protection of significant natural or cultural resources.

2) No flag lot will be allowed if it increases the number of access points onto a major thoroughfare. Subdivisions approved after the effective date of this Ordinance shall not be resubdivided to create flag lots.

3) Use of a single driveway, granted through an easement, to serve adjoining flag lots or to serve a flag lot and an adjoining conventional lot is permitted and encouraged to reduce access points on public streets.

4) The minimum lot width at the public street is twenty (20) feet.

I) ***Driveways***
Driveways serving residential properties shall meet the standards found in Sec. 8.3.4(D).

7.2.4 Easements

A) ***Utility Easements***
The subdivider shall dedicate easements to the Town or an appropriate utility company for utility installation where needed. Easements shall be sized in accordance with the *Town of Apex Standard Specifications and Standard Details*. Easements shall be at least 20 feet wide and normally centered along rear or side lot lines. Wider easements may be required if the topography along the proposed right-of-way is such that maintenance equipment cannot reasonably operate within the minimum 20-foot wide easement.

B) ***Drainage Easements***
Where a subdivision is traversed by a watercourse, drainage way, channel or stream, there shall be provided a storm water easement or drainage right-of-way

conforming substantially with the lines of such watercourses and of such further width or construction, or both, as will be adequate for the purpose, but in no instance less than 20 feet. Lakes, ponds, watercourses, and the land immediately adjacent thereto shall be considered for maintenance by the Town only if sufficient land is dedicated as a public recreation area or park or if such area constitutes a necessary part of the drainage control system. The Town reserves the right to reject any intended dedications. Easements shall be sized in accordance with the *Town of Apex Standard Specifications and Standard Details*.

7.2.5 Single-Family Residential Grading

A) ***General Grading Standards***

1) As required by the North Carolina Building Code Appendix J *Grading*, no grading shall be performed without first having obtained a permit from the Building Official.

2) Grade changes in existing public utility easements and public rights-of-way consisting of a cut of greater than one (1) foot in elevation or fill greater than two (2) feet in elevation must be approved by the Town of Apex Water Resources Director.

3) After rough grading of a subdivision is completed, the grade of any single-family residential lot shall not be raised or lowered more than six (6) feet at any point, except the grade may be raised or lowered up to 12 feet to accommodate foundation walls incorporated into the principal structure for walk-out basements.

B) ***Single-Family Residential Subdivision Mass Grading***
Mass grading of single-family residential subdivisions shall be allowed provided all provisions of Secs. 7.2.5(B) and (C) are met.

1) Grading activities shall be staged; prior to proceeding to another stage the developer shall stabilize the present stage with adequate ground cover sufficient to restrain erosion and have all infrastructure installed.

2) In no case shall mass grading exceed 20 acres per stage, including grading necessary for on-site infrastructure.

3) Mass graded acreage in single-family residential subdivisions must retain at least 80% of the pre-development drainage areas within their natural basins.

4) A land disturbing and sedimentation & soil erosion control plan shall be submitted for Master Subdivision Plan approval that shows:

a) How stormwater will be handled within the subdivision to meet Sec. 6.1 *Watershed Protection Overlay District* requirements;

b) Existing and proposed grades of site based on topography verified by a professional land surveyor or 2013 topography generated from the 2013 LiDAR Project over Wake County, NC, and acquired on February 21-24, 2013, as updated from time to time. Topographic coverage may be obtained from the Town of Apex, the Town of Cary, or Wake County, depending on the site location*;*

c) Required sedimentation and erosion control measures;

d) The limits of disturbance;

e) Offsite drainage;

f) Stockpile areas and maximum heights;

g) Debris piles and maximum heights; and

h) Clearly identified borrow and/or waste areas on-site and/or off-site if located in Town of Apex's corporate limits or ETJ.

5) Grading activities shall be done in accordance with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to air and water pollution.

6) When an owner of any parcel shall raise, lower, or alter the level of existing grade of a site by a fill or excavation, he or she shall at his or her own expense protect all adjoining property, with the exception of off-site easement areas, from encroachment by such fill or from danger of collapse due to such excavation either by erection of engineered retaining wall(s) or by sloping the sides of such fill or excavation entirely within the confines of the development including off-site easement areas in a manner approved by the Town of Apex. (See Secs. 8.1.4 *Development Restrictions on Steep Slopes* and 8.1.6 *Retaining Structures.*)

7) Each lot 8,000 square feet in size or greater shall be supplemented with a minimum of four (4) shrubs and two trees, to be provided in the front, side, or rear yard.

8) An additional two percent (2%) Resource Conservation Area (RCA) shall be set aside. This requirement is added to the standard RCA percentage requirement found in Sec. 8.1.2(C) *Size of the RCA*.

C) ***Single-Family Residential Subdivision Staged Grading***
Staged grading shall be allowed provided that the following standards are met:

1) Grading activities shall be staged; prior to proceeding to another stage the developer shall stabilize the present stage with adequate ground cover sufficient to restrain erosion and have all infrastructure installed.

2) In no case shall staged grading exceed 20 acres per stage, including grading necessary for on-site infrastructure.

3) Stage graded acreage in single-family residential subdivisions must retain at least 80% of the pre-development drainage areas within their natural basins.

4) A land disturbing and sedimentation & soil erosion control plan shall be submitted for Master Subdivision Plan approval that shows:

a) How stormwater will be handled within the subdivision to meet Sec. 6.1 *Watershed Protection Overlay District* requirements;

b) Existing and proposed grades of site based on Town of Apex

LIDAR topography in the corporate limits and ETJ and Wake County LIDAR topography in Wake County's jurisdiction or topography verified by a professional land surveyor;

c) Required sedimentation and erosion control measures;

d) The limits of disturbance;

e) Offsite drainage;

f) Stockpile areas and maximum heights;

g) Debris piles and maximum heights; and

h) Clearly identified borrow and/or waste areas on-site and/or off-site if located in Town of Apex's corporate limits or ETJ.

5) Grading activities shall be done in accordance with all applicable federal, state, and local laws, rules, and regulations, including those pertaining to air and water pollution.

6) When an owner of any parcel shall raise, lower, or alter the level of existing grade of a site by a fill or excavation, he or she shall at his or her own expense protect all adjoining property from encroachment by such fill beyond off-site easement areas or from danger of collapse due to such excavation either by erection of engineered retaining wall(s) or by sloping the sides of such fill or excavation entirely within the confines of the development including off-site easement areas in a manner approved by the Town of Apex. (See Secs. 8.1.4 *Development Restrictions on Steep Slopes* and 8.1.6 *Retaining Structures.*)

D) ***Exemptions***

1) The following shall be exempt from the provisions of Sec. 7.2.5 *Single-Family Residential Grading*:

a) Grading in emergency situations involving immediate danger to life or property or substantial fire hazards.

b) Agricultural activities on bona fide farms.

c) Routine maintenance activities, including tree removal required to control vegetation on public roads and public utility rights-of-way.

d) Traditional Neighborhood Developments (TNDs).

e) Attached and detached townhomes, multi-family/apartments, condominiums, and non-residential developments.

7.3 PARK, RECREATION AND OPEN SPACE SITES

7.3.1 Dedication Generally; Fee in Lieu of Dedication Generally; Construction of Public Recreation Facilities with Fee-in-Lieu Monies Generally

A) Every person who subdivides or develops land for residential purposes shall at the time of final approval of the master subdivision plan agree to dedicate a

portion of such land, as set forth in this section, for the purpose of providing park, recreation or open space sites to serve the future residents of the neighborhood within the Town of Apex corporate limits.

B) As an alternative to the dedication of a portion of such land by the subdivider, and where it is determined by the Parks, Recreation, and Cultural Resources Advisory Commission and the Town Council that a dedication of land is not feasible in a given subdivision or incompatible with the Town's plan, the subdivider may be allowed to:

1) Make provisions for an equitable amount of land to be dedicated in another location;

2) Pay to the Town a fee-in-lieu of dedication as provided herein;

3) Construct public recreation facilities with fee-in-lieu monies; or

4) Any combination of 7.3.1(B)(1), (2), or (3), as approved by the Town Council

7.3.2 Standards for Dedication

All land dedicated for recreation and park development shall substantially meet the following standards:

A) ***Unity***
The dedicated land shall form a single parcel of land except where the Town Council determines that 2 or more parcels would be in the public interest and determines that a connecting path or strip of land is in the public interest, and in which case the path shall not be less than 30 feet wide.

B) ***Shape***
The shape of the dedicated parcel of land shall be sufficiently square or round to be usable for recreational activities such as softball, tennis, croquet, etc.

C) ***Location***
The dedicated land shall be located so as to reasonably serve the recreation and open space needs of the subdivision for which the dedication was made and shall bear a reasonable relationship to the use of the area by the future inhabitants of the subdivision or residential development.

D) ***Access***
Public access to the dedicated land shall be provided either by adjoining street frontage or public easement at least 20 feet in width.

E) ***Topography***
Generally areas dedicated for recreation shall not exceed slopes of 5 percent.

F) ***Usableness***
The dedicated land shall be usable for recreation; lakes may not be included in computing dedicated land area. Where the Parks, Recreation, and Cultural Resources Advisory Commission determines that recreational needs are being adequately met, either by other dedicated parcels of land or existing recreational facilities, then land that is not usable for recreation may be dedicated as open space.

G) ***Plans***
Municipal and county plans shall be taken into consideration when evaluating land proposals for dedication.

7.3.3 Standards for Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof

A) Whether the Town Council accepts the land dedication, elects to require payment of fee-in-lieu, construction of public recreation facilities with fee-in-lieu monies, or combination thereof, shall be determined by consideration of the following:

1) Recreational element of the Town's land development plan;

2) The recommendations of the Parks, Recreation, and Cultural Resources Advisory Commission;

3) Topography, geology, access and location of land in the subdivision available for dedication; and

4) Size and shape of the subdivision and land available for dedication.

B) The determination of the Town Council as to whether land shall be dedicated, whether a fee should be exacted, whether construction of public recreation facilities, or a combination thereof shall be final and conclusive. When a development contains 30 units or less in a single-family, detached subdivision; 45 units or less in a single-family, attached subdivision; or 51 units or less in a multi-family development, only the payment of fees-in-lieu shall be required, unless the development abuts an existing or planned park.

7.3.4 Procedure for Determination of Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof; Performance Guarantees

The procedure for determining whether the subdivider is to dedicate land, pay a fee-in-lieu, construct public recreation facilities with fee-in-lieu monies or some combination thereof, shall be as follows:

A) ***Subdivider***
The subdivider shall indicate in the PUD or TND plan or on the Master Subdivision Plan, whichever is submitted first, whether land dedication of property for park and recreational purposes is proposed, whether the subdivider proposes to pay a fee-in-lieu, whether the subdivider proposes to construct public recreation facilities with fee-in-lieu monies, or whether the subdivider proposes some combination thereof. If the subdivider proposes to dedicate land for this purpose, the subdivider shall designate the area on the master subdivision plan. The land proposed for dedication shall meet the standards in Sec. 7.3.2 *Standards for Dedication*.

B) ***Action of Town***
At the time of review of an application requesting rezoning to the PUD or TND zoning districts or a Master Subdivision Plan, the Parks, Recreation, and Cultural Resources Advisory Commission shall recommend, and the Town Council shall determine as a part of such approval, whether to require a dedication of land, payment of a fee-in-lieu, construction of public recreation facilities with fee-in-lieu monies, or some combination thereof, pursuant to the standards in Sec. 7.3.3 *Standards of Council's Choice Between Land Dedication, Payment of Fee-in-Lieu, Construction of Public Recreation Facilities with Fee-in-Lieu Monies, or Combination Thereof*.

C) ***Prerequisites for Approval of Final Plat***
1) **Dedication, Fee, and/or Construction**. Where dedication is required, such dedication shall be shown upon the first final plat for subdivision

submitted for approval. Where fees are required, the same shall be deposited with the Town prior to the recording of the first final plat for subdivision. In the event that Town Council authorizes the subdivider to construct required public recreation improvements in lieu of or in combination with the required dedication or fee-in-lieu, then such construction must be completed prior to first final plat approval or such performance must be guaranteed in accordance with subsection 2 herein. Open space covenants for park or recreational facilities shall be submitted to the Town prior to approval of the first final plat and shall be recorded with the first final plat.

2) **Performance Guarantee**. In lieu of prior construction of public recreational facilities required by this article, the Town may accept a guarantee from the subdivider that such improvements will be carried out according to the Town's specifications at subdivider's expense. Such guarantee shall be required prior to approval of the first final plat for the subdivision. Such guarantee may be in the form of a surety bond enforceable at the sole discretion of the Town and on the form prescribed by the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance*, certified check drawn in favor of the Town, or cash deposited with the Town. Such guarantee shall be in the amount of not less than 125 percent of the estimated cost of the construction of the required improvements. The developer shall submit an estimate of this amount subject to review, modification, and approval by the Parks and Recreation Director or designee. Such guarantee shall remain in full force and effect until construction of all required public recreation facilities is completed. All public recreational facility requirements shall be completed and accepted by the Town per UDO Section 7.5.9(B) *Schedule of Installation*.

7.3.5 Computation of Size of Area Required for Dedication

The area of land required to be dedicated with respect to a development shall be the sum of the following:

1) the product of the number of single family detached dwelling units or lots in the development, whichever is greater, times 1/30 of an acre (for land proposed to be dedicated which (*a*) lies within the one hundred-year floodplain, (*b*) has slopes greater than 15 percent or (*c*) is within overhead utility easements, "1/20" of an acre per dwelling unit shall be substituted for "1/30" in the formula);

2) the product of the number of single family attached dwelling units or lots in the development, whichever is greater, times 1/45 of an acre (for land proposed to be dedicated which (a) lies within the one hundred-year floodplain, (b) has slopes greater than 15 percent or (c) is within overhead utility easements, "1/30" of an acre per dwelling unit shall be substituted for "1/45" in the formula); and

3) the product of the number of multi-family dwelling units or lots in the development, whichever is greater, times 1/51 of an acre (for land proposed to be dedicated which (a) lies within the one hundred-year floodplain, (b) has slopes greater than 15 percent or (c) is within overhead utility easements, "1/34" of an acre per dwelling unit shall be substituted for "1/51" in the formula).

7.3.6 Computation of Fee Payable In-lieu of Dedication

A) ***Generally***
Where a fee is to be paid in-lieu of land dedication with respect to a development, the amount of such fee shall follow the published Town of Apex "Development Fee Schedule."

B) ***Adjustment***
Each January 1 starting on January 1, 2010, the fee amounts per dwelling unit stated in 7.3.6(A) shall automatically be adjusted in correlation with the inflation rate in the previous calendar year as reported by the U.S. Department of Commerce Consumer Price Index.

C) ***Fair Market Value***
Notwithstanding any other Town of Apex ordinance provision, the total fee in-lieu of dedication charged for a development or subdivision shall not exceed the fair market value of the land area that would have otherwise been required to be dedicated by the development or subdivision. For the purpose of this section, fair market value is to be determined with respect to a development or subdivision, at the time the initial development application submittal is made to the Town. The process for determining fair market value shall be as follows:

1) the developer submits an appraisal completed within 12 months of the date of the initial submittal of the development application;

2) the developer's appraisal shall be reviewed by a review appraiser retained by the Town. The review appraiser shall either concur with the developer's appraisal or recommend that a new appraisal be prepared;

3) if a new appraisal is recommended, the Town's appraisal shall be done by an appraiser from a Town approved list at the Town's expense. The decision of the Town's appraiser shall constitute the Town's decision on fair market value; and

4) in the event of a disagreement about fair market value, it shall be determined by the special committee procedure provided in Section 7.3.8.

D) ***Projects Submitted Prior to May 20, 2008***

1) Projects submitted prior to May 20, 2008 shall be governed by the Ordinance in place at the time of their submittal where the development projects meet the following two criteria: (1) the development application for the project was pending at the time of amendments adopted on May 20, 2008 and (2) the development project had been to the Parks, Recreation and Cultural Resources Advisory Committee related to a fee in lieu determination prior to May 20, 2008.

2) Amendments to development projects approved prior to May 20, 2008 shall be governed by the Ordinance in place at the time of their approval where the development projects meet the following two criteria: (1) the development project was approved prior to May 20, 2008 and (2) the amendment does not increase the number of residential units in the development project. For the purpose of this Subsection, development projects grandfathered under 7.3.6(D)(1) shall treated as if they were approved prior to May 20. 2008.

7.3.7 Use of Land by Town; Sale of Land by Town; Use of Funds Received in Lieu of Dedication

A) ***Generally***
The land received by the Town under this article shall be used only for the purpose of providing neighborhood open space, park and recreational areas, but shall not be so restricted should the Town decide to sell such land as provided by the following paragraph.

B) ***Sale of Land***
The Town shall have the right to sell any land dedicated to the Town for neighborhood park and recreation purposes on finding by the Planning Board and the Parks, Recreation, and Cultural Resource Advisory Committee that a particular piece of property is not feasible or compatible with the Town's land development plan.

C) ***Special Fund***
Fees collected in lieu of dedications and any proceeds from such transactions or sales shall be held in a special fund by the Town, and the funds shall be used by the Town for the purpose of acquiring and developing public recreation areas as shown on the land development plan and for no other purpose. The depository for such funds may be the same as permitted for other funds of the Town and pending their expenditure in accordance with the terms of this section, such funds may be invested as other funds of the Town. The Town may, at its discretion, add additional monies to the fund for the purposes of purchasing public recreational land to be used for public recreational purposes. On all matters not specifically provided for in this section, the Local Government Budget and Fiscal Control Act shall be controlling.

D) ***Public Safety Facilities***
Lands acquired pursuant to this section after July 1, 1994 may be used for public safety facilities, including police, fire and rescue, notwithstanding any other limitations on such use under this section.

7.3.8 Special Committee to Settle Disagreements Between Town and Subdivider

A) ***Generally***
In the event that the Town and the subdivider of land cannot agree upon the location, terrain, size or shape of the land necessary to be dedicated for a neighborhood recreation area, or cannot agree upon the details of provisions for an equitable amount of land in another location or cannot agree about fair market value, such disagreement shall be determined by a special committee.

B) ***Membership and Action***
Where the subdivider disagrees with the fair market value determination per Section 7.3.6(C), the subdivider may appeal to the Special Committee, comprised of the subdivider’s appraiser, the Town appraiser, and a third appraiser selected by the first two appraisers. An appraisal shall be completed by the third appraiser with the expense borne equally by the Town and the subdivider. The findings of the committee shall be by majority vote and shall be certified to the Town Council within 45 days of the time of appointment of the third member of the committee.

7.3.9 Privately-owned Play Lawns

Privately-owned play lawns are required for any new single-family and townhome subdivision over 50 lots. The amount of land area required for the play lawn shall be

0.006 acre per dwelling unit with a maximum requirement of two (2) acres of play lawns within any one subdivision. Privately-owned play lawns cannot be credited toward the requirement of dedication for public park and recreation purposes.

A) ***Standards***
The following minimum design standards shall apply to all privately-owned play lawns.

1) The play lawn shall not be located within public park land dedication areas, Resource Conservation Areas, any type of required buffer, stormwater BMPs, floodplains, floodways, or wetlands, except that partial credit toward the RCA requirement is allowed per Sec. 8.1.2.B.1.g *Categories of RCA*.

2) The minimum dimension in any direction for the play lawn shall be 50 feet.

3) The minimum acreage of a play lawn shall be 0.3 acre in size.

4) The preferred acreage of a play lawn is 0.5 acre in size. If one (1) acre of play lawns are required, the preference is for two (2) 0.5-acre play lawns. If two (2) acres of play lawns are required, the preference is for four (4) 0.5-acre play lawns.

5) If one (1) or more acres of play lawns are required by this Section, the play lawns shall be distributed throughout the subdivision and not clustered in one (1) section of the development.

6) The maximum slope of the play lawn shall be two percent (2%).

7) The play lawn shall be landscaped with turf grass; perimeter areas around the play lawn may include items such as, but not limited to, hardscaping, furniture, trash cans, trees, or shrubs.

8) The play lawn shall be situated to allow vehicular access for maintenance purposes.

9) A public sidewalk or public greenway shall be connected to the play lawn.

10) The play lawn shall be maintained by the subdivision's Home Owners Association (HOA) as a grassed play area; however, the play lawn is the property of the HOA and as such may be used for private recreation other than a play lawn provided an administrative site plan is submitted and approved per Sec. 2.3.6.C.2.f *Exemptions*; *Minor site elements and features*.

7.3.10 Greenways

A) Greenways may be credited against the requirements of Section 7.3 *Park, Recreation and Open Space Sites* provided that such greenways are:

1) A part of the Town's greenway plan.

2) Dedicated to public use and located within a 20' public greenway easement located across HOA-owned/maintained land (easement

cannot be located within individual residential lots).

3) Built to meet public greenway standards per the *Town of Apex Standard Specifications and Standard Details*.

B) Residential developments adjacent to planned/existing public greenways shall provide one or more dedicated public greenway connection(s) from a public sidewalk/public multi-use path within the development to the planned/existing public greenway shown on the Town's greenway plan; such greenway connections may be credited against the requirements of Section 7.3 provided that these greenway connections meet the standards in Section 7.3.10(A)(2) and (3) above.

7.4 DEDICATION OF ROW FOR THOROUGHFARE PLAN STREETS AND HIGHWAYS

When a street or highway corridor identified on the Town's Thoroughfare Plan established and adopted pursuant to Sec. 136-66.2, N.C.G.S, is located on land subject to subdivision site plan, or other development plan, the landowner shall dedicate the right-of-way for the street or highway to the Town if:

7.4.1 Reasonable Relationship

There is a reasonable relationship between the proposed street or highway right-of-way requested to be dedicated and the traffic that will be generated by the proposed development when any mitigation provided for by Town ordinance is taken into consideration.

7.4.2 No Deprivation of Land

The dedication of right-of-way does not result in the denial of a reasonable use of the original tract of land.

7.4.3 Density Credit Transfer

The right-of-way dedication is mitigated by the transfer of density credits attributable to the dedicated right-of-way to the same parcel or contiguous land owned by the applicant.

7.5 REQUIRED IMPROVEMENTS

7.5.1 Generally and Exemptions

A) ***Generally***

The developer of any subdivision within the Town or the Town's extraterritorial jurisdiction shall be responsible for the proper installation of improvements as set forth in the following sections and as set forth in the *Town of Apex Standard Specifications and Standard Details*. No final plat for subdivision shall be approved until required improvements have been installed or their installation guaranteed as provided herein in those areas shown on the plat.

B) ***Exemptions***

A site plan or subdivision plan that does not propose a subdivision of an existing parcel into more than four (4) lots, has an anticipated number of vehicular trips less than 150 per day, and a total of less than 10,000 square feet of proposed non-residential buildings is exempt from public road frontage improvements and new location public road construction that would otherwise be required based on the *Town of Apex Transportation Plan* and typical road sections specified in the *Town of Apex Standard Specifications and Construction Details*. This exemption does not exempt installation of a paved driveway apron as required for the safe ingress and egress of vehicles and emergency services accessing the site.

Buildings shall not be permitted in areas that are planned for future roadway construction and expansion. Right-of-way dedication is recommended for planned public roadways where practical to promote future connectivity to adjacent properties and future improvement projects.

7.5.2 Permanent Reference Points

The following permanent survey reference markers shall be installed:

A) ***Monuments and Control Corners***

Permanent monuments shall be placed at not less than 2 corners of the subdivision; provided, that additional monuments shall be placed where necessary to ensure that no point within the subdivision shall lie more than 500 feet from a monument. Two or more of the monuments shall be designated as control corners. Such monuments may be of concrete or iron pipe. Where concrete monuments are employed, they shall have an indented cross metal pin or plate at the top to properly identify the point. All monuments and control corners shall be shown on the final plat for subdivision; further, all monuments and control corners shall be made of such materials and installed in such manner as is established in the "Manual of Practice for Land Surveying" of the North Carolina Board of Registration for Professional Engineers and Land Surveyors.

B) ***Markers***

All lot corners, all points where the street lines intersect the exterior boundaries of the subdivision and all angle points and points of curve in each street, shall be marked with iron pipe not less than three-fourths of an inch in diameter and 30 inches long driven so as to be within one inch of finished grade.

C) ***Property Corner Tie***

At least one corner of the property surveyed shall be designated by course and distance (tie) from a readily discernible reference marker. If a corner is within 2,000 feet of a U.S. Coast and Geodetic Station or state grid system coordinated monument, then this corner shall be marked with a monument so designated and shall be accurately tied to the station or monument by computed X and Y coordinates which shall appear on the map with a statement identifying the station or monument and to an accuracy of one per fifteen thousand (1:15,000). When such a monument or station is not available, the tie shall be made to some permanent and readily recognizable landmark or identifiable point, physical object or structure.

D) ***Subdivision Survey Accuracy***

1) Angular error of closure shall not exceed 20 seconds times the square root of the number of angles turned.

2) Linear error of closure shall not exceed one foot per ten thousand feet (1:10,000) of perimeter of the lot of land, except for commercial and industrial subdivisions, where linear error of closure shall not exceed one foot per fifteen thousand feet (1:15,000) of perimeter.

7.5.3 Water Lines and Sanitary Sewers

A) ***Subdivisions Within 500 Feet of Town Systems***

If a subdivision lies within 500 feet of the municipal water or sanitary sewer system, the subdivider shall, at such subdivider's expense, connect every lot of the subdivision to the municipal water or sewer system, or both if available. Sufficient taps shall be extended to lot lines to prevent subsequent cutting of

pavement. All materials, design, and installation shall be made in accordance with the *Town of Apex Standard Specifications and Standard Details*. As to lines outside of Town, see subsection (B) below. If a drinking water well permit has been issued by the Wake County Department of Environmental Services, the subdivider is not required to connect to municipal water so long as the permitted well remains in use and compliant with the permit issued.

B) ***Subdivisions Beyond 500 Feet of Town Systems***
Where a subdivision lies more than 500 feet distant from the municipal water or sewer system, the subdivider may, at the subdivider's expense, connect the subdivision lots to such systems. If the developer provides individual wells or septic tanks, the materials, design and installation shall be made in accordance with and subject to approval by the Wake County Department of Environmental Services.

C) ***Water System and Sewer System Defined***
For the purpose of this section, the terms "water system" and "sewer system" shall include all appurtenances and fixtures normally associated with such facilities, including fire hydrants, gate valves, blowoffs, manholes and pumping apparatus, but shall not include individual service meters, which shall be installed by the Town. Such appurtenances and fixtures shall comply with the *Town of Apex Standard Specifications and Standard Details*.

D) ***Size***

1) All sanitary sewers and water distribution lines shall conform with the *Town of Apex Standard Specifications and Standard Details*.

2) Oversized improvements may be required as provided in Section 7.5.10.

7.5.4 Streets

A) ***Grading***
The subdivider shall bear the costs of grading all streets within the subdivision, whether they are new streets or existing streets, to the full right-of-way width set forth in Section 7.2.1.

B) ***Base Material, Paving, Curbs and Gutters, and Sidewalks***
The subdivider shall bear the costs of the installation of the base material, paving, curbs and gutters, and sidewalks if required (See subsection (C) of this section) for all new or existing streets within or adjacent to the subdivision in accordance with the “Rural Residential Street Section” in the *Town of Apex Standard Specifications and Standard Details* and the requirements of Section 7.2.1, not inconsistent with the aforementioned standard specifications.

1) *Adjacent to Paved Streets*

a) When a subdivision lies along only one side of an existing paved street, the subdivider shall be required to extend the base material and paving and install curbs and gutters and sidewalks if required (See subsection (C) of this section) for said street only on the side of the street upon which the subdivision lies.

b) When a subdivision lies along both sides of an existing paved street and the unpaved section is contiguous to an existing paved street section, the subdivider shall extend the base material and

paving to the full appropriate width and install curbs and gutters and sidewalks if required (See subsection (C) of this section) for said unpaved section along which the subdivision lies.

2) *Adjacent to Unpaved Streets*

a) When a subdivision lies along both sides of an existing unpaved street and the unpaved section is not contiguous to an existing paved street section of street, then in-lieu of paving the street the Town may require the subdivider to pay to the Town sums equal to the costs that otherwise would have been paid by the subdivider to pave and provide sidewalks and curbs and gutters.

b) When a subdivision lies along only one side of an existing unpaved street, the subdivider shall, in-lieu of making the improvements required in the foregoing subsection (B)(1)(a), pay to the Town a sum equal to the costs that otherwise would have been paid by the subdivider in constructing such improvements. Such fee shall be determined as set forth in the foregoing subsection (B)(2)(a).

3) When a subdivision lies along either side of any new or existing street designated as controlled-access such that the subdivider would have no access to that street, then no extension of base material, paving or installation of curbs and gutters shall be required.

4) *Exemptions*

a) When a subdivision of property zoned for residential use is designed such that the minimum lot size is 1 acre or more, then curbs and gutters shall not be required. The street shall comply with the Town of Apex Standard Specifications and Standard Details.

b) When a subdivision of property zoned for residential use is designed such that the following conditions are met, then curbs and gutters shall not be required:

(i) Average gross density shall be 1 lot per acre or less;

(ii) Minimum lot size shall be 0.5 acre (21,780 sq. ft.);

(iii) Minimum lot width shall be 100’ at the front setback line;

(iv) Mass grading shall not be allowed;

(v) Maximum State-mandated impervious caps shall be allowed; and

(vi) The allowed street design standard shall be ribbon-pavement with swale section design in compliance with the Town of Apex Standard Specifications and Standard Details (as may necessarily be modified).

c) Projects submitted prior to November 20, 2007 shall be governed by the lot size and density stated in this Subsection (4) as it existed at the time of submittal.

C) ***Sidewalks***

1) This section replaces the Town's Sidewalk Policy adopted April 7, 1992 and subsequent Amendment to Sidewalk Policy adopted September 7, 1993.

2) The Town Council shall require that the subdivider construct sidewalks along both sides of all major and minor thoroughfares, all collectors, and on one side of all other streets within and bordering the subdivision property boundaries. Such sidewalks shall provide direct pedestrian connections to adjacent properties outside the subdivision.

   a) Consideration will be given to a greenway trail/sidewalk system in lieu of some or all sidewalks within a development if an equal or better pedestrian system will be provided.

   b) Where street interconnectivity is not provided (such as but not limited to cul-de-sacs) within the development plan, the developer shall construct five-foot (5') wide Concrete Paved Paths according to the following:

      (i) The developer shall construct the required Concrete Paved Paths within open space or Resource Conservation Area owned by a homeowner's association, with the exception of using a five-foot (5') width instead of the 10-foot (10') wide standard section for concrete greenways;

      (ii) The developer shall provide a ten-foot (10') wide public access and maintenance easement along these paths, with the paths in the center of the easements;

      (iii) The open space shall be provided between lots (not within lots) to maintain pedestrian connectivity and shall include destination and directional signs;

      (iv) Where necessary to cross a stream or creek, the developer shall construct a bridge with a minimum path width of six feet (6') across the bridge; and

      (v) In low-lying areas, the Planning Director may require that the developer construct a boardwalk.

3) The Planning Director may recommend exceptions to this general requirement for areas within a subdivision that are not reasonably expected to draw a significant amount of pedestrian traffic, such as but not limited to:

   a) The bulb portion of a cul-de-sac, provided that the sidewalk connects to other cul-de-sacs, roads, amenities and greenways and a sidewalk is still provided up the "neck" portion of the cul-de-sac where ten (10) or more dwelling units border the cul-de-sac.

   b) If a topographic or natural feature makes construction of a sidewalk impractical (as determined by the Planning Director).

c) If a subdivision is of rural nature such that the density is equal to or less than one (1) dwelling unit per acre and have streets without curb and gutter.

4) Where a sidewalk is required on one side of the street, the following criteria will be considered in determining which side of the street the sidewalk will be located:

a) The side that would link with an existing sidewalk(s).

b) The side what would link a greenway, park, shopping area, or school.

c) Where there are no existing sidewalks for linkage, the planning staff will evaluate the length of the street for slope, existing conditions and any other special conditions that may effect sidewalk installation. The planning staff will make recommendation to the Planning Board as to which side would be the most appropriate side. The Planning Board will then make a recommendation to the Town Council.

5) All installation of sidewalks shall conform to the *Town of Apex Standard Specifications and Standard Details*.

6) Subdividers are encouraged and expected to meander sidewalks and utilize boardwalk sections to preserve existing significant trees. Sidewalks may be placed within a 10-foot public access easement located outside of the public right-of-way in order to preserve or plant trees between the sidewalk and the curb. This Section in no way authorizes the planting of trees within public rights-of-way or the location of sidewalks within the required thoroughfare or streetfront buffers (Sec. 8.2.6 *Buffering*).

7) For existing sites that are proposed for re-development items 1-6 will apply at the discretion of the Planning Director.

D) ***Apex Peakway Construction Requirements***

1) This section replaces the Town's Apex Peakway Development Policy last revised and adopted on June 7, 1994.

2) *Cross-Section Design/Construction Standards*
The typical section includes 100' right-of-way containing a four (4-lane) divided seventy-one (71) foot back-to-back curb and gutter roadway including an eighteen (18) foot landscaped median, a five (5) foot sidewalk on the outside of the corridor and a ten (10) foot multi-use asphalt path on the inside of the corridor. The Peakway shall be constructed and right-of-way dedicated in accordance with current standards of the Town of Apex.

3) *Posted Speed/Design Speed*
Refer to the *Town of Apex Standard Specifications and Standard Details* for width and pavement structure requirements.

4) *Order of Construction*
Because of expected low traffic counts early in the life of the facility, two travel lanes with curb and gutter and sidewalk are to be constructed initially with grading for the remaining roadway width when adequate public right-of-way is available. First priority of construction shall be the outer two travel lanes. In constructing only the outer two lanes, the inside curb shall be constructed as median curb.

a) Development on Outside of Road Corridor
One-half of the right-of-way shall be dedicated and the outside two lanes and sidewalk shall be built as specified above.

b) Development on Inside of Road Corridor
When property develops on the inside of the corridor and the outer lanes have already been constructed, the remaining one-half (½) right-of-way shall be dedicated and an approved connection shall be made to the outer lanes. A fee in lieu shall be paid for construction of the inside lanes and multi-use path.

If the outer lanes have not been constructed and the developer has access to the property through an existing road, then the Town may consider accepting the dedication of one half (½) of the right-of-way and a fee-in-lieu of construction. If the outer lanes have not been constructed but the only access to the property being developed is the Peakway, then the developer shall make the necessary arrangements to have the right-of-way dedicated and the outside lanes constructed and may be required to dedicate the right-of-way and pay a fee in lieu of construction of the inside lanes. In a situation where it may be possible to build the inside lanes and transition from the outside lanes to the inside lanes meeting forty (40) mph roadway design guidelines, then the Town may consider allowing the developer to dedicate the right-of-way and build the inside lanes instead of the outside lanes.

c) Development of Both Sides of the Road Corridor
If the owner develops property on both sides of the corridor, the full right-of-way shall be dedicated with construction of the outer two lanes, curb and gutter and sidewalk as specified above. The property owner shall also provide grading for the remaining half of the roadway.

5) *Median Cross-Over Spacing/Access*
Future median cross-overs are to be a minimum of 500 feet apart. The distance as provided in this subsection also applies to allowable offsets from existing State-maintained or other municipal roadways. Right-in/right-out access may be considered between median cross-overs, but no less than two hundred (200) feet from a cross-over or other adjacent right-in/right-out access.

6) *Residential Lot Access*
No residential lot access shall be allowed other than a lot of record prior to the adoption of this policy.

7) *Buffers*
Properties that are adjacent to the Peakway shall provide a buffer in

accordance with Sec 8.2.6 *Buffering*. The buffer planting plan shall be submitted as a part of the master subdivision or site plan approval process. Protection of existing vegetation is encouraged where this vegetation is significant. The reservation of the buffer must be noted on the final plat. The maintenance of the buffer shall be the responsibility of the property owner.

8) *Streetscape Landscaping*
Streetscape landscaping requirements would be as prescribed by the Landscape Ordinance for all developments required to file a site plan.

E) ***Public Access Requirements***
A residential development or any portion thereof shall (either by itself or in combination with another existing development through which it accesses the public street system) propose no more than 50 single-family units, 100 multi-family units, or 50 units of single-family and multi-family combined unless it is served by at least two (2) points of access to the public street system. When more than one (1) point is required, one (1) of those two (2) points must be a full-movement intersection and both points of access must be constructed to Town of Apex standards. A stub street allowing for future connectivity but not being extended to the public street system in conjunction with the proposed development cannot be considered a point of access. The points of access serving the development shall be separated by a minimum distance of 500 feet. The spacing between points of access is subject to approval by the North Carolina Department of Transportation if the access is proposed along a state-maintained roadway. Any residential development exceeding 300 residential units shall provide at least three (3) points of access to the public street system. Construction of a Major Collector or Thoroughfare on the Town of Apex Transportation Plan can provide opportunities for additional points of access when the existing roadway frontage cannot provide those opportunities. See also Sec. 7.2.1(A)(2) *Points of ingress/egress.*

F) ***Stub Street Fee-In-Lieu***
When a public street stub is included in an approved site plan and cannot be constructed within ten (10) feet of the property line due to environmental constraints, a fee-in-lieu shall be paid for future completion of the street stub and utilities to the property line.

1) The fee-in-lieu shall be based on an engineer's estimate of actual quantities of clearing and grubbing, grading, drainage structures, water and sewer lines, concrete curb and gutter, sidewalk, and paving required to complete the remainder of the street section to the property line. The fee-in-lieu shall also include the appropriate share of the engineer's estimate of permitting fees.

2) In the event of a stream crossing and/or if a bridge is anticipated, the fee-in-lieu shall include the appropriate share of the crossing which may not be exactly half of the estimated total monetary cost of the crossing due to differences in elevation between the two sides of the creek and location of the property line with respect to the centerline of the creek.

3) The fee-in-lieu shall be due prior to platting of the portion of the site plan that includes the street stub.

4) If and when the adjacent property is proposed for development, the adjacent site plan will include completion of the street and the developer

of the adjacent site shall receive the full balance of the fee-in-lieu upon completion of the street.

5) If for any reason the first developer has not paid a fee-in-lieu and platted their portion of the street at the time the adjacent (second) developer is prepared to plat their portion of the street to the property line, the Town may make the fee-in-lieu option available to the adjacent developer provided the first developer is given notice.

6) In the event the adjacent developer pays a fee-in-lieu for their portion prior to platting, the first developer would then be responsible for connection of the street prior to platting.

7.5.5 Required Landscaped Median

At the main entrance to any Low Density (LD), Medium Density (MD), or Planned Unit Development (PUD) District subdivisions containing 50 or more lots, there shall be a landscaped median containing trees. There shall be a 15' wide back of curb to back of curb landscaped median for large trees or an 8' wide back of curb to back of curb landscaped median for small trees. Large trees shall have at least 350 square feet of non-paved area around the trunk, and small trees shall have at least 250 square feet of non-paved area around the trunk. Trees shall be selected from the *Town of Apex Design and Development Manual*'s recommended tree list.

7.5.6 Reserved

7.5.7 Storm Drainage

All storm drainage improvements shall be installed in accordance with the *Town of Apex Standard Specifications and Standard Details*. In addition, all storm drainage improvements shall comply with the following provisions:

A) ***Generally***
The subdivider shall provide an adequate drainage system for the proper drainage of all surface water in order to protect the proposed development from water damage. The design of such system shall be subject to the approval of the Water Resources Director.

B) ***Connection to Town System***
Where feasible, the subdivider shall connect to the municipal storm drainage system.

C) ***Design of System Not Connected to Town System***
Where the municipal storm drainage system cannot feasibly be extended to the subdivision, a surface drainage system shall be designed to complement surface drainage systems on surrounding properties.

D) ***Cross Pipes***
Cross pipes under streets and driveways shall be reinforced concrete or corrugated metal. Where corrugated metal is used, the gauge shall be in accordance with the specifications of the North Carolina Highway Commission.

E) ***Side Slopes of Surface Courses***
Surface drainage courses shall have side slopes of at least one foot of horizontal distance for each one foot of vertical distance.

F) ***Grade of Surface Course, Direction into Sanitary Sewer***
The minimum grade along the bottom of a surface drainage course shall be a vertical fall of approximately one foot in each 300 feet of horizontal distance. No surface water shall be channeled or directed into a sanitary sewer.

7.5.8 Underground Utilities

If expressly approved by the Town Council, the subdivider may install new underground utilities to serve the subdivision, at the subdivider's own expense and without expense to the Town, including but not limited to, electrical distribution lines, natural gas lines, fiber optic lines, telephone lines, and cable television lines.

The subdivider shall provide each residential driveway and each building lot with at least one utility access conduit. The placement, sizing, and materials to be used shall be in accordance with the *Town of Apex Standard Specifications and Standard Details*.

7.5.9 Schedule of Installation

A) Subdivision improvements shall be installed on the site in the following sequence:

1) Street grading and installation of water distribution lines, sanitary sewers and storm sewers. Connections for each system shall be extended beyond the curb line to preclude subsequent cutting of pavement.

2) Curbing and gutter.

3) Street base material.

4) Street paving.

5) Sidewalks.

6) Installation of electric, gas, telephone and cablevision service lines. Connections for each system shall be extended beyond the curb line to preclude subsequent cutting of pavement.

B) All public recreational facility requirements shall be completed and accepted by the Town prior to completion of 50 percent of the building permits being issued for a subdivisions; 25 percent of the building permits being issued for Planned Developments; or 50 percent of units being issued a certificate of occupancy for Site Plans.

C) All road improvements within a public right-of-way (including but not limited to road widening, road extension, lane striping/re-striping, curb and gutter installation, sidewalk installation, crosswalk striping, signal installation and signal upgrades) shall be completed as noted in Sections 7.5.9(C)(1) and (2) below. No bonding is allowed to extend these completion requirements except as noted.

1) *Non-residential development*

a) All road improvements required per the *Town of Apex Thoroughfare and Collector Street Plan*, all proposed roadways to be constructed within existing or proposed public right-of-way as part of the approved development plan and all additional offsite road improvements required to mitigate development traffic impacts to existing facilities must be completed prior to

issuance of the first Certificate of Occupancy (CO) in the development. For phased developments, all the improvements applicable to a phase must be completed before the first CO is issued for the phase.

b) All other road improvements (including but not limited to drives, private roads, and alleys) must be completed prior to the last CO in the development or per the approved phase plan for the project, whichever is first.

c) Signal installations or upgrades which are required improvements in the TIA shall be installed based on NCDOT and Town of Apex approvals. Bonding for signals shall be in accordance with Sec 7.5.13.

2) *Residential development*

a) All road improvements required per the *Town of Apex Thoroughfare and Collector Street Plan*, all proposed roadways to be constructed within existing or proposed public right-of-way as part of the approved development plan and all additional offsite road improvements required to mitigate development traffic impacts to existing facilities must be completed prior to the first plat approval for single family residential and townhomes and prior to the first CO for multi-family, apartments and/or condominiums. For phased multi-family, apartment and/or condominium developments, all the improvements applicable to a phase must be completed before the first CO is issued for the phase.

b) All other road improvements (including but not limited to drives, private roads, and alleys) must be completed prior to completion of ninety-five (95%) percent of the COs within the development or per the approved phase plan for the project, whichever is first.

c) Sidewalk installation is preferred prior to the first plat being signed. Sidewalks may be bonded in accordance with Sec. 7.5.13 but must be installed lot line to lot line prior to any single family or townhome CO. However, all sidewalks required per the approved development plan shall be installed by the time that 95% of CO's for the subdivision phase have been issued.

d) Signal installations or upgrades which are required improvements in the TIA shall be installed based on NCDOT and Town of Apex approvals. Bonding for signals shall be in accordance with Sec. 7.5.13.

7.5.10 Installation of and Reimbursement for Oversized and/or On-Site/Off-Site Improvements

Where the Town Council deems it necessary in the interest of the health, safety and general welfare of the residents of the Town, the subdivider shall make certain improvements at sizes in excess of those which would normally be required. Where such oversized improvements are required, the Town shall reimburse the subdivider for the cost of materials incurred over and above those required to serve such subdivider's subdivision. Such reimbursement shall be made in accordance with the policies regarding Town participation in oversized and/or on-site/off-site utility projects as may be amended

from time to time. The timing of the installation of the oversized and/or on-site/off-site road improvements shall follow the requirements of Section 7.5.9(C).

7.5.11 Ownership of Completed Improvements

All water, sanitary sewerage and storm drainage facilities, hydrants, pumps, valves, blowoffs, manholes, service meters and all other appurtenances and fixtures associated with such systems which are installed in public rights-of-way and utility or drainage easements under the requirements of this article shall become the sole property of the Town upon acceptance. All electric service facilities installed in public rights-of-way and utility easements located within the municipal electric service area shall become the sole property of the Town upon acceptance.

7.5.12 Installation Prerequisite to Approval of Final Plat and Extension of Town Services or Utilities

A) Prior to approval of a final plat for subdivision, the subdivider shall have installed improvements specified in this chapter or guaranteed their installation as provided in this section.

B) No municipal services or utilities shall be extended or furnished to any subdivision either within or outside the Town until the subdivider shall have installed the improvements specified in this chapter or guaranteed their installation as provided.

7.5.13 Performance Guarantee in Lieu of Construction Prior to Acceptance of Final Plat

In lieu of prior construction of the improvements required by this article, the Town may, for the purpose of approving a final plat, accept a guarantee from the subdivider that such improvements will be carried out according to the Town's specifications at subdivider's expense. Such guarantee may be in the form of a surety bond enforceable at the sole discretion of the Town, a letter of credit that meets the specifications of Sec. 7.5.17 *Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance,* certified check drawn in favor of the Town, or cash deposited with the Town. The subdivider shall install sufficient improvements to provide functional fire protection (with adequate street access and water supplies for the fire-fighting equipment). Such guarantee shall be in an amount of not less than 125 percent of the estimated cost of the construction of the required improvements. The developer shall submit his estimate of this amount subject to review, modification, and approval, which shall be by the Town Engineer. Performance guarantees shall run for a period of one year and may be renewed once for a like period upon written approval from the Town Engineer. All required construction of improvements, less the final lift of asphalts and adjustments, shall be completed within one year from approval of the final plat. The obligation to maintain Performance Guarantees for the final lift of asphalt and utility adjustments is independent of the additional obligation to provide the Defects Guarantee.

7.5.14 Defects Guarantee

A) The Town Engineer shall require a bond (enforceable at the sole discretion of the Town) guaranteeing utility taps, curbs, gutters, street pavement, sidewalks, greenways, drainage facilities, water and sewer lines and other improvements against defects for one year. All guarantees must remain in force in the Town’s favor for a period of no less than the longer of 1) one year from the satisfactory completion of the performance inspection, or 2) until 60% of the lots in the bonded phase have been issued a Certificate of Occupancy. If during the one-year defects period substantial corrections to the required improvements are made, then such corrections must be bonded for an additional one year after acceptance by the Town. Substantial corrections are defined as follows:

1) *Roadway.* Total repair area exceeds 15 percent of the original construction.

2) *Curb and gutter.* Total linear feet of repairs exceeds 15 percent of the original construction.

3) *Water system.* The system experiences two or more failures with the piping or any associated components.

4) *Sewer system.* The system experiences two or more failures with the piping or any associated components.

5) *Storm water collection system.* The system experiences two or more failures with the piping or any associated components.

B) This bond shall be in the amount determined by the Town Engineer and shall be in cash or be made by a surety company authorized to do business in North Carolina.

7.5.15 Maintenance Guarantee

The Town Engineer shall secure from all subdividers a bond or guarantee in which each subdivider shall agree to maintain the backfill and any improvements located thereon and therein and any ditch, which has been dug in connection with the installation of such improvements. Such bond or guarantee shall be binding on the subdivider for a period of one year after the acceptance of such improvements by the Town.

7.5.16 Final Plat Review Contingent on Execution of Guarantees

No final plat will be accepted for review by the Planning Director and the Town Engineer unless such plat is in compliance with Sections 7.3.4(C) and Sections 7.5.12 through 7.5.15.

7.5.17 Irrevocable Letter of Credit in Lieu of Surety Bond or Other Guarantee of Performance

Whenever by this section a surety bond, certified check, or cash bond is required to guarantee performance by any person or to guarantee against defects, the security for said guaranty may be in the form of an irrevocable letter of credit from any commercial bank doing business in the state and addressed to the Town in the sum and the terms required by such bond, guaranty, or deposit.

ARTICLE 8 GENERAL DEVELOPMENT STANDARDS

8.1 RESOURCE CONSERVATION

8.1.1 General

A) ***Purpose***
Protection of the Town's existing natural and cultural resources is intended to preserve the visual and aesthetic qualities of the Town; to encourage site design techniques that preserve the natural and cultural environment and enhance the developed environment; to control erosion, slippage, and sediment run-off into streams and waterways; to increase slope stability; and to protect wildlife habitat and migration corridors.

B) ***Applicability***
These resource conservation standards shall apply to all new development in the Town, except for development on lots of record that were approved for single-family residential use prior to the effective date of this UDO.

C) ***Structure of this Section***
This Section 8.1 requires applicants for development in the Town to protect a variety of types of sensitive natural and cultural resources. The resource conservation area (RCA) provisions of Sec. 8.1.2 require delineation of a protected area for every development site, and provide a general framework within which other, more specific types of protection must take place. Subsequent sections (8.1.3 through 8.1.4) provide specific rules for protecting specific types of resources.

8.1.2 Resource Conservation Area

A) ***Establishment of RCA***
RCA required. For every development subject to administrative approval, site plan review**,** master subdivision plan review, and/or planned development plan review, the applicant shall propose, and the Planning Director shall establish, a "resource conservation area" (RCA) according to the criteria set forth below. The plan shall indicate the specific area(s) of a lot, lots, or site to be protected (the RCA), outside of which the developed project (including buildings, accessory structures, driveways, parking, and private utilities) and all development activity shall be contained. The landscaping of non-vegetated RCA is governed by Sec. 8.2.3(C)(3) and the *Town of Apex Design and Development Manual*.

1) *Off-site RCA.* RCA may be established outside of the limits of the development site provided that the Town Council finds through a quasi-judicial public hearing that all of the following criteria are met by the off-site RCA:

a) The area must include one or more of the RCA categories listed in 8.1.2(B)(1).

b) The area must be located within the Town of Apex's corporate limits or extra-territorial jurisdiction.

c) The area must be 1) located directly adjacent to existing RCA, existing public parks, existing conservation easements, or other publicly held land with environmental preservation or wildlife

habitat preservation as its primary function (such as wetland mitigation), or 2) be a minimum size of 2 acres and a minimum width of 30 feet.

d) The provision of off-site RCA shall be provided at a rate of 1.5 times the on-site RCA. However, the on-site RCA cannot be reduced more than 50% through the provision of off-site RCA.

e) The off-site RCA must be deeded to the Town of Apex or another qualified land management agency, such as but not limited to the Triangle Land Conservancy.

B) ***Criteria for Establishing RCA***
In establishing the RCA, the Planning Director shall take into account the criteria listed below:

1) *Categories of RCA:*

a) Undisturbed floodplains, floodways, flood fringes, and flood hazards.

b) Undisturbed riparian streams, wetland protection, and riparian buffering.

c) Undisturbed steep slopes equal to or greater than 3:1 (30%) and other erosion prevention and control measures, including, but not limited to, protection of natural drainage channels.

d) Preservation of undisturbed forested areas (including trees less than 18” caliper in size), or individual significant trees 18” caliper and larger.

e) Undisturbed significant wildlife and plant habitat areas.

f) Preservation of other significant site elements such as, but not limited to, historic and cultural sites and structures, scenic views, farm ponds, rock outcroppings, and cemeteries.

g) Private recreation area, including but not limited to, privately-owned play lawns, open space, pools, tennis courts, tot lots, ball fields, and village greens shall be allowed to be counted as partial credit toward the RCA requirement. In order to qualify as RCA, the private recreation area must be located on a lot .3 acre or larger in size. The credit for the private recreation area shall be 50% of the acreage provided in the private recreation area. (For example, 1 acre of private recreation area counts as .5 acre of RCA).

2) *Site and Tree Survey Required.*
In order to determine which categories of RCA shall be established on a site, the applicant shall provide a site and tree survey to the Planning Director as part of the submission of an application for development approval. The site and tree survey shall map the following items:

a) Provide boundaries of the site in metes and bounds.

b) Provide field verified topography of the area located within the limits of disturbance (including stormwater retention areas within RCA) at a minimum of 2' contours is required at the site plan stage and subdivision construction plan stage of plan review or 2013 topography generated from the 2013 LiDAR Project over Wake County, NC, and acquired on February 21-24, 2013, as updated from time to time. Topographic coverage may be obtained from the Town of Apex, the Town of Cary, or Wake County, depending on the site location.

c) Call out location of slopes equal to or greater than 3:1 (30%) and rock outcroppings.

d) Provide tree survey locating all specimen (hardwood) trees 18" caliper and larger within RCA and buffers on site. Fifty feet (50') outside of the perimeter of the site, document location of all trees 18" caliper and larger by providing an aerial photograph, registered forester's or certified arborist's report, tree survey, or other appropriate means.

e) Document that all proposed RCA areas meet the Criteria for Establishing RCA (per Section 8.1.2(B)(1)) by means of a tree survey or other appropriate means, including but not limited to a registered forester's or certified arborist's report referenced to-scale digital photos, a registered forester's or certified arborist's report referenced to aerial photographs. Aerial photographs are not an acceptable stand-alone means of documentation for trees in RCA.

f) Document that buffers meet the required "A", "B", "C", "D" or "E" type standards by means of a tree survey or other appropriate means, including but not limited to a registered forester's or certified arborist's report referenced to-scale digital photos, a registered forester's or certified arborist's report referenced to aerial photographs. Aerial photographs are not an acceptable stand-alone means of documentation for trees in buffers.

g) Show location of wetlands as determined by a licensed soil scientist, the Army Corps of Engineers (ACOG), or the NC Department of Environmental Quality (DEQ).

h) Show location of all creeks, streams, ponds, and dams.

i) Note whether the site is in the Primary or Secondary Watershed Protection Overlay District and show required riparian buffers on both sides of perennial and intermittent streams.

j) Show location of the 100 year floodplain and 100 year floodway based upon the FIRM maps, the FEMA detailed study, and field measurements (if applicable). If not applicable, certify that there is no FEMA floodplain on the subject property by giving FIRM map # and date. Provide non-FEMA flood study information on floodplains, floodways, flood fringes, and flood hazards at the construction plan stage of plan review.

k) Provide location of existing fencing, roads, and structures.

l) Provide locations of significant site elements such as, but not limited to, historic and cultural sites and structures, scenic views, farm ponds, rock outcroppings, and cemeteries.

m) Indicate clearly on the plans the location of all existing utilities (water, sewer, natural gas, electric, telephone, cable, fiber optic, etc.) above and/or below ground as well as existing utility easements.

n) Identify location of any underground storage tanks, hazardous waste and debris, abandoned wells, septic tanks or similar structures.

C) ***Size of the RCA***
The size of the RCA for each development site shall be calculated by the applicant and staff based on the following:

1) *Planned Developments*
The RCA for all planned developments shall be determined by the Town Council per Section 2.3.4(F)(1)(c) and per Section 8.1.2(C)(4), (5), or (6) as applicable, based on the criteria set forth in subsection (B) above.

2) *Small Town Character Overlay District*
All development meeting the criteria of Section 6.3 *Small Town Character Overlay District* shall be exempt from Section 8.1 *Resource Conservation.*

3) *Low Density Single-Family Residential Developments (maximum of two dwelling units per gross acre)*
Low density single-family residential developments with a maximum of two (2) dwelling units per gross acre shall be exempt from Section 8.1 *Resource Conservation*.

4) *Development located north and east of NC 540*
All developments which do not meet the criteria of subsections 8.1.2(C)(2) or (3) above and which are located north and east of NC 540 shall provide buffers and RCA equal to or greater than 20% of the gross site acreage.

5) *Development located south and west of NC 540*
All developments which do not meet the criteria of subsections 8.1.2(C)(2), (3), or (4) above and which are located south and west of NC 540 shall provide buffers and RCA equal to or greater than 25% of the gross site acreage.

6) *Resource Conservation Area Exchanged for Reduced Width Buffers*
Resource Conservation Areas (RCA) may be established in lieu of portions of otherwise required perimeter, streetfront, thoroughfare, and fully- and limited-controlled access highway buffers, provided that all of the following criteria are met:

a) RCA established in lieu of buffers shall be undisturbed forested areas or individual significant trees 18” caliper and larger, meeting the category described in Sec. 8.1.2(B)(1)(d) *Categories of RCA*.

b) RCA established in lieu of buffers shall be located directly adjacent to existing or proposed RCA, or shall be a minimum of ½ acre in size.

c) RCA established in lieu of buffers shall have a minimum width of 30 feet; the minimum width can be measured in combination with other RCA and buffers.

d) The exchange rate for RCA established in lieu of buffers shall be at a 1 to 1 (1:1) ratio.

e) The reduced width buffers must still meet the screening (opacity) requirement for the type of buffer required.

f) No required perimeter or streetfront buffer can be reduced to less than one half of the required buffer width or less than 10' (whichever is greater).

g) A required thoroughfare buffer may be reduced to no less than 15 feet when an encroachment is due to public street improvements.

h) Required fully- and limited-controlled access highway buffers can only be reduced per Sec. 8.2.6(B)(5)(f) *Buffers Along Fully- and Limited-Controlled Access Highways*.

7) *Maximum Built-Upon Area*
The overall site (including RCA), shall not exceed the applicable maximum built-upon area limitations set forth in Sec. 5.1 *Table of Intensity and Dimensional Standards* and Sec. 6.1 *Watershed Protection Overlay Districts*.

8) Notwithstanding any other provisions in the UDO, if a public utility line or easement counts toward buffer requirements, then the Public utility line or easement shall be allowed to be counted in RCA calculations (see Secs. 8.2.2(C)(2)(a) and 8.2.6(C)(4)).

D) ***Ownership of RCA in Subdivisions***
No portion of the RCA in a planned development or residential or non-residential subdivision shall be part of an individual building lot. The RCA shall be designated so that the RCA is not removed, modified or damaged. The RCA shall be a separate lot or lots and be owned in common by the building lot owners or owned by a separate entity or entities (e.g. property owner's association, development corporation, building lot owner or owners, etc.) In no case shall the RCA for one subdivision be owned by more than 3 entities.

E) ***Designation of RCA on Plans and Plats***

1) *Master Subdivision Plan and Plats*. The approved RCA shall be shown on the master subdivision plan as a separate lot (or lots) from the individual residential or non-residential building lots. The RCA shall be shown on the final plat, to be preserved in perpetuity.

2) *Site Plans and Plats.* The approved RCA shall be shown on the site plan for each development site. The RCA shall be shown on the final plat, to be preserved in perpetuity.

F) ***Development Activity Inside of the RCA***

1) No development, including grading or vegetation removal or alteration, shall occur as part of the development project or associated construction activity inside the RCA except as provided in subsection (3) below.

2) No private utility easements shall be allowed within RCA. Existing and proposed private easements must be excluded from the RCA calculation.

3) Disturbance or construction activity may occur inside the RCA when construction is done in such a way as to protect significant resources with approval of the Planning Director for the following limited purposes:

a) Emergency public safety activities when such activities and installations cannot reasonably be restricted to areas outside the RCA or other nearby developed areas. Measures shall be required to mitigate the impact of the disturbed area;

b) Engineered stormwater controls, including but not limited to retention and detention basins, when they are designed to look like natural areas, and meet the requirements of Section 6.1.12;

c) Construction of a trail, pedestrian walkway, or passive recreational amenity (e.g. picnic tables, benches, gazebo, etc.) that will provide public access for educational or recreational purposes when such trails, walkways, or amenities cannot reasonably be restricted to areas outside the RCA or nearby developed areas and where construction is done in such a way as to protect significant resources;

d) The enhancement of the habitat values and/or other natural resource values of an identified natural area; or

e) The removal of noxious species, such as kudzu or poison ivy for general maintenance of the area; see the *Town of Apex Design and Development Manual* for details.

G) ***Standards for Protection During Construction***
The owner of the property, the developer, and contractors shall be responsible for protecting all existing natural resources, including trees, vegetation, streams, wetlands, ponds, wildlife habitats, historic/cultural sites and structures, that are designated as RCA or as areas to be preserved. Natural areas shall be protected and maintained in a healthy, viable condition. The following minimum standards shall apply throughout the site and/or subdivision approval process:

1) *Protective Fencing*

a) The RCA shall be designated in the field prior to commencement of excavation, grading, or construction with construction barrier fencing or other methods approved by staff. Protective fencing shall also be placed around all other designated save areas

identified by the Planning Director. Fence placement shall be based on the following minimum standards:

(i) *Trees and Vegetation:* Fencing shall enclose all stands of trees or vegetation within a buffer or other save area that meet the base buffer standard (trees with calipers of 2 ½ inches or greater). Where significant trees exist (18-inch caliper or greater), the fencing shall protect the critical root zone of such trees and shall be located no less than one foot from the trunk of the tree for each one inch of tree caliper (diameter at breast height). Both applicant and staff shall consider the existing site conditions in determining the exact location of any tree protection fencing. For the protection of trees and clusters of trees to be preserved outside the RCA, tree protection specifications as required in Sec. 8.1.2(G)(2)(c) below shall be followed.

(ii) *Floodplains:* Fencing shall be placed along the line representing the 100-year floodplain.

(iii) *Streams:* Fencing shall be placed at the outside edge of the required riparian buffer in accordance with Sec. 6.1 *Watershed Protection Overlay Districts*.

(iv) *Other Resources*: Fencing shall be placed at least 10 feet from the edges of other saved or protected features identified by the Planning Director. Such features may include, but are not limited to, wetlands, ponds, rock outcroppings, steep slopes and historic structures.

b) No construction, grading, equipment or material storage, or any other activity shall be allowed within the fenced protection area, and the fencing shall remain in place until all land alteration, construction, and development activities are completed.

2) *Other Requirements*

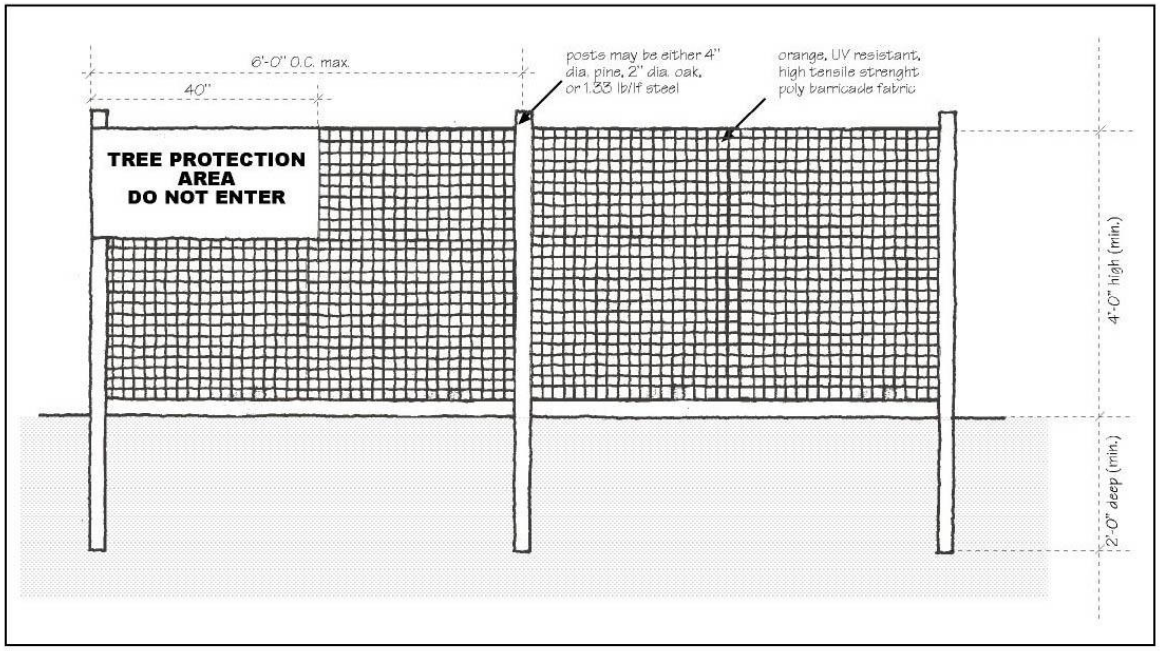
a) The owner shall keep all saved areas within the RCA free of refuse, debris, equipment, and supplies throughout the entire site development process.

b) The owner shall be responsible for replacing trees and/or vegetation if they are destroyed or substantially damaged and for paying any civil penalties associated with the encroachment into any protected area according to the standards set forth in Sec. 8.2.3.

c) The proposed methods for protection shall be reviewed and approved as part of the site plan and/or master subdivision plan approval process and must be clearly indicated on plans. If construction is proposed within any saved area, a registered architect, engineer, or landscape architect, certified arborist, or horticulturalist, must submit detailed plans indicating how the sensitive area will be protected, and shall supervise all construction activity within such areas. Protection measures

must adhere to generally accepted good design standards and practices.

d) Out parcels that are graded shall be seeded, mowed, and maintained until development occurs on the parcel.



TREE PROTECTION FENCE

Warning signs to be made of durable waterproof material all letters to be at least 3" high, clearly legible
Signs to be placed 200' on center, max.
Signs to be placed at each end of linear tree protection area and 200' on center thereafter
For tree protection areas less than 200' in perimeter, provide no less than one sign per protection area and/or side
Attach signs securely to fence posts and fabric
Fabric must be attached to approved posts only - do not attach to trees
Maintain tree protection fence throughout duration of project - fencing must remain upright and slack free
Additional signs and/or protection measures may be required by Planning Department based upon actual field conditions
Failing to maintain tree protection measures may result in fines and/or permit revocation

Figure 8.1.2(G)(1): Tree Protection Fencing

8.1.3 Tree and Vegetation Conservation

A) ***Purpose***

1) For all development sites, the Town requires both the conservation of existing trees and vegetation, and also the installation of new landscaping. This section sets forth requirements for the conservation of existing trees and vegetation, and new landscaping requirements are set forth in Section 8.2, *Landscaping, Buffering, and Screening*.

2) The Town encourages and supports saving all types of existing vegetation. This includes small caliper, mixed hardwood stands of trees to large significant vegetation. The intent of this section is to save not only large, significant vegetation, but also existing, small vegetation that over time will mature into stable, healthy stands of large trees.

B) ***Exemptions for Specific Activities***
The following activities shall be exempt from this section:

1) The removal, by hand, of dead or naturally fallen trees or vegetation, or the removal, by an approved method, of trees or vegetation that are found by the Town to be a threat to the public health, safety, or welfare;

2) The selective and limited removal of trees or vegetation necessary to obtain clear visibility at driveways, intersections, or within sight triangles;

3) The selective and limited removal of trees less than 2-inch caliper for the purpose of performing authorized field survey work;

4) The removal of trees or vegetation on land zoned or lawfully used for:

a) Agricultural, forestry, and horticultural uses as classified by Wake County, including normal forestry activities conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes.

However, if a Tree Removal and Non-Structural Development Permit is not issued, per NCGS 160A-458.5(c)(1), no approval of a site or subdivision plan or issuance of a building permit shall occur for a period of 3 or 5 years from the date the tree removal activities are completed, based on the following:

(i) Three years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought.

(ii) Five years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.

b) The removal of trees or vegetation for the purpose of sale by established commercial garden centers, greenhouses, or nurseries. Such land shall be classified by Wake County as horticultural use in order to meet this exemption.

C) ***Tree/Vegetation Removal***

1) *Inside the RCA*
No trees or vegetation shall be removed inside the approved RCA, except as specifically exempted in this section or article. Significant

trees or vegetation removed from inside the RCA, including those removed for installation of utility lines, but not including those removed pursuant to exempted activities, shall be replaced as set forth in Section 8.2.3, *Maintenance Responsibility and Replacement of Damaged Vegetation.*

2) *Outside the RCA*

a) To the maximum extent feasible, significant trees or vegetation outside the RCA shall be preserved.

b) Any existing trees or vegetation outside the RCA that are in appropriate locations, in sufficient quantities, and of acceptable quality to be utilized to fulfill landscaping or buffering requirements of this Ordinance, including the "base buffer" as defined in Article 12, shall be preserved to the maximum extent feasible. All existing vegetation which meets the landscape buffer requirements of this article, or which is located in a preservation area (plant communities, groves and selected individual trees) designated on the approved site plan, subdivision plan, or PD plan shall be preserved on the site. Existing vegetation that is to remain on the site, as well as off-site vegetation to be protected, shall be clearly delineated and identified on all site plans, subdivision plans, and PD plans.

c) *Tree/Vegetation Removal for Views Prohibited*
No trees or vegetation shall be removed for the sole purpose of providing open views to or from structures on a site, except for the selected and limited removal of trees or vegetation necessary to obtain clear visibility at driveways, intersections, or within sight triangles.

d) *Site and Tree Survey Required.*
The applicant shall provide a site and tree survey to the Planning Director as part of the submission of an application for development approval. The site and tree survey shall follow the requirements of Section 8.1.2(B)(2).

D) ***Tree Protection During Construction and Grading Activities***
In addition to the general requirements for protection of natural resources during construction and grading activities set forth in Section 8.1.2(F), the following specific standards shall apply to protect all trees and vegetation on a development site throughout the site development and construction process:

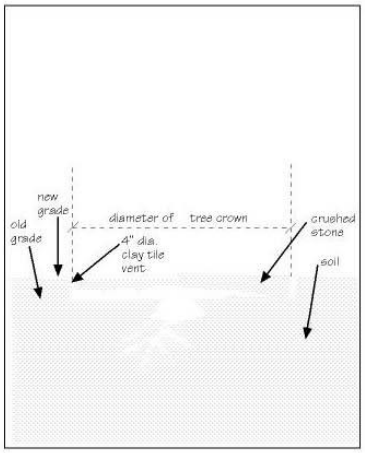
1) If it is necessary to fill over the critical root zone, compacted soils shall be avoided by sandwiching fabric, rocks, and more fabric under the area to be filled.

2) Fill placed directly on the roots shall not exceed a maximum of six inches in depth.

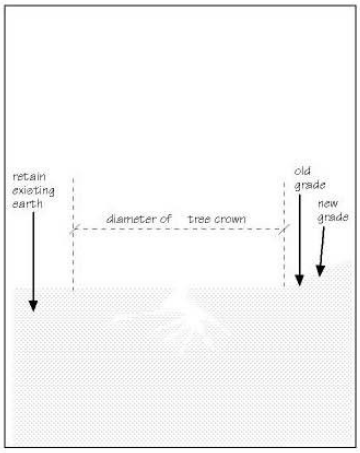
3) If fill creates a tree well or depression around a tree or shrubs, such area shall be drained so that the vegetation is not drowned by the pooling of rainfall or irrigation.

4) If a tree's roots must be cut, the branches shall be trimmed by an amount equal to the percent of roots that were lost. Roots shall be pruned cleanly prior to digging and not ripped off by heavy equipment. Cutting more than 30 percent of the roots endangers the health of the tree, and over 40 percent affects the tree's stability.

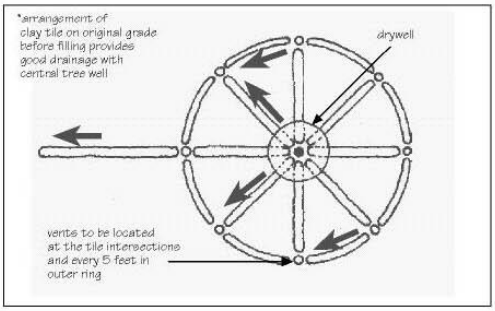
5) Utility trenches near trees should be avoided. If a line must be near a tree, tunneling, auguring, or other mitigation measures shall be used.



FILLING LESS THAN 30" AROUND EXISTING TREE

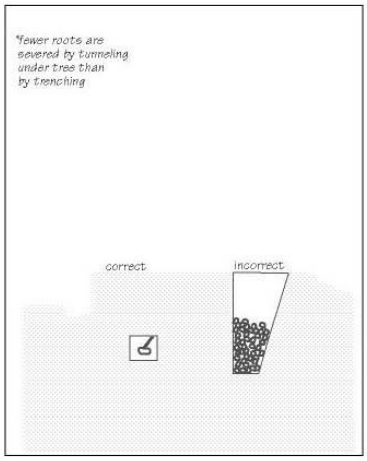


FILLING GRADE AROUND EXISTING TREE

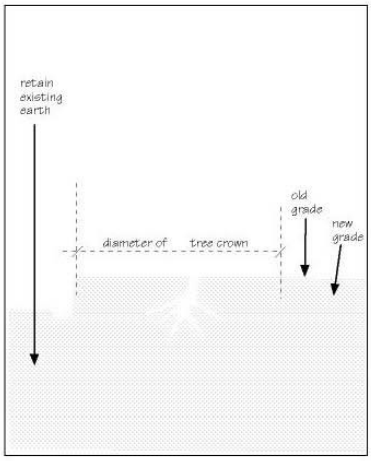


FILLING OVER 30" AROUND EXISTING TREE

Note: These are meant to illustrate measures that may be taken when construction around trees can not be avoided. A landscape architect or certified arborist should be consulted for specifics.



UNDERGROUND UTILITIES NEAR EXISTING TREES



CUTTING GRADE AROUND EXISTING TREES

Figure 8.1.3(D): Filling and Cutting Around Trees

8.1.4 Development Restrictions on Steep Slopes

A) ***Staff Review Criteria***
Staff shall review all Site Plans and/or Subdivision Plans and evaluate them according to the following standards:

1) Site disturbance shall be minimized to the maximum extent practicable;

2) Cuts for utilities and access driveways shall be shared to the maximum extent feasible;

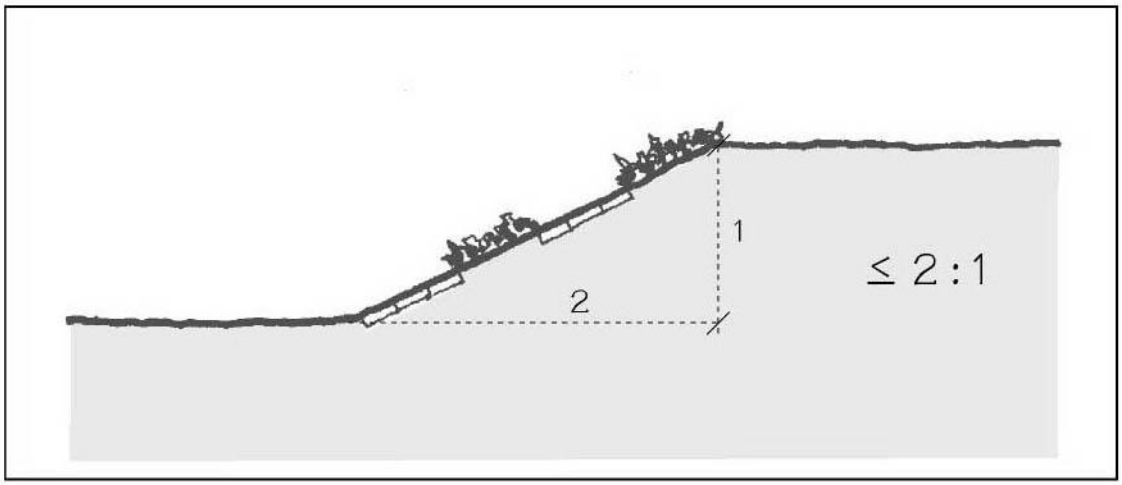
3) To the maximum extent feasible, new construction shall not take place on any portion of a parcel that shows slope instability, flooding, or other natural or man-made hazards;

4) The applicant shall demonstrate that the slope's ground surface and subsurface are not unstable, that the proposed development will not cause instability or increase the potential for slope failure, and that the development of the slope will not increase the degree of hazard both on-site and on adjacent properties.

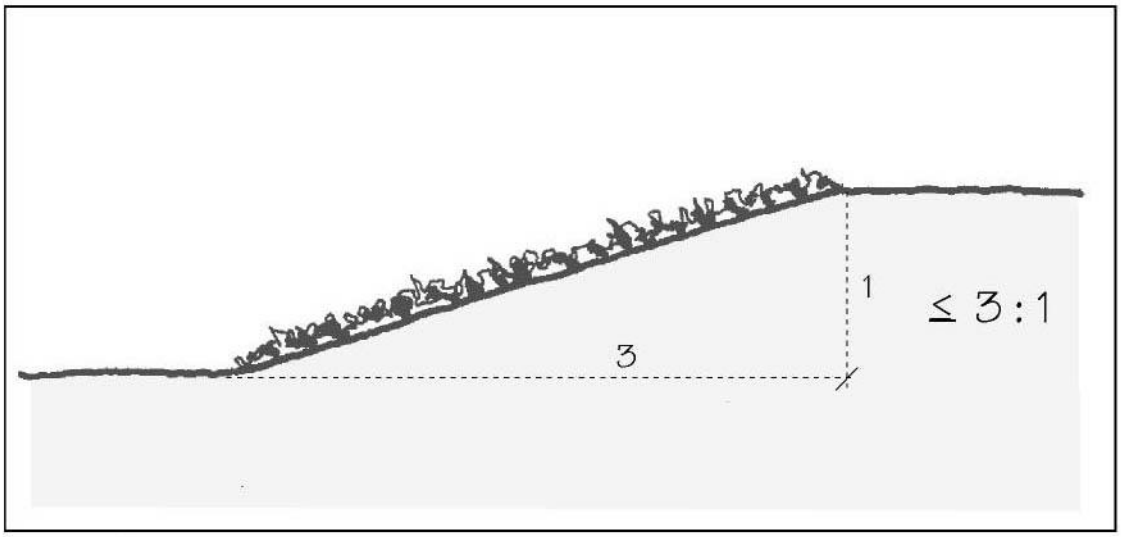
5) Slopes greater than a ratio of two to one (2:1) shall not be permitted.

B) ***Stabilization Measures***
On all sites containing steep slopes on which development is allowed pursuant to this subsection, the following stabilization measures shall be required:

1) All slopes equal to 2:1 shall be stabilized with a suitable combination of plantings and permanent slope retention devices. Slopes equal to or greater than 3:1 shall not be stabilized with turf grasses, but shall be stabilized with other permanent ground cover referenced in the *Town of Apex Design and Development Manual*.



Stabilize 50 per cent or slopes greater than 2:1 with permanent slope retention devices or a suitable combination of plantings (ground cover, shrubs, etc.) and retention devices.



Stabilize slope greater than 3:1 with permanent ground covers rather than turf grasses

Figure 8.1.4: Steep Slope Stabilization Measures

8.1.5 Reserved

8.1.6 Retaining Structures

Retaining structures are permitted as elements of site design and shall meet the following requirements:

A) Retaining structures providing a cumulative vertical relief greater than five (5) feet in height within a horizontal distance of 50 feet or less must be designed, inspected, and certified by a licensed professional engineer. Additionally, retaining structures meeting this provision must be constructed under a building permit from the Building Inspections and Permitting Department.

B) All grading and support structures associated with the retaining structure shall not encroach into any required buffer or protected area (such as, but not limited to, RCA and critical root zones of buffer trees), and shall be contained entirely on site.

C) Retaining structures on land developed for single-family and duplex residences shall not exceed six (6) feet in height and shall not exceed two (2), six (6) feet tall terraced sections.

D) Terraced sections must be spaced a minimum of three (3) feet horizontally to allow for planting of small shrubs and groundcovers between the terraces.

E) Retaining structure materials must meet one of the following standards:

1) Segmental retaining wall materials must be an integrally tinted medium or dark brown or rust color.

2) Gravity and cast in place structures must be integrally tinted or stained a medium or dark brown or rust color or be covered with a masonry veneer that is a medium or dark brown or rust color.

8.2 LANDSCAPING, BUFFERING, AND SCREENING

8.2.1 Purpose and Intent

The intent of this section is to establish standards to protect and enhance the Town's appearance by the installation of appropriate landscaping and buffering materials; to encourage the preservation of native plant communities and ecosystems; to maintain and increase the value of land by providing for restoration of disturbed areas and by incorporating adequate landscaping into development; to restrict the spread of invasive plant species that disrupt and destroy native ecosystems; to encourage skilled installation and continued maintenance of all plant materials; and to establish procedures and standards for the administration and enforcement of this section.

8.2.2 General Landscaping Design Standards

A) ***Aesthetic Enhancement Requirements***

Landscaping shall be utilized in the design to enhance the aesthetic quality of the property by adding color, texture, and visual interest while obscuring views of parking and unsightly areas and uses. In locations where new development alters visually attractive and distinctive natural landscapes, the selection and arrangement of new plantings shall be designed to complement and enhance the natural landscape character of the site. All areas not covered by parking, drives, streets, or structures shall be improved with landscape elements in accordance with this section.

B) ***Plant Materials***

1) *Use of Native or Adaptive Plant Materials*
In order to further water conservation and to assure growth and survival of new plantings, all new landscaping installed pursuant to this chapter shall be comprised entirely of native or adaptive plants that reflect the surrounding plant materials and environment. See the Town of Apex Development and Design Manual for a list of approved native or adaptive plants.

2) *Existing Plant Materials*

a) Healthy, existing trees and shrubs, including those preserved pursuant to the requirements of Section 8.1, *Resource Conservation*, shall be incorporated into the landscape to the maximum extent feasible, and may be used to meet the new landscaping requirements of this section. These existing plants shall be shown on the sensitive area analysis and labeled as "existing."

b) Design of the landscape shall take retained, existing trees into consideration with an adequate area provided around each tree that is free of impervious material to allow for infiltration of water and air. This pervious area shall be equal to 1.5 times the critical root zone of the tree. The root zones of existing trees and shrubs to be preserved shall be protected from unnecessary disturbance as stated in Sec. 8.2.2.

c) *Incentives.* The following incentives are provided to encourage the preservation of existing vegetation:

(i) Existing healthy vegetation may be counted towards meeting the performance criteria for buffers (Section 8.2.4) and parking lots (Section 8.2.5).

(ii) A 5 to 20 percent reduction in the number of parking spaces required on the site shall be allowed to the extent that the reduction will preserve existing healthy trees. The amount of reduction will be determined after taking all unique site conditions into account.

3) *Plant Sizes and Standards*
The standards for all trees and shrubs planted within buffers or as part of any landscaping, including the minimum height, root ball size, number of branches, and width shall conform with the American Standard for Nursery Stock published by the American Association of Nurserymen for that type of tree or shrub at the time of installation. The selection and planting of trees and shrubs shall conform to the standards set forth in the Town of Apex planting standards. Plants must meet the following sizes:

a) Large deciduous trees shall be at least 12 feet tall and 2½ inches caliper at the time of planting, and shall have an expected mature height of at least 30 feet.

b) Large evergreen trees shall be at least 8 feet tall and 2½ inches caliper at the time of planting, and shall have an expected mature height of at least 30 feet.

c) Small ornamental or under-story trees shall be at least 8 feet tall and at least 1½ inches caliper at the time of planting, and shall have an expected mature height of at least 18 feet.

d) Large type shrubs shall be at least 30 inches tall at the time of planting and at least 5-gallon container size. Mature height shall reach at least 4 feet. Large shrubs required to meet the standards for Type A buffer shall be between 5 and 6 feet tall at the time of planting, and at least 7-gallon container, and shall have a mature height of at least 6 feet.

e) Small type shrubs shall be at least 18 inches tall at the time of planting and at least 3-gallon container, and shall have a mature height of at least 2 feet.

f) Shrubs used as ground cover shall be at least one-gallon container size.

g) Grass shall be planted in species normally grown as permanent lawns in the Town and region. In swales or other areas subject to erosion, solid sod, erosion-reducing net, or suitable mulch shall be used and nursegrass seed shall be sown for immediate protection until complete coverage otherwise is achieved. Grass sod shall be free and clean of weeds and noxious pests or diseases. Ground cover shall be planted in such a manner as to provide 75% complete coverage after two growing seasons.

C) ***Location of Required Landscaping***

1) *On-Site Landscaping Required*
All landscaping shall be located on the property it serves. Landscaping located on adjacent properties or street rights-of-way shall not count toward the landscaping requirements of this section.

2) *Protection of Utilities*

a) No landscaping other than grasses shall be planted within underground public utility easements without the permission of the Water Resources Director per the accepted list of plant material and planting standards as provided in the *Town of Apex Design and Development Manual*.

b) No private utility lines or easements shall be allowed to be counted in the calculations for RCA, riparian buffers, or required landscape areas.

c) Landscaped overhead public utility easements may encroach into required highway, thoroughfare, streetfront, and perimeter buffers and count toward the required buffer and undisturbed buffer width as determined by the Table in Section 8.2.6(B), provided that the following standards are met:

(i) The buffer provided is at least 30' in width and the overhead public utility easement encroaches no more than 50% into the buffer.

(ii) The buffer plantings within the overhead public utility easements shall not exceed a mature height of 20' and shall be planted to meet the buffer type (e.g. Type A, B, C, etc.) requirements as closely as possible.

(iii) The buffer plantings in the first 15' outside the overhead public utility easement shall not exceed a mature height of 30'; the remainder of the buffer shall be planted to meet the requirements of the buffer type (e.g. Type A, B, C, etc.).

D) ***Irrigation***
If irrigation is to be used, no overhead spray type irrigation is allowed.

E) ***Landscape Installation and Inspection***

1) *Time Limit*
All landscaping, including mulching and seeding, shall be completed in accordance with the approved site plan or subdivision plan prior to issuance of a certificate of occupancy for the site or recording of a final subdivision plat.

2) *Extensions and Exceptions*
The Planning Department may grant exceptions and extensions to the above time limit in the following circumstances and under the following conditions:

a) All landscaping is required to be installed prior to a certificate of occupancy for the project, or in the case of phased development, for the phase of the project. If the applicant chooses to delay the installation of landscaping from April 1 through September 1, then the applicant shall provide a cash bond equal to 150% of the cost of materials and installation, based on the highest estimate received, to ensure installation of the required landscaping.

b) Exceptions may be granted due to unusual environmental conditions, such as drought, ice, over-saturated soil (deep mud) or inappropriate planting seasons for the plant species, provided that the developer or property owner provides the Town with a cash bond ensuring the installation of the remaining landscape materials. In such cases, the Planning Department may issue a temporary certificate of occupancy for a period of 30 to 180 days, depending on the zoning compliance enforcement officer's recommendation for the next earliest planting season. The bond shall be accompanied by documentation of the estimated cost of the remaining landscaping to be completed. This documentation may be a landscaping contractor's bid or contract, a nurseryman's bill or a similar document. The amount of the bond shall be equal to 150% of the cost of the plant material and installation costs yet to be installed, based on the highest estimate received.

c) Exceptions may be granted due to the substitution or unavailability of plant species or acceptable plant size as specified on the site plan or subdivision plan, provided that the developer or property owner provides the town with a cash bond to ensure that the unavailable plants will be installed on the property. In such cases, the Planning Department may issue a certificate of occupancy for a term of 180 days or to the next planting season, whichever comes first. Only 20% of the plant materials to be installed on the property may be delayed and bonded under this exception. All such substitutions shall be marked on the "as-built" landscaping plans submitted to the Planning Department and must be signed, dated and approved by that department prior to installation.

d) Exceptions may be granted due to circumstances beyond the developer's or property owner's control, such as incomplete construction or utility work in a proposed landscaped area within 30 days after expected site completion, provided that the developer or property owner submits a letter from the utility company stating the expected installation date and provides a cash bond equal to 150% of the cost of materials and installation to ensure installation of the required landscaping. In such cases, the Planning Department may issue a temporary certificate of occupancy for a period not to exceed 30 days.

3) *Inspections*

a) The Planning Department and zoning compliance enforcement officer shall inspect the site prior to the issuance of a permanent certificate of occupancy or recording of the final subdivision plat.

b) Prior to obtaining a certificate of occupancy or recording of the final subdivision plat, the developer or property owner shall submit an "as-built" plan to the Planning Department for all landscaping-related components of the site plan or subdivision plan.

c) The zoning compliance enforcement officer shall inspect the site one year after the issuance of a permanent certificate of occupancy or recording of the final subdivision plat in order to ensure compliance with the approved site plan or subdivision plan and to ensure that the landscape is properly maintained.

8.2.3 Maintenance Responsibility and Replacement of Damaged Vegetation

A) ***Maintenance Responsibility***

The owners of the property and their agents, heirs, or assigns shall be responsible for the installation, preservation, and maintenance of all planting and physical features required under this article. Any vegetation that is dead, substandard, unhealthy, of poor structural quality, or missing, shall be removed and replaced in conformance with the standards of this section and to the approved site plan or subdivision plan. In the event that any vegetation or physical element functioning to meet the standards of this section is severely damaged due to an unusual weather occurrence or natural catastrophe, the owner shall have one year or one growing season, whichever is sooner, to replace or replant. All plant materials should be allowed to reach their mature size and maintained at their mature size. Plants shall not be cut or severely

pruned so that their natural form is impaired. This section shall not apply when a developer has damaged or destroyed vegetation in the buffer, or caused vegetation to be damaged or destroyed. In this case, revegetation according to subsection (c) is required.

B) ***Replacement of Disturbed and Damaged Vegetation***
The disturbance of any landscaped area or vegetation installed pursuant to this article shall constitute a violation of the site plan or subdivision plan. All disturbed landscaped areas and vegetation shall be replanted so as to meet the standards of this section as well as the approved site plan or subdivision plan.

C) ***Replacement of Existing, Original Vegetation***
Existing trees and vegetation preserved pursuant to this article shall be considered as elements of a development project in the same manner as parking, building materials, and other site details. If such trees or vegetation are damaged during construction or dead within two years of completion of development, they shall be promptly replaced based on the standards of this section, taking into account any unique site conditions and vegetation remaining within the landscaped area. Replacement consists of one or a combination of the following:

1) A base fine of $20.00 per square foot area of disturbed area, not to exceed $40,000 total in accordance with appropriate penalty requirements then in effect.

2) Any tree with a caliper of at least 8 inches that is damaged or removed shall be replaced with one or more trees that have a caliper of at least 2½ inches and a cumulative caliper equal to or greater than the original tree.

3) For all other cases where existing vegetation is damaged or removed, the type and amount of replacement vegetation required shall be that which is necessary to provide the type of landscaped buffer or Resource Conservation Area required. Each category listed below is equal to one unit. One unit represents the replacement for 200 square feet of disturbed area. Fractions of a unit must be rounded to the nearest whole unit. Depending on the type of vegetation disturbed and the type buffer or Resource Conservation Area required, the Planning Department shall determine which units must be used. For example, a 9,950 square foot disturbed area is required to have 49.75 units of replacement vegetation, which rounded to the nearest whole unit is 50 units of replacement vegetation. To ensure plant diversity and suitability, the Planning Department may, in consultation with the applicant, determine that twenty-five of category “a” and twenty-five of category “c” are required in one instance, while in another instance ten of each category (a, b, c, d, and e) are required. These requirements shall also be used to re-vegetate non-vegetated areas that are being used to meet Resource Conservation Area requirements. The five categories are as follows:

a) One large deciduous tree of at least 2½ inches caliper and 12 feet high.

b) Two small type trees of at least 1½ inches caliper and at least 8 feet high above ground level at the time of installation.

c) One large evergreen tree of at least 2½ inches caliper and at least 8 feet high above ground level at the time of installation.

d) Four evergreen shrubs of at least 2 feet in height and 3-gallon container size at the time of installation.

e) Four deciduous shrubs of at least 2 feet in height and 3-gallon container size at the time of installation.

4) In addition to the above requirements, on existing slopes equal to or greater than a ratio of 2:1, provide 1-gallon groundcover plants spaced approximately 2 feet on center.

5) The specific quantities and sizes of plants listed above may be adjusted by the Planning Department in order to meet the standards for a required buffer type, the replacement or establishment of an approved Resource Conservation Area, and/or to more appropriately match the surrounding existing vegetation, so long as substantially the same performance is achieved. Refer to the *Town of Apex Design and Development Manual*, Section 2 for more specific information.

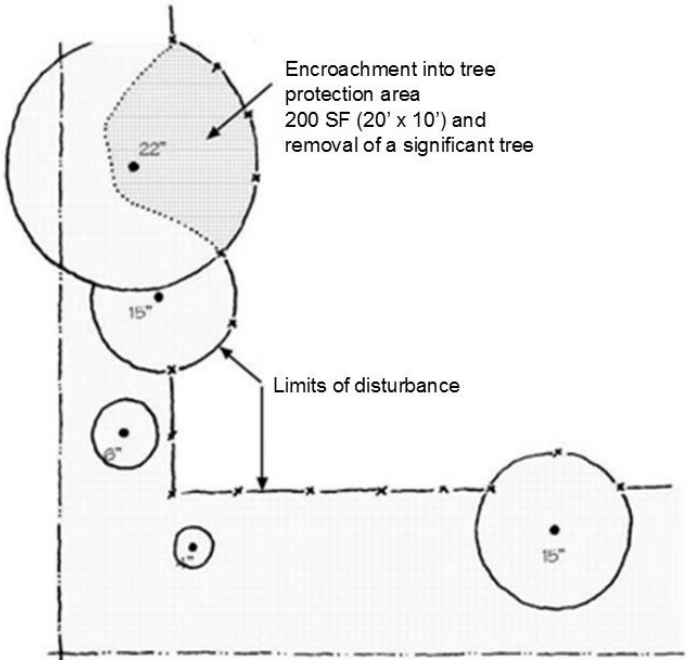


Figure 8.2.3(C): Illustration of Required Replacement of Existing, Original Vegetation

8.2.4 Building Landscaping Requirements

A) ***General Landscaping Standards***
All non-residential, multi-family/apartment, condominium and townhome developments, and all single-family residential subdivisions shall install landscaping pursuant to the requirements of this Section. This landscaping shall be in addition to any other landscaping required by Article 8: *General Development Standards*, unless otherwise specified.

1) *Non-Residential Development*

All non-residential development shall install at least one (1) tree and three (3) shrubs for every 2,000 square feet of building footprint. This is above and beyond any vehicular use area landscaping requirements, screening requirements, buffers, and Resource Conservation Area plantings.

2) *Multi-Family/Apartment Development*
All multi-family/apartment development shall install at least three (3) shrubs for every 2,000 square feet of building footprint. This is above and beyond any vehicular use area landscaping requirements, screening requirements, buffers, and Resource Conservation Area plantings.

3) *Townhome Development*
All townhome development shall install at least one (1) small ornamental type tree and two (2) shrubs per lot, to be located within HOA-owned commons areas. This is above and beyond any vehicular use area landscaping requirements, screening requirements, buffers, and Resource Conservation Area plantings.

4) *Single-Family Residential Subdivisions*
All single-family residential subdivisions shall install at least one (1) small ornamental type tree and two (2) shrubs per lot, to be located in the front, side, or rear yard of the individual single-family lot. This Section shall not apply to those single-family residential subdivisions that provide landscaping per UDO Sec. 7.2.5(B)(7) *Single-Family Residential Subdivision Mass Grading*.

B) ***Installation Requirements for Non-Residential Development and Multi-Family/Apartment Development***

1) Large trees shall be no closer than 20 feet from any structure with at least 350 square feet of non-paved area around the trunk, and small trees shall be no closer than 10 feet from any structure with at least 250 square feet of non-paved area around the trunk.

2) Planting beds may contain a combination of living plant materials and mulch. However, living plant materials shall comprise no less than 50 percent of the required planting beds.

3) Plant materials shall be located in close proximity to the building and shall enhance views from public streets and sidewalks.

C) ***Installation Requirements for Townhomes and Single-Family Residential Development***

1) Trees shall be set back at least six (6) feet from the right-of-way line.

8.2.5 Vehicle Use Area Landscaping

A) ***Purpose***
Vehicle use area landscaping is intended to improve the views from adjacent properties and public use areas, alter the microclimate of vehicle use areas by providing shade and reducing reflected heat, and break up large areas of impermeable surface allowing areas for water infiltration.

B) ***Vehicle Use Area Screening***

1) *Applicability*
All vehicle use areas shall provide landscaping pursuant to the General Requirements below.

2) *General Requirements*

a) All vehicle use areas shall be screened from off-site view with a continuous evergreen hedge that will reach a minimum height of 42 inches within three (3) years of installation.

b) All vehicle use areas and access drives shall be separated from side and rear property lines by a planting area at least eight (8) feet wide that meets type B buffer standards (see Sec. 8.2.6(B)). Outparcels with multi-tenant buildings shall be exempt from this requirement.

c) Perimeter plantings shall be arranged and maintained to protect visibility at any driveways.

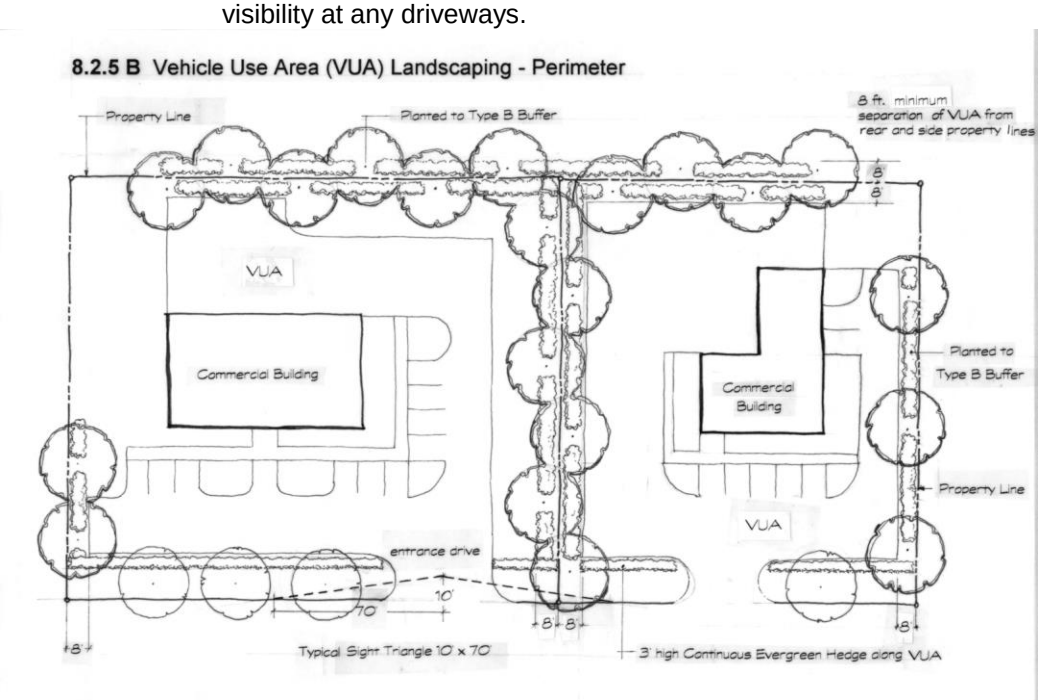


Figure 8.2.5(B) Vehicular Use Area Landscaping for Single-Tenant Parcels

d) Structured parking that incorporates ground level non-residential uses shall only comply with the standards in Sec. 8.2.4(A)(1).

C) ***Vehicle Use Area Shading***

1) *Applicability*
All vehicle use areas, with the exception of the interior of structured parking areas, shall comply with these landscaping requirements. Perimeter, streetfront, and thoroughfare buffer trees may be used to meet the vehicle use area landscaping requirements.

2) *Minimum Requirement*
No portion of the vehicle use area shall be further than 40 feet from the trunk of a large-type deciduous tree, except for areas that cannot reasonably be landscaped in the interior (as determined by the Planning Director), including, but not limited to, truck loading and unloading spaces and vehicle storage yards. In these cases, the same number of trees required to meet the 40-foot requirement are required to be planted along the perimeter of the exempted vehicle use area. Two (2) small-type trees can be substituted for a large-type deciduous tree in cases where the health of the large-type deciduous tree may be compromised or where other circumstances so warrant, including, but not limited to, utility lines and/or easements located too close to the vehicle use area to allow the planting of a large-type deciduous tree or building location that does not provide a large enough planting bed for a large-type deciduous tree. No portion of the vehicle use area where the small-type tree substitution is allowed shall be further than 20 feet from the trunk of a small-type tree. The vehicle use area interior landscaping shall be designed to achieve shading of no less than 35% of the vehicle use area at maturity.

D) ***Additional Vehicle Use Area Requirements***

1) *Landscaped Islands*

a) Individual landscaped islands shall include a minimum of 1 tree and raised concrete curbs to prevent damage by automobile or pedestrian traffic. Planting areas shall be protected from damage by vehicular traffic with barriers including but not limited to curbs, wheel stops, walls or fences.

b) Landscaped islands shall have at least 350 square feet of planting area for each large tree, and 250 square feet for each small tree. The smallest dimension of a landscaped island shall be 10 feet to allow for adequate root aeration and expansion.

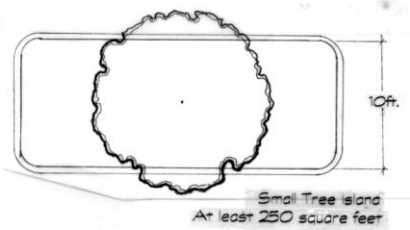
c) Islands shall be arranged to maximize shading of parking spaces.

d) Plantings shall be arranged so as not to interfere with driver vision, vehicle circulation, or pedestrian circulation.

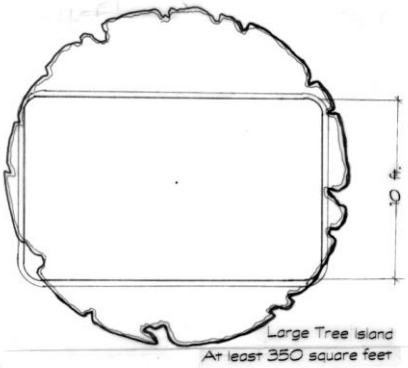
2) *Internal Pedestrian Walkways*

Internal pedestrian walkways required pursuant to Section 8.4.4 shall feature landscaping, benches, and other such materials or facilities for approximately 50 percent of the length of the walkway. Such walkways may pass through required buffers and other protected areas as long as construction is done in such a way as to protect significant resources. This landscaping may be counted toward the landscaping requirements of Sec. 8.2.4 “General Landscaping Requirements.”

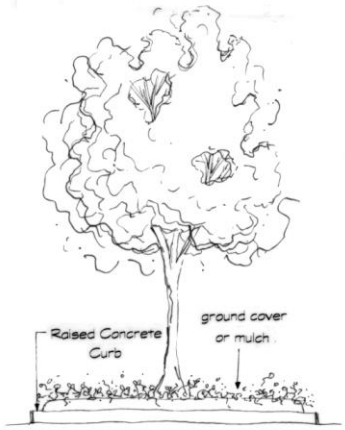
8.2.5 C 3 + 4 Landscaped Islands and Internal Walkways



Small Tree Island
At least 250 square feet

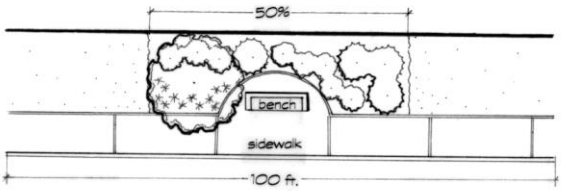


Large Tree Island
At least 350 square feet



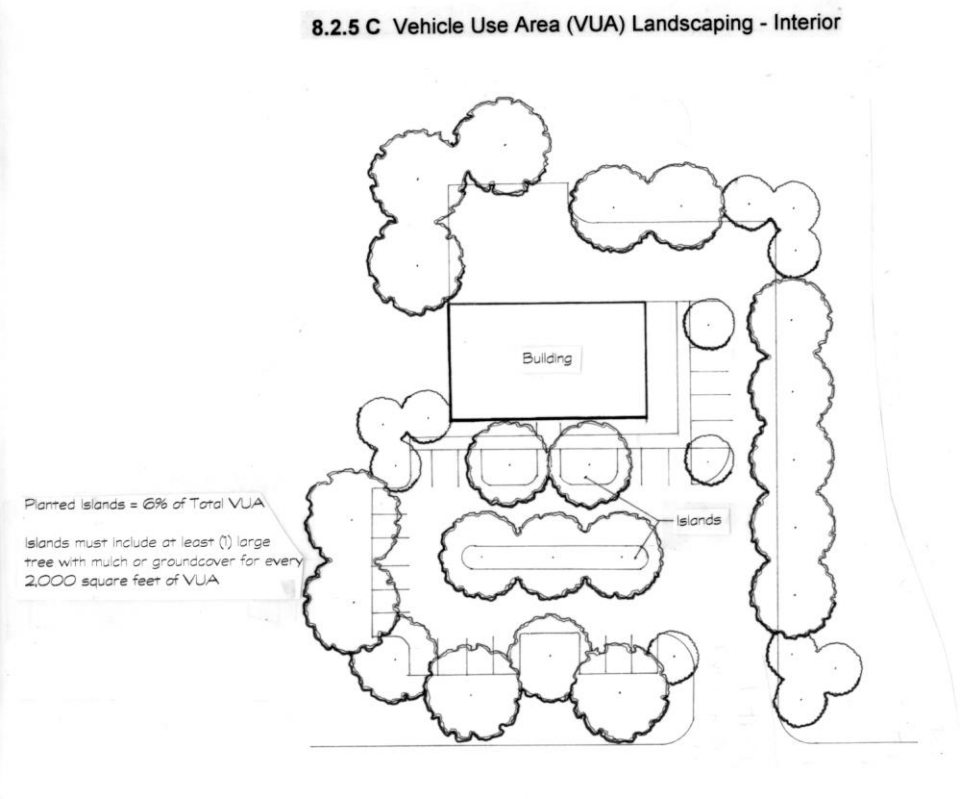
Typical Island Section

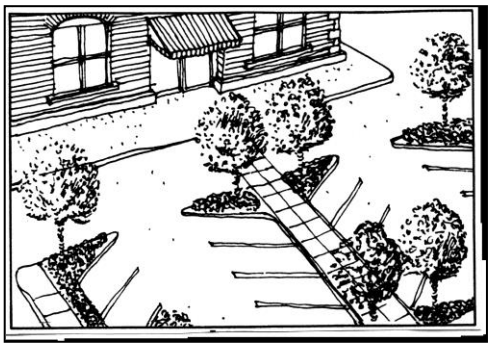
Islands must have raised concrete curbs and cannot be less than 10 feet wide.



Internal Pedestrian Walkway

Must include landscaping and/or site features (benches, light, fountain, etc.) for at least 50% of length of the walkway





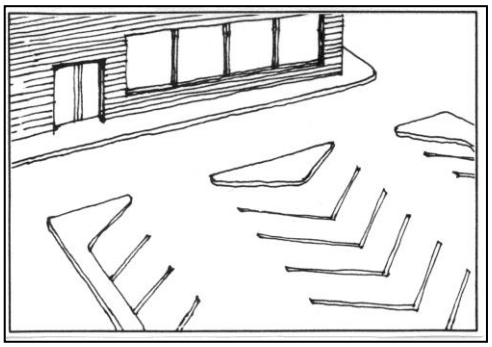


Figure 8.2.5(C): Comparison of Vehicle Use Areas With and Without Landscaping

8.2.6 Buffering

A) ***Purpose***

Landscaped buffers to separate adjacent land uses shall be provided in accordance with this section in order to fulfill the following purposes:

1) To shield adjacent properties from any adverse external effects of the development, so as to render incompatible adjacent uses more compatible;

2) To shield development from the negative impacts of adjacent land uses, so as to render incompatible adjacent uses more compatible;

3) To preserve open space and existing vegetation, using supplemental plantings only when necessary; and

4) To prevent adverse grade changes between properties and to provide adequate land area for transition of proposed grades.

B) ***Landscape Buffers Between Land Uses***

1) *Applicability*

a) All site and master subdivision plans shall provide a landscape buffer to separate that use or subdivision from differing land uses pursuant to the requirements of this section.

b) This buffer requirement shall not apply to the B-2 zoning district.

2) *Building Setbacks from Edge of Buffer*
All building setbacks along property lines with required buffers are determined by adding 10 feet to the buffer widths given in Table 1 below, except along the Streetfront D Type buffer, where building setbacks are determined according to the zoning of the parcel (see Sec. 5.1.2). Building setbacks along property lines with no required buffers are determined according to the zoning of the parcel (see Sec. 5.1.2).

3) *Type and Width of Buffer Required*

a) Table 1 below determines the type of landscape buffer that must be installed. Depending on the land use classifications of the proposed use and the use of the adjacent property, Table 1 specifies a landscaped buffer of a particular type and a particular minimum width. Subsection (4) below identifies the land uses that fall within each land use classification shown on Table 1. Subsection (5) below identifies the width and type of vegetation required for each type of buffer.

Table 1: Type and Width of Buffer Required

A	B						C					D			E	
	PERIMETER BUFFER											STREETFRONT* (except thoroughfares and fully-/limited controlled access highways)			THOROUGHFARE	
Req'd Buffer	Adjacent Property Developed: Land Use Class						Adjacent Property Vacant: Zoning District									
Proposed Land Use Class	1	2	3	4	5	6**	All Res.	TND-CZ, PUD-CZ, SD-CZ	MEC-CZ, O&I, PC	B1, B2	LI, TF	1,2,3	4	5,6	Undisturbed ***	Disturbed ***
1	0	10 B	10 C	10 B	30 C	40 B	10 B	10 B	10 C	30 C	40 B	0	20 D	30 D	30 E	50 E
2	10 B	10 B	10 A	20 A	40 A	60 A	10 B	10 A	20 A	40 A	60 A	10 D	20 D	30 D	30 E	50 E
3	10 B	10 A	10 B	10 B	20 B	50 A	10 B	20 B	10 B	20 B	50 A	10 D	20 D	30 D	30 E	50 E
4	10 B	20 A	10 B	0	0	15 B	20 A	10 B	0	0	15 B	30 D	10 D	10 D	30 E	50 E
5	30 C	40 A	20 B	0	0	0	40 A	20 B	0	0	0	30 D	10 D	10 D	30 E	50 E
6**	40 B	60 A	50 A	15 B	0	0	60 A	60 A	15 B	0	0	30 D	20 D	10 D	30 E	50 E

1. To use Table 1 to determine Landscape Buffers Between Land Uses:
   a. Locate land use class of subject property in column A.
   b. Identify if adjacent parcel is developed or vacant (column B or C).
   c. Required buffer is at intersection of row and column. Buffer class is indicated by letter; width in feet is indicated by number.
2. To determine buffers along all street types except thoroughfares and fully-/limited-controlled access highways:
   a. Locate land use class of subject property in column A.
   b. Determine land use class of property across street from subject property in column D.
   c. Required buffer is at intersection of row and column. Buffer class is indicated by letter; width in feet is indicated by number.
3. To determine buffers along all thoroughfares:
   a. Locate land use class of subject property in column A.
   b. Determine if the buffer will be an undisturbed buffer or a disturbed buffer in column E.
   c. Required buffer is at intersection of row and column. Buffer class is indicated by letter; width in feet is indicated by number.

* For streetfront buffers only, non-residential uses in the Residential Agricultural (RA) zoning district shall have a 10' Type D buffer. No streetfront buffer is required on collectors or residential streets within residential developments.
** No buffer is required along the use "Railroad tracks", which is classified as Class 6, for Land Use Classes 1, 2, 3, 4, 5, and 6. However, it is recommended that the developer consider the comfort of future occupants and security of the development in determining if buffering and/or screening should be implemented.
***Pedestrian-oriented streetscape buffers shall be allowed in lieu of standard landscaped thoroughfare buffers when such buffers are located inside the Apex Peakway. Pedestrian-oriented streetscape buffer shall contain both hardscape elements (such as but not limited to sidewalks, decorative lighting, street furniture, and fountains) and street tree plantings which do not have to meet typical minimum island widths or sizes.

b) *Reduced Width Buffers in Exchange for Resource Conservation Area*
Required buffers may be exchanged for Resource Conservation Area in accordance with Sec. 8.1.2(C)(6).

4) *Land Use Classes*
The 6 land use classes appearing in Table 1 include the following uses:

a) *Class 1:*
Active farm
Botanical gardens
Campgrounds
Cemeteries
Golf course
Greenways
Horse boarding and riding stables
Parks, active and passive
Water reservoir

b) *Class 2:*
Bed and breakfast
Manufactured home-detached, lots greater than 6,000 square feet
Single family-detached, lots greater than 6,000 square feet

c) *Class 3:*
Condominium
Duplex
Manufactured home-detached, lots less than 6,000 square feet
Multi-family or apartment
Single family-detached, lots less than 6,000 square feet
Townhouse
Townhouse, detached
Triplex or Quadplex

d) *Class 4:*
Ambulatory Healthcare Facility with Emergency Department
Assembly hall, for-profit
Assembly hall, nonprofit
Barber/beauty shops
Bookstore
Church or place of worship
Congregate living
Day care facility
Drop-in or short-term daycare
Dispatching office
Farmers market
Financial institutions without drive through
Floral shop
Funeral home
Government service
Health/fitness centers/spas
Indoor animal kennel
Laundromat
Medical, dental offices and clinics
Medical, dental laboratory

Mobile home park
Monument sales, retail
Newsstand or gift shop
Nursing or convalescent facility
Office, business or professional
Parking, parking lot, parking garage- commercial or residential
Personal services
Pet services
Pharmacy
Printing and copying services
Real estate sales
Restaurant, general
School, public or private
Studios for arts
Tailor shops
Utility, minor
Veterinary clinic or hospital
Vocational schools
Youth or day camps

e) *Class 5*
All drive through facilities
Artisan studio
Automotive parts
Automotive service stations
Bars and nightclubs
Beach bingo
Broadcasting stations (radio and television)
Building supplies, retail
Carwash or auto detailing
Convenience store
Convenience store with gas pumps
Drycleaners and laundry services
Electronic gaming operation
Entertainment, indoor
Flea market
Game rooms and devices
Gas and fuel, retail
Greenhouse or nursery, retail
Grocery, general
Grocery, specialty
Hotel/motel
Microbrewery
Pilot plant
Publishing office
Radio and television recording studios
Retail sales, bulky goods
Retail sales, general
Shopping center
Theater
Transportation facilities
Upholstery shop
Vehicle inspection center
Vehicle repair and service

f) *Class 6*

Adult establishment
Airplane landing strip
Airport
Animal kennel, outdoors
Arena, auditorium or stadium
Asphalt or concrete plant
Automotive paint or body shop
Brewery
Building supplies, wholesale
Chipping and mulching
Communication tower, commercial
Contractor offices and storage yards
Distillery
Dry-cleaning and dyeing plants
Electrical power facility
Entertainment, outdoor
Fish hatcheries and fish ponds
Forestry
Gas and fuel, wholesale
Glass sales
Greenhouse or nursery, wholesale
Heliport or helipad
Hospital
Incinerator
Industrial services
Laboratory, industrial research
Land clearing and inert debris landfill
Laundry plants
Machine or welding shop
Manufacturing and processing
Microdistillery
Railroad facilities
Railroad tracks
Recycling center
Recycling collection station
Recycling plant
Regional recreation complex
Repair and maintenance, general
Repair services, limited
Research facilities
Sanitary landfill
Self-service storage
Shooting range, indoor
Shooting range, outdoor
Towing services and storage
Truck terminals
Vehicle sales and rental, heavy
Vehicle sales and rental, light
Warehousing
Water or wastewater plant
Wholesaling, general
Wood or lumber processing
Woodworking or cabinetmaking
Zoological garden

5) *Types of Buffers*
The 7 types of landscaped buffers appearing in Table 1 are defined as follows and shall meet the following performance requirements:

a) *Type A: Opaque*
This buffer functions as an opaque screen from the ground to a height of at least 6 feet. Plantings of deciduous and evergreen trees shall obtain a height at maturity of between 18 and 60 feet and have no unobstructed openings between tree canopies at maturity. Large trees shall be spaced no wider than 15 feet at time of planting. Screening plants for the Type A buffer shall be evergreen and between 5 and 6 feet tall at the time of installation (see Plant Standards Sec. 8.2.2(B)). At least 50 percent of the required trees and 100 percent of the shrubs must be evergreen species.

b) *Type B: Semi-Opaque*
This buffer serves as a semi-opaque screen from the ground to a height of between 3 and 6 feet with openings no greater than 10 feet. Trees shall obtain a height of between 18 and 40 feet at maturity and have no unobstructed openings greater than 20 feet between canopies at maturity. Large trees shall be spaced no wider than 40 feet at time of planting, and small trees shall be spaced no more than 20 feet. At least 75 percent of the required shrubs must be evergreen species.

c) *Type C: Spatial Definition*
This buffer is intended to provide a sense of separation between adjoining properties without significantly obstructing the view from one to the other. Generally, it will be less opaque than the Type B buffer, and more oriented towards aesthetic enhancement rather than screening. It shall include a combination of trees and shrubs that provide intermittent visual obstruction from the ground to a height of at least 20 feet. Large trees shall be spaced no wider than 50 feet at time of planting, and small trees shall be spaced no wider than 25 feet. At least 25 percent of the trees or shrubs must be evergreen species.

d) *Type D: Streetfront*
This buffer is intended to provide a softening of the view of a particular property from the street, without eliminating views to and from the property. This shall include at least one large type tree for every 1,000 square feet of buffer, or two small trees for every 1,000 square feet of buffer. Large trees may not be spaced more than 30 feet apart, and small trees no more than 15 feet apart. At maturity, these trees shall reach a height of at least 20 feet. A streetfront buffer is required along all private and public streets except thoroughfares and controlled access highways.

e) *Type E: Streetscape Buffers Along Thoroughfares*
Streetscape buffers are required on all thoroughfares as shown on the adopted thoroughfare map. Streetscape buffers are to remain undisturbed to the maximum extent practicable except where no existing vegetation is present.

All uses that require site plan approval or subdivision plan approval shall preserve, install, and maintain a planted streetscape along each thoroughfare it abuts which protects the existing vegetation and abuts the perimeter of the property. All streetscape plantings, including the installation of all plant materials, shall perform in accordance with specifications of this section.

The width of the streetscape buffer shall be at least 30 feet if it remains undisturbed. If the buffer will require encroachment in order to install anything other than public street improvements, the buffer must be at least 50 feet wide. Up to 25 feet of the 50-foot buffer may be disturbed provided that the disturbed section is re-planted to a Type E standard. A buffer with an encroachment due to public street improvements may be reduced per Sec. 8.1.2(C)(6) *Resource Conservation Area Exchanged for Reduced Width Buffers* and Sec. 8.2.6(B)(3)(b).

If any part of the buffer is disturbed or non-vegetated, the owner shall plant one large tree and two small trees for every 1,000 square feet of disturbed or non-vegetated buffer. Where existing overhead utility lines interfere with part of the buffer, the large tree requirement may be substituted by installing all small trees (4 small trees for every 1,000 square feet).

Trees shall be installed on the thoroughfare side of any berm or screen planting no less than 10 feet from the right-of-way of the thoroughfare. Street trees may be installed in a linear fashion or in clusters or groupings of larger and/or small trees in combination with associated plantings so as to enhance the visual appearance of the streetscape and views from adjacent properties.

Each large canopy tree in the streetscape shall be provided with at least 350 square feet of pervious ground area for root growth. Any planting area bounded by a built-upon area shall be at least 10 feet wide.

Where there is a vehicular use area between the right-of-way of the thoroughfare and a permanent building, the streetscape shall provide a semi-opaque screen or barrier between the right-of- way and the vehicular use area. The screen or barrier may consist of existing vegetation, plants, earthen berms, decorative entry fences (not privacy), walls, or any combination thereof that meets the following requirements:

The screen shall occupy the entire 100 percent length of the vehicular use area except for sidewalks and driveways. All vehicular use areas must be screened from off-site view. Plant material shall be at least 2 feet tall above the ground at the time of installation and must reach a height of 3 feet within 3 years.

Fences, walls, and berms may be installed in addition to plantings (see Sec. 8.2.7 *Fences, Walls, and Berms*). Plant

materials shall be installed that meet these performance standards. Berms may be installed if there is no existing vegetation. The installation of additional plant materials is required so as to enhance the visual and aesthetical qualities of the streetscape.

f) *Buffers Along Fully- and Limited-Controlled Access Highways*
All uses that require site plan approval or subdivision plan approval shall install and maintain a vegetated buffer along each controlled access highway as follows:

(i) Residential Uses
A 100-foot Type A buffer is required along all fully- and limited-controlled access highways, measured from ultimate right-of-way. All highway buffers along residential uses shall remain undisturbed to the maximum extent practicable. The Planning Director or designee shall determine at the time of site plan or subdivision plan review what supplementation of plant material must occur to bring the existing natural buffer to a Type A standard. Disturbance within the buffer is only allowed as follows:

(a) Construction of driveways and public streets perpendicular to the buffer strip shall be allowed where such construction is necessary for safe ingress or egress to the site. The nature and limits of such construction must be designated on the approved site plan or master subdivision plan.

(b) Notwithstanding any other provision pertaining to buffers, Town of Apex public utilities and easements shall be allowed, parallel and otherwise, within buffers, and the area within such easements shall still count towards buffer, undisturbed buffer, or RCA requirements.

(ii) Non-residential Uses
A 100-foot Type A buffer is required along all fully- and limited-controlled access highways, measured from ultimate right-of-way. All highway buffers along non-residential uses shall remain undisturbed to the maximum extent practicable. The Planning Director or designee shall determine at the time of site plan or subdivision plan review what supplementation of plant material must occur to bring the existing natural buffer to a Type A standard. Disturbance within the buffer is only allowed as follows:

(a) Construction of driveways and public streets perpendicular to the buffer strip shall be allowed where such construction is necessary for safe ingress or egress to the site. The nature and limits of such construction must be

designated on the approved site plan or master subdivision plan.

(b) Notwithstanding any other provision pertaining to buffers, Town of Apex public utilities and easements shall be allowed, parallel and otherwise, within buffers, and the area within such easements shall still count towards buffer, undisturbed buffer, and RCA requirements.

(c) Highway buffers along non-residential uses meeting all of the following criteria shall be reduced to a planted 50' Type A buffer.

i. No more than 20% of the façades of non-residential buildings facing the highway can use EIFS or other synthetic stucco.

ii. Pedestrian connections in the form of sidewalks and/or multi-use paths shall be made from non-residential buildings to adjacent residential development and properties with future residential land use. The form of the connection shall be determined by the Planning Director or designee.

g) *Buffers Along the American Tobacco Trail*
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. The buffer shall function as visual separation between the public trail and private property; it shall contain native plant material, supplemented where necessary with deciduous and evergreen trees to provide an opaque screen for the benefit of trail users and adjoining property owners. The buffer shall conform to the requirements of a Type 'A' Buffer as described in UDO Section 8.2.6(B)(5)(a).

C) ***General Buffering Requirements***

1) *Location of Buffers*

a) The buffers required by this Section shall be located along the outer perimeter of the parcel and shall extend to the parcel boundary line or right-of-way line. Buffers shall not include any portion of an existing public or private street, proposed public street, existing or proposed private easement, or right-of-way. The required buffer width does not just determine a simple setback but is to be totally planted to meet the requirements for the applicable buffer type. Therefore, the plants comprising the buffer shall be spread across the entire width of the buffer and not just planted in a row or rows.

b) Buffers for residential subdivisions shall not be located within the individual lots that make up the subdivision, but shall be

located in common areas, and shall be owned and maintained by the homeowner's association.

2) *Existing Vegetation*

a) Existing significant vegetation within the required buffer shall be preserved and credited toward standards for the type of buffer required at the time of site plan approval, subdivision, or PD plan approval. In order to determine which existing vegetation shall be preserved, the applicant shall provide a Site and Tree Survey per the requirements of Sec. 8.1.2(B)(2).

b) No plantings shall be required when a preserved wetland or required riparian buffer exists within a required buffer.

3) *Installation of New Vegetation and Other Features*
If existing significant vegetation and other site features do not fully meet the standards for the type of buffer required, then additional vegetation and/or site features (including fences) shall be planted or installed within the required buffer area. All plantings must face toward the public right-of-way.

4) *No Development Within the Required Buffer*
The required buffer shall not contain any development, built-upon area, or site features that do not function to meet the standards of this section or that require removal of existing vegetation, except for signs within platted sign easements and utilities within public utility easements (see Secs. 8.1.2(C)(8) and 8.2.2(C)(2)(a)). When a public utility easement is located within a required buffer, a minimum 10 foot wide planting area shall be provided as measured from the edge of the easement. The planting area shall be as wide as necessary in order to accommodate all required buffer plantings. Tree species with compact root systems shall be used adjacent to the easement.

5) *Critical Root Zone Encroachment*
If the critical root zone of any tree encroaches one-third or more onto an adjacent parcel, the developing site must protect the critical root zone to protect the health and vigor of the tree.

6) *Ownership of Buffers*

a) No required buffer in a residential subdivision shall be wholly owned (in fee simple absolute) by the owner of an individual residential building lot zoned for residential uses. The buffers shall be owned by a property owner's association or be owned by a third party or shall be otherwise divided so that the buffer is not removed, modified, or damaged. Any required buffer (including those required as a zoning condition) for a residential development shall not be credited toward meeting the lot size requirements. The preferred method is that the residential buffer be a separate lot and owned by a separate entity (e.g., property owner's association).

b) The buffers required under this Section 8.2 may be left under the control of the lot owner provided that: (1) the width of the

buffer is doubled; and (2) each lot that contains a buffer must have a deed restriction recorded with a restriction that the buffer is to be left undisturbed. In any case, where control of the buffer is through a property owner's association, modifications, removal, or damage to the buffer by an adjacent homeowner shall be prohibited. The property owner's association shall be responsible for any violation related to the buffers in accordance with Sec. 8.2.3, *Maintenance Responsibility and Replacement of Damaged Vegetation*. This Provision applies to residential developments only.

8.2.7 Fences, Walls, and Berms

Fences, walls, and berms are permitted as elements of site design and in some locations, may be used to conceal storage or other unsightly or conflicting land uses. Fences are not allowed around detention and retention basins per Section 6.1.12(B)(10). All fences, walls, and berms shall meet the following requirements:

A) ***Materials***

1) Fences or walls shall be constructed of wood, stone, brick, decorative concrete block, wrought iron, (or products created to resemble these materials), or a combination of any of these materials. Chain link fencing is allowed provided it meets the standards in Section 8.2.7(A)(4).

2) All fencing shall be finished on the side facing a public right-of-way or adjacent properties.

3) Materials such as, but not limited to, plywood, particleboard, sheet metal, concrete slabs, concrete barriers shall not be used for fencing or for walls.

4)

a) Chain link fencing used in non-residential zoning districts shall be coated in black, brown or dark green vinyl or equivalent, except that chain link fencing used in industrial zoning districts or for public utility purposes does not require vinyl coating.

b) In residential zoning districts, chain link fencing is only allowed in the side and/or rear yards of individual lots and is not allowed to be used by the developer of a subdivision for buffering and screening. Chain link fencing used for single-family recreational accessory uses as permitted in Section 4.5.4 such as but not limited to playgrounds, swimming pools, hot tubs, spas, tennis courts, volleyball courts, and basketball courts, shall be vinyl coated in black, brown or dark green, and must meet the requirements of Section 8.2.7(B)(1) "Fence/Wall Height".

5) Barbed-wire and similar fence materials may only be used in conjunction with a permitted agricultural use or in conjunction with the permitted keeping of horses or livestock. Up to 2' of barbed wire can be erected on top of another fence type for safety purposes for industrial and utility uses.

B) ***Fence/Wall Height***

1) No freestanding fence or wall shall exceed seven feet in height including piers, posts, and finials. Non-residential fences or walls may be higher for security and/or screening purposes with approval by the Planning Director, after taking into account topography, unique site conditions, and unique safety, security, and screening requirements of the property owner (see section 8.2.8, Screening). Vinyl coated chain link fencing for single-family recreational accessory uses that typically require taller fencing, such as tennis courts and basketball courts, may be approved up to 10 feet in height by the Planning Director, after taking into account site topography, existing and proposed vegetative screening, setbacks, unique site conditions, and the nature of the single-family recreational accessory use.

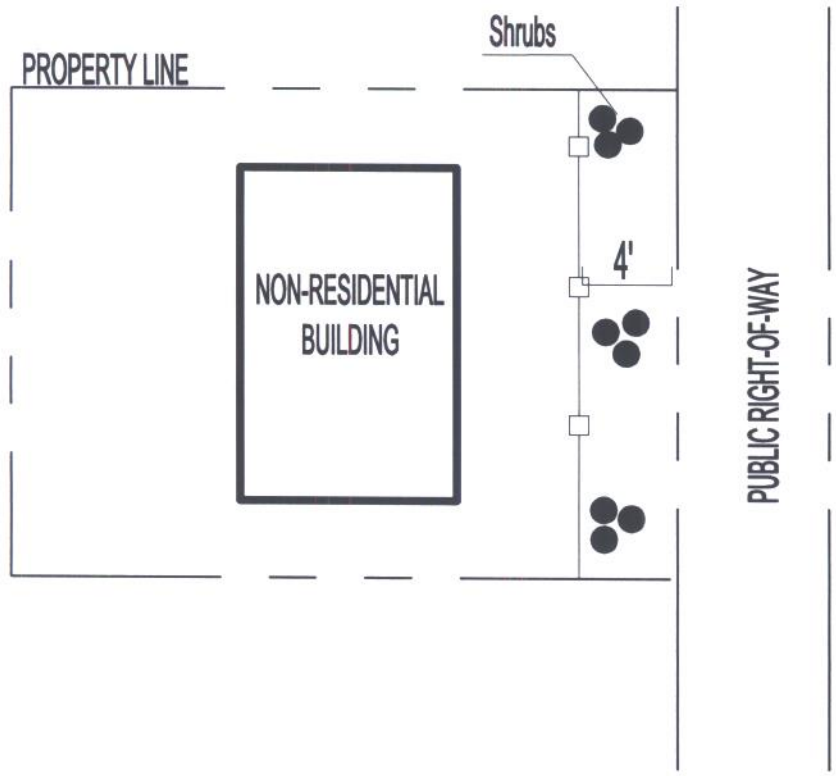
2) Fences and walls in front yards shall not exceed 48 inches in height. Piers or posts and finials may extend up to 6 inches higher than the finished fence or wall height.

3) Fences and walls shall be allowed in the controlled and limited access highway buffer, thoroughfare buffer, and streetfront buffer provided that they meet the requirements of Section 8.2.7(F) “Fences in Required Buffers” and the height requirements of Section 8.2.7(B)(1) and (2).

C) ***Fences/Walls Abutting Public Rights-of-Way***

1) Where non-residential fencing or walls will abut a public right-of-way, it shall be set back at least 4 feet from the right-of-way, and a minimum of 3 small evergreen shrubs spaced every 20 feet shall be planted on the side of the fence or wall facing the surrounding rights-of way, walks, parks, trails, or other public use properties. Plantings shall not be planted within the public right-of-way. Fencing or walls must provide visual interest through the use of different materials, decorative posts and finials.

2) Where a residential fence or wall will abut a major or minor thoroughfare, it must provide visual interest through changes in fence setbacks or materials, or through the use of decorative posts with finials, or through the use of plants spaced every 20 feet on the side of the fence or wall facing the public thoroughfare. Plantings shall not be planted within the public right-of-way.



8.2.7 (C) Fences/Walls Abutting Public Rights-of-Way

D) ***Berms***

Berms may be utilized as part of the landscaping and shall be covered with turf grasses or other appropriate groundcovers, shrubs, and trees as required to meet specific landscaping, screening, or buffer requirements as determined by the Planning Department provided that:

1) Berms shall be constructed to blend into the overall landscape and undulate to imitate the surrounding topography.

2) Berms shall be constructed to drain well and be composed of soils suitable to grow and sustain plants with at least the top foot consisting of good quality topsoil.

3) The slope of a berm shall not exceed a three to one (3:1) run to rise ratio.

E) ***Fences/Walls in Required Buffers***

1) Fences/walls shall be permitted in buffers only where they are planned as an integral part of the buffer. Fences/walls are not allowed in Riparian Buffers per Sec. 6.1.11, except for fences/walls installed by the

Town for utility protection. Where there is existing vegetation, the installation of the fence/wall must be done in such a manner as to protect significant vegetation, such as, but not limited to, being hand built and winding around trees. It is not the intent of this section to allow the piecemeal installation of fences/walls in buffers or the installation of private fences/walls that result in completely enclosing sections of buffer inside of a fence/wall or fences/walls.

2) Fences shall supplement and not replace the existing and/or required plantings. Fences shall be set back from the edge of the buffer so that the buffer plantings are located on both sides of the fence, with a minimum of four feet from public rights-of-way. Fences shall be of uniform design throughout the buffer. The property owners association or other entity controlling the buffer shall maintain fences. Privately owned and/or installed fences are not permitted in the buffers except where designed and approved as part of the overall buffer.

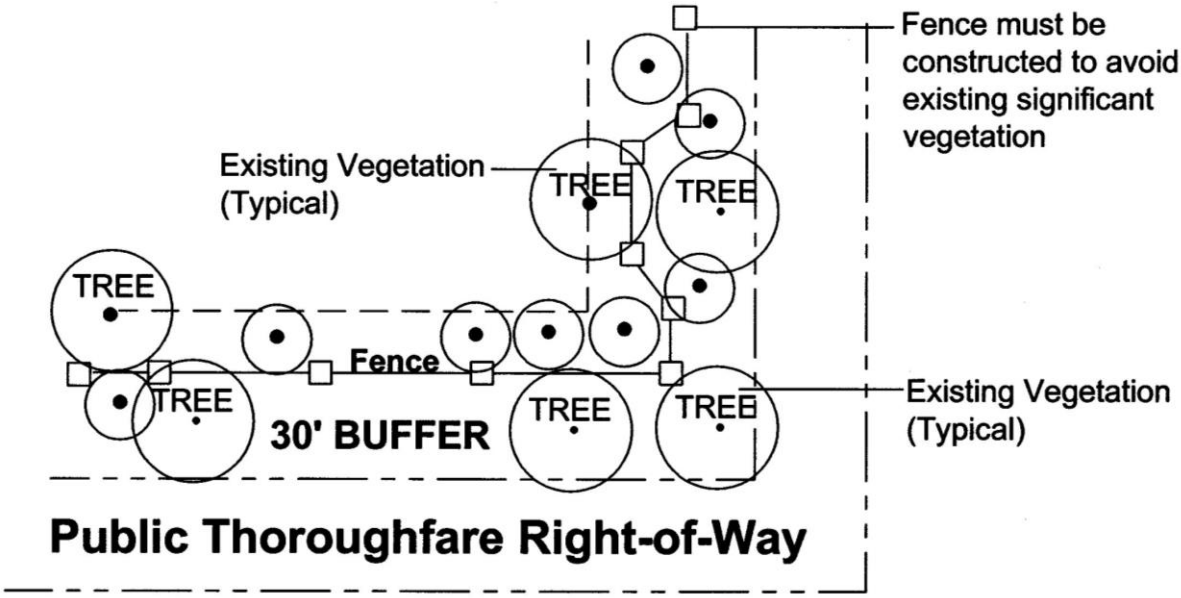


Figure 8.2.7(E): Fences/Walls in Required Buffers

F) ***Maintenance***
The owner of the property (or other party responsible for maintenance as depicted on the approved site plan) on which the fence, wall or berm is located is required to maintain the fence or wall in a safe and attractive condition. This shall mean the following:

1) No fence or wall shall have more that 20 percent of its surface area with disfigured, cracked, ripped or peeling paint or other material;

2) A fence or wall shall not stand with bent or broken supports, including loose or missing appendages;

3) Fences and walls shall be plumb (vertical) to the ground; and

4) Replacement of non-conforming fences, walls and berms shall comply with all the requirements of this section.

8.2.8 Screening

A) ***Integrate with Overall Design***
Loading docks, trash containers, outdoor storage, mechanical and HVAC equipment, and similar facilities on the roof, on the ground, or on buildings shall be incorporated into the overall design theme of the building and the landscape so that the architectural design is continuous and uninterrupted by ladders, towers, fences, and equipment, and no attention is attracted to such facilities by use of screening materials that are different from or inferior to the principal materials of the building and landscape. These areas shall be located and screened so that the visual and acoustic impacts of these facilities are fully contained and out of view from adjacent properties and public streets. See also Sec. 4.1.2 *Outside Storage, Display, and Sales/Rentals*.

B) Screening Methods
Screening shall be accomplished by the following methods:

1) *Dumpsters.*

a) Dumpsters shall be screened with an opaque enclosure, fence or wall that reaches 8 feet in height or the height of the dumpster, whichever is higher. The design and materials of the enclosure, fence or wall must be presented as part of the exempt site plan, site plan, or master subdivision approval process. The screening structures must be constructed of masonry materials. The screening structures shall be architecturally compatible with the principal building(s) on site. The operational parts of the enclosure such as the gate frame and hinge assemblies must be built of heavy-duty material such as steel and engineered to hold up to daily use and abuse; wood is not allowed;

b) Gates or doors on dumpster enclosures shall be constructed of opaque metal, wood composite, or PVC composite. When composite products are used, they shall be placed close enough together to create an opaque gate. Any composite product used shall be lightweight. No wooden gates are permitted;

c) Where practical, shrubs or other plants must be planted outside the enclosure to visually soften the appearance;

d) The overall enclosure design must comply with the standards found in the Town's *Design and Development Manual*.

2) *Ground-located HVAC or other mechanical or utility equipment, including satellite dishes and roll-out carts.*
HVAC or other mechanical or utility equipment and roll-out carts located on the ground shall be screened with an opaque fence and vegetation or with an opaque screen of evergreen shrubs. Fences or shrubs shall be a minimum height of the proposed structure to be screened at installation. If ground located HVAC or other mechanical or utility equipment (including satellite dishes) are six (6) feet in height or taller, then fencing or other enclosure is required with vegetation planted outside the enclosure.

3) *Rooftop HVAC or other mechanical equipment, including satellite dishes.*
HVAC or other mechanical equipment located on the roof of buildings and not adequately screened by parapet walls shall be screened with an opaque screen similar in materials and color to the building materials.

4) *Other.*
Smaller devices such as but not limited to electrical boxes, vents, and externally mounted piping and conduit must also blend with and be incorporated into the overall architecture of the building. Where it is impractical to physically screen these smaller devices they may be painted to match the primary building color or the color of the portion of the building where they are mounted or affixed.

8.3 OFF-STREET PARKING AND LOADING

8.3.1 Applicability

A) ***New Development***
The off-street parking and loading standards of this section shall apply to the erection of any building, and to any new use established.

B) ***Downtown Exempted***
However, within the central business district, there shall be no minimum parking requirements in existing platted areas that are, or previously have been, in commercial use.

C) ***Expansions and Alterations***
The off-street parking and loading standards of this section shall apply when an existing structure or use is expanded or enlarged. Additional off-street parking and loading spaces shall be required to serve only the enlarged or expanded area, provided that in all cases the number of off-street parking and loading spaces provided for the entire use (pre-existing plus expansion) must equal at least 75 percent of the minimum ratio established in the Off-Street Parking Schedules of this section.

D) ***Change of Use***
Off-street parking and loading must be provided for any change of use or manner of operation that would, based on the Off-Street Parking Schedules of this section, result in a requirement for more parking or loading spaces than the existing use.

8.3.2 Off-Street Parking Requirements

A) ***Off-Street Parking Schedule "A"***
Unless otherwise expressly stated in this Code, off-street parking spaces shall be provided in accordance with Table 8.3-1.

Table 8.3-1: Off-Street Parking Schedule "A"

Use	Minimum Number of Spaces Required
Residential Uses	
Single-family dwelling	2 per dwelling unit
Townhouse	2 per dwelling unit plus .25 per unit for guest parking
Townhouse, detached	2 per dwelling unit plus .25 per unit for guest parking
Cluster Box Unit (CBU) Mailboxes	1 accessible space (Required space must be signed as "Mailbox Use Only")
Mail Kiosk	2 spaces (1 must be accessible) (Required spaces must be signed as "Mailbox Use Only")
Congregate Care	1 per dwelling unit
Assisted Living	.5 per dwelling unit or bed
All other uses	2 per dwelling unit
Public and Civic Uses	
Ambulatory healthcare facility with emergency department	1 per 300 square feet
Assembly hall, nonprofit	1 per 100 square feet of assembly area
Church or place of worship	1 per 4 seats in principal assembly area
Government services center	1 per 300 square feet, excluding vehicle storage areas
Hospital	1 per 2 beds plus 1 per employee
School, public or private: Elementary or Junior	2 per classroom, or 1 per 3 seats in auditorium or principal place of assembly, whichever is greater
School, public or private: Senior	10 per classroom, or 1 per 3 seats in auditorium or principal place of assembly, whichever is greater
All other	Schedule C
Utilities	
All uses	Schedule C
Recreational Uses	
Shooting range, indoor	1 space per target + 1 space for every 300 square feet of office area
Shooting range, outdoor	1 space per target + 1 space for every 300 square feet of office area
All other uses	Schedule C
Commercial Uses	
Adult establishment	1 per 60 square feet
Automotive paint or body shop	Schedule B
Automotive parts	1 per 200 square feet
Automotive service station	5 spaces per each grease rack, wash rack, or service bay
Bars and Nightclubs	1 per 50 square feet of floor space devoted to public use
Beach bingo	1 per 50 square feet of floor space devoted to public use
Bed and breakfast	1 per guest room
Barber and beauty shops	3 per chair
Book stores	1 per 200 square feet
Broadcasting stations (radio and television)	1 per 200 square feet of office or administrative area
Building supplies, retail	Schedule B
Building supplies, wholesale	Schedule B
Car wash or auto detailing	1 space per 2 onsite employees with a 1 space minimum
Contractor's offices and storage yards	Schedule B
Convenience store	1 per 200 square feet
Convenience store with gas sales	1 per 200 square feet of convenience store/food sales area, plus 1 per service bay, plus vehicle stacking spaces

Use	Minimum Number of Spaces Required
Day care	1 per 6-person capacity
Dispatching office	1 per 300 square feet
Dry cleaners and laundry service	1 per 300 square feet
Farmers market	Schedule B
Financial institution	1 per 150 square feet
Financial institution, with drive-through service	1 per 150 square feet, plus vehicle stacking spaces
Floral shop	1 per 200 square feet
Funeral home	1 per 5 seats in chapel, plus 1 per each hearse, ambulance, or related vehicle
Game rooms	1 per 100 square feet
Gas and fuel, retail	1 per 200 square feet
Gas and fuel, wholesale	2 per 3 employees
Glass sales	1 per 200 square feet
Greenhouse or nursery, retail	1 per 800 square feet of lot area used for open air sales or display plus additional spaces for retail sales (computed per Schedule B)
Greenhouse or nursery, wholesale	2 per 3 employees
Grocery, general	1 per 200 square feet
Grocery, specialty	1 per 200 square feet
Health/fitness centers and spas	1 per 200 square feet
Horse boarding and riding stables	1 per 3 stalls
Hotel or motel	3 spaces plus 1 space per guest room
Insurance offices	1 per 300 square feet
Kennel, indoor	1 per 300 square feet
Kennel, outdoor	Schedule B
Laundromat	1 per 3 washing machines
Laundry plants	1 per 300 square feet
Medical office or dental clinic or offices	1 per 200 square feet of gross floor space
Medical or dental laboratory	1 per 200 square feet
Monument sales, retail	Schedule B
Newsstand or gift shop	1 per 200 square feet
Office, business or professional	1 per 300 square feet
Parking garage, commercial	None
Parking lot, commercial	None
Pawn shop	1 per 300 square feet
Personal services	1 per 300 square feet
Pet services	1 per 300 square feet
Pharmacy	1 per 200 square feet
Pilot plants	Schedule C
Printing and copying services	1 per 300 square feet
Publishing office	1 per 300 square feet
Radio, television and recording studios	2 per 3 employees plus 1 per 4 seats in studio with greatest seating capacity
Real estate sales	1 per 300 square feet
Repair and maintenance, general	Schedule B
Repair services, limited	Schedule B
Restaurant, drive-through	1 per 50 square feet of floor space devoted to public use, plus vehicle stacking spaces
Restaurant, general	1 per 50 square feet of floor space devoted to public use
Research facilities	Schedule B
Retail sales, bulky goods	Schedule B
Retail sales, general	1 per 300 square feet
Self-service storage	1 per 2 employees
Studios for arts	1 per working artist
Tailor shops	1 per 200 square feet
Tattoo parlor and body piercing	1 per 300 square feet

Use	Minimum Number of Spaces Required
Theaters	1 per 5 seats
Towing service	Schedule B
Towing storage	Schedule B
Truck terminals	Schedule B
Upholstery shop	1 per 200 square feet
Vehicle inspection center	1 per service bay plus 1 per 2 employees
Vehicle sales and rental, heavy	2 spaces plus 1 per 800 square feet of floor area over 1600 square feet
Vehicle sales and rental, light	2 spaces plus 1 per 800 square feet of floor area over 1600 square feet
Veterinary clinic or hospital	Schedule B
Vocational school	Schedule C
Wholesaling, general	Schedule B
Industrial Uses	
All uses	Schedule B
Agricultural Uses	
All uses	Schedule C

B) ***Off-Street Parking Schedule "B"***
Uses subject to off-street parking schedule "B" shall provide the following minimum number of off-street parking spaces.

Table 8.3-2: Off-Street Parking Schedule "B"

Activity	Number of Spaces Required
Office or administrative area	1 per 300 square feet
Indoor sales area	1 per 200 square feet
Outdoor sales or display area (3,000 square feet or less)	1 per 750 square feet
Outdoor sales or display area (over 3,000 square feet)	
$ Motor vehicles/equipment sales	1 per 2,000 square feet
$ Other sales/display	1 per 1,000 square feet
Indoor storage/warehousing/vehicle service/manufacturing area	
$ 1–3,000 square feet	1 per 250 square feet
$ 3,001–5,000 square feet	1 per 500 square feet
$ 5,001–10,000 square feet	1 per 750 square feet
$ 10,001–50,000 square feet	1 per 1,250 square feet
$ 50,001 square feet+	1 per 2,000 square feet

C) ***Off-Street Parking Schedule "C"***
Uses that reference Schedule "C" have widely varying parking and loading demand characteristics, making it impossible to specify a single off-street parking or loading standard. Upon receiving a development application for a use subject to "Schedule C" standards, the Planning Director shall apply the off-street parking and loading standard specified for the listed use that is deemed most similar to the proposed use, or shall establish minimum off-street parking requirements on the basis of a parking and loading study prepared by the applicant. Such a study must include estimates of parking demand based on recommendations of the Institute of Traffic Engineers (ITE), or other acceptable estimates as approved by the Planning Director, and should include other reliable data collected from uses or combinations of uses that are the same as, or comparable with, the proposed use. Comparability will be determined by density, scale, bulk, area, type of activity, and location. The study must document the source of data used to develop the recommendations.

D) ***Standards for Off-Street Compact Spaces***
Up to 20% of off-street parking spaces may be designed for compact cars subject to the following conditions:

1) Compact spaces shall only be permitted when there are extra parking spaces beyond the required parking in 8.3.2 *Off-Street Parking Requirement*;

2) Parking spaces should be grouped or placed in clusters rather than being scattered simply to solve parking layout difficulties; and

3) Each parking space shall be clearly marked with the words "Compact Only" and such parking spaces shall comply with the dimensional standards in Table 8.3-4.

8.3.3 Rules for Computing Requirements

A) ***Multiple Uses***
Unless otherwise approved, lots containing more than one use must provide parking and loading in an amount equal to the total of the requirements for all uses.

B) ***Fractions***
When measurements of the number of required spaces result in a fractional number, any fraction of one-half or less shall be rounded down to the next lower whole number and any fraction of more than one-half shall be rounded up to the next higher whole number.

C) ***Area Measurements***
Unless otherwise specifically noted, all square footage-based parking and loading standards must be computed on the basis of gross floor area.

D) ***Occupancy- or Capacity-Based Standards***
For the purpose of computing parking requirements based on employees, students, residents or occupants, calculations shall be based on the largest number of persons working on any single shift, the maximum enrollment, or the maximum fire-rated capacity, whichever is applicable and whichever results in the greater number of spaces.

E) ***Unlisted Uses***
Upon receiving a development application for a use not specifically listed in an off-street parking schedule, the Planning Director shall apply the off-street parking standard specified for the listed use that is deemed most similar to the proposed use.

8.3.4 Location

A) ***General***
Except as otherwise expressly provided in this section, required off-street parking spaces shall be located on the same lot as the principal use.

B) ***Setbacks***

1) Required off-street parking spaces and driveways must be located at least 5 feet from any required buffer or Resource Conservation Area, except driveways crossing perpendicularly through buffers.

2) Off-street parking or storage of vehicles, travel trailers, or motor homes shall not be permitted within any front or street side setback area, provided that off-street parking may be permitted within that portion of any setback used for driveway access to required off-street parking areas. Storage of mobile homes is not permitted.

C) ***Guest Parking***
Guest parking shall be designated within common areas and be distributed throughout residential projects. Striped on-street parking may be counted toward guest parking requirements. For Townhouse, detached and Townhouse, guest parking shall be distributed so that there is at least one parking space within 200' of each townhouse lot.

D) ***Residential Driveway Standards***

1) *Width*
Driveways serving single-family residential properties shall have a minimum width of 12 feet. Ribbon strip driveways within the Small Town Character Overlay District shall be exempt from this standard.

2) *Length*
Driveways serving all residential properties shall be at least 20 feet in length as measured from the back of the sidewalk or, where no sidewalk exists, from the back of the curb. Driveways accessed by an alley shall be exempt from this standard.

8.3.5 Off-Street Loading Requirements

A) ***Off-Street Loading Schedule***
Off-street loading spaces shall be required for industrial, major institutional, and business uses that can be expected to regularly receive or deliver goods, pursuant to the following Off-Street Loading Schedule.

Table 8.3-3: Off-Street Loading Schedule

Gross Floor Area (square feet)	Required Number of Spaces
0 – 40,000	1
40,001 – 100,000	2
100,001 – 160,000	3
160,001 – 240,000	4
240,001 – 320,000	5
320,001 – 400,000	6
Each 90,000 over 400,000	1

B) ***Dimensions***
Required loading spaces shall have the following minimum dimensions: 12-foot minimum width, 25-foot minimum length, and 14-foot minimum vertical clearance.

C) ***Location***

1) Required off-street loading spaces shall not be located within a building, but shall be on the site of the use served or on an adjoining site.

2) Required off-street loading spaces shall be located to the sides and/or rear of the lot to maximize the street exposure of the primary structure.

3) A loading area shall not be located in a required setback. In addition, street-side loading docks shall be set back at least 70 feet from the street property line or 110 feet from the street center line, whichever is greater.

4) No loading bay may intrude into any portion of a required parking aisle or access dimension.

5) Loading areas visible from a street shall be screened on three sides by a solid, decorative fence, wall, or hedge at least six feet in height.

D) ***Access***

1) A required loading space shall be accessible without backing a truck across a street property line unless the Planning Director determines that provision of turn-around space is infeasible and approves alternative access.

2) An occupied loading space shall not prevent access to a required off-street parking space.

8.3.6 Parking Lot Design Standards

A) ***Purpose***

Because parking areas frequently predominate the visual impact of a development, this section is intended to beautify and enhance these spaces without compromising vehicular and pedestrian safety. The Town does not desire parking areas which dominate a site and advocates de-emphasized parking in favor of architectural design, landscape buffers, and pedestrian amenities. Site development shall also address the safety and comfort of the pedestrian in walking within and between areas of automobile movement.

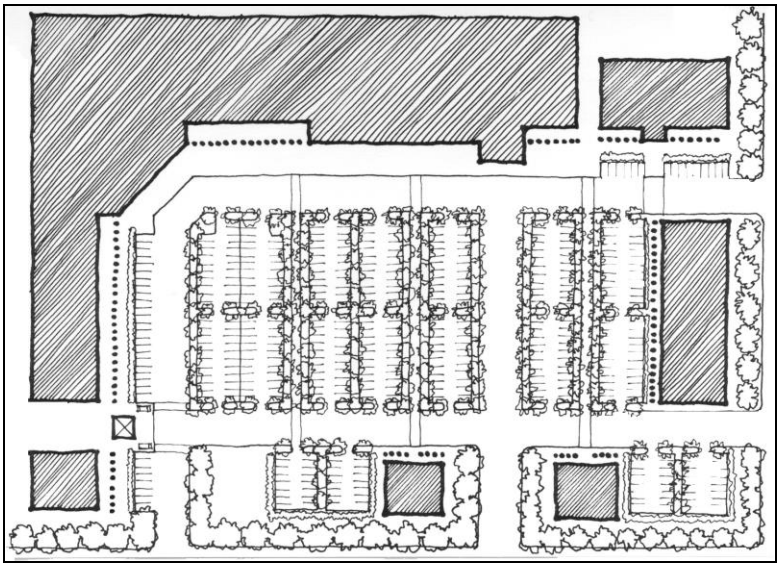


Figure 8.3.6(A): Illustration of Landscaped Parking Area

B) ***Site Layout***

1) In order to develop a more pedestrian-oriented streetfront and to maximize the street exposure of the primary structure, a minimum of fifty percent of off-street parking spaces shall be located in the side yard and/or rear yard as defined in Section 12.2 *Terms Defined*. Off-street parking lots with a total of 35 parking spaces or less shall be exempt from this requirement.

2) Any parking areas containing more than 50 spaces shall be visually subdivided through the use of buildings, planting areas, plazas, courtyards, or landscaped islands.

3) Parking lots shall be designed to allow pedestrians to safely move from their vehicles to the building. On smaller lots, this shall be achieved by providing a sidewalk at the perimeter of the lot. On larger parking lots, corridors within the parking area should channel pedestrians from the car to all customer entrances. These corridors should be delineated by a paving material that is different from that of vehicular areas and by small posts or bollards, which may incorporate lighting.

4) Driveways to parking areas shall be no wider than current Town specifications.

5) All nonresidential development and all residential development in the PUD-CZ, SD-CZ, TND-CZ, and MORR districts shall comply with the “Pedestrian Flow” design standards located in Section 8.4.4.

C) ***Markings***

1) Each required off-street parking space and off-street parking facility shall be identified by surface markings and shall be maintained in a manner so as to be readily visible and accessible at all times, except during periods of snow. Such markings shall be arranged to provide for orderly and safe loading, unloading, parking, and storage of vehicles. Markings required to be maintained in a highly visible condition include striping, directional arrows, lettering on signs, and handicapped-area designations. All paved parking spaces shall be striped white. Such striping shall be a minimum of four (4) inches wide.

2) One-way and two-way accesses into required parking facilities shall be identified by directional arrows. Any two-way access located at any angle other than 90 degrees to a street shall be marked with a traffic separation stripe the length of the access. This requirement does not apply to aisles.

D) ***Surfacing and Maintenance***

All off-street parking areas shall be paved and kept in a dust-free condition at all times, except in the CB Conservation Buffer zoning district or for Athletic Fields only under the category of Entertainment, Outdoor where allowed in other zoning districts where parking areas shall be gravel or paved and kept in a dust-free condition at all times. Gravel parking shall at a minimum meet the following specifications:

1) Compacted Subgrade;

2) 6 Inches Aggregate Base Course;

3) 1.5 Inches #78M Stone; and

4) Drive aisles must be repaired or replaced with #78M Stone every six (6) months.

E) ***Dimensions***

1) *General*
Required off-street parking spaces shall comply with the following dimensional standards:

a) The maximum angle for angled parking shall be 60 degrees.

Table 8.3-4: General Dimensional Standards for Required Off-Street Parking Spaces

Use	Type of Space	Dimensions (feet)
Residential	Spaces in Garage or Carport	10 x 20
	Uncovered	9 × 18
Nonresidential	Angled and perpendicular spaces	9 × 18
	Compact (see 8.3.2(D))	9 x 15
All	Parallel	8 x 22

2) *Vertical Clearance*
Vertical clearance for off-street parking spaces shall be 7 feet, except that an entrance may be 6.67 feet and the front 5 feet of a parking space serving a residential use may have a minimum vertical clearance of 4.5 feet.

3) *Spaces Near Obstructions*
Each parking space adjoining a wall, column, or other obstruction higher than 0.5 feet shall be increased by two feet on the obstructed side.

F) ***Access to Parking Areas***

1) All off-street parking spaces shall be accessible without backing into or otherwise reentering a public right-of-way, unless it is physically impossible to provide for such access. An alley may be used as maneuvering space for access to off-street parking.

2) When an off-street parking area does not abut a public street, there shall be provided an access drive not less than 24 feet in width for two-way traffic, connecting the off-street parking area with a public street. The access drive shall be paved in the manner required for off-street parking lots and may not traverse property in a residential district unless the drive provides access to a parking area serving a use allowed in a residential district. Where an access or service drive is such that satisfactory turn-around is not possible, a turn-around shall be provided as required by the Fire Department.

G) ***Off-Street Parking Area Landscaping, Buffering, and Screening***
Off-street parking areas shall be landscaped, buffered, and screened in accordance with the standards of Section 8.2.

8.3.7 Use of Off-Street Parking Areas

Required off-street parking areas are to be used solely for the parking of licensed, motor vehicles in operating condition. Required spaces may not be used for the display of goods for sale or lease or for long-term storage of vehicles, boats, motor homes, campers, mobile homes, or building materials.

A) ***Vehicle Stacking Areas***

The vehicle stacking standards of this subsection shall apply unless otherwise expressly approved by the Planning Director.

1) *Minimum Number of Spaces*

Off-street stacking spaces shall be provided as follows:

Table 8.3-5: Minimum Required Vehicle Stacking Spaces

Activity Type	Minimum Stacking Spaces	Measured From
Bank teller lane	4	Teller or Window
Restaurant drive-through	6	Order Box
Restaurant drive-through	4	Order Box to Pick-Up Window
Car wash stall, automatic	6	Entrance
Car wash stall, self-service	3	Entrance
Gasoline pump island	2	Pump Island

2) *Design and Layout*

Required stacking spaces are subject to the following design and layout standards.

3) *Size*

Stacking spaces shall be a minimum of 8 feet by 20 feet in size.

4) *Location*

Stacking spaces shall not impede on- or off-site traffic movements or movements into or out of off-street parking spaces.

5) *Design*

Stacking spaces shall be separated from other internal driveways by raised medians if deemed necessary by the Planning Director for traffic movement and safety.

8.3.8 Accessible Parking for Physically Handicapped Persons

A portion of the total number of required off-street parking spaces in each off-street parking area shall be specifically designated, located, and reserved for use by persons with physical disabilities.

A) ***Number of Spaces***

The minimum number of accessible spaces to be provided shall be a portion of the total number of off-street parking spaces required, as determined from the following schedule. Parking spaces reserved for persons with disabilities shall be counted toward fulfilling off-street parking standards.

Table 8.3-6: Required Accessible Parking for Physically Handicapped Persons

Total Parking Spaces Required	Minimum Total Number of Accessible Spaces	Minimum Number of Van-Accessible Spaces
1-25	1	1
26-50	2	1
51-75	3	1
76-100	4	1
101-150	5	1
151-200	6	1
201-300	7	2
301-400	8	2
401-500	9	2
501-1,000	2% of total spaces	1 out of every 6 accessible spaces
Over 1,000	20 + 1 per each 100 spaces over 1,000	1 out of every 6 accessible spaces

*Hospital Outpatient Facilities require 10% of the patient and visitor spaces be accessible.
**Rehabilitation Facilities and Outpatient Physical Therapy Facilities require 20% of the patient and visitor spaces be accessible.

B) ***Accessible Parking Space Dimensions***
The dimensions of accessible spaces shall meet the minimum requirements of the 2010 ADA Standards for Accessible Design.

C) ***Location of Spaces***
Required spaces for persons with disabilities shall be located in close proximity to building entrances and shall be designed to permit occupants of vehicles to reach the building entrance on an unobstructed path.

D) ***Signs and Marking***
Required spaces for persons with disabilities shall be identified with signs and pavement markings identifying them as reserved for persons with disabilities. Signs shall be posted directly in front of the parking space at a height of no less than 42 inches and no more than 72 inches above pavement level.

8.3.9 Off-Street Parking Alternatives

The Planning Director shall be authorized to approve alternatives to providing the number of off-street parking spaces required by the Off-Street Parking Schedules in accordance with this subsection.

A) ***General***

1) *Procedure*
Alternative parking plans shall be reviewed and approved by the Planning Director prior to site plan approval.

2) *Violations*
Violations of approved alternative parking plans constitute a violation of this Code and will be subject to the enforcement and penalty provisions of Article 11: *Enforcement*.

B) ***Off-Site Parking***
The Planning Director may approve the location of required off-street parking spaces on a separate lot from the lot on which the principal use is located if the off-site parking complies with the all of following standards.

1) *Ineligible Activities*
Off-site parking may not be used to satisfy the off-street parking standards for residential uses (except for guest parking), restaurants, convenience stores, or other convenience-oriented uses. Required parking spaces reserved for persons with disabilities may not be located off-site.

2) *Location*
No off-site parking space may be located more than 400 feet from the primary entrance of the use served (measured along the shortest legal pedestrian route) unless remote parking shuttle bus service is provided. Off-site parking spaces may not be separated from the use served by a street right-of-way with a width of more than 80 feet, unless a grade-separated pedestrian walkway is provided, or other traffic control or remote parking shuttle bus service is provided.

3) *Zoning Classification*
Off-site parking areas require the same or a more intensive zoning classification than required for the use served.

4) *Agreement for Off-Site Parking*
In the event that an off-site parking area is not under the same ownership as the principal use served, a written agreement between the record owners will be required. The agreement must guarantee the use of the off-site parking area for at least 10 years. An attested copy of the agreement between the owners of record must be submitted to the Planning Director for recordation in form established by the Town Attorney. Recordation of the agreement must take place before issuance of a Certificate of Zoning Compliance for any use to be served by the off-site parking area. An off-site parking agreement may be revoked only if all required off-street parking spaces will be provided, in accordance with the Off-Street Parking Schedules (Section 8.3.2). No use shall be continued if the parking is removed unless substitute parking facilities are provided, and the Planning Director shall be notified at least 60 days prior to the termination of a lease for off-site parking.

C) ***Shared Parking***
The Planning Director may approve shared parking facilities for developments or uses with different operating hours or different peak business periods if the shared parking complies with the all of following standards.

1) *Location*
Shared parking spaces must be located within 600 feet of the primary entrance of all uses served, unless remote parking shuttle bus service is provided.

2) *Zoning Classification*
Shared parking areas require the same or a more intensive zoning classification than required for the use served.

3) *Shared Parking Study*
Those wishing to use shared parking as a means of satisfying off-street parking requirements must submit a shared parking analysis to the Planning Director that clearly demonstrates the feasibility of shared parking. The study must be provided in a form established by the

Planning Director and made available to the public. It must address, at a minimum, the size and type of the proposed development, the composition of tenants, the anticipated rate of parking turnover and the anticipated peak parking and traffic loads for all uses that will be sharing off-street parking spaces.

4) *Agreement for Shared Parking*
A shared parking plan will be enforced through written agreement among all owners of record. An attested copy of the agreement between the owners of record must be submitted to the Planning Director for recordation in a form established by the Town Attorney. Recordation of the agreement must take place before issuance of a Certificate of Zoning Compliance for any use to be served by the off-site parking area. A shared parking agreement may be revoked only if all required off-street parking spaces will be provided, in accordance with Off-Street Parking Requirements (Section 8.3.2).

D) ***Other Eligible Alternatives***
For Minor Site Plans and Minor Subdivision Plans, the Planning Director may approve any other alternative to providing the requisite number of off-street parking spaces on the site of the subject development (including, but not limited to, a decrease in the number of proposed off-street parking spaces by not more than 10 percent from the minimum number of spaces otherwise required under Section 8.3) if the applicant demonstrates to the satisfaction of the Planning Director that the proposed plan will do at least as good of a job of protecting surrounding neighborhoods, maintaining traffic circulation patterns, and promoting quality urban design as would strict compliance with the otherwise applicable off-street parking standards.

For Major Site Plans, the Town Council may approve any other alternative to providing the requisite number of off-street parking spaces on the site of the subject development (including, but not limited to, a decrease in the number of proposed off-street parking spaces by not more than 10 percent from the minimum number of spaces otherwise required under Section 8.3) if the applicant demonstrates to the satisfaction of the Town Council that the proposed plan will do at least as good a job of protecting surrounding neighborhoods, maintaining traffic circulation patterns, and promoting quality urban design as would strict compliance with the otherwise applicable off-street parking standards.

The Planning Director and Town Council shall consider the following factors in determining whether any such proposed alternative is acceptable:

1) Existing topography;

2) The type, amount, and location of existing vegetation;

3) The size and configuration of the parcel;

4) The location and extent of underground and overhead utilities;

5) Rights-of-way bounded by slopes steeper than 2:1;

6) Natural barriers such as waterways, rock formations, and soil conditions;

7) Proximity to transit stops;

8) Frequency of use of the parking areas;

9) Availability of on-street parking;

10) Historic or cultural sites or structures;

11) Interference with convenient and enjoyable use of adjacent properties; and

12) Consistency with the intent of this Ordinance.

8.4 COMMUNITY AMENITIES AND PEDESTRIAN FLOW

8.4.1 General

Site development focuses on macro-level issues of the development's relationship to its neighbors and to the community at large. It is the purpose of the Town Council in adopting this section that development contribute to the enhancement of the entire community and that no site be viewed as an island unto itself. Community cohesiveness, rather than fragmentation, is a primary goal of this article.

8.4.2 Applicability

The provisions of this Section 8.4 shall apply to all nonresidential development, and residential development in the PUD-CZ, SD-CZ, TND-CZ, and MORR planned development districts.

8.4.3 Community Amenities

All development subject to Sec. 8.4 shall contribute to the establishment or enhancement of the community and public spaces by providing at least two community amenities, including but not limited to a patio seating area, water feature, clock tower, pedestrian plaza with benches, planters, public art, or focal feature. Any such areas shall have direct access to the public sidewalk network and such features shall not be constructed of materials that are inferior to the principal materials of the building and the landscape. These amenities may be built so as to terminate a vista, where possible, in order to provide a prominent visual orientation for the development.

8.4.4 Pedestrian Flows

A) ***Continuous Internal Pedestrian Walkway***

Within all developments subject to this Section 8.4, a continuous internal pedestrian walkway shall be provided from the perimeter public sidewalk or right-of-way to the principal customer entrance of all principal buildings on the site. This internal walkway shall feature landscaping, benches, and other such materials/facilities for approximately 50 percent of the length of the walkway.

B) ***Sidewalks***

In addition, sidewalks at least 5 feet in width shall be provided in the following locations:

1) Along the street-facing side(s) of any lot that abuts a public street;

2) Along the full length of the building(s) along any façade(s) featuring a customer entrance, and

3) Along any façade(s) abutting public parking areas.

C) ***Planting Beds***
A minimum of one foundation planting bed shall be provided for every 200 feet of required sidewalk, spaced at regular intervals and located between curbs and buildings. A minimum of one tree and ground covering or mulch shall be installed in each planting bed. Such beds shall have at least 350 square feet of planting area for each large tree, and 250 square feet for each small tree.

D) ***Weather Protection Features***
Internal pedestrian walkways provided in conformance with this section shall provide weather protection features such as awnings or arcades within 30 feet of all customer entrances.

E) ***Driving Surfaces***
All internal pedestrian walkways shall be distinguishable from driving surfaces through the use of special pavers, bricks, or scored concrete to enhance pedestrian safety and the attractiveness of the walkways.

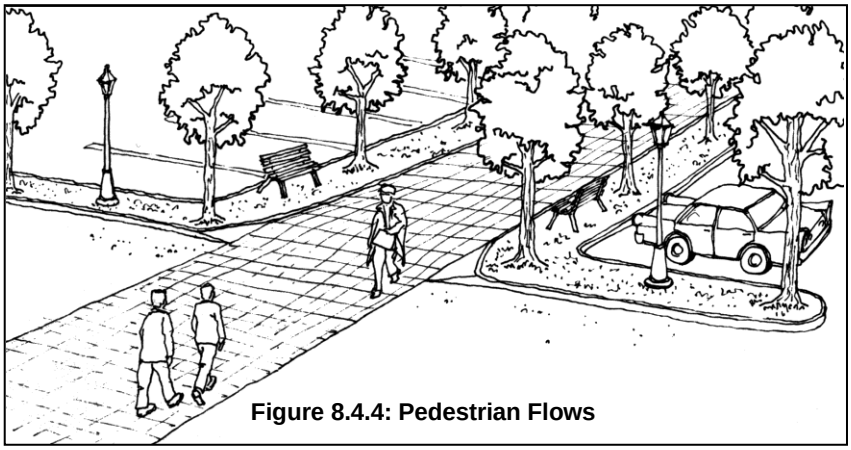


Figure 8.4.4: Pedestrian Flows

8.5 OPERATIONAL COMPATIBILTY STANDARDS

8.5.1 Glare
Glare from arc welding, acetylene torch cutting, or similar processes shall be contained within a completely enclosed and vented building.

8.5.2 Heat and Humidity
Uses, activities, and processes shall not produce any unreasonable, disturbing, or unnecessary emissions of heat or humidity at the property line of the site on which they are situated, which cause material distress, discomfort, or injury to a reasonable person.

8.5.3 Noise
No activity or operation subject to this Ordinance shall exceed the maximum permitted sound levels as set forth in Sections 14-29 through 14-38 of the Apex Town Code, which provisions are enforced by the Police Department.

8.5.4 Vibration
No use, activity, or process shall produce vibrations that are perceptible without instruments at the property line for more than three minutes in any one hour of the day between the hours of 7:00 a.m. and 10:00 p.m., or for more than 30 seconds in any one hour between the hours of 10:00 p.m. and 7:00 a.m.

8.5.5 Operational/Physical Compatibility

The following conditions may be imposed upon the approval of any development to ensure that it is compatible with existing uses, including but not limited to, restrictions on:

A) Hours of operation and deliveries;

B) Location on a site of activities that generate potential adverse impacts on adjacent uses, such as noise and glare;

C) Placement of trash receptacles;

D) Location of loading and delivery areas;

E) Location, intensity, and hours of illumination;

F) Placement and illumination of outdoor vending machines, telephones, and similar outdoor services and activities;

G) Additional landscaping and buffering;

H) Height restrictions to preserve light and privacy and views of significant features from public property and rights-of-way;

I) Preservation of natural lighting and solar access;

J) Ventilation and control of odors and fumes; and

K) Dust-control paving.

8.5.6 Evidence of Compliance

The Planning Director shall require such evidence of ability to comply with appropriate performance standards, mitigation measures, and conditions as set forth in this section, as he deems necessary prior to issuance of a certificate of zoning compliance.

8.6 EXTERIOR LIGHTING

8.6.1 Purpose and Intent

The provision of outdoor lighting heightens nighttime safety and visibility, and is used to enhance the security of property and people. Lighting should be provided in areas of heavy vehicle and pedestrian use, and areas that are dangerous if unlit such as stairs, intersections, or changes in grade. It is important to set clear guidelines so that lighting adequately serves the site while minimizing negative impacts on surrounding properties.

8.6.2 Lighting Plan

Any development that proposes exterior lighting shall include a detailed exterior lighting plan as part of the plan submission. This plan shall include:

A) Specifications for the lighting fixtures such as: type of unit (cutoff, non-cutoff, glare shields, etc.), lamps (wattage, etc.), electrical load requirements, utility company involved, method of wiring, routing/location of lines, location of lights, and mounting heights.

B) An isofootcandle plan that shows typical foot-candle contours or a point photometric grid that indicates foot-candle levels measured at grade across the site. A point photometric plan is required for major site plans. Other information

such as: maximum, average, and minimum site foot-candles, uniformity ratio (average/minimum), and depreciation factors should also be included. Foot-candle levels must be shown at initial levels.

C) Cross-sections of all lighted perimeter areas immediately adjacent to existing residential properties indicating how all exterior lighting (site and building mounted lighting) will be designed to limit spillover light and control off-site glare (see Sec. 8.6.4(D)(4)). A cross-section must be provided for each adjoining single-family residential property. Where the developing site adjoins multi-family residential property, a typical cross-section must be provided at 100 foot intervals along the common property line. The cross-sections must accurately represent existing site topography of the residential properties, sections of the residential units, and proposed topography and site/architectural elements (buildings, retaining walls, lights, landscape screening, etc.) of the developing site (see Sec. 8.6.4(A)).

D) Plan certification by a licensed lighting professional holding the PE, LC or CLEP certification or similar certification that indicates proficiency in the design of outdoor lighting, a lighting manufacturer, or the local electric utility. The certification must verify that the plans meet the Town's design requirements and illumination standards.

8.6.3 Illumination Standards

The tables below set forth standards for lighting intensity based upon the land use or activity involved. Values are presented in initial foot-candles measured at grade. Site lighting shall not exceed these initial average foot-candle levels. Average values must be calculated using the levels found within the lighted area; for example, a parking lot must be calculated using the levels found within the curb to curb or paved parking area only.

Table 8.6-1: Lighting Standards for General Parking with Pedestrian Areas (initial foot-candles)

Use	Horizontal Illuminance Avg	Uniformity Ratio (Average/minimum)
- Multi-family residential or condominium (stacked flat)	4	8/1
- Retail	4	4/1
- Office - Industrial - Educational - Cultural, civic, and recreational - Church or place of worship - Townhomes and other attached residential	2	4/1

Table 8.6-2: Other Exterior Lighting Standards (initial foot-candles)

Location	Horizontal Illuminance Avg	Uniformity Ratio (Average/minimum)
*Vital locations (entry/exit doors, service areas, ATMs, etc.)	5.0	4/1
Sidewalks	1.0	4/1
Vehicular use area other than parking (service areas, drives and approach ways, private access roads, etc.)	1.0	4/1
Storage yards	4.0	4/1
Loading/unloading docks and platforms	15.0	4/1
Auto sales yard/enclosed outdoor display	10.0	8/1
General recreational areas (fields, playgrounds, courts, pools)	10.0	4/1

*Average initial levels for vital locations shall be generally based on an area 10 feet by 10 feet or the limits of the specific area.

8.6.4 Design Requirements

Exterior lighting, such as that used in and around buildings, recreation areas, parking lots, and signs, shall be designed to prevent the excessive spillover of light onto adjacent properties. It shall also be designed to protect against glare onto public rights-of-way thereby impairing the vision of motorists and adversely impacting adjoining properties. All exterior lighting shall be shielded from adjacent properties by existing vegetation, thick evergreen vegetated buffers, berms, walls, or fences, and/or the use of directional lighting, lighting shields, special fixtures, timing devices, appropriate light intensities, luminaries, and mountings at appropriate heights. External and/or internal shields are required on all lights in vehicular use areas and lights mounted to buildings where they are immediately adjacent to residential uses (such as along the edges of parking lots or mounted to the rear of buildings close to residential uses). All outdoor lighting shall conform to the following design standards:

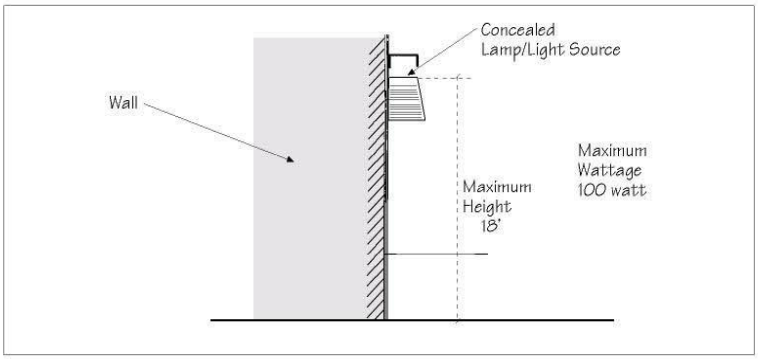
A) ***Mounting Heights***

Outdoor lighting fixtures shall be designed, located and mounted at heights shown to be appropriate in cross section (see also Sec. 8.6.2(C)), but in no case shall be greater than:

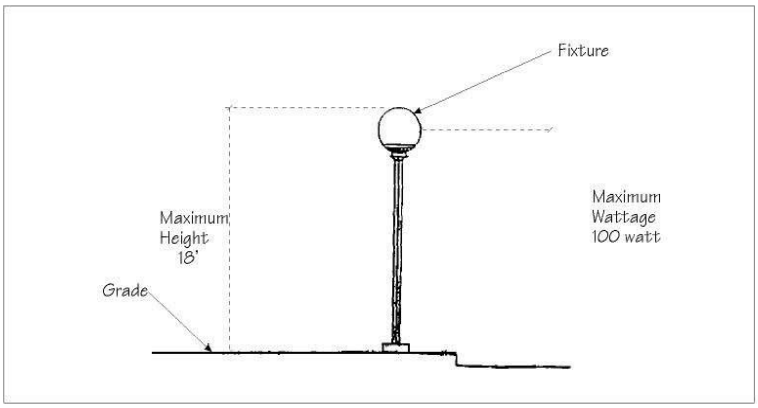
1) 18 feet above grade for *non-cutoff* lights (see Sec. 8.6.4(D)(2));

2) 35 feet above grade for *cutoff* lights (see Sec. 8.6.4(D)(3). The height for *cutoff* lights along the perimeter of non-residential sites where they are immediately adjacent to adjoining residential properties shall be designed based on cross sections as required by Sec. 8.6.2(C);

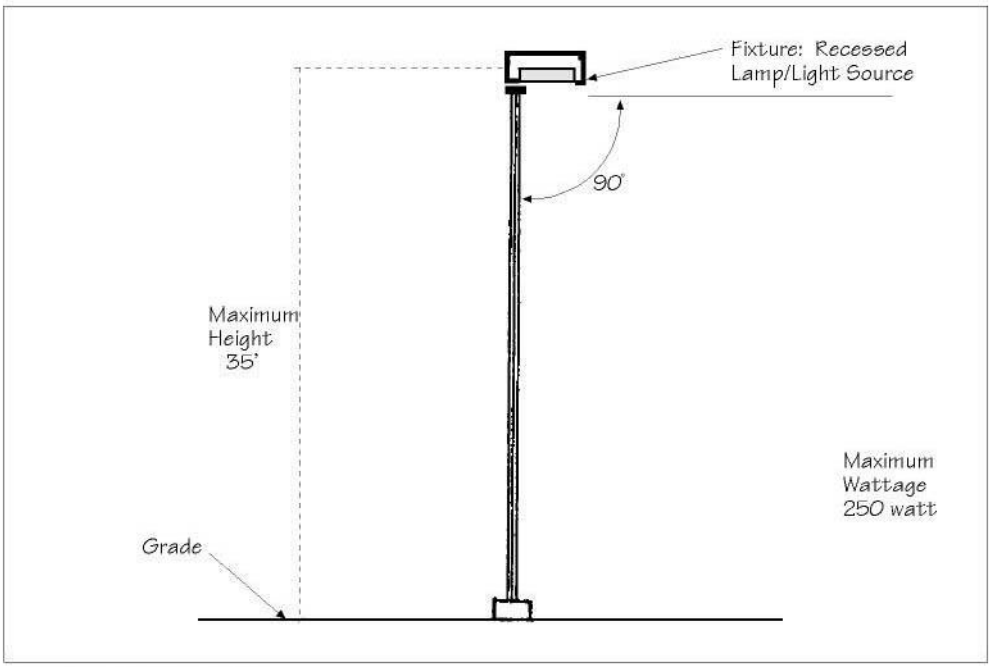
3) Mounting height is measured from the finished grade or surface and includes the total height of the fixture, pole, and any base or other supporting structure required to mount the light(s).



WALL-PACK LIGHT FIXTURES



NON-CUTOFF LIGHT FIXTURE



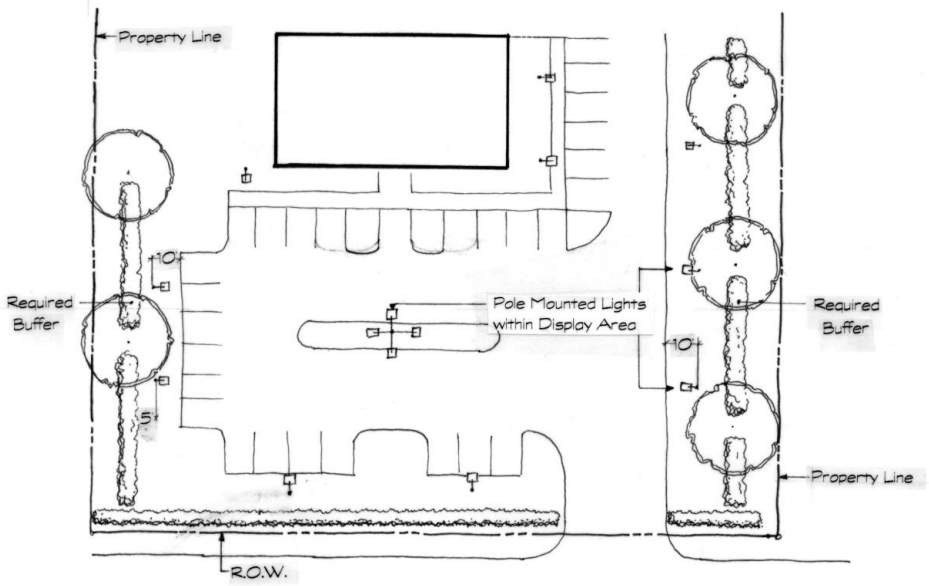
CUTOFF LIGHT FIXTURE

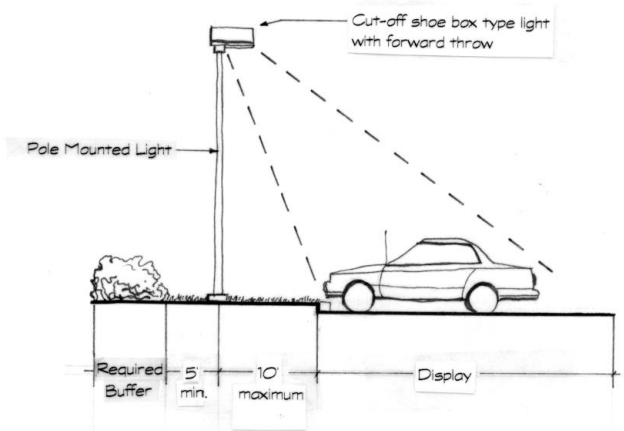
B) ***Location***

1) All outdoor lighting fixtures shall be located a minimum of 10 feet from a property or right-of-way line, and should be kept out of and at least 2 feet away from any required perimeter or streetscape buffer, and tree save area.

2) The layout of lighting shall be designed so that poles do not interfere with other elements of the approved site such as trees, landscaping, and parking. In general, poles should be kept at least 20 feet away from the trunk of any large type tree and at least 10 feet away from the trunk of any small type tree.

3) Lighting for outdoor display areas, such as auto dealerships, must be located inside the illuminated area or no more than 10 feet away from the outside edge of the illuminated area so that the amount of direct glare and the visual field of view does not present a safety hazard to the passing motorist.





8.6.4(B) Location/Lighting for Outdoor Display

C) ***Architectural/Site Compatibility***

Lighting fixtures shall be of a design and size compatible with the principal building of a development and adjacent areas, and shall be designed to be an integral part of the entire development site. Light fixtures and poles will be considered neutral elements of the site and must be finished in black, dark brown, or architectural bronze. All light fixtures/poles on site including building mounted lighting shall be the same color throughout the development. Bright colors or white are prohibited.

D) ***Spillover Light and Glare Control***

1) All outdoor lighting shall be designed and located such that the maximum illumination measured in initial foot-candles at the property line shall not exceed 0.3 onto adjacent residential sites and 1.0 onto adjacent non-residential sites and public rights-of-way.

2) Non-cutoff lights are prohibited along the perimeter of non-residential sites where they are immediately adjacent to adjoining residential

properties. Non-cutoff lights may require external caps and/or internal shields to control glare.

3) Cutoff lights shall be *full* cutoff with no sag-type lenses;

4) Cutoff lights used along the perimeter of non-residential sites where they are immediately adjacent to adjoining residential properties must be fitted with externally mounted shields placed on the residential side. The shields must be appropriately sized to sufficiently limit visible glare from the light onto the residential properties. Additional internal shields or other devices may be required to direct the light away from residential properties.

E) ***Wattage***
Lamps for non-cutoff fixtures shall not exceed 100 watts. Lamps for cut-off fixtures shall not exceed 250 watts.

F) ***Building, Ground Mounted Fixtures and Accent Lighting***
Lighting shall not be mounted to buildings or used to illuminate buildings or other site features unless approved as integral elements on the development plan. Lighting will not be approved unless the light fixtures are carefully selected, located, aimed, and shielded so that light is directed only onto limited parts of the building façade, specimen landscape, and site features, and spillover light is minimized (see also Secs. 8.6.4(C) *Architectural/Site Compatibility*. 8.6.4(D) *Spillover Light and Glare Control*, and 8.6.4(E) *Wattage*. Building, ground mounted fixtures and accent lighting must meet the following criteria:

1) Lights must not be used to illuminate entire portions of building(s), landscape, or site features.

2) Building mounted lights such as wall-pack and goose-neck type fixtures shall be fully shielded, true cutoff type fixtures (concealed lamp/light source). The lighting must be directed downward, and the wattage must not exceed 100 watts.

3) Accent lights must be low-wattage or low-voltage and the maximum illumination on any surface shall not exceed 5.0 average initial foot-candles.

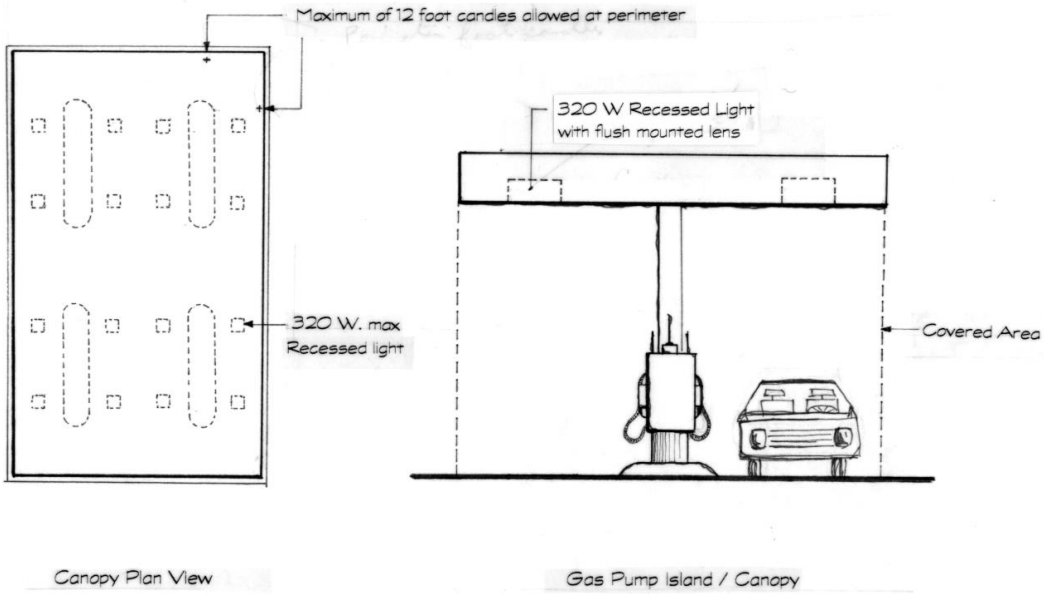
4) Awnings and canopies used for building accents over doors, windows, and etc. shall not be internally lit (i.e., from underneath or behind). If lit from above, the lighting must be spaced sparingly so that only limited portions of awnings and canopies are accented.

5) Lights that flash, move, revolve, rotate, scintillate, blink, flicker, vary in intensity or color, or use intermittent electrical pulsation are prohibited. Continuous lighting such as, but not limited to tubes or strings of lights on rooflines and building edges are prohibited (see also Sec. 8.7.2(I) *Prohibited Signs*).

G) ***Floodlights***
Floodlights or similar types of directional lighting attached to light poles or buildings to illuminate large portions of the site and/or building(s) are prohibited unless the Director of Planning gives special permission and approval is given

through the development review process. The use of floodlights or similar types of directional lighting will only be considered for special approval for Industrial type uses or where it can be demonstrated that extreme site or design constraints warrant their use.

H) ***Lighting for Gas Station/Convenience Store Canopies***
Lighting for canopies for service stations and similar uses shall be restricted to no more than two 320 watt recessed lighting fixtures (including lenses) mounted flush with the bottom of the canopy on each side of a gasoline pump island, or any other design that meets the standards of this ordinance. Lighting for canopies for service stations and other similar uses such as but not limited to bank and pharmacy drive through, and large covered main entrance canopies shall not exceed an initial maximum level of 12 foot-candles as measured at ground level at the inside of the outside edge of the canopy and an initial average level of 25 foot-candles under the canopy.



8.6.4(H) Exterior Lighting Design Requirements – Lighting for Gas Stations & Convenience Store Canopies

I) ***Sports and Athletic Field Lighting***
Lighting for ball fields may need to exceed illumination standards for general recreational needs in order to meet higher standards required for tournament play. The Director of Planning must approve any deviations from the illumination standards; however, before any changes will be considered the sports lighting must meet these minimum standards:

1) Fixtures must not exceed 80 feet in mounting height (this includes bases and/or other mounting structures).

2) Fixtures must be fitted with the manufacturer's glare control package. If the manufacturer does not have a glare control package, the fixture specification must be changed to a manufacturer that offers a glare control package.

3) Fixtures must be designed and aimed so that their beams fall within the primary playing area and the immediate surroundings, so that off-site direct illumination is significantly restricted. Spillover levels at the property line must not exceed 0.3 foot-candles onto residential properties.

4) Lighting shall be extinguished no later than one hour after the event ends.

J) ***Illuminated Tubing or Strings of Light***
Illuminated tubing or strings of light on trees and landscaping or outlining property lines or open sales areas, rooflines or wall edges of buildings are prohibited except as provided in Sec. 8.7.1(A)(25) *Holiday*.

K) ***Illumination for a Regional Recreation Complex***

1) Unless specifically exempted or amended below, all exterior lighting must meet the standards found in Section 8.6 *Exterior Lighting* of the UDO. Structures erected to support and function as operational elements of outdoor amusements such as, but not limited to, bungee jumping, ropes courses, and zip-lines may be illuminated.

2) Lights shall not be used to illuminate entire portions of building(s), landscape, or site features.

3) Building-mounted lights such as wall-pack and goose-neck type fixtures shall be fully shielded, true cutoff type fixtures (concealed lamp/light source). The lighting must be directed downward, and the wattage must not exceed 100 watts.

4) Awnings and canopies used for building accents over doors and windows shall not be internally lit (e.g. from underneath or behind). If lit from above, the lighting must be spaced sparingly so that only limited portions of awnings and canopies are accented.

5) Critical areas associated with an outdoor amusement activity, such as, but not limited to, entrances and exits, approaches and mounting areas, queue and waiting areas, ticket booths or similar service facilities, and observation areas must be reasonably sized for the purpose they serve and identified and laid out on plans in close proximity to the outdoor amusement activities that they serve. Illumination standards for these areas shall not exceed a horizontal illuminance average of 5.0 foot candles and a uniformity ratio of 4/1 (average/minimum) and height of 35 feet.

6) Except as allowed under Section 8.6.4 (F) *Building, Ground Mounted Fixtures and Accent Lighting*, all up-lighting, spot lights, and floodlights are prohibited.

7) Lights that flash, move, revolve, rotate, scintillate, blink, flicker, vary in intensity or color, or use intermittent electrical pulsation are prohibited. Continuous lighting such as, but not limited to, tubes or strings of lights on rooflines, building edges, and outdoor amusement activities are allowed (see also Section 8.7.2(I) *Prohibited Signs*).

8.6.5 Exemptions

The standards of this section shall not apply to:

A) Individual residential lighting that is not reviewed as part of a development plan, except for a *Single Family Recreational Use* as defined in Sec. 4.5.4.

B) Lighting associated with temporary uses that have been permitted, provided that the lighting meets the general standards of this section.

C) Seasonal lighting that is part of customary holiday decorations and annual civic events, provided that it meets all the requirements of Sec. 8.7.1(A)(25) *Holiday*.

D) Lighting associated with sign illumination as set forth in Section 8.7.6(B) *Sign Illumination*.

E) Municipal lighting installed within public rights-of-way or on Town-owned property for the benefit of public health, safety, and welfare.

8.6.6 Final Inspection

Before certificates of occupancy are released, the owner/builder must supply the Town with a final letter of certification from the lighting engineer, qualified lighting professional (Sec. 8.6.2 (C)), or lighting manufacturer verifying that all site lighting is installed according to Town standards, the approved plans, and any applicable conditions. The certification must include a report indicating that all site and exterior mounted building lighting was inspected and the light levels measured and recorded (including spillover lighting). Any irregularities or deviations from the approved site plan, Town standards, or applicable conditions must be pointed out in the report.

8.7 SIGNS

8.7.1 Permitted Signs: Location, Size, and Number

All signs are subject to Sec. 8.7.9, *Definitions* and Article 12 *Definitions* and Sec. 8.7.2 through 8.7.6. The sections listed specifically in Section 8.7.1 have been included for emphasis and user convenience and shall not be construed to exclude other sections of the Ordinance.

Table 8.7.1

P = allowed with permit X = not allowed √ = allowed without permit

	Sign Type Permanent	Conditions	Residential Uses	Commercial Uses	Industrial Uses	Office & Institutional Uses	Illumination[1]
1	Awning	8.7.1(A)(1)	X	P	P	P	Yes
2	Reserved						
3	Building Marker	8.7.1(A)(3)	√	√	√	√	Yes
4	Civic Club Non-profit (Off-Premise)	8.7.1(A)(4)	X	P	P	P	No
	Directory:						
5	• Building	8.7.1(A)(5)	X	P	P	P	Yes
6	• Ground	8.7.1(A)(6)	P	P	P	P	Yes
7	Flags	8.7.1(A)(7)	√	√	√	√	Yes
8	Gasoline Sales	8.7.1(A)(8)	X	√	√	X	Yes
9	Governmental	8.7.1(A)(9)	√	√	√	√	Yes
10	Health/Hospital	8.7.1(A)(10)	X	X	X	P	Yes
11	Incidental	8.7.1(A)(11)	√	√	√	√	Yes

	Sign Type	Conditions	Residential Uses	Commercial Uses	Industrial Uses	Office & Institutional Uses	Illumination[1]
12	Marquee	8.7.1(A)(12)	X	√	X	X	Yes
13	Menu Board	8.7.1(A)(13)	X	P	X	X	Yes
	Principal Ground:						
14	• Non-residential	8.7.1(A)(14)	X	P	P	P	Yes
15	• Residential	8.7.1(A)(15)	P	X	X	X	Yes
16	Special/Historic	8.7.1(A)(16)	P	P	P	P	Yes
17	Suspended	8.7.1(A)(17)	X	P	P	P	Yes
18	Wall	8.7.1(A)(18)	X	P	P	P	Yes
30	Window	8.7.1(A)(30)	X	√	√	√	Yes
	Temporary						
19	Construction/ Development:						
	• Non-residential or mixed-use	8.7.1(A)(19)(a)	X	P	P	P	No
	• Residential	8.7.1(A)(19)(b)	P	X	X	X	No
20	Contractor	8.7.1(A)(20)	√	√	√	√	No
	Event:						
21	• For-profit	8.7.1(A)(21)	X	P	P	P	No
22	• Non-profit	8.7.1(A)(22)	P	P	P	P	No
23	• Public	8.7.1(A)(23)	√	√	√	√	No
24	Coming Soon/Grand Opening/Closing	8.7.1(A)(24)	X	P	P	P	No
25	Holiday	8.7.1(A)(25)	√	√	√	√	Yes
26	Political	8.7.1(A)(26)	√	√	√	√	No
27	Public Notice	8.7.1(A)(27)	√	√	√	√	No
28	Real Estate	8.7.1(A)(28)	√	√	√	√	No
29	Seasonal Outdoor Sales	8.7.1(A)(29)	P	P	P	P	Yes
30	Window	8.7.1(A)(30)	X	√	√	√	No
31	Yard Sale	8.7.1(A)(31)	√	√	√	√	No
Prohibited							
See Sec. 8.7.2 *Prohibited Signs*							
Central Business District, Small Town Character Overlay District, and Planned Development Districts							
See Sec. 8.7.7 *Central Business District, Small Town Character Overlay District, and Planned Development Districts*							
Planned Developments TND-CZ, MEC-CZ							
See Sec. 2.3.4 and 8.7.7							
Sign Design and Color							
[1]Subject to Sec. 8.7.4.C *Uniform Color Scheme,* 8.6 *Exterior Lighting, and* 8.7.6.B *Sign illumination.*							

A) ***Conditions***

Permanent signs are allowed as follows:

1) *Awning*
A material such as fabric, metal, flexible plastic, or vinyl that is supported by or attached to a frame and that extends from the exterior wall of a building without ground-mounted support and meets the conditions below:

Awning signs shall be allowed provided that:

a) On a single-occupant property, one (1) awning sign may be allowed only in lieu of all other signage otherwise permitted on the wall to which the awning is attached.

b) On a multi-occupant property, one (1) awning sign may be allowed over each occupant entrance, in lieu of other wall signs, and if so shown on the Master Signage Plan.

c) The maximum area of an awning sign shall not exceed ten (10) percent of the total awning face front or side area.

d) Awning signs may be illuminated only with direct surface lighting and not with any form of backlighting.

e) Also subject to Sec. 8.7.4 *Sign Design and Color*, Sec. 8.7.5 *Master Sign Plan Requirement*, and Sec. 8.6.4(F), *Building, Ground Mounted Fixtures and Accent Lighting*.

f) Awnings in the Central Business District, Small Town Character Overlay District, and Planned Development Districts shall be exempt from this section and subject to 8.7.7(A)(5) *Awning Signs*,

Figure 8.7.1(A)(1): This awning sign does not exceed ten (10) percent of total awning face area.

2) *Reserved*

3) *Building Marker*
A name, stamp, or seal placed on a building to signify ownership or origin and meets the conditions below:

Building marker signs shall be allowed provided that:

a) Such sign(s) shall not exceed one (1) on any single building;

b) Such sign(s) shall not exceed three (3) square feet in area;

c) Such sign(s) shall contain no commercial logo or message;

d) Such sign(s) shall be made of permanent material, such as bronze or masonry, and be permanently affixed to the building wall.

e) Also subject to Sec. 8.7.4 *Sign Design and Color* and Sec. 8.7.5 *Master Sign Plan Requirement*.

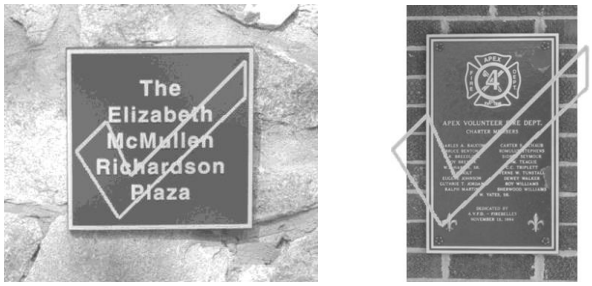


Figure 8.7.1(A)(3): These permanent building markers do not exceed three (3) square feet.

4) *Civic Club Non-Profit (Off-Premise)*
A sign (emblem or insignia) advertising for a non-profit organization (charitable, civic, fraternal, patriotic, religious, or similar organization) and meets the conditions below:

The emblem or insignia shall be allowed provided that:

a) Limited to three (3) signs per organization.

b) Located a minimum of fifteen (15) feet from any public right-of-way.

c) A maximum of two (2) square feet in size and a maximum of four (4) feet in height.

d) Not displayed in connection with a commercial promotion or as an advertising device.

e) Shall obtain property owner permission through a letter.

5) *Building Directory*
A wall sign that lists tenants or occupants of a building or project with unit numbers, arrows or other directional information and meets the conditions below:

Building wall-mounted directory signs shall be allowed on non-residential multi-tenant buildings provided that:

a) Such signs are limited to one (1) per building entrance not to exceed two (2) per building.

b) The total size of the wall-mounted directory sign does not exceed ten (10) square feet.

c) Also subject to Sec. 8.7.4 *Sign Design and Color* and Sec. 8.7.5, *Master Sign Plan Requirement*.

Figure 8.7.1(A)(5): This wall mounted directory sign does not exceed ten (10) square feet.

6) *Directory Ground*
A ground sign with a continuous base less than two (2) feet in height that lists tenants or occupants of a building having more than one tenant or project with unit numbers, arrows or other directional information and meets the conditions below:

Directory ground signs shall be allowed provided that:

a) *Non-residential*

(i) Non-residential logo/name directory signs internal to the site within an integrated development, multiple use development, or mixed use development shall be located not less than fifty (50) feet measured perpendicular from any vehicular entrance public right-of-way and at principal intersections within the site, where such intersections are not less than fifty (50) feet from any public right-of-way as shown on an approved Master Signage Plan.

(ii) Such signs shall not exceed twenty (20) square feet in area and forty-eight (48) inches in height.

(iii) Such signs shall not be located within a required buffer.

(iv) Such signs may contain logos or business names with arrows or other directional information but shall not contain any commercial message.

(v) Such signs may be internally or externally lighted in accordance with Sec. 8.7.6(B) Sign Illumination.

(vi) Also subject to Sec. 8.7.4 Sign Design and Color and Sec. 8.7.5, Master Sign Plan Requirement.

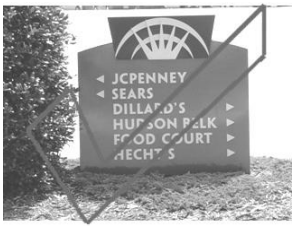


Figure 8.7.1(A)(6)(a): This non-residential directory sign is located away from public right-of-way and is of proper size.

b) *Multi-Family Residential*

(i) One (1) directory sign may be located near the principal entrance to a parking area for multi-family projects, as shown on an approved Master Signage Plan.

(ii) Such sign shall be located away from any public right-of-way, so that drivers can conveniently pull up and read the directory without impeding traffic on any driveway or entrance serving the development.

(iii) Such sign may contain an unlimited number of pieces of information, but letters shall not be more than three (3) inches in height and shall not be legible from any public right-of-way.

(iv) Such sign shall not exceed eight (8) square feet in area and five (5) feet in height.

(v) Such sign may be internally or externally lighted in accordance with Sec. 8.7.6(B), *Sign Illumination*.

(vi) Also subject to Sec. 8.7.4 *Sign Design and Color*.

7) *Flags*
A fabric, usually rectangular or triangular in shape, representing a country, state or other civic entity, corporation, business or other private organization designed to be flown from a flag pole and meets the conditions below:

Flags shall be allowed provided that:

a) No more than one flag of each type (e.g. state, national, non-profit organization, corporate) may be displayed on any lot unless the lot has more than one road frontage, in which case there may be one flag of each type at each entrance, or addressing each road frontage, with no more than 3 flag poles per entrance or road frontage.

b) A maximum of 2 flags shall be allowed per a flag pole.

c) Flag poles shall not exceed 30 feet in height nor shall flags on these poles exceed a size of five (5) feet by eight (8) feet.

d) Flag poles exceeding thirty (30) feet in height on May 4, 2004 may remain, however, flags flown on taller poles shall not exceed a size proportionate to a five-foot by eight-foot flag on a thirty-foot pole.

e) No building mounted flag or flag pole shall extend above the roofline.

f) Flags shall not be faded, tattered or torn.

8) *Gasoline Sales*
A service station sign advertising fuel prices in accordance with North Carolina General Statutes and meets the conditions below:

Gasoline sales signs shall be allowed provided that:

a) Gasoline price or self-service sign located and secured to each pump island shall not exceed nine (9) square feet.

b) A gasoline price/self-service changeable copy sign, not to exceed nine (9) square feet, may be included on the principal ground sign (not to exceed the total square footage shown in Table 8.7.1(A)(14) if a principal ground sign is allowed. Changeable copy for gasoline prices can be achieved through the use of LED lights only on the principal ground sign or on the gasoline canopy, but not both. LED lights shall not be used for any other purpose than to display gasoline prices.

c) An official North Carolina vehicle inspections sign shall be permitted on the building, provided said sign does not exceed four (4) square feet.

d) Signage and logos on pump island canopies are restricted to no greater than ten (10) percent of the face of the canopy.

e) A stripe is permitted on the canopy provided that the overall color scheme in the Master Sign Plan for the gas station is limited to white or black and one other color when a stripe is introduced on the canopy.

f) Also subject to Sec. 8.7.4 Sign Design and Color and Sec. 8.7.5 *Master Sign Plan Requirement*.

9) *Governmental*
Temporary or permanent sign erected and maintained by or required by the city, county, state or federal government and meets the conditions below:

Governmental signs are allowed to include but are not limited to the following:

a) Municipal, county, state and federal traffic signs.

b) Historical markers, monuments or signs erected by public authority.

c) Signs denoting the location of underground utilities.

d) Signs posted by or under the authority of municipal, county, state, or federal authorities for crime prevention, public safety, health, zoning, and identification.

Figure 8.7.1(A)(9): Signs posted under state and municipal authority for public information are allowed.

10) *Health/Hospital*
Permanent signs erected and maintained by an Ambulatory Healthcare Facility with Emergency Department or a Hospital and meet the conditions below:

a) Permitted signs in subsections 8.7.1(A)(10)(b), (c), (d), and (e) below must be approved as part of a Master Sign Plan for the Ambulatory Healthcare Facility with Emergency Department or Hospital use

b) Principal ground signs shall be allowed provided that:

(i) One principal ground sign is allowed at each intersection of two public streets bordering the facility.

(ii) Maximum height is six feet (6').

(iii) Maximum size is seventy (70) square feet.

(iv) The principal ground sign shall identify only the facility name, not the tenants or occupants thereof.

(v) Also subject to Sec. 8.7.4 *Sign Design and Color*, 8.7.5 *Master Sign Plan Requirement*, Sec. 8.7.3 *Sign Area Measurement*, and 8.7.6(B) *Sign Illumination*.

c) Emergency Department ground signs shall be allowed provided that:

(i) One Emergency Department ground sign is allowed at each major entrance to the facility.

(ii) Maximum height is eight feet (8').

(iii) Maximum size is eighty (80) square feet.

(iv) The Emergency Department ground sign shall identify only the facility name and emergency department information, not the tenants or occupants thereof.

(v) Also subject to Sec. 8.7.4 *Sign Design and Color*, 8.7.5 *Master Sign Plan Requirement*, Sec. 8.7.3 *Sign Area Measurement*, and 8.7.6(B) *Sign Illumination*.

d) Wall signs shall be allowed provided that:

(i) The sign surface area of a sign located on a wall of a structure may not exceed ten (10) percent of the total surface area of the wall on which the sign is located. The Emergency Department band shall not be counted in the measurement of the wall sign but in no case shall it exceed thirty-four (34) square feet.

(ii) No wall sign attached to a building may project more than twelve (12) inches from the building wall.

(iii) Also subject to Sec. 8.7.4 *Sign Design and Color*, 8.7.5 *Master Sign Plan Requirement*, Sec. 8.7.3 *Sign Area Measurement*, and 8.7.6(B) *Sign Illumination*.

e) Directory ground signs shall be allowed provided that:

(i) Maximum height is four feet (4').

(ii) Maximum sign face size is twenty-four (24) square feet.

(iii) Such signs may contain logos or business names with arrows or other directional information but shall not contain any commercial message.

(iv) Such signs may be internally or externally lighted in accordance with Sec. 8.7.6(B) *Sign Illumination*.

(v) The signs shall be located so as not to be legible from the public right-of-way. If this is not feasible, the signs can be located as close as fifty feet (50') measured perpendicular from the public right-of-way.

11) *Incidental*
A sign, generally informational, that has a purpose secondary to the use of the subject property on which it is located, such as "no parking", "entrance", "loading only", and other similar directives and meets the conditions below:

Incidental signs shall be allowed and include but are not limited to the following:

a) Signs or plates on structures or premises giving the name or address of the occupant, mailboxes, paper tubes and similar uses customarily associated with structures.

b) Signs posted upon private property relating to private parking or warning the public against trespassing, against danger from animals or other dangers or dangerous conditions so long as such signs are of an allowed size and description.

c) Private unofficial traffic signs indicating onsite directions, entrances, exits, or hazards.

d) Such signs shall not include logos or commercial messages or be extended to the supporting structure.

e) The size of such signs shall not exceed two (2) square feet or four (4) feet in height.

f) Signs that indicate towing shall be no smaller than 24” x 24” and be prominently displayed at the entrance thereto, displaying the name and phone number of the towing and storage company, and, if individually owned or leased, the parking lot or spaces within the lot are clearly marked by signs setting forth the name of each individual lessee or owner.

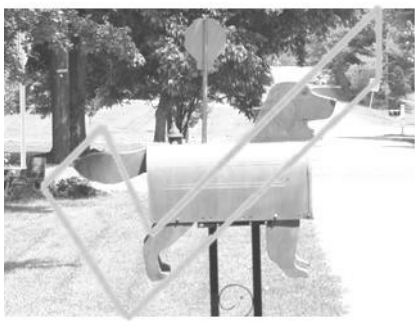


Figure 8.7.1(A)(11): Mailboxes (left) and signs posted upon private property relating to private parking (right) are allowed if sized appropriately.

12) *Marquee*
A theater wall sign designed to have changeable copy and meets the conditions below:

In addition to wall signs, marquee signs with changeable copy shall be allowed at theaters provided that:

a) Such changeable copy signs shall cover not more than one (1) square foot of sign area for each linear foot of theater building frontage.

b) Non-electric copy only.

c) Such signs shall be subject to total wall sign area limits and be affixed to the wall.

d) Also subject to Sec. 8.7.4 *Sign Design and Color* and 8.7.5, *Master Sign Plan Requirement*.

Figure 8.7.1(A)(12): This marquee sign with changeable copy covers less than one (1) square foot of sign area for each linear foot of theater building frontage.

13) *Menu Board*
An accessory sign providing items and price associated with a drive-thru window or walk-up window and meets the conditions below:

Changeable menu boards shall be allowed provided that:

a) Such signs shall not exceed thirty-two (32) square feet in area and six (6) feet in height.

b) Two (2) signs shall be permitted per drive-through not to exceed sixty-four (64) combined square feet.

c) Such signs shall not be legible from a public right-of-way or adjacent property.

d) Such signs may be internally and externally illuminated per Sec. 8.7.6(B), *Sign Illumination*.

e) Also subject to Sec. 8.7.4 *Sign Design and Color* and 8.7.5 *Master Sign Plan Requirement*.

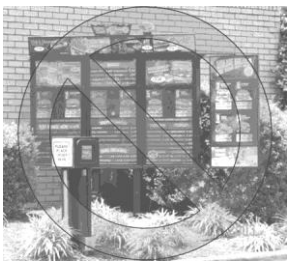


Figure 8.7.1(A)(13): The menu board sign on the left is too large, whereas the sign on the right meets requirements.

14) *Principal Ground: Non-Residential*
A sign supported permanently upon the ground by a continuous base or two (2) or more support posts at the outside edge, not attached to any

building and meets the conditions below. If supported by posts, the bottom of the sign shall be located no more than two (2) feet above grade and meets the conditions below:

Principal ground signs are allowed provided that size and height limitations set forth below are met.

Table 8.7.1(A)(14)

Street Frontage	Maximum Size (sq.ft.)	Maximum Height (feet)
< 200 feet	20	4
≥ 200 feet < 400 feet	30	5
≥ 400 feet	40	6

a) *Single Use Development that is not part of a Multiple Use Development, Mixed Use Development, or Integrated Development:*

(i) Single Use Development that is not part of a Multiple Use Development, Mixed Use Development, or Integrated Development shall be allowed one (1) principal ground sign at each major full service vehicular entrance.

(ii) If there are no major full service vehicular entrances, then one (1) principal ground sign is permitted. Location of such sign shall be permitted as stated below (iii,or iv,or v) where a “major vehicular entrance” shall replace “major full service vehicular entrance”.

(iii) A business located on a corner with one full service vehicular entrance on each roadway may opt to have one (1) principal ground sign on the corner instead of the signs located at each full service vehicular entrances.

(iv) A principal ground sign may be located in the median of a major full service vehicular entrance where the median is a minimum of fifty (50) feet long and ten (10) feet wide, provided that the sign is not located within ten (10) feet of either end of the median.

(v) A principal ground sign may be allowed in the buffer in close proximity to a major full service vehicular entrance within a sign easement to be shown on the approved site plan.

(vi) Also subject to Sec. 8.7.4 *Sign Design and Color*, and 8.7.6(B), *Sign Illumination*.

b) *Multiple Use Development, Mixed Use Development, or Integrated Development*
A group of two (2) or more uses or entities planned and developed in a joint manner that are governed by a common business, tenant, homeowner or other association or by

common conditions, covenants, and restrictions, regardless of whether such uses or entities are located on the same lot or parcel and meets the conditions below:

Principal ground signs for Multiple Use Development, Mixed Use Development, or Integrated Development shall be allowed provided that:

(i) One (1) principal ground sign shall be allowed at each major full service vehicular entrance in close proximity to that entrance.

(ii) Principal ground sign(s) shall be allowed in the buffer within a sign easement to be shown on the approved site plan.

(iii) A principal ground sign may be located in the median of a major full service vehicular entrance where the median is a minimum of fifty (50) feet long and ten (10) feet wide, provided that the sign is not located within ten (10) feet of either end of the median.

(iv) Such sign may be mounted on a fence or wall that does not exceed six (6) feet in height. For size limitations refer to Table 8.7.1(A)(14).

(v) A principal ground sign shall identify only the center name, not the tenants or occupants thereof.

(vi) Also subject to Sec. 8.7.4 *Sign Design and Color*, 8.7.5 *Master Sign Plan Requirement*, and 8.7.6(B) *Sign Illumination*.

Figure 8.7.1(A)(14)(b): The non-residential entrance sign for multiple-use lots (left) should identify only the center name, not the tenants thereof. The sign on the right is located out of the right-of-way.

15) *Principal Ground: Residential*
A sign supported permanently upon the ground by a continuous base or two (2) or more support posts at the outside edge, not attached to any building and meets the conditions below. If supported by posts, the bottom of the sign shall be located no more than two (2) feet above grade and meets the conditions below:

a) Residential Subdivision

(i) A maximum of two (2) principal ground signs shall be permitted to be located at each vehicular entrance.

(ii) A principal ground sign may be located in the median of a vehicular entrance where the median is a minimum of fifty (50) feet long and ten (10) feet wide, provided that the sign is not placed within ten (10) feet of either end of the median.

(iii) Principal ground signs shall be allowed in the buffer within a sign easement to be shown on the approved site plan.

(iv) Such sign(s) shall not exceed a total of forty (40) square feet per vehicular entrance.

(v) A principal ground sign may be mounted on a fence or wall that does not exceed six (6) feet in height; however, the sign itself may not exceed the size limitations set forth in this subsection and the sign must be only an incidental part of the wall or fence design.

(vi) If illuminated, such sign(s) shall be externally illuminated.

(vii) Also subject to Sec. 8.7.4 *Sign Design and Color* and Sec. 8.7.6(B), *Sign Illumination*.

b) Multi-family Residential

(i) A maximum of two (2) principal ground signs shall be permitted to be located in close proximity to each major full-service vehicular entrance. If there is no full-service vehicular entrance, then one (1) principal ground sign is permitted at one (1) limited-service vehicular entrance.

(ii) A principal ground sign may be located in the median of a major full-service vehicular entrance where the median is a minimum of 50 feet long and 10 feet wide, provided that the sign is not placed within 10 feet of either end of the median.

(iii) Principal ground sign(s) shall be allowed in the buffer within a sign easement to be shown on the approved site plan.

(iv) Principal ground sign(s) shall not exceed a total of 40 square feet per vehicular entrance.

(v) A principal ground sign may be mounted on a fence or wall that does not exceed six (6) feet in height; however, the sign itself may not exceed the size limitations set forth in this subsection and the sign must be only an incidental part of the wall or fence design.

(vi) Reserved.

(vii) If illuminated, such sign(s) shall be externally illuminated.

(viii) Also subject to Sec. 8.7.4 *Sign Design and Color* and Sec. 8.7.6(B) *Sign Illumination*.

16) *Special/Historic*
A sign that is unique or a sign affixed to or associated to historic buildings, events or places and meets one or more of the criteria and conditions below:

- Significant as evidence of the history of the product, business or service advertised.
- Significant as reflecting the history of the building of the development of the historic district. A sign may be the only indicator of a building's historic use.
- Characteristic of a specific historic period, such as gold leaf on glass, neon, or stainless steel lettering.
- Integral to the building's design or physical fabric, as when a sign is part of a storefront made of Carrara glass or enamel panels, or when the name of the historic firm or the date are rendered in stone, metal, or tile. In such cases, removal can harm the integrity of a historic property's design, or cause significant damage to its material.
- Outstanding examples of the signmaker's art, whether because of their excellent craftsmanship, use of materials, or design.
- Local landmarks, that is, signs recognized as popular focal points in the community.
- Elements important in defining the character of a district, such as marquees in a theater district.

Special and historic signs may be permitted provided that:

a) Property owners shall make application to the Town Council for such designation of special or historic signs.

b) Such designated special or historic signs are excluded (exempted) from Sec. 10.6 *Nonconforming Signs.*

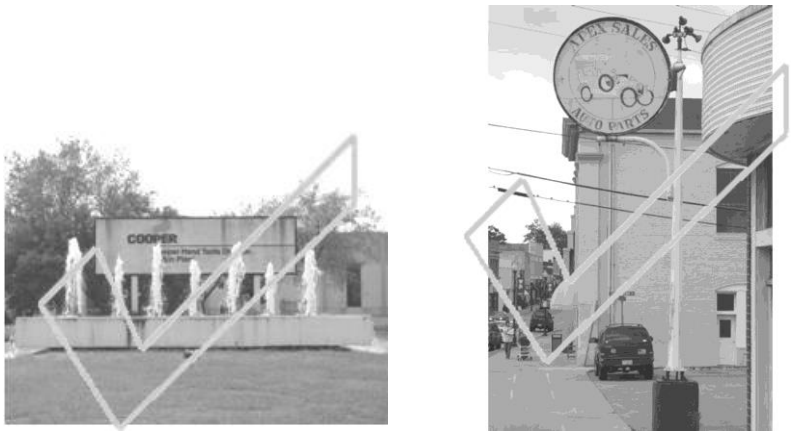


Figure 8.7.1(A)(16): Special and historic signs are permitted within an historic district and places of historic significance.

17) *Suspended*
A sign that is suspended from the underside of a horizontal plane surface and is supported by such surface and meets the conditions below:

Suspended signs shall be allowed provided that:

a) Such sign(s) shall not exceed one (1) per building entrance or tenant, whichever is less.

b) Such sign(s) shall not exceed two (2) square feet in total area.

c) Such sign(s) shall not be directly or internally illuminated.

d) Such sign(s) may be in addition to wall signs as permitted.

e) Such sign(s) shall contain only the address, suite number, logo or name of the occupant or business served by the entrance.

f) Also subject to Sec. 8.7.4 *Sign Design and Color* and 8.7.5, *Master Sign Plan Requirement.*

Figure 8.7.1(A)(17): This suspended sign is less than two (2) square feet.

18) *Wall*

A sign attached parallel to a wall, professionally painted on the wall surface or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building and meets the conditions below:

Wall signs shall be allowed provided that:

a) The sign surface area of a sign located on a wall of a structure may not exceed ten (10) percent of the total surface area of the wall on which the sign is located.

b) Buildings containing one business with a front façade 600 feet in length or greater may install wall-mounted customer directional signs identifying the service or function. Examples of such signs include but are not limited to “Pharmacy,” Grocery,” and “Lumber Yard.” Such signs are limited to two per front façade and 100 square feet each.

c) No wall sign attached to a building may project more than 12 inches from the building wall.

d) Also subject to Sec. 8.7.4 *Sign Design and Color*, 8.7.5 *Master Sign Plan Requirement*, Sec. 8.7.3 *Sign Area Measurement*, and 8.7.6(B) *Sign Illumination*.

Temporary signs are allowed as follows:

19) *Construction/Development*
An on-site temporary sign identifying the names of individuals and/or firms connected with the construction of a non-residential active project. Such sign may incorporate the name of the project, lender, owner, developer, architect, engineers, rental agencies, real estate agent/broker, financial institutions, contractor, address of business and telephone number, or other principals involved in the sponsorship, design, or construction of a structure or project, and meets the conditions below:

a) Non-Residential or Mixed-Use (including both non-residential and residential uses) Construction/Development signs shall be allowed provided that:

(i) One (1) sign per major vehicular entrance.

(ii) No such temporary signs shall exceed sixty-four (64) square feet or a maximum height of five (5) feet.

(iii) Permits for such temporary signs shall be limited to six (6) months with renewable option upon written request for an additional six (6) month period.

(iv) Construction plan approval is required prior to sign permitting.

(v) Sign shall be removed at approval of Certificate of Occupancy.

b) Residential Construction/Development signs shall be allowed provided that:

(i) A maximum of one (1) real estate sign per development at a residential development entrance to advertise properties for sale.

(ii) Such sign shall not exceed thirty-two (32) square feet and five (5) feet in height.

(iii) Construction plan approval is required prior to sign permitting.

(iv) The sign shall be removed no later than the time at which one hundred (100) percent of the properties within the residential development have initially been sold to a builder or private owner.

20) *Contractor*
An on-site temporary sign identifying the name of the contractor performing a service such as but not limited to painters, building contractor, roof cleaning, landscaper, and meets the conditions below:

Contractor sign shall be allowed provided that:

a) Contractor signs shall be no larger than five (5) square feet and four (4) feet tall.

b) One (1) sign per a contractor per a site shall be allowed.

c) Such sign may be displayed during the time and on-site that the service is being performed.

Figure 8.7.1(A)(20): This contractor sign is of appropriate size.

21) *Event for-profit*
Temporary on-premise signs for events shall be allowed provided that:

a) Only one (1) sign advertising promotional events or fairs, carnivals, horse shows, and similar events shall be permitted on-site.

b) Such sign shall not exceed sixteen (16) square feet and four (4) feet in height.

c) Permits for such temporary signs shall be limited to no sooner than one week prior to the commencement of the event and shall be removed no later than two days after the end of the event.

d) See Sec. 4.6, *Temporary Uses and Structures*.

Figure 8.7.1(A)(21): This on-premise sign meets size requirements.

22) *Event non-profit (on-premise and off-premise)*

a) On premise
Temporary, on-premise signs for non-profit events shall be allowed provided that:

(i) Signs advertising non-profit events shall be limited to three (3) signs per lot and individually or cumulatively shall not exceed thirty-two (32) square feet and five (5) feet in height.

(ii) Such signs shall be permitted no sooner than one week prior to the commencement of the event and shall be removed no later than two days after the end of the event.

(iii) If the sign display area is permanent but the message displayed is subject to periodic changes, then the sign shall be regarded as permanent.

(iv) Signs shall be non-illuminated only.

(v) The structure holding the banners may remain between events and shall not be used to display banners or signs between events and shall not exceed a maximum of five (5) feet in height. See Sec. 4.6, *Temporary Uses and Structures*.

b) Off premise
Temporary off-premise signs for non-profit events shall be allowed provided that:

(i) Signs advertising fund raisers, school events, fairs, revivals and other similar events shall be limited to thirty (30) signs per event and each shall not exceed five (5) square feet in size and four (4) feet in height.

(ii) Such signs shall be permitted no sooner than one week prior to the commencement of the event and shall be removed no later than two days after the end of the event.

(iii) Written permission from the property owner shall be obtained.

(iv) See Sec. 4.6, *Temporary Uses and Structures*.

23) *Event public (on-premise and off-premise)*
Public event signs or banners shall be allowed provided that:

a) Such signs or banners shall be permitted only for public events proclaimed by the Town Council.

b) Such signs may be located in the public right-of-way but outside of the sight triangles.

c) Such signs shall be removed within 48 hours after the end of the event.

24) *Coming Soon/Grand Opening/Closing*
A sign advertising the initial opening or closing of a business and meets the conditions below:

Coming Soon/Grand Opening/Closing signs shall be allowed provided that:

a) Such signs shall be attached to the building wall.

b) The total signage shall not exceed thirty-two (32) square feet.

c) Permits for such temporary signs shall be limited to sixty (60) days each.

Figure 8.7.1(A)(24): This banner meets the maximum size requirement.

25) *Holiday*

Displays erected on a seasonal basis in observance of religious, national, or state holidays, which are not intended to be permanent and contain no commercial message and meets the conditions below:

Holiday displays as a part of customary holiday decorations shall be allowed provided that:

a) No temporary signs, banners, lighting, or displays shall be on display for more than sixty (60) days.

b) Such signs shall display no commercial message.

Figure 8.7.1(A)(25): Customary holiday display

26) *Political*
A temporary sign of a candidate, party, or group supporting the candidacy of an individual for office or expressing or soliciting public support of, or opposition to, any public issues and meets the conditions below:

Political signs shall be allowed provided that:

a) Such sign(s) may be placed within Town of Apex public street rights-of-way during the period 45 days prior to election to which the sign is directed, provided that no such signs shall be:

(i) Located within a sight triangle,

(ii) Located in a way to obscure vision or obstruct traffic,

(iii) Located or installed in a manner that creates a hazard,

(iv) Located on utility poles or within street medians,

(v) Located on other Town owned property.

b) Such sign(s) shall not exceed five (5) square feet and a height of four (4) feet.

c) Where such signs refer to an election or other political event, they shall be removed within ten (10) days after the election or political event.

27) *Public Notice*

A temporary sign advertising official notices or advertisements posted under the direction of a public official.

Official notices or advertisements posted or displayed by or under the direction of a public official in the performance of official duties, or by trustees under deeds of trusts or other similar instruments, or court appointed commissioners shall be allowed.

28) *Real Estate*
A temporary sign advertising the real estate upon which the sign is located as being for rent, lease or sale and meets the conditions below:

Real estate signs shall be allowed provided that:

a) Single family, duplex, triplex, quadplex, townhome, condo or residential lot or dwelling;
   (i) A maximum of one (1) real estate sign per lot frontage advertising for rent, sale, or lease.
   (ii) A maximum of one (1) real estate sign per lot frontage advertising an Open House. Such sign shall be displayed no longer than thirty-six (36) hours before the event and shall be removed at the conclusion of the event.

   Such signs shall not exceed five (5) square feet and four (4) feet in height and shall be located on the property to which the advertisement is referring. The signs shall be removed when property is sold by the transfer of title to the new owner. Signs are not allowed off-premise or in private common areas.

b) No multi-family apartment leasing signage allowed except as specifically stated in Sec. 8.7.1(A)(15)(b)(vi).

c) Residential subdivision sales center

   (i) One (1) residential subdivision “sales center” sign, not to exceed sixteen (16) square feet or five (5) feet in height is permitted on the lot on which the sales center is located. The sign shall be removed no later than the time at which 100% of the properties within the residential development have initially been sold to a builder or private owner.
   (ii) Directional signs shall be permitted at the first crossroad beyond the entrance of the subdivision within the subdivision directing traffic to the residential subdivision “sales center”. Directional signs shall be a maximum of four (4) square feet with a maximum height of four (4) feet.

d) A maximum of one (1) real estate sign per lot frontage advertising the rent, sale or lease of a non-residential lot or structure including tenant spaces located within a structure. Such sign shall not exceed sixteen (16) square feet and five (5) feet in height and shall be located on the property to which the advertisement is referring. The sign shall be removed when the rented or leased property is occupied by the new tenant or

when the property is sold by the transfer of title to the new owner. Signs are not allowed off-premise or in private common areas.

29) *Seasonal Outdoor Sales*

a) Seasonal Agricultural Signs for Products Sold Where They Are Grown

(i) *Definitions*. (a) "Seasonal Agricultural Signs" are signs that advertise seasonal agricultural products which were grown on the property where they are offered for sale and that contain no other messages; (b) "On-Site Agricultural Products" are seasonal agricultural products which were grown on the property where they are offered for sale; and (c) "Off-Site Agricultural Products" are seasonal agricultural products that were not grown on the property where they are offered for sale.

(ii) *On-Premises Signs*. Pursuant to UDO Section 1.4.4, on a private property where On-Site Agricultural Products are sold, Seasonal Agricultural Signs are not regulated by the Town of Apex.

(iii) *Off-Premises Signs*. For each private property where On-Site Agricultural Products are sold, thirty (30) Off-Premises Seasonal Agricultural Signs that advertise the products shall be allowed. Off-premises signs allowed by this subsection may be displayed only on private property and only with the permission of the off-premises private property owner. Only one off-premises sign is allowed per off-premises private property.

(iv) *Duration*. For each private property where On-Site Agricultural Products are sold, Off-Premises Seasonal Agricultural Signs may be displayed only while the advertised products are actually for sale, and only during one forty-five (45) consecutive day period per calendar year per On-Site Agricultural Product. The signs shall be removed immediately upon the sooner of the end of the forty-five (45) day period or the end of the sale of the products. At no time shall more than thirty (30) Off-Premises Seasonal Agricultural Signs be displayed for a given property regardless of the number of agricultural products being sold on that property.

(v) *Physical Characteristics.* Each Off-Premises Seasonal Agricultural Sign shall not exceed five (5) square feet in area and four (4) feet in height. Off-Premises Seasonal Agricultural Signs may only be ground signs.

(vi) *Limitation on Off-Site Agricultural Products.* Off-Site Agricultural Products shall not be a majority of the

agricultural products offered for sale on a property during any time that an Off-Premises Seasonal Agricultural Sign is being displayed related to the property.

(vii) *Contiguous Properties.* Contiguous properties owned by the same person, family, establishment, or entity shall be treated as one property for the purposes of the Section.

(viii) *Limitations Are Comprehensive.* The limitations on Off-Premises Seasonal Agricultural Signs stated in Subsections i-vii of this Section shall apply regardless of the number of persons, family members, establishments, or entities that sell the products on a property and regardless of the number of booths, stands, tables, tents, or the like that are located on a property.

(ix) See Section 4.6 *Temporary Uses and Structures* and Section 8.7.6(B) *Sign Illumination*.

b) Other Seasonal Outdoor Sales Signs
Outdoor temporary sales signs advertising a product of a particular season shall be permitted provided that:

(i) Such signs shall advertise the sale of seasonal products such as, but not limited to, Christmas trees, pumpkins, and fireworks.

(ii) Such signs shall be limited to thirty-two (32) square feet and four (4) feet in height.

(iii) Such signs shall be permitted for no more than thirty (30) days.

(iv) See Section 4.6, *Temporary Uses and Structures* and Section 8.7.6(B) *Sign Illumination.*

(v) Signs authorized by this Subsection 8.7.1(A)(29((b) may be displayed only on the premises where the seasonal products are being sold.

Figure 8.7.1(A)(29): This seasonal sign is located in the right-of-way.

30) *Window*
Any sign, picture, symbol, or combination thereof, designed to communicate information about an activity, business, commodity, event, sale, or service that is placed inside a window or door and is visible from the exterior and meets the condition below:

a) Signs shall be allowed on the show window glass of non-residential buildings provided that all such commercial and incidental signs (both temporary and permanent) do not exceed a combined maximum of 25 percent of the total window area per facade.

31) *Yard Sale*
A sign advertising the sale of household articles in a residential yard or garage and meets the conditions below:

Yard sale signs shall be allowed provided that:

a) Such signs shall be no larger than five (5) square-feet and four (4) feet in height.

b) Such signs shall be displayed no longer than thirty-six (36) hours before the event and shall be removed at the conclusion of the event.

c) Such signs shall be allowed one (1) on-site and two (2) off-site on private property only with permission of property owners.

Figure 8.7.1(A)(31): This sign is located in the public right-of-way.

B) ***Home Occupation Signs***
Signs advertising home occupations shall be permitted where a home occupation has been approved per UDO Section 4.5.5 *Home Occupation*. Home Occupation signs shall be permitted as follows:

1) A Home Occupation sign permit is required and must be obtained from the Planning Department;

2) In addition to meeting the requirements of Section 8.7.4 *Sign Design and Color*, plastic and/or acrylic sign faces are prohibited;

3) A placard is permitted on the home where a Home Occupation has been approved, provided:

a) The sign shall be no larger than 12 inches by 12 inches;

b) The placard shall be placed no higher than 6’ at the front door; and

c) The sign shall not be internally lit; external lighting shall be limited to traditional residential lighting fixtures.

4) Where a home occupation exists on a lot with a minimum of 300 feet of linear road frontage, one sign may be placed in the front yard, provided:

a) The sign shall be no larger than 18 inches by 24 inches;

b) The maximum height of the sign shall be 4 feet;

c) The sign shall not be internally lit;

d) The sign must be permanent and affixed to a permanent pole(s); and

e) The sign shall not be located in the right-of-way and must be located so that it does not obscure vision at driveway sight triangles.

8.7.2 Prohibited Signs

The following signs are expressly prohibited within all zoning districts:

A) Signs within the public right-of-way. The only type of signs permitted in the public right-of-way are governmental or city-sponsored civic signs, or unless specifically authorized elsewhere in this section.

B) Unless specifically authorized elsewhere in this ordinance, no off-premise signs, as defined in Section 8.7.9 *Definitions*, are permitted.

C) Any sign located in the required sight triangle, as defined in Section 8.7.9 *Definitions.*

D) No sign may extend above a parapet or be placed upon a roof surface except that for purposes of this section, roof surfaces, such as a mansard roof, constructed at an angle of 75 degrees or more from horizontal shall be regarded as wall space.

E) Any nonexempt sign which is not authorized by a valid permit.

F) Abandoned signs, as defined in Section 8.7.9 *Definitions.*

G) Portable signs, as defined in section 8.7.9 *Definitions*, except signs authorized by Sec. 8.7.7 *Central Business District*.

H) Animated Signs or Attracting Devices as defined in Section 8.7.9 *Definitions,* except decorative banners on residential property displayed by the resident with non-commercial messages are allowed. Banners are permitted only in accordance with the specific authorizations provided in Sec. 8.7.1(A)(19)-(31) *Temporary Signs.*

I) Illuminated tubing or strings of lights on trees and landscaping or outlining property lines or open sales areas, rooflines, or wall edges of a building. This requirement shall not apply to reasonable and customary holiday decorations as authorized by Sec. 8.7.1(A)(25) *Holiday.*

J) Signs comprised in whole or in part of exposed neon tubing. This requirement shall not prohibit the use of neon tubing when it is fully contained within a sign fixture or element thereof, or if it is a two (2) square foot or smaller sign displaying the word “OPEN” with or without a logo.

K) Pole signs as defined in section 8.7.9 *Definitions*.

L) Tourist Oriented Directional Signs (TODS). North Carolina General Statutes Chapter 136 Article 11B.

M) Billboard signs as defined in Section 8.7.9 *Definitions.*

N) Changeable copy sign(s) as defined in Section 8.7.9 *Definitions,* except for gasoline sales sign, menu boards, and marquee that comply with this ordinance.

O) Series signs as defined in Section 8.7.9 *Definitions.*

P) Box-style signs with internally-illuminated backgrounds. Individually illuminated letters are acceptable.

Q) Exposed LED signs with the exception of LED signs used to display gas prices as permitted by Section 8.7.1(A)(8)(b).

8.7.3 Sign Area Measurement

A) ***Sign surface area measurement***

1) The surface area of a sign shall be measured by including the entire area within a single, continuous, eight-sided, straight-sided perimeter.

2) Enclose the extreme limits of the writing, representation, emblem, or other display, together with any material or color forming an integral part of the background of the display or used to differentiate the sign from the backdrop or structure against which it is placed.

3) Do not include any supporting framework or bracing that is clearly incidental to the display itself.

B) ***Signs consisting of multiple elements.***
If the sign consists of multiple elements, all of the area, including that area between elements shall be included in the computation of the sign area.

C) ***Double faced signs.***

1) The sign surface area of a double faced, back-to-back sign with identical words on both sides shall be regarded and calculated as one sign.

2) A double-faced sign with an angle shall be regarded and calculated as two signs.

8.7.4 Sign Design and Color

A) ***Items of Information***
In order to increase readability and to decrease confusion, the number of items of information per sign shall be kept to a minimum. All signs requiring permits must be constructed of materials that present a finished appearance. Rough cut plywood is not acceptable. The sign's lettering should be professionally painted or applied; a "yard sales" or "graffiti" look with hand painted or paint stenciled letters is not acceptable.

B) ***Architectural Consistency***
All signs shall be consistent with the architectural style, color, scale and materials of the principal building of a development.

C) ***Uniform Color Scheme***
Sign colors shall be limited to no more than four (4) colors plus white and black. Each Pantone color shall be considered one (1) color. The colors (and materials) chosen shall blend with or complement the colors (and materials) of the principal building(s) on the lot or within the development. It is not the intent of this requirement to restrict the use of, or to in any way alter, the color composition of a federally registered trademark or other logo. However, if the

color content of a federally registered trademark or business logo is not consistent with the color limitations of this sub-section, or otherwise is in conflict with the uniform color scheme, then the Planning Director, at his discretion, shall:

1) Restrict the use of the federally registered trademark or other logo to no more than 10% of the surface area of a wall or ground sign allowed proposed on the lot or within the development, or

2) Prohibit the use of the federally registered trademark or other logo altogether from any sign or signs if the presence of the federally registered trademark in its standard federally registered colors are determined by the Planning Director to be detrimental to the aesthetic integrity of the overall development, or

3) Allow the applicant to voluntarily alter the color composition of the federally registered trademark or other logo in such a manner as to be in harmony with the uniform color scheme of the development.

8.7.5 Master Sign Plan Requirement

A Master Sign Plan for multiple use development, mixed use development or integrated development shall provide the following:

A) Consistency among signs on the premises with regard to location of each sign on the building(s), size of the signage allotted per use, business or out parcel, color scheme (including signs otherwise exempt from regulation), lettering or graphic style, materials and lighting.

B) The allocation of signage among the various uses, businesses, or out parcels shall be determined by the owner of the lot or building, or their authorized agent, but shall in no case exceed the limitations established in this Section.

C) The Master Sign Plan shall be approved by the Planning Director prior to the issuance of any sign permits.

D) The Master Sign Plan may be modified by the owner or their authorized agent, so long as any nonconformities thereby created are brought into compliance with the revised Master Sign Plan and the current requirements of this Article within 90 days of its approval by the Planning Department.

8.7.6 Installation Requirements

A) Procedure for obtaining a sign permit

1) Application for a sign permit, where required by this section, shall be made to the Planning Department.

2) A sign permit shall become null and void if the sign is not erected within 12 months from the date of issuance of the permit.

3) A permit fee shall be charged according to the current fee schedule adopted by the Town Council.

4) If the sign or signs proposed in an application meet the requirements of this section, then a sign permit shall be issued.

5) The applicant shall obtain all required building permits for sign construction.

6) If the sign or signs proposed in an application fail to meet 1 or more of the requirements of this section, then the permit shall be returned to the applicant for revisions.

7) A sign located within a multiple use development, mixed use development or integrated development shall not be permitted until a Master Sign Plan has been approved.

8) Any modification or replacement of a sign or support or frame shall be subject to a sign permit.

B) ***Sign illumination***

Unless otherwise prohibited by this section, signs may be illuminated if such illumination is in accordance with this section. All electric signs shall be in accordance with Section 8.6.4(F) *Building, Ground Mounted Fixtures and Accent Lighting*, the Building and National Electric Code and shall obtain all required building permits. All wiring to ground signs or to lighting equipment erected after the effective date of this section must be underground.

1) *Signs near residential premises.* No sign within 150 feet of a residential premise may be illuminated between the hours of midnight and 6 a.m., unless there is no spillover of lighting or glare to the residential area beyond the boundaries of the lot where the lighting is located.

2) *Shielding of lights*. External lighting directed toward a sign shall be shielded so that it illuminates only the face of the sign and does not shine directly into or cause glare onto a public right-of-way or residential premises.

3) *Flashing or intermittent lights*. No sign shall contain or be illuminated by flashing or intermittent light or lights of changing degrees of intensity.

C) ***Sign maintenance***

1) *Maintenance of signs.* All signs and all components thereof, including but not limited to supports, braces, and anchors, shall be kept in a state of good repair.

2) *Abandonment of signs.* If a sign advertises any enterprise or activity, including but not limited to a business, service, commodity, accommodation, or attraction that is no longer operating or being offered or conducted, that sign shall be considered abandoned and shall, within 90 days of the enterprise or activity ceasing, be removed by the sign owner, owner of the property where the sign is located or other party having control over the sign.

3) *Removal of message portion of signs.* If the message portion of a sign is removed, leaving only the supporting "shell" of a sign or the supporting braces, anchors, or similar components, the owner of the sign or the owner of the property where the sign is located or other

person having control over such sign shall, within 60 days of the removal of the message portion of the sign, either replace the entire message portion of the sign or remove the remaining components of the sign. This subsection shall not be construed to alter the effect of Sec. 10.6, *Nonconforming signs*.

D) ***Landscaping***

A freestanding permanent sign shall include landscaping at the base of the sign. The landscaping shall be designed to include, but not limited to, one or more of the following: annual and/or perennial flower beds; ground cover; ornamental grass; and shrubs. Turf and other grasses are not permitted as part of the landscaping of the sign. Landscaping of the sign shall be in keeping with the adjacent area landscaping. The required landscaping shall be well maintained.

E) ***Unlawful cutting of vegetation***

No person may, for the purpose of increasing or enhancing the visibility of a sign, damage, aggressively trim, destroy, or remove trees, shrubs or other vegetation located:

1) Within the right-of-way of any public street, unless the work is done pursuant to the express written authorization of the North Carolina Department of Transportation and/or the Town.

2) On off-site property that is not under the ownership or control of the person doing or responsible for such work.

3) In an area where such trees or shrubs are required to remain under a permit issued under the Unified Development Ordinance, a development approval, or under Town landscape requirements.

8.7.7 Central Business District, Apex National Register Historic District, Small Town Character Overlay District, Mixed Office-Residential-Retail and Planned Development Districts

A) Sign Types

Table 8.7.7(A)

P = allowed with permit

	Sign Type	Conditions	Permitted	Illumination
1	Projecting	8.7.7(A)(1)	P	Sec. 8.7.7(B)(4)
2	Sandwich Board	8.7.7(A)(2)	P	Sec. 8.7.7(B)(4)
3	Wall	8.7.7(A)(3)	P	Sec. 8.7.7(B)(4)
4	Bracket	8.7.7(A)(4)	P	Sec. 8.7.7(B)(4)
5	Awning	8.7.7(A)(5)	P	Sec. 8.6.4(F)(4)

1) *Projecting Sign*

A sign affixed to a building or wall in such a manner that its leading edge extends more than 12 inches beyond the surface of said building or wall and meets the conditions below:

Projecting signs shall be allowed provided that:

a) Such sign(s) shall not exceed an area equal to two percent of the façade area of the structure.

b) The outside edge of the projecting sign shall not project more than five feet beyond the façade of the structure.

c) Projecting signs shall be placed a minimum distance of seven feet above the sidewalk or as required by the Building Code.

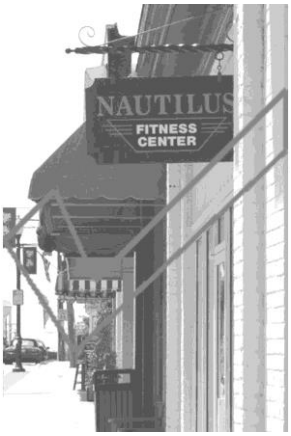


Table 8.7.7(A)(1): This projecting sign is more than seven (7) feet above the sidewalk.

2) *Sandwich Board Sign*
A sign consisting of two panels joined together at the top and configured in the shape of an inverted "V" so that the bottom of the sign rests upon or near the ground and meets the conditions below:

Sandwich Board Signs shall be allowed provided that:

a) The total area of the signboard (including both sides) shall not exceed fourteen (14) square feet.

b) Any sandwich board sign shall not exceed two (2) linear feet in width, with a maximum height of forty-two (42) inches. Within these specified maximum dimensions, creative shapes that reflect the theme of the business are encouraged (i.e. ice cream shops may display a sign in the shape of an ice cream cone).

c) The sign must be constructed of materials that present a finished appearance. Rough cut plywood is not acceptable. The signs lettering should be professionally painted or applied; a "yard sales" or "graffiti" look with hand painted or paint stenciled letters is not acceptable, however, chalkboard signs shall be permitted. The written message of the sign should be kept to the minimum necessary to communicate the name of the business or a special message of the business.

d) The sign shall be located within four (4) feet of the main building entrance to the business and its location shall not interfere with pedestrian or vehicular circulation;

e) The sign shall be removed at the end of the business day.

f) Any person erecting a sandwich board sign shall indemnify and hold harmless the Town and its officers, agents, and employees from any claim arising out of the presence of the sign on Town property or public right-of-way.

g) Sandwich boards located in the Central Business District shall either be located in the designated area for outdoor storage, display, and sales/rentals for that business or on the brick utility strip in front of the business.

3) *Wall Sign*
A sign attached parallel to a wall, professionally painted on the wall surface or erected and confined within the limits of an outside wall of any building or structure, which is supported by such wall or building and meets the condition below:

Wall signs shall be allowed provided that:

a) *Such signs shall not exceed an area equal to ten percent of the façade area of the structure minus the area of any projecting sign or awning sign.*

Figure 8.7.7(A)(3): This wall sign is of appropriate size.

4) *Bracket*
A sign hanging from an arm and post and meets the conditions below:

a) Such signs shall only be allowed within the Apex National Register Historic District, Central Business District, Small Town Character Overlay District, and MORR and Planned Development districts.

b) The bracket sign is permitted instead of a ground sign, not in addition.

c) The sign may include the name of the business and tenants of a building.

d) The post for such signs shall be between four and six feet in height.

e) The sign itself does not exceed nine square feet in size.

f) The sign shall relate to the building to which it refers in architectural style, scale and materials.

g) The sign shall not encroach within the public right-of-way nor hang over the public sidewalk.

h) Such signs shall be subject to Sec.8.7.4 *Sign Design and Color* and 8.7.5, *Master Sign Plan Requirement*.

i) If the sign is to be illuminated, it shall meet the guidelines in Sec. 8.7.6(B) *Sign Illumination.*

Figure 8.7.7(A)(4): This sign is not in the public right-of-way and meets the design guidelines.

5) *Awning Signs*
Awning signs shall be allowed provided that:

a) On a single-occupant property, one (1) awning sign may be allowed provided that it shall not exceed ten (10) percent of the total awning face. The total signage area on the awning and building may not exceed ten (10) percent,

b) On a multi-occupant property, multiple awning signs may be allowed provided that the signs do not exceed ten (10) percent of the total awning face and if so shown on the Master Signage Plan. The total signage area on the awnings and buildings may not exceed ten (10) percent,

c) They be illuminated only with direct surface lighting and not with any form of backlighting, and

d) Shall also be subject to Sec. 8.7.4 *Sign Design and Color*, Sec. 8.7.5 *Master Sign Plan Requirement*, and Section 8.6.4(F) *Building, Ground Mounted Fixtures and Accent Lighting*.

B) ***General Regulations***

1) *Multiple occupancy of an area in single ownership or in a single structure.* Should an area in single ownership or in a single structure be occupied by more than one 1 establishment or firm, the allocation of permitted signs and display surface area among the several occupants shall be determined by the owner. The sign plan submitted for an area in single ownership shall show all such signs of uniform design, in harmony and consistent with each other. The total area for all such signs under the required plan shall be in conformance with this subsection.

2) *Sign location.* No sign shall be placed on a structure such that significant architectural features or details are disfigured, concealed or painted over. For purposes of this section, and by way of illustration, a significant architectural feature shall include, but not be limited to, windows, doors, cornices, and decorative wood, brick or stone work.

3) *Method of attachment.* The method of sign attachment shall respect the architectural integrity of the structure and relate to or become an extension of the design. The method of attachment of signs to existing structures shall be chosen to minimize damage to the structure.

4) *Lighting.* The use of front lighting shall respect the integrity of design of structures. The use of back-lighting, internally illuminated wall, internally illuminated bracket, or internally illuminated projecting signs shall be prohibited.

8.7.8 Nonconforming Signs

Provisions governing nonconforming signs are set forth in Article 10.

8.7.9 Definitions

Abandoned Sign
Any sign that advertises any enterprise or activity, including but not limited to a business, service, commodity, accommodation, or attraction that is no longer operating or being offered or conducted and has been vacated for a period of more than 90 days of the enterprise or activity ceasing.

Animated Sign or Attracting Device
Any sign that uses movement or change of lighting to depict action or create a special effect, scene, or attract attention, including beacons, pennants, hand-held signs, streamers, balloons or other inflatables used as signs, spot lights and search lights, high-intensity illuminated signs, electronic or mechanical indications of time and temperature, or other moving or flashing signs.

Awning
A material such as fabric, metal, flexible plastic, or vinyl that is supported by or attached to a frame and that extends from the exterior wall of a building without ground-mounted support.

Bracket Sign
A ground sign with one post and extending arm from which the sign hangs.

Banner
A temporary sign constructed of lightweight fabric or similar material such as, but not limited to vinyl, fabric, or paper.

Billboard
An off-premise outdoor advertising sign owned by a person, corporation, or other entity that engages in the business of selling the advertising or communicative space on that sign.

Building Façade
The entire area of a building facing or side extending from the roof or parapet to the ground and from one corner of the building to another but does not include any structural or nonstructural elements which extend beyond the roof of a building.

Canopy
A structure constructed of rigid materials, including but not limited to metal, wood, concrete, canvas, or glass, which is attached to and supported by a building, or which is free-standing and supported by column, poles, or braces extended to the ground.

Changeable Copy
A sign or portion of a sign with characters, letters or illustrations that can be changed or rearranged without altering the face or the surface of the sign.

Commercial Message
Any sign, wording, logo, or other representation that names or advertises a business, product, service or other commercial activity.

Copy (permanent or temporary)
The wording or pictorial graphics on a sign surface either in permanent or removable form.

Development
Single-use lots, multiple-use lots, shopping centers with or without outparcels connected thereto as shown on an approved master subdivision plan, or any other group of non-residential projects planned as a total entity.

Exterior Lighting
Lighting, such as that used in and around buildings, recreation areas, parking lots, and signs designed to illuminate certain areas for visibility..

Gasoline Sales Sign
A service station sign advertising fuel prices in accordance with North Carolina General Statutes.

Illegal Sign
A sign erected, altered, replaced, or maintained in violation of this UDO.

Illuminated Sign
A sign with an artificial light source incorporated internally or externally for the purpose of lighting the sign.

Internal Illumination
A light source concealed or contained within the sign itself, such as fluorescent or neon tubing, which lights the sign but where the light source is not visible.

Logo
A graphic sign which represents a particular trademark or business symbol for identification.

Major Entrance
The principal vehicular full access point from which to enter and exit.

Master Sign Plan
Sign criteria established per UDO Section 8.7.5 for design consistency among all signs within an integrated development, multiple use development, or mixed use development.

Mechanical Movement
Animation, revolution, rotation, or other movement of any or all parts of a sign.

Off-premise Sign
A sign that directs attention to a business commodity, service, or establishment conducted, sold, or offered at a location other than the premises where the sign is erected or affixed.

On-premise Sign
A sign that directs attention to a business commodity, service, or establishment conducted, sold, or offered on the premises on which the sign is erected or affixed.

Pennant
A lightweight plastic, fabric, or other material, whether or not containing a message of any kind, suspended from a rope, wire, string, or pole, usually in series, designed to move in the wind.

Pole Sign
A sign that is not attached to a building, but is supported by a pole(s) or mast which has as its principal function the support of the sign.

Portable Sign
A sign that is not permanently affixed to a building, structure or the ground or other permanent structure including but not limited to; sandwich board signs/A-frame, T-frame signs, products, costumed characters, hand-held signs, umbrellas that are not associated with a restaurant seating area, hot air or gas-filled balloons, or a sign designed to be transported, including, but not limited to the following: signs designed to be transported by means of wheels, signs attached to or painted on vehicles or trailers parked and visible from any public right-of-way.

Projecting Sign
A sign affixed to a building or wall in such a manner that its leading edge extends more than 12 inches beyond the surface of said building or wall.

Roof Sign
A sign attached to and extending above a roof of a building or other structure, but shall not include emblems of religious orders or institutions.

Sandwich Board Sign

A sign consisting of two panels joined together at the top and configured in the shape of an inverted “V” so that the bottom of the sign rests upon or near the ground.

Series Signs
A message, copy, or announcement, which uses a series of two (2) or more signs placed in a line generally parallel to a street, highway, or expressway carrying a single message, copy, or announcement, a part of which is contained on each sign.

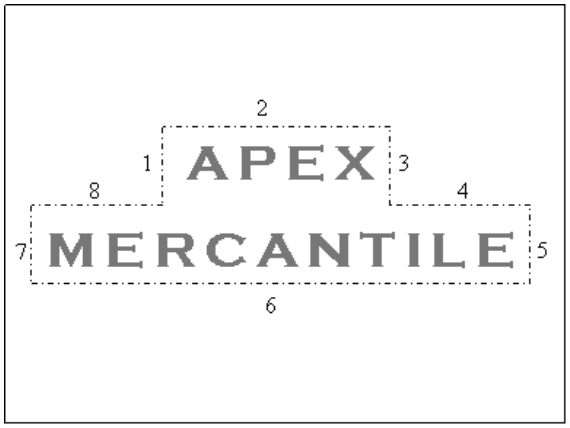
Sight Triangle
A triangular-shaped portion of land established at street intersections and driveways in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection, as set forth in the *Town of Apex Standard Specifications and Standard Details*.

Sign
An identification, description, animation, illustration, or attention getting device, illuminated or non-illuminated, which is visible from a public right-of-way and which directs attention to a realty, product, service, place, activity, person, institution, performance, commodity, firm, business or solicitation, including permanently installed or situated merchandise or an emblem, logo, painting, banner, poster, bulletin board, pennant, placard, or temporary sign designed to identify or convey information, with the exception of state, municipal, national, and religious flags.

Sign Face
The entire surface area of a sign upon, against, or through which copy is placed.

Sign Height
The vertical distance measured from the sign’s average grade level, provided that no filling, berming, or mounding solely for the purpose of locating the sign at a higher level is done.

Sign Surface Area
The entire area of a sign shall be the smallest rectangle entire area within a single, continuous eight-sided, straight-sided perimeter that encloses the entire sign inclusive of any border or trim and all the elements of the matter displayed, but excluding the base or apron, supports, and other structural members. In the case of three-dimensional or painted letters located directly on a wall surface, the surface area shall be defined as the area encompassing the individual letters themselves including any trim and excluding the background that supports the three-dimensional or painted letters.



Temporary Sign

A sign that is used in connection with a circumstances, situation or event that is designed, intended, or expected to take place or to be completed within a definite period of time after the erection of such sign. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as temporary.

ARTICLE 9 DESIGN STANDARDS

9.1 GENERAL

9.1.1 Purpose and Intent

The purpose of this article is to ensure that the physical characteristics of proposed development are compatible when considered within the context of the surrounding area. They should be read in conjunction with the general development regulations of Article 8 and the zoning district-specific standards contained in Article 4.

9.1.2 Applicability

A) These design standards shall be applicable to all nonresidential development under this UDO.

B) These design standards shall also be applicable to residential development in the PUD-CZ, SD-CZ, and TND-CZ planned development districts and the MORR district.

9.1.3 General Compatibility Requirement

All development subject to this article shall be compatible with the established architectural character of the Town by using a design that is complementary to existing Town architectural styles, designs, and forms. Compatibility shall be achieved through techniques such as the repetition of roof lines, the use of similar proportions in building mass and outdoor spaces, similar relationships to the street, similar window and door patterns, and the use of building materials that have color, shades, and textures similar to those existing in the immediate area of the proposed development.

9.2 BUILDING AESTHETICS

9.2.1 Purpose

Building aesthetics establish a base criteria related to the appearance of specific structures. These regulations strike a balance between creativity and innovation on one hand, while avoiding obtrusive, incongruous structures on the other. The Town strongly discourages architectural styles that do not build upon and promote the existing character of the Town. The Town supports the view that inspiring, well-maintained, and harmonious development is in the best economic development interests of all residents and businesses.

9.2.2 Building Design

A) ***Emphasize Human Scale***

Building design shall emphasize a human scale at ground level, at entryways, and along street frontages through the creative use of windows, doors, columns, canopies, and awnings.

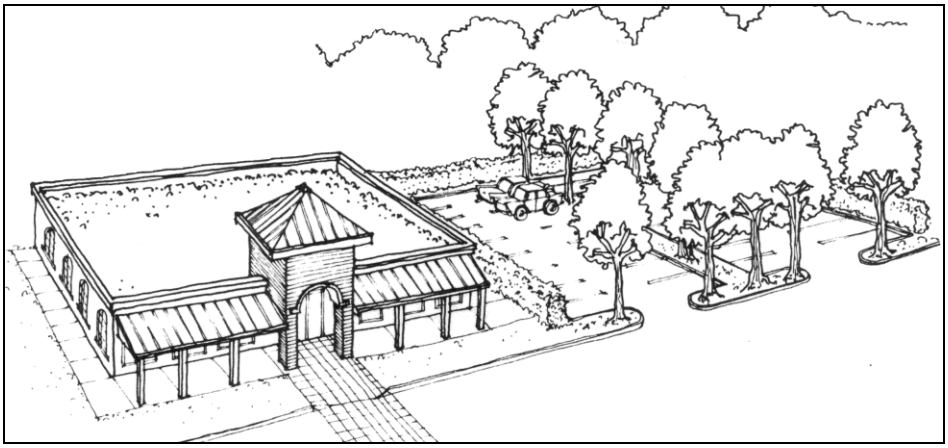


Figure 9.2.2(A): Emphasize Human Scale

B) ***Major Building Design Features***
Major building design features, such as but not limited to windows, shutters, vents, doors, entrances, awnings, canopies, roof pitch/design, eaves, and parapets, shall meet the following criteria:

1) Be designed to be in proportion to one another.

2) Be designed so that elements from different styles of architecture or different time periods are not incongruously utilized on a single building or within a single development.

C) ***Structural Lines Retained at Storefront Level***
The structural lines of a building and its materials shall be retained at the storefront level. For instance, brick piers and columns shall be carried down to street level.

D) ***Awnings and Canopies***
Awnings and canopies shall complement the color and material of the building to which they are affixed.

E) ***Massing***
A single, large, dominant building mass shall be avoided. Where large structures are required, mass should be broken up through the use of setbacks, projecting and recessed elements, and similar design techniques. Changes in mass shall be related to entrances, the integral structure, and/or the organization of interior spaces and activities and not merely for cosmetic effect.

F) ***Avoiding Garage Dominance***
Where garages are located in front of, even with, or to the side of a principal dwelling, the width of garage doors on the house elevation facing the street shall not exceed 40 percent of the total width of the house and garage together.

G) ***Accessory Facilities***
Uses and devices that are ancillary to the primary building such as loading, trash containment, maintenance, storage, and mechanical/electrical areas and the devices and equipment associated with these areas shall be incorporated into the overall design, architecture, and landscape so that the visual and acoustic impacts of these functions and devices are fully contained and out of view from

adjacent properties and public areas.

9.2.3 Avoiding Monotony of Design

Monotony of design in single or multiple building projects shall be avoided by varying detail, form, and siting to the maximum extent practicable, within the standards set forth in this article, to provide visual interest.

9.2.4 Harmony of Design

A) ***Purpose***

The purpose of this section is to preserve the design character of existing development, to protect the visual pattern of the community, and to promote harmony in the visual relationships and transitions between new and older buildings. New buildings should respect the scale, form, and proportion of existing development. This can be done by repeating building lines and surface treatments and by requiring some uniformity of detail, scale, proportion, texture, materials, color, and building form.

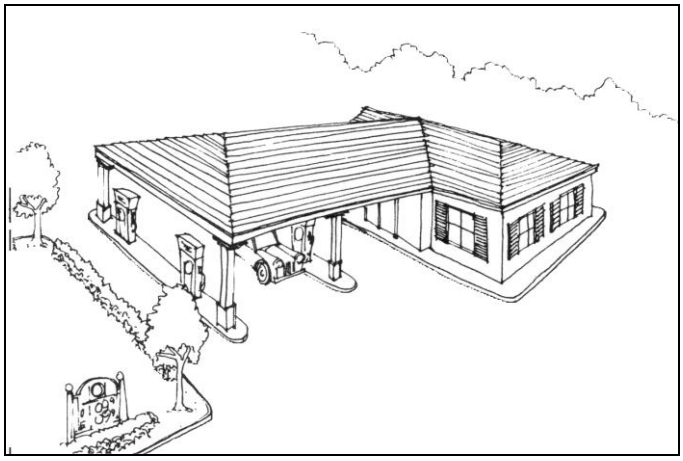


Figure 9.2.4(A): Maintain Scale and Design Character of Local Architecture

B) ***Building Color Shades***

Building color shades shall be used to facilitate blending into the neighborhood and unify the development. The color shades of building materials shall draw from the range of color shades that already exist on the block or in the adjacent neighborhood.

C) ***Building Materials***

Building materials shall either be similar to the materials already being used in the neighborhood or, if dissimilar materials are being proposed, other characteristics such as scale and proportions, form, architectural detailing, color, and texture, shall be utilized to ensure that enough similarity exists for the building to be compatible, despite the differences in materials.

D) ***Similar Size and Height for Infill Development***

New infill development shall either be similar in size and height or, if larger, be articulated and subdivided into massing that is proportional to the mass and scale of other structures on the same block, or if no buildings exist thereon, then on adjoining blocks.

E) ***Unify Individual Storefronts***

Figure 9.2.4(E): Unify Individual Storefronts
(like the illustration on the left, *not* like the illustration on the right)

If several storefronts are located in one building, the individual storefronts shall be unified in all exterior design elements, such as mass, window and door placement, color, materials, and signage.

F) ***Additions and Renovations***
Building additions and façade renovations should be designed to reflect existing buildings in scale, materials, window treatment, and color. A change in scale may require a transitional design element between the new development and existing buildings.

G) ***Varying Architectural Styles***
In developments with multiple structures of varying architectural styles, buildings shall be compatible by such means as a pattern of architectural features, similar scale and proportions, and consistent location of signage.

9.3 ARCHITECTURAL CHARACTER

9.3.1 Purpose

Architectural character focuses on the micro-level details that greatly affect the overall appearance of a particular development. These architectural character regulations provide direction in aspects of color, facade materials, rooflines, and the enhancement of entryways. The primary goal is to define the “finishing touches” that provide the development with a sense of permanence, style, and compatibility. The Town actively discourages proposals that have not taken these matters into account. The Town desires that all development be treated as a lasting contributor to the community and as a “good neighbor” to its surroundings.

9.3.2 Roofs

A) Roof lines shall be varied to reduce the scale of structures and add visual interest.

B) Roof shape (for example: flat, hip, mansard, or gable) and material shall be architecturally compatible with façade elements and the rest of the building.

9.3.3 Facades

A) ***Recesses and Projections***
Facades greater than 100 feet in length, measured horizontally, must incorporate recesses and projections along at least 20 percent of the length of the façade. Windows, awnings, and arcades should total at least 60 percent of the façade length abutting a public street.

B) ***Repeating Design Patterns***
Facades greater than 100 feet in length, measured horizontally, shall incorporate a repeating pattern of change in color, texture, and material modules. All elements should repeat at intervals of no more than 30 feet, either horizontally or vertically.

C) ***Renovations***
Façade renovations shall incorporate original building details to the maximum extent practicable.

D) ***Materials***
Brick, stone, or wood facades shall not be covered or replaced with artificial siding or panels.

E) ***Roof Cornices***
If roof cornices have been removed or damaged on an existing building, renovations of that building must include retaining, repairing, and replacing the roof cornices if previously removed.

F) ***Replacement of Windows***
Replacement of windows on the façade of an existing building shall be accomplished by using windows of the same trim size and character as the original.

G) ***Exterior Wall Cladding***
All exterior walls visible from a parking lot or public right-of-way in any zoning district except Light Industrial (LI) shall be clad with the same material required for the front of the building. Buildings in the LI district are required to provide the same material as the front of the building for at least 25% of the area of the side façades and 100% of the area of side façades directly facing a public right-of-way. All walls not visible from a parking lot or public right-of-way, or the remaining 75% of the side façades in the LI district, may be constructed of alternate material(s), but shall be of a color that is complimentary to the primary material, is incorporated into the overall color scheme of the building, and is approved by the Planning Director. See also Sec. 9.3.5(A) *Predominant Exterior Building Materials.*

H) ***Building Orientation***
To the maximum extent feasible, new buildings shall be oriented or designed to minimize shadows falling on public or semi-public spaces.

9.3.4 Entryways

A) ***Required Entryway Features***
Each principal building on a site should have a clearly defined, highly visible customer entrance featuring no less than two of the following: canopies or

porticos, arcades, arches, wing walls, and/or planters.

9.3.5 Color and Materials

A) ***Predominant Exterior Building Materials***
Predominant exterior building materials shall be high quality materials, including brick, wood, stacked stone, other native stone, and tinted/textured concrete masonry units. In the LI zoning district, concrete masonry units shall be tinted/textured or painted.

B) ***Colors***

1) Façade colors shall be of low reflectance and/or subtle colors. Building trim may feature brighter colors, but neon tubing is not allowed as an accent material. The use of high intensity colors or fluorescent colors shall be prohibited.

2) Variations in color schemes are encouraged in order to articulate entryways and public amenities so as to give greater recognition to these features.

9.3.6 Reserved

ARTICLE 10 NONCONFORMITIES

10.1 PURPOSE AND INTENT

Within the provisions established by this Ordinance, there exist uses of land, structures, lots and signs that were lawfully established before this Ordinance was adopted or amended, that now do not conform to the terms and requirements of this Ordinance. The purpose and intent of this article is to regulate and limit the continued existence of those uses, structures, lots and signs that do not conform to the provisions of this Ordinance or any amendments thereto.

It is the intent of this Ordinance to permit these nonconformities to continue, until they are removed, but not to encourage their survival except under the limited circumstances established in this article. It is further the intent of this Ordinance that changes in nonconformities shall not be permitted. The provisions of this article are designed to curtail substantial investment in nonconformities to preserve the integrity of this Ordinance.

10.2 NONCONFORMING USES

Nonconforming uses of land are declared generally incompatible with this Ordinance. Nonconforming uses of land may continue in accordance with the provisions of this Section.

10.2.1 Normal Maintenance or Repair

Normal maintenance or repair of structures where nonconforming uses are located may be performed in any period of 12 consecutive months, to an extent not exceeding 15 percent of the current assessed value of the structure, provided that the cubic content of the structure existing after the date it became nonconforming shall not be increased, except pursuant to the standards of this Section.

10.2.2 Enlargement or Expansion

A nonconforming use shall not be enlarged or expanded in area occupied, except a nonconforming use may be enlarged in any area of the same structure in which is manifestly designed for such use prior to the date the use became a nonconformity.

10.2.3 Relocation

A structure housing a nonconforming use shall not be moved in whole, or in part, to another location on or off the parcel of land on which it is located, unless the relocation of the nonconforming use decreases the nonconformity.

10.2.4 Damage and Restoration of Structure Housing Nonconforming Use

Any conforming structure housing a nonconforming use that is damaged by any means to an extent exceeding a percentage of its then reproducible value equal to 100 percent minus two percent per year of age of the structure, or 60 percent, whichever is greater, shall comply with the use standards of this Ordinance when it is re-constructed. Any conforming structure housing a nonconforming use that is damaged by any means to a lesser extent may continue the nonconforming use if it is reconstructed and used as before within two years of the damage.

10.2.5 Change in Use

A nonconforming use shall not be changed to any other use, unless any new or additional use conforms to the provisions in this Ordinance for the zoning district in which the use is located**.**

10.2.6 Discontinuance or Abandonment

If a nonconforming use is discontinued or abandoned for a period of more than six consecutive months, whether or not the equipment or furniture are removed, then such use may not be re-established or resumed, and any subsequent use shall conform to the

provisions specified by this Ordinance. When government action can be documented as the reason for discontinuance or abandonment, the time of delay by government shall not be calculated for the purpose of this Section.

10.2.7 Unsafe Because of Maintenance

If a nonconforming structure or portion thereof containing a nonconforming use becomes physically unsafe or unlawful due to the lack of repairs or maintenance, and is declared to be an unsafe structure, it shall thereafter be rebuilt and repaired in conformance with the standards of this Ordinance.

10.3 NONCONFORMING STRUCTURES

A nonconforming structure devoted to a use permitted in the zoning district in which it is located at the time of its construction, may be continued in accordance with the provisions in this Section.

10.3.1 Normal Maintenance

Normal maintenance or repair to permit continuation of a nonconforming structure may be performed in any period of 12 consecutive months, to an extent not exceeding 15 percent of the current assessed value of the structure, provided that the cubic content of the structure existing after the date it became nonconforming shall not be increased, except pursuant to the standards of this Section.

10.3.2 Enlargement or Expansion

A) A non-residential nonconforming structure shall not be enlarged or expanded in area occupied unless otherwise stated in 10.3.2(B)(1-4). A residential structure may expand so long as there is no increase to the noncomformity.

B) Structures with setbacks which were made nonconforming by the adoption of this Ordinance are exempt from the requirements of Section 5.1 *Table of Intensity and Dimensional Standards* provided:

1) The proposed addition or alteration will either meet the current setback requirements or will not further encroach into any required setback than the existing structure, provided that such encroachment meets North Carolina State Building Code.

2) Any addition or alteration that encroaches into any setback shall not exceed the height of the existing structure.

3) Additions to non-residential nonconforming structures shall not encroach into the required setback where the encroachment would be adjacent to a residential structure.

4) Nonconforming structures housing nonconforming uses shall not be enlarged or expanded in any way; Section 10.2.2 *Nonconforming Uses, Enlargement or Expansion* is still applicable.

10.3.3 Relocation

A nonconforming structure shall not be moved, in whole or in part, to another location on or off the parcel of land on which it is located, unless it conforms to the standards and requirements of the zoning district in which it is located.

10.3.4 Damage and Restoration of Nonconforming Structure

No nonconforming structure which has been damaged by any means to an extent exceeding a percentage of its then reproducible value equal to 100 percent minus two percent per year of age of the structure, or 60 percent, whichever is greater, shall comply with the use standards of this Ordinance when it is re-constructed. Any nonconforming structure that is damaged by any means to a lesser extent may continue if it is reconstructed within two years of the damage.

10.3.5 Unsafe Because of Maintenance

If a nonconforming structure, or portion thereof, or any structure or portion thereof containing a nonconforming use becomes physically unsafe or unlawful due to the lack of repairs or maintenance, and is declared to be an unsafe structure, it shall thereafter be rebuilt and repaired in conformance with the standards of this Ordinance and the Building Code.

10.3.6 Mobile Homes on Individual Lots

Where a mobile home existed prior to October 2, 2007, the owner may replace the existing mobile home with a newer mobile home provided that it meets all other State and Local laws.

10.4 NONCONFORMING LOTS OF RECORD

Where a lot or parcel of land has an area or frontage which does not conform to the standards of this Ordinance, but it was a lot of record on the effective date of this Ordinance August 1, 2000, such lot or parcel of land may be developed for a single family home, provided it complies with the regulations in existence at the time of its approval, and the terms and conditions of its approval.

10.4.1 Setback Reductions

Where a single-family lot has an area, depth, or width which does not conform to the requirements of the district in which it is located, the side yard setbacks may be reduced to not less than five feet. The rear setback may be reduced to not less than ten feet.

10.5 NONCONFORMITIES CREATED BY EMINENT DOMAIN PROCEEDINGS

10.5.1 Authority to Gain Certificate of Conformity

A structure, lot, or parcel of land that is rendered or will be rendered nonconforming because of eminent domain proceedings initiated by a governmental authority, or by the sale of a parcel of land under the threat of eminent domain proceedings shall be considered conforming under the terms of this Ordinance through the receipt of a Certificate of Conformity, pursuant to the terms of this Section. A Certificate of Conformity may authorize the relocation of existing conforming or nonconforming structures with modifications to development standards.

10.5.2 Applicability

Either the Condemnor or Condemnee may submit an application requesting a Certificate of Conformity, pursuant to the terms of this Section.

10.5.3 Procedure

A) ***Application***

A Condemnor or Condemnee may submit an application requesting a Certificate of Conformity to the Planning Director either before or after the first negotiation/appraisal of the Condemnor or the Order of Taking in the eminent domain proceeding, or after the sale of a parcel of land under the threat of an eminent domain proceeding. The application shall include the following:

1) *Legal description of the land*. A legal description of the land subject to the eminent domain proceeding, or sold under the threat of an eminent domain proceeding;

2) *Location*. The name and address of the owner of the land;

3) *Name and address of Condemnor.* The name and address of the Condemnor, and the name and address of the Condemnor's representative;

4) *Proof of eminent domain proceeding* If relevant, proof of the actual or impending eminent domain proceeding;

5) *Survey of land.* A certified survey of the land, no greater than one year old, subject to the eminent domain proceeding or sold under the threat of an eminent domain proceeding that demonstrates the extent of the condemnor's acquisition, and all principal and accessory structures on the land;

6) *Site plan.* A site plan of the land subject to the eminent domain proceeding or sold under the threat of an eminent domain proceeding at a scale of not less than 1" = 30', showing: (1) the location of all structures and improvements on the land; and (2) the extent of the condemnor's acquisition*;*

7) *Explanation*. An explanation of why the Certificate of Conformity should be granted;

8) *Proof of notification.* Proof that notification of the application has been provided to the other party (Condemnor or Condemnee, whichever is relevant); and

9) *Fee.* The application fee.

B) ***Determination of Sufficiency, Review and Decision***
After receipt of an application requesting a Certificate of Conformity, the Planning Director shall determine whether it is sufficient within 10 days. If it is determined the application is not sufficient, notice shall be served on the applicant specifying the deficiencies. The Planning Director shall take no further action on the application unless the deficiencies are remedied. Within 20 days after the application is determined to be sufficient, the Planning Director shall review and grant, grant with conditions, or disapprove the application, pursuant to the standards established in Sec. 10.5.3(C), *Standards*.

C) ***Standards***
An application requesting a Certificate of Conformity shall be granted if the following standards are met.

1) If the condemnation action has not been decided by a court of law, the amount of severance and business damages resulting from the eminent domain proceedings are substantial, and the loss of business damages would be minimized by the issuance of a Certificate of Conformity;

2) A site plan can be designed for the land which is consistent with the use requirements of this Ordinance, minimizes to the greatest degree practicable any nonconformities of parking, loading, landscaping, lot size, and yard requirements; and

3) The structure or lot can function adequately for its designated land use pursuant to the site plan proposed in Sec. 2.3.6, *Site Plan* that minimizes nonconformities while ensuring compatibility.

10.6 NONCONFORMING SIGNS

10.6.1 Notification of Nonconformities

As soon as reasonably possible after the effective date of this Ordinance, the Planning Director shall make every reasonable effort to identify all the nonconforming signs within the Town and its ETJ. The Planning Director shall then contact in writing the person responsible for each such sign (as well as the owner of the property where the nonconforming sign is located, if different from the former) and inform such person (i) that the sign is nonconforming, (ii) how it is nonconforming, (iii) what must be done to correct it and by what date, and (iv) the consequences of failure to make the necessary corrections. The Planning Director shall keep complete records of all correspondence, communications, and other actions taken with respect to such nonconforming signs.

10.6.2 Removal of Nonconforming Signs

Subject to the remaining restrictions of this Section, nonconforming signs that were otherwise lawful on July 1, 1993 (which is the effective date of the adoption of the amortization provisions) may be continued until they are required to be removed pursuant to Sec. 10.6.10, *Amortization of nonconforming signs*.

10.6.3 Nonconforming Signs Not Altered

No person may cause an increase in the extent of nonconformity of a nonconforming sign. Without limiting the generality of the foregoing, no nonconforming sign may be enlarged or altered in such a manner as to aggravate the nonconforming condition. Illumination may not be added to a non-conforming sign.

10.6.4 Moving or Replacing Nonconforming Signs

A nonconforming sign may not be moved or replaced except to bring the sign into complete conformity with this Ordinance.

10.6.5 Damage to Nonconforming Signs

If a non-conforming sign is destroyed by natural causes, it may not thereafter be repaired, reconstructed, or replaced except in conformity with the provisions of this Ordinance, and the remnants of the former sign structure shall be cleared from the land. For purposes of this Section, a non- conforming sign is "destroyed" if damaged to an extent that the cost of repairing the sign to its former condition or replacing it with an equivalent sign equals or exceeds the value (tax value if listed for tax purposes) of the sign so damaged.

10.6.6 Changing Message of Nonconforming Signs

The message of a nonconforming sign may be changed so long as this does not create a new nonconformity (for example, by creating an off-premise sign), and so long as a change of use has not occurred. If there is a change of use, then the sign must be brought into conformity with this Ordinance.

10.6.7 Repair and Renovation of Nonconforming Signs

Subject to the other provisions of this Section, nonconforming signs may be repaired and renovated so long as the cost of such work does not exceed, within a 12 month period,

50 percent of the value (tax value if listed for tax purposes) of such sign. Proof of value is required. A permit is required.

10.6.8 Discontinuation of Business

If a nonconforming sign, other than a billboard, advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted, that sign shall be considered abandoned and shall be removed within 90 days after such abandonment by the sign owner, owner of the property where the sign is located, or other person having control over such sign.

10.6.9 Nonconforming Billboards Left Blank

If a nonconforming billboard remains blank for a continuous period of 90 days, that billboard shall be deemed abandoned and shall, within 30 days after such abandonment, be removed by the sign owner, owner of the property where the sign is located, or other person having control over such sign. For purposes of this section, a sign is "blank" if:

A) ***Advertises Business or Commodity***
It advertises a business, service, commodity, accommodation, attraction, or other enterprise or activity that is no longer operating or being offered or conducted; or

B) ***Advertising Message Becomes Illegible***
The advertising message it displays becomes illegible in whole or substantial part; or

C) ***Advertising Copy Removed***
The advertising copy paid for by a party other than the sign owner or promoting an interest other than the rental of the sign has been removed.

10.6.10 Amortization of Nonconforming Signs

A) ***Nonconforming Signs***
Subject to the other subsections of this Section, a nonconforming sign is a sign that exceeds:

1) *Square footage limitation*. The square footage limitation by more than 10 percent of that permitted in Sec. 8.7.3 (A) (Surface area and heights); or

2) *Pole sign*. For a pole mounted sign, 12 feet in height (see Sec. 8.7.3 (A) (Surface area and heights)); or

3) *Ground mounted sign*. For a ground mounted sign, 6 feet in height (see Sec. 8.7.3 (A) (Surface area and heights)).

B) ***Time Period for Amortization***
Subject to the other subsections of this Section, a nonconforming sign that exceeds the limits in Sec 10.6.10(A), *Nonconforming signs*, shall, within 10 years from July 1, 1993 (which is the effective date of the adoption of these amortization provisions), be altered to comply with the provisions of this Ordinance or be removed.

C) ***Excess of Signs or Sign Area***
If the nonconformity consists of too many freestanding signs on a single lot or an excess of total sign area on a single lot, the person responsible for the violation may determine which sign or signs need to be altered or removed to bring the development into conformity with the provisions of this Ordinance.

ARTICLE 11 ENFORCEMENT

11.1 GENERAL

11.1.1 Authority

The provisions of this Ordinance shall be enforced by the Town Council and the Planning Director through their authority to abate any violations, enjoin, restrain, and prosecute any person violating this Ordinance pursuant to North Carolina law.

11.1.2 Purpose

The purpose of this article is to establish the procedures by which the Town seeks corrections of violations of this Ordinance. It also sets forth the remedies and penalties that apply to violations of this Ordinance. The provisions of this article are intended to encourage the voluntary correction of violations, where possible.

11.1.3 Unlawful to Violate this Ordinance

It shall be unlawful for any person to develop or use any building or structure within the Town or its ETJ in violation of this Ordinance. Any failure to comply with a requirement, prohibition, or limitation imposed by this Ordinance, or the terms or conditions of any permit or other development approval or authorization granted pursuant to this Ordinance shall constitute a violation of this Ordinance.

11.1.4 Responsible Person

For the purposes of this article, person shall include but not be limited to:

A) ***Person Maintaining Condition that Results that Constitutes Violation***
An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this Ordinance.

B) ***Responsibility for Use or Development***
The owner of the land on which the violation occurs, any tenant or occupant of the property, or any person, who has control over, or responsibility for, its use or development.

11.2 INSPECTION

Under the powers of this article, the Planning Director shall have the authority to enter onto land within the Town and its ETJ to inspect for violations of this Ordinance.

11.3 PERFORMANCE BOND

As a condition for granting a special use permit, site plan, variance, final plat for subdivision or minor subdivision, the applicant may be required to post a performance bond in an amount sufficient to insure completion of the development or required improvements, including landscaping or any required off-site improvements. In such case, the applicant shall file with the Planning Director a surety or cash bond, letter of credit, or other collateral suitable to the Town Attorney, in an amount specified by the review board or person to insure the actual construction of such development or required improvements within such period of time as may be determined by the Town Council. Upon completion of the required improvements, the applicant shall obtain certification from a professional Engineer certified by the State of North Carolina that the improvements have been constructed in accordance with the development approval. Upon receipt of this certification, the Planning Director shall release the security within seven calendar days. If the security provided by the applicant is not released, refusal to release and the reasons therefore shall be given to the applicant in writing by the Planning Director.

11.4 REMEDIES AND PENALTIES

The Town may use any combination of the following actions and penalties to prevent, correct, stop, abate, or penalize a violation of this Ordinance:

11.4.1 Permit Revocation

If a person fails to comply with the terms and conditions of a permit or development approval granted under this Ordinance, the Planning Director may revoke the permit or development approval.

11.4.2 Disapproval of Subsequent Permits and Development Approvals

As long as a violation of this Ordinance continues and remains uncorrected, the Planning Director or official specifically designated by this Ordinance may withhold, and the Planning Director and other Town boards may disapprove, any request for permit or development approval or authorization provided for by this Ordinance or Chapter 5 of the Code of Ordinances, Apex, North Carolina, for the land on which the violation occurs.

11.4.3 Injunction and Abatement Order

The Planning Director, with the written authorization of the Town Manager, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this Ordinance. Any person violating this Ordinance shall be subject to the full range of equitable remedies provided in Chapter 160A of N.C.G.S.

11.4.4 Civil Penalties

The following civil penalties may be imposed on a person who violates this Ordinance:

A) ***Individual Violation***

There shall be a civil penalty of $100.00 for each violation, except in cases where work is performed on a site prior to being granted approval by the Town of Apex per Sec. 2.3.17 *Site Work Prior to Development Approvals*; in such cases, there shall be a one-time civil penalty of $500.00 for each violation.

B) ***Continuing Violation***

If a violation is not corrected within 10 days of receipt of a notice of violation and correction order pursuant to Sec. 11.5.3, *Notice of Violation and Correction Order*, then civil penalties accrue starting on the 11th day and accrue through and until the violation is corrected. A person receiving a notice of violation and correction order shall pay all accrued civil penalties to the Town within 30 days of receipt of the notice. If the person fails to pay the accrued civil penalties within 30 days of receipt of the notice, then the civil penalties, including all further accruing penalties for a continuing violation, shall be collectible for the Town through a civil action in the nature of debt. Each day that any violation continues shall constitute a separate violation for the purpose of assessing civil penalties. A notice of violation and correction order need only be given once for a continuing violation.

11.4.5 Criminal Penalty

Violation of this Ordinance shall not be a crime under G.S. §14-4 or other law.

11.4.6 Other Relief

In addition to all other remedies and penalties outlined in this Article, the Planning Director may, with the written authorization of the Town Manager, institute any other

appropriate action or proceeding in a court of competent jurisdiction to prevent, correct, or abate a violation of this Ordinance.

11.5 PROCEDURES

The following procedures shall apply to the enforcement of this Ordinance by the Town:

11.5.1 Investigation

Upon the receipt of complaints or other information suggesting a violation of this Ordinance, the Planning Director shall investigate the allegations and suggestions and determine whether a violation exists.

11.5.2 Warning of Violation

On determining that a violation exists, the Planning Director may provide the person alleged to be violating this Ordinance a written warning. The written warning shall include a description of the violation, state the actions necessary to correct the violation, and invite the alleged violator to meet with the Planning Director to discuss the violation and how it may be corrected. The Planning Director may provide the alleged violator additional written warnings of the violation. A warning of violation is not required to be issued prior to issuance of a notice of violation and correction order pursuant to Sec. 11.5.3, *Notice of Violation and Correction Order*.

11.5.3 Notice of Violation and Correction Order

The Planning Director or official specifically designated by this Ordinance is authorized to determine the existence of violations and to send a notice of violation and correction order to any person found to be in violation of this Ordinance. The notice shall include a description of the violation and an order to cease the violation and/or stop work. A person shall cease violating this Ordinance within 10 days of receiving a notice of violation and correction order. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt. The Planning Director may deliver the notice of violation and correction order personally, by the Town Police Department, by certified or registered mail, return receipt requested, by the Wake County Sheriff's Department, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

11.5.4 Appeal to Board of Adjustment

Any person who is served a notice of violation and correction order pursuant to Sec. 11.5.3, *Notice of Violation and Correction Order*, may appeal that determination to the Board of Adjustment within 30 days of the date of the receipt of the notice of violation and correction order. If a person who receives a notice of violation and correction order does not appeal the determination within the time established in this Section, then that person may not later appeal to the Board of Adjustment the subsequent imposition of any remedy or penalty provided in this article.

11.5.5 Extension of Time Limit to Correct Violation

A person who receives a notice of violation and correction order, or the owner of the land on which the violation occurs, may submit to the Planning Director a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Planning Director may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Planning Director may grant additional 30-day extensions if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this

Ordinance. The Planning Director may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made or the violator will be subject to the penalties described in the notice of violation and correction order.

11.5.6 Enforcement Action After Time to Correct Violation

After the time has expired to correct a violation, including any extension thereof, the Planning Director shall determine if the violation is corrected. If the violation is not corrected, the Planning Director may act to impose one or more of the remedies and penalties authorized by Sec. 11.4, *Remedies and Penalties*.

11.5.7 Emergency Enforcement Without Notice

If delay in correcting a violation would seriously threaten the effective enforcement of this Ordinance or pose an immediate danger to the public health, safety, or welfare, then the Planning Director may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Planning Director may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

ARTICLE 12 DEFINITIONS

12.1 GENERAL

This article includes definitions for many words and terms used in this UDO. All words and terms not defined in this article shall be given their common, ordinary meanings, as the context may reasonably suggest. All use classifications are defined in Section 4.3.

12.2 TERMS DEFINED

Accessory Structure
A structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. See Sections 4.5 *Accessory Uses and Structures* and 5.2.7 *Dimensional Standards for Detached Accessory Structures*.

Addition (to an existing building)
Any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition that is connected by a fire wall or is separated by independent perimeter load-bearing walls is new construction.

Alley
A public or private vehicular way providing secondary service access along rear or side property lines of lots which are also served by one of the previously listed higher order street types.

Architectural Compatibility
Quality of visual agreement, complement and/or balance based on elements of proportion, scale, use of materials and siting between structures or parts of the same structure.

Arithmetic Difference
The net value of two or more numbers taking into account their positive or negative signs.

Basement
The lowest level or story of a building that has its floor sub-grade on all sides.

Bay Window
A large window or series of windows projecting from the outer wall of a building and forming a recess within. The center unit is parallel to the wall and the side units are usually at an angle to the wall.

Beneficial Use Determination
A non-judicial procedure established in Sec. 2.3.13, beneficial use determination, that allows any landowner who believes the application of this Ordinance results in a "taking" of their property to seek administrative relief from the Town Council. The procedure is based on United States Supreme Court decisions that teach that local governments may establish procedures by which they can assess takings claims before they go to court and offer relief if the regulations are found to amount to a taking-- that is, they deny all reasonable economic use of a property.

Berm
An undulating mound of soil, designed to provide visual interest, screen undesirable views, and/or reduce noise. The berm must be replanted with sufficient vegetation to meet the opacity desired.

Buffer
A combination of physical space and vertical elements such as plants, berms, fences, or walls, the purpose of which is to separate and screen land uses from each other.

Buffer, base
An area of land with existing vegetation that includes trees with a minimum tree size of 2 ½ -inch caliper potentially for buffer reforestation. This is the threshold to determine if the existing vegetation is mature enough to be considered as the base buffer. If the buffer is inferior to the base buffer requirements, the buffer may be graded. The buffer must be upgraded to meet the opacity requirements at the time of site or subdivision plan approval.

Building
Any structure built for support, shelter, or enclosure for any occupancy or storage.

Building setback line
A line extending through a lot which is parallel to the property line and between which line and such property line no building shall be erected. For the purposes of this UDO, building setback lines are identical with the rearward boundary of the yard of the lot required by the zoning regulations.

Built-upon Area
For the purposes of complying with the standards and requirements of the Watershed Protection Overlay Districts, calculation of the built-upon area within the proposed development shall include, but not be limited to, all existing public and private streets, proposed public streets, sidewalks, driveways, rooftops, parking lots, patios, and all other impervious and partially impervious surfaces, including CABC and gravel within the development. The water area of swimming pools and wooden slatted decks shall not be included in the calculation of the built-upon area.

Caliper
The diameter of a tree trunk measured in inches to determine the graded size. The caliper of the trunk is measured 6 inches above the ground, up to and including four-inch caliper trees, and 12 inches above ground for trees larger than four-inch caliper.

Canopy
A structure constructed of rigid materials, including but not limited to, metal, wood, concrete, canvas or glass, which is attached to and supported by a building, or which is free-standing and supported by column**,** poles, or braces extended to the ground.

Cantilever
A projecting structure, such as a porch or wall, or beam that is supported only on one end. A cantilever is a part of a building that projects beyond its support and overhang.

Central Business District
Beginning at an iron pipe being the southwest property corner of the Town of Apex's Police Station and being the northeast corner of the Kenneth E. and Cheryl H. Koch, Jr. property, thence N 29º26'25" E 104.06' to an iron pipe, thence N 40º39'50" E 142.13' to a point in the north right-of-way of Saunders Street, thence with the right-of-way of Saunders Street S 64º43'45" E 139.99' to an iron pipe, thence N 14º25'14" E 206.97' to an iron pipe, thence N 62º35'13" W 32.27' to an iron pipe, thence N 05º22'10" W 84.93' to an iron pipe in the line of the Brittany Trace subdivision, thence with the Brittany Trace subdivision line N 89º06'04" E 251.46' to an iron pipe, thence S 88º48'57" E 398.32' to an iron pipe, thence N 88º04'51" E 17.54' to an iron pipe, thence S 88º02'25" E 178.84' to a railroad iron in the eastern right-of-way of North Salem Street, thence S 89º44'29" E 150.45' to a point, thence S 63º57'42" E 131.00' to a point in the CSX Railroad right-of-way, thence S 33º56'03" W 1156.99' to a point in the CSX Railroad right-of-way, thence N 63º57'15" W 387.10' to a point, thence N 24º01'39" E 156.50' to a point, thence N 66º32'30" W 172.56' to a point, thence N 25º56'40" E 10.00' to a point, thence N 64º03'20" W 296.90' to an iron pipe, thence N 64º17'45" W 80.73' to an iron pipe, thence N 64º40'57" W 94.64' to an iron pipe, thence N 64º13'25" W 103.74' to the point of beginning.

Change of Occupancy or Use
A change of occupancy or use as defined by the North Carolina State Building Code.

Compatible Uses
Land uses that are not substantially different and are to be used for activities that are not extremely dissimilar in nature.

Corner Lot
A lot that abuts the right-of-way of 2 streets at their intersection.

Critical Root Zone
A circular region measured outward from a tree trunk representing the essential area of the roots that must be maintained or protected for the tree's survival. For purposes of this UDO, the critical root zone is calculated by measuring the diameter of the tree at breast height (dbh); every inch of diameter is equal to one foot of critical root zone. For example, a 12-inch diameter tree has a minimum 12-foot wide critical root zone.

Crosswalk
A public pedestrian right-of-way that cuts across a block to facilitate pedestrian access to adjacent streets and properties.

Cul-de-sac
A short local street having one end open to traffic and the other permanently terminated by a vehicular turn-around.

Cultural Amenities
Historic or culturally significant buildings or structures.

Cut-off Light Fixture
An artificial outdoor lighting fixture designed to ensure that no light is emitted above a horizontal line parallel to the ground.

Dedication
A gift by the owner of a right to use land for specified purposes. Because a transfer of property rights is entailed, dedication must be made by written instrument, which transfer is completed with an acceptance. Acceptance by the town for land dedicated as a street does not obligate the town to open such street.

Demolition
The act of razing, dismantling, removing, or otherwise altering a building or structure, or portion thereof, to the ground level.

Density Credit
The potential for the improvement or subdivision of part or all of a parcel of real property, expressed in dwelling unit equivalents or measures of development density or intensity or a fraction or multiple of that potential that may be transferred to other portions of the same parcel or to contiguous land that is part of a common development plan, consistent with the requirements of this Ordinance.

Development
Any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials. For purposes of Article 6.1, means any land-disturbing activity that increases the amount of built-upon area or that otherwise decreases the infiltration of precipitation into the soil.

Development (for the purposes of the sign regulations in Section 8.8)
Single-use lots, multiple-use lots, shopping centers with or without out parcels connected thereto as shown on an approved master subdivision plan, or any other group of nonresidential projects planned as a total entity.

Diameter at Breast Height (DBH)
Diameter of a tree measured 4.5 feet from the ground.

Diffuse Flow
To run smoothly with unbroken continuity in a widely spread or scattered manner.

Double Frontage Lot
A continuous (through) lot accessible from both of the parallel streets upon which it fronts.

Drop-in Day Care
A commercial operation which keeps children for short periods of time, up to four hours per day per child, for which no day care license is required.

Dwelling Unit
A building or portion thereof providing complete living facilities for one family.

Engineered Storm Water Control Structure
Storm water control structures designed by an engineer or landscape architect to control storm water runoff. Such structures include, but are not limited to, wet detention ponds.

Encroachment
To advance beyond specified limits.

Existing Land Use (for purposes of determining buffers)
For the purposes of Sec. 8.2.6, *Buffering*, the bona fide and legal land use(s) for development that is built, under construction or that has received a building permit on the date an application for development approval for a site plan or master subdivision plan is submitted to the Director pursuant to the requirements of this Ordinance for the development of adjacent lands. Bona fide and legal land use(s) under this Ordinance are uses that comply with the requirements of Sec. 4.2.2 Use Table, or are valid nonconforming uses pursuant to the standards of Art. 10: Nonconformities.

Existing Manufactured Home Subdivision or Mobile Home Park
A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before August 1, 2000.

Exotic Architecture
Architecture from or characteristic of another place or part of the world, or that is strikingly strange or unusual. It is the opposite of vernacular architecture which is a term used to categorize methods of construction which use locally available resources and traditions to address local needs.

Exterior Lighting
Lighting such as that used in and around buildings, recreation areas, parking lots and signs designed to illuminate certain areas for visibility.

Extraterritorial Jurisdiction/Planning Jurisdiction (ETJ)
That area outside the Town of Apex delineated on the Official Zoning District Map, which is incorporated herein by reference. A copy of this map is available for inspection in the office of the Town Clerk during normal business hours. Pursuant to the North Carolina General Statutes, the Town enforces the following regulations within the ETJ: zoning ordinance; subdivision regulations; North Carolina State Building Code; minimum housing standards code; and ordinances creating the Town's Planning and Zoning Board and the Town's inspection department.

Façade Area
The overall width times the overall height of a structure's front, side or rear facade or wall.

Fair Housing Amendments Act of 1988
A federal statute (42 U.S.C. 3601 et seq.) that outlaws various types of discrimination in the provision of housing.

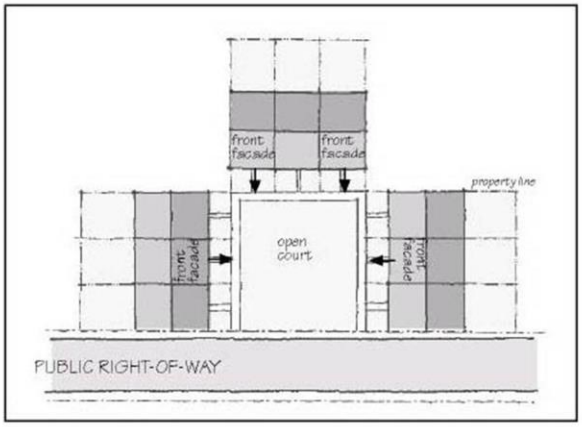
Family
One (1) or more persons occupying a premises and living as a single housekeeping unit, provided that no housekeeping unit shall contain more than five (5) persons unless they are related by blood, marriage, adoption, guardianship, or foster care.

Fence
An artificially constructed barrier intending protection, screening or boundary.

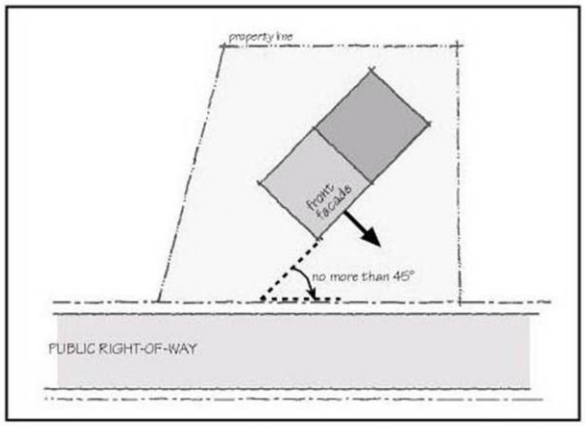
Flag Lot
An irregularly shaped lot where the buildable portion (flag) of the lot is connected to a public street by a narrow nonbuildable strip (pole). The front setback line will be measured from that lot line more or less lying parallel to the public street.

Floor
The top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete slab construction or top of wood flooring in wood-frame construction. The term does not include the floor of a garage used solely for parking vehicles.

Frontage
Frontage shall mean the width of the building lot measured along the street right-of-way on which the lot faces and has vehicular access. If the lot has more than 1 street frontage (e.g. corner lots and double frontage lots), the second street frontage shall be included in the calculations for free-standing sign purposes only if the frontage on each of the 2 streets exceeds 150 feet.

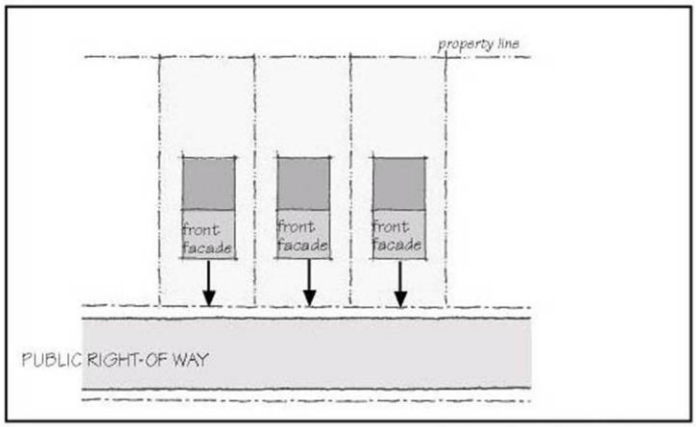


FRONTS ON OPEN COURT



ANGLED DWELLING FRONTAGE

Figure 12.2-1:
Illustrations of Frontage



DWELLING FRONTAGE

Frontage Road
A local street parallel and adjacent to a major thoroughfare or railroad, which provides access to abutting properties, protection from through traffic and control of access to the major thoroughfare.

Fully Controlled Access Highways
A divided, multi-lane major highway in which the Department of Transportation has purchased all access rights to the highway. Access to the highway is via interchanges.

Grading
The movement of earth by mechanical means to alter the gross topographic features of a development site, including elevation and slope, in preparation for construction of single-family, multi-family/apartment, condominium, and attached and detached townhome residential development and non-residential development.

Greenway Plan
The greenway plan adopted by the town as the basis for the development of a greenway system in and around the town.

Handicapped Person
A person with a temporary or permanent physical, emotional, or mental disability including but not

limited to mental retardation, cerebral palsy, epilepsy, autism, hearing and sight impairments, emotional disturbances and orthopedic impairments but not including mentally ill persons who are dangerous to others as defined in N.C.G.S 122C-3(11)b.

Hazardous Waste Management Facility
As defined in NCGS Article 9 of Chapter 130A, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

High-density Development Option
Development where the percentage of built-upon area exceeds that allowed without engineered storm water control measures.

Historic Structure
Any structure that is:

1) *Individually listed*
Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of Interior or preliminarily determined by the Secretary of the Interior as meeting the requirements for individual listing on the National Register);

2) *Listed as a contributing structure*
Listed as a contributing structure in the National Register of Historic Places as identified in the National Register Nomination for the Apex Historic District (1994); the National Register Nomination for the Apex Historic District Boundary Increase (1995); the National Register Nomination for the Apex Historic District Boundary Increase II (2001); and the National Register Nomination for the Apex Historic District Boundary Increase III (2008);

3) *Certified*
Certified or preliminarily determined by the Secretary of the Interior as contributing to the significance of a registered district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

4) *State inventory*
Individually listed in the state inventory of historic places;

5) *County register*
Listed in the Wake County Register of Historic Places;

6) *Local inventory*
Individually listed in a local inventory of historic places in communities with historic preservation programs that have been certified:
   a) By an approved state program as determined by the Secretary of the Interior; or
   b) Directly by the Secretary of the Interior in states without approved programs.

Homeowners Association
An incorporated, non- profit organization established by a developer or an association of property owners whose membership shall consist of individual property owners within a subdivision and operating under recorded legal agreements.

Hydric Soils
Those soils that, due to periods of wetness during the growing season, develop anaerobic (reducing) conditions in the upper part. These soils shall include all soils in the list developed by the National Technical Committee for Hydric Soils and all soils that when classified in accordance with USDA Soil Taxonomy, have "aqu" as a formative element of the Suborder name or 'hydr' as a formative element of the Great Group Name.

Impervious Surface
Materials that allow little or no infiltration of precipitation into the soil. Impervious surfaces include, but are not limited to, public and private streets, sidewalks, driveways, rooftops, parking lots, patios, and all other impervious and partially impervious surfaces, including CABC and gravel within the development. Swimming pools and wooden decks shall not be considered impervious surfaces and shall not be included in the calculation of the built-upon area.

Inert Debris
Solid waste that consists solely of material that is virtually inert, such as brick, concrete, rock, and clean soil.

Interconnectivity
Design and development patterns that connects residences, businesses, shopping and recreation uses in a pedestrian friendly way. Interconnectivity may occur through the use of sidewalks, pedestrian-ways, trails and other similar features that are designed to encourage pedestrian travel.

Jordan Lake Watershed
All lands and waters draining to B. Everett Jordan Reservoir.

Jordan Lake Watershed Protected Area
The protected land area within the town's corporate limits or extraterritorial planning jurisdiction contributing surface drainage to Jordan Lake or its tributaries. The boundaries of the protected areas are defined as extending five miles upstream and draining to water supply reservoirs (measured from the normal pool elevation) or to the ridge line of the watershed (whichever comes first).

Land-clearing Debris
Solid waste that is generated solely from land-clearing activities such as stumps, trees, etc.

Land Use Classification
The class or description of how land is to be used or occupied.

Landscape Area
A portion of a site or property containing vegetation to exist after construction is completed. Landscaped areas include, but are not limited to, natural areas, buffers, plantings, and streetscapes.

Landscape Plan
The portion of the development plan that is submitted to show existing vegetation and proposed location of plant material utilized to conform to site plan application requirements.

Larger Common Plan of Development or Sale
Any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities

may occur on a specific plot.

Levee
A manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

Lighting Plan
A portion of the development plan conforming with the applicable requirements of this UDO, and showing the location, height above grade, fixture type, isolux diagram, foot-candles at grade and bulb wattage for each light source proposed.

Limited Controlled Access Highway
A multi-lane major artery for through traffic that can be accessed at stoplights or specific curb cuts. The Department of Transportation has purchased partial access rights to such roads.

Lot
A portion of a subdivision or other parcel of land, intended as a unit for transfer of ownership or for development or both.

Low-density Development Option
Development where the percentage of built-upon area falls below the level that requires engineered storm water control measures.

Manufactured Home Subdivision, existing
A manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) is completed before August 1, 2000.

Manufactured Home Subdivision, expansion of existing
The preparation of additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs).

Manufactured Home Subdivision, new
A manufactured home subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs) is completed on or after August 1, 2000.

Minor Subdivision
For the purposes of this UDO, a land division (minor subdivision) is a subdivision (as defined by this UDO) which also:

1) Is a division of a tract or parcel of land into not more than four lots, each of which has at least 30 feet of frontage on a public street, and;

2) Does not dedicate or offer for dedication any new street or require construction of any private road for access to any of the lots, and;

3) Allows reasonable access to the remainder of the tract from which the lot or lots are conveyed of at least 60 feet in width, and;

4) Does not require extension of sanitary sewer mains or storm sewer mains or water mains to service the lots, and;

5) Creates no residual parcels which themselves do not conform to the requirements of this UDO.

Mobile Home Park
A lot containing, or designed for the location of, two or more mobile homes in the MHP Mobile Home Park District.

NC DEQ Stormwater BMP Manual
The stormwater design manual approved for use in Phase II jurisdictions by the DEQ for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the NC DEQ Stormwater BMP Manual are to the latest published edition or revision.

Natural Amenities
Environmentally sensitive areas, wildlife habitats, stands of trees, ponds, rock outcroppings, streams, scenic vistas or other unique natural features.

Neotraditional Principles (or new urbanism principles)
Planning and design principles that seek to integrate or re-integrate the components of modern life. Generally, neotraditional principles results in development that is compact and interconnects work, housing, shopping and recreation uses in a pedestrian friendly way.

Non-cutoff Light Fixture
An outdoor lighting fixture designed to allow light to be directly emitted above a horizontal line parallel to the ground.

Parapet Wall
That portion of a building wall that extends above the level of the roofline.

Person
Any individual, corporation, company, partnership, association, or entity of any kind.

Planned Development District
A land area under unified control that is designed and planned as a whole with either one or a series of development phases according to a concept plan for development (Planned Development Plan). There are three types of planned developments that may be developed under this Ordinance if they comply with the procedures and standards of Sec. 2.3.4, *Planned Development Districts:* Planned Unit Developments (PUD-CZ); Traditional Neighborhood Developments (TND-CZ); and Major Employment Centers (MEC-CZ).

Planning Director
The Planning Director of the Town of Apex or his or her designee.

Plat
A map or plan of a parcel of land which is to be, or which has been, subdivided.

Pre-school
An accredited or non-accredited program that shall for the purposes of this ordinance be considered a drop-in day care for care up to four hours per day per child; a day care for care over four hours per day per child.

Principal Structure
The main or primary building as designated by the main or principal use of the land. Exterior porches, decks and any part of the building that is not fully enclosed by solid walls are not considered part of the principal structure.

Produce Stand
Produce stand means an unenclosed, open-air temporary structure that is no greater than 20 feet by 30 feet in size that is located on a lot for the purpose of the sale of agricultural products on a seasonal basis.

Real Estate
Land, portions thereof, and improvements thereon.

Recreational Vehicle
A vehicle that is: built on a single chassis; four hundred square feet or less when measured at the largest horizontal projection; designed to be self-propelled or permanently towable by a light duty truck; and designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel or seasonal use.

Redevelopment
For purposes of Article 6.1, means any land-disturbing activity that does not result in a net increase in built-upon area and that provides greater or equal stormwater control than the previous development.

Residential Yard Sale
The casual sale of household articles in a private yard or garage. “Residential yard sale” includes the terms “yard sale”, “garage sale”, “rummage sale”, “estate sale”, or any other term used to describe these types of sales.

Resource Conservation Area (RCA)
The area(s) of a site, as established pursuant to Sec. 8.1.2 of this UDO, that may not be disturbed by earth movement (grading) or cleared of vegetation, including disturbance or clearance to provide space for construction of principal and accessory uses and structures, parking areas, roads, drainage and stormwater management facilities, and/or other utilities.

Screen
A method of reducing the impact of noise, visual intrusions, and invasion of privacy with such elements as plants, berms, fences, walls or any appropriate combination thereof.

Seasonal Outdoor Sales
The display and sale of products and services primarily outside of a building or structure, occurring during certain seasons or at regular times during the year, but not on a continuing, regular basis.

Secured
Placed in a concrete footing, hole with compacted earth or gravel, or other approved support, so as to be adequately affixed to the ground as a permanent structure meeting requirements of the North Carolina Building Code.

Shopping Center
A commercial establishment planned, constructed, and managed as a total entity with customer and employee parking provided on-site, provision for goods delivery separated from customer access.

Sight Triangle
A triangular-shaped portion of land established at street intersections and driveways in which nothing is erected, placed, planted, or allowed to grow in such a manner as to limit or obstruct the sight distance of motorists entering or leaving the intersection, as set forth in the *Town of Apex Standard Specifications and Standard Details*.

Sign
See UDO Section 8.7.9 for *Sign* related definitions.

Significant vegetation
Existing vegetation 8 inches in diameter and greater, measured DBH.

Single-Family Residential Subdivision Mass Grading
The movement of earth by mechanical means to alter the gross topographic features of a development site, including elevation and slope, in preparation for construction of infrastructure and 50% or more of the subdivision lots prior to the first plat in a single-family residential subdivision. Subdivision lots that are graded no more than 10 feet from the right-of-way solely for the installation of infrastructure shall not be considered when calculating the number of graded lots. Grading completed after the plat is recorded shall be considered individual lot grading subject to Sec. 7.2.5(A)(3) *General Grading Standards*.

Single-Family Residential Subdivision Staged Grading
The movement of earth by mechanical means to alter the gross topographic features of a development site, including elevation and slope, in preparation for construction of infrastructure and less than 50% of the subdivision lots prior to the first plat in a single-family residential subdivision. Subdivision lots that are graded no more than 10 feet from the right-of-way solely for the installation of infrastructure shall not be considered when calculating the number of graded lots. Grading completed after the plat is recorded shall be considered individual lot grading subject to Sec. 7.2.5(A)(3) *General Grading Standards*.

Site Plan
A portion of the development plan that shows the existing and proposed conditions of the lot including: topography, building placement, and all other pertinent site features.

Slope
The deviation of a surface from the horizontal, usually expressed in percent or degrees.

Slope Calculation
For purposes of this UDO, slope shall be determined by dividing the horizontal run of the slope into the vertical rise of the same slope and converting the resulting percentage into a percentage value. For purposes of regulation and measurement, steepness of slope shall be measured from the points with the highest and lowest elevation within 20 feet of any portion of the proposed structure.

Small Vegetation
Existing vegetation from 2.5 inches in caliper to significant vegetation size of 8 inches in diameter.

Special Event
An activity or circumstance of a business or organization that is not part of its daily activities. Such activities may include, but are not limited to, grand openings, closeout sales (pursuant to Article 17 of Chapter 66 of the NC General Statutes), and fund raising, membership drives or events of civic, philanthropic, educational or religious organizations.

Specimen Tree
Any tree other than a pine with a caliper of 18 inches or more.

Stream, ephemeral
A stream that flows briefly and only in direct response to local precipitation, and whose channel is always above the water table. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water. Ephemeral streams are not indicated on the most recent version of either the U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps, or the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture. This classification requires no buffer under the requirements of Sec. 6.1 *Watershed Protection Overlay Districts*.

Stream, intermittent
A stream, or reach of a stream, that does not flow year-round. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water. Intermittent streams are indicated as “intermittent” on the most recent version of either the U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps, or the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture. In the event that there exists a discrepancy between these two maps that would affect a required buffer under Sec. 6.1 *Watershed Protection Overlay Districts*, the classification requiring the most stringent buffer shall be applied.

Stream, perennial
A stream that flows continuously throughout the year. Perennial streams are indicated as “perennial” on the most recent version of either the U.S.G.S. 1:24,000 (7.5 minute) scale topographic maps, or the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture. In the event that there exists a discrepancy between these two maps that would affect a required buffer under Sec. 6.1 *Watershed Protection Overlay Districts*, the classification requiring the most stringent buffer shall be applied.

Stream Buffer
A natural or vegetated area through which storm water runoff flows in a diffuse manner so that the runoff does not become channeled and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the bank of each side of the stream.

Street Front Buffer
A buffer that is located along all public and private streets which includes collector streets.

Street, private
A street that has not been accepted by the municipality or other governmental entity. No private streets shall be allowed to be built within developments or subdivisions approved on or after October 15, 2002.

Street, public
Any vehicular way that: (1) is an existing state, county, or municipal roadway; (2) is shown upon a plat approved pursuant to law; or (3) is approved by other official action.

Street, rural
A street without curb and gutter, the principal function of which is to provide access to adjacent properties.

Street, urban
A street with curb and gutter, the principal function of which is to provide access to adjacent properties.

Streetscape
A buffer that is located along all thoroughfares as defined by the adopted Thoroughfare Plan of the Town of Apex.

Structural BMP
A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, wet detention ponds, bio-retention areas, vegetative practices, filtered strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with engineered stormwater control structure and similar terms used in this ordinance.

Stump Diameter
For purposes of Article 6.1, means the diameter of a tree measured at six (6) inches above the ground surface level.

Subdivider
A person who subdivides or develops any land deemed to be a subdivision within the meaning of that term as defined herein.

Subdivision
Any division of a tract or parcel of land into 2 or more lots, building sites or other divisions when any one or more of the divisions were created for the purpose of sale or building development (whether immediate or future) and shall include any division of land involving the dedication of a new street or a change in an existing street. Refer to Section 7.1.1(B) for Subdivision Exemptions.

Subdivision Administrator
The Planning Director or, in his or her absence, a designee.

Swift Creek Watershed Protected Area
The entire land area within the town's corporate limits or extraterritorial planning jurisdiction contributing surface drainage to Swift Creek or its tributaries.

Tattoo Parlor and Body Piercing
An establishment whose principal business activity, either in terms of operation or as held out to the public, is the practice of one or more of the following: (1) placing of designs, letters, figures, symbols, or other marks upon or under the skin of any person, using ink or other substances that result in the permanent coloration of the skin by means of the use of needles or other instruments designed to contact or puncture the skin; (2) creation of an opening in the body of a person for the purpose of inserting jewelry or other decoration. Body piercing does not include piercing an ear lobe with a disposable, single-use stud or solid needle that is applied using a mechanical device to force the needle or stud through the ear lobe.

Temporary Use
A use established for a limited duration with the intent to discontinue such use upon the expiration of the time period.

Thoroughfares, major
Interstates, freeways, expressways and major streets that provide for the expeditious movement of volumes of traffic within and through urban areas, and which have been designated as major thoroughfares on the thoroughfare plan.

Thoroughfare, minor
A street that carries traffic from local streets to the system of major thoroughfares, and which has been designated as a minor thoroughfare on the thoroughfare plan.

Thoroughfare Plan
The thoroughfare plan mutually adopted by the Town and the state Department of Transportation as the basis for the development of the street and highway system in and around the town.

Town of Apex Design and Development Manual
The manual prepared by the Town that establishes landscape and planting standards for Resource Conservation areas. All references herein to the *Town of Apex Design and Development Manual* are to the latest published edition or version.

Town of Apex Standard Specifications and Standard Details
The manual prepared by the Town to provide minimum standards for all subdivision and utility construction projects within the jurisdiction of the Town. All references herein to the *Town of Apex Standard Specifications and Standard Details* are to the latest published edition or version.

Tree
For purposes of Article 6.1, means a woody plant with a Diameter Breast Height (DBH) equal to or exceeding five (5) inches or a stump diameter exceeding six (6) inches.

Tree Canopy
The diameter or variable radius from the tree trunk to the outermost reaches of tree branches.

Trunkline
Imaginary or visual line separating cleared area from forested area.

Variance
A grant of relief from the requirements of an ordinance.

Vehicular Use Area
An off-street ground level area used for temporary storage of motor vehicles or parking. Also includes drive entries, loading areas and/or other built-upon areas used for transportation.

Vested Right
As defined in Sec. 160A-385.1(b)(6), N.C.G.S., the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.

Wall
An artificially constructed barrier intending protection, screening or boundary, but which does not include a retaining wall.

Wetlands
Land that is in an area defined as wetlands by the State of North Carolina, U.S. Army Corps of Engineers, or a qualified consultant.

Yard
An open, unoccupied space on the same lot with a principal building or structure, unobstructed from the ground upward, except for hedges, bird baths, swimming pools, walkways, curbs, driveways, unenclosed patios, well houses and other similar appurtenances associated with the principal structure.

Yard, front
The yard between the front lot line and the front building line and extending to the side lot lines, and measured perpendicular to the building at its closest point to the front lot line.

Yard, rear
The yard extending the full width of the lot between the rear lot line and rear building line and measured perpendicular to the building at its closest point to the rear lot line.

Yard, side
The yard between the side lot line and the building, extending from the front yard to the rear yard, and measured perpendicular from the side lot line to the closest point of the building.

Zoning Regulations
The zoning regulations as set out in this UDO.

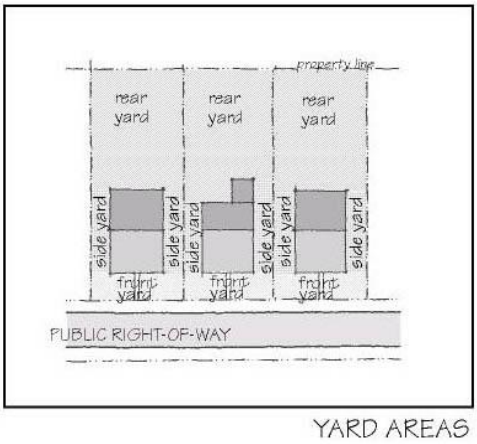


Figure 12.2-2: Illustration of Yard Areas

ARTICLE 13 TRANSPORTATION DEVELOPMENT FEES

13.1. Purpose. The purpose of this Article is to establish a procedure to assist in the funding of road improvements required by new growth in the Apex Planning Area. This Article is not intended to require developers to pay for all new road construction. This Article provides for new development to pay a prorated share of road costs required to provide adequate road improvements to serve new construction before the new development is completed.

13.2. Authority. Pursuant to the powers conferred by the General Assembly of North Carolina under Articles 1, 8, 15, and 19 of Chapter 160A, as well as other applicable sections of the North Carolina General Statutes, the Town of Apex ("the Town") has authority to regulate development including requiring development to ameliorate the transportation impacts of development through reasonable impact fees.

13.3. Findings.

(a) The Town is experiencing rapid population and employment growth, in part, because of its proximity to regional employment facilities such as the Research Triangle Park and Raleigh Durham International Airport.

(b) The Town's population and employment growth creates demand for additional capital improvement funds for roadway facilities, which include but are not limited to streets, intersection improvements, culverts and other road related drainage improvements, turn lanes, and signalization.

(c) The Town and the North Carolina Department of Transportation are responsible for and committed to providing road related improvements at a level-of-service necessary to support anticipated residential and employment growth.

(d) The Town has adopted and the North Carolina Department of Transportation has approved, the Town of Apex Official Map of Thoroughfare Plan, which identifies additional road capital improvements necessary to serve new construction.

(e) The transportation development fees established by this Article are proportional to the need for new road improvements caused by new construction and reasonably benefit the new construction that pays the fee.

13.4. Definitions. As used in this Article, the following words shall have the meanings indicated.

Benefit District: A defined area within which thoroughfare infrastructure improvements benefit all construction and intensification of use occurring within the defined area.

Building: Any structure enclosed and isolated by exterior walls constructed or used for residence, business, industry or other public or private purpose, or accessory thereto, the construction of which requires or would require a building permit under the building code in effect in the Town.

Building Permit: A permit issued by the Town Building Official in accordance with the building code then in effect in the Town.

Construction: Building, construction, new construction, reconstruction, erection, extension, betterment or improvement of land providing a building or structure or any part thereof, which provides or increases dwelling units or the floor area of a residential or nonresidential use.

Credit: A reduction in transportation development fees in accordance with Section 13.15 of this Article.

Developer: Any individual, group, or entity proposing development.

Development: Any construction or intensification of use as those terms are defined herein.

Dwelling Unit: A building or a portion thereof designed, arranged, or used for living quarters for one (1) family.

Floor Area: The total of the gross horizontal areas of all floors below the roof and within the outer surface of the main walls and the gross horizontal areas within lines drawn parallel to and 2 feet within the roof line of any building or portion thereof without walls. If the building has party walls, the center line of the party wall is used for the "area" calculation. Useable basements and cellars are included. With respect to nonresidential facilities, the following areas are not included in the area calculation: porticos, arcades, and similar areas open to the outside air, which are not designed or used as sales, display, storage, service, or production areas even if such areas are accessible to the general public.

Intensification of Use: A change of use of a property that intensifies its use whether or not construction is involved.

Land Development Project: A development or interrelated set of developments, approved by the Town pursuant to a subdivision plat, site plan, planned development, or other development plan.

Nonresidential Construction: Construction for any use other than residential use.

Office Park: A subdivision or site containing more than one (1) office building.

Pass-By Trips: Trips entering and exiting a new development site that are attracted to the site from the existing traffic flow. Pass-by trips are not considered new trips to the road network.

Pass-Through Trips: Trips that enter, travel through, and exit the planning area of the Town without stopping at any destination within the Town. Pass-through trips impact the road network, but are not attributable to development within the Town planning area.

Peak Hour Trips: The greatest number of vehicle trips generated by a unit of new development during any one (1) hour period.

Residential Use: A residential use as defined in the Zoning Ordinance of the Town of Apex.

Certificate of Occupancy: The certificate of occupancy required by Section 5-30 of the Town of Apex Code of Ordinances.

Town: The Town of Apex, North Carolina.

Thoroughfare: A major street, road, or highway which is designated as a thoroughfare on the adopted Thoroughfare Plan.

Thoroughfare Improvement: Any improvement to any highway, road, or street designated on the Thoroughfare Plan.

Thoroughfare Plan: The Official Map of Thoroughfare Plan, as adopted by the Town of Apex and the NCDOT, which identifies major road improvements necessary to serve projected growth.

13.5. Applicability. This Article applies to all construction and intensification of use in the planning area of the Town, and applies uniformly within each benefit district.

13.6. Condition of Approval. No subdivision, site plan, other development plan, or certificate of occupancy shall be approved or issued for construction or intensification of use within the Town's

planning jurisdiction unless and until any applicable transportation development fee herein established has been paid in full.

13.7. Benefit Districts. The entire planning jurisdiction of the Town constitutes one benefit district for the purposes of this Article.

13.8. Fees. All construction and intensification of uses shall be subject to a transportation development fee. Every person seeking approval of a subdivision plan, a site plan, a development plan, or a certificate of occupancy on which the transportation development fee has not already been paid, shall pay the transportation development fee indicated by the Fee Schedule prior to final subdivision plat approval, site plan approval, development plan approval, or certificate of occupancy issuance, as the case may be. Transportation development fees shall not be charged in connection with the upfit of shell buildings.

(a) The fee shall be computed by proposed building use and based on the plans submitted for approval, according to the Fee Schedule, attached hereto and incorporated by reference herein, except for fees computed by an individual assessment in accordance with Sec. 13.9.

(b) If the proposed construction or intensification of use contains a mix of building uses, the development fee shall be calculated separately for each use according to the fee schedule.

(c) The fee shall be collected for additions and remodeling to existing structures for that portion of the structure which represents an increase in the number of dwelling units or the floor area of the building above the number or area prior to the addition or remodeling.

(d) An intensification of use shall be charged based on the net increase in the intensity of use by comparing the present use with the proposed use on the Fee Schedule.

(e) The schedule of transportation development fees may be amended from time to time by ordinance of the Town Council, after a review in accordance with Sec.13.14 and after public hearing.

13.9. Individual Assessments. If any person believes that his/her proposed development is so unique in the traffic impacts that it will generate, then such person may request the Town to consider an individual assessment of the traffic impacts of the proposed development. Such person shall obtain the services of a duly qualified person to perform the assessment, and submit the assessment to the Town for consideration. The Town Council shall, at a public hearing, consider the request of the applicant to pay the fee based on the individual assessment. The Town shall assess the fee based on the individual assessment if the Council finds that:

(a) The proposed development is in fact so unique that the application of the fee schedules adopted by the Town would result in the collection of a fee that is not proportionate to the traffic impact of the proposed development; and

(b) There is a difference between the fees computed under the fee schedule and the fees computed in accordance with the individual assessment of at least five thousand dollars ($5,000.00) or five percent (5%) of the total fees computed under this ordinance, whichever amount is greater.

The Town Council reserves the right to dispute the assumptions, methodology or conclusions of individual assessments and to retain a qualified engineer to review the applicant's assessment.

Fees computed under this section shall be computed in dollars per residential dwelling unit or dollars per 1,000 square feet of non-residential floor area, using the following formula:

Facility fee = (ADT) X (1.0-P) X Cost per trip end. (The cost per trip end is listed in the Fee Schedule)

ADT = The number of average daily trips ends of the new construction.

P = The percent of pass-by trips expressed as a decimal. The pass-by trip percent is zero for all uses except retail uses.

Cost = The capital costs of developing thoroughfares less double payment credit, existing lane deficiencies, and pass-through trips.

13.10. Collection of Fees.

(a) The transportation development fee for residential subdivisions, condominiums, and townhouses that will create 10 or more lots or units shall be computed in conjunction with the subdivision, condominium, or townhouse application and paid prior to final plat or plan approval.

(b) The transportation development fee for nonresidential construction, apartment construction, or intensification of use shall be computed in conjunction with the site plan application and paid before building permit issuance.

(c) The transportation development fee for all construction or intensification of use for which the transportation development fee has not been paid at the subdivision, site plan, or other prior stage shall be computed in conjunction with the application for a building permit and paid prior to issuance of the certificate of occupancy. Transportation development fees shall not be charged in connection with the upfit of shell buildings.

(d) The transportation development fee for a mixed development shall be paid for the various portions of the plan in accordance with the Subsections of (a) through (c) above that correspond to the portions of the plan.

(e) The transportation development fee shall be calculated and collected by the Town Planning Department or Building Inspections and Permitting Department, as the case may be.

13.11. Fund Accounting.

(a) The Town shall establish an account for the benefit district to which development fees collected within the benefit district shall be credited. Interest at the actual rate of return on invested funds of the Town shall be credited to the account periodically (but not less often than quarterly) in accordance with the accounting policies of the Town. Such account need not be segregated from other Town monies for banking purposes.

(b) Interest earned on the account into which the development fees are deposited shall accrue to the account and shall be used for the purposes specified for such account.

(c) The Town shall maintain and keep financial records for the account showing the revenues to the account and the disbursements from the account, in accordance with normal Town accounting practices. The records of the account shall be open to public inspection in the same manner as other financial records of the Town.

13.12. Use of Funds.

(a) The revenues from development fees collected for the benefit district pursuant to this Article, and accrued interest on such revenues, may be used to finance direct project costs of thoroughfares shown on the Thoroughfare Plan then in effect and located within the district, including: direct project engineering costs; the acquisition cost of rights-of-way; the construction cost of improvements, including related pedestrian and drainage improvements; and the principal sum and

interest and other financing costs on bonds, notes, or other obligations issued by or on behalf of the Town to finance qualified road improvements.

(b) Development fees collected pursuant to this Ordinance shall not be used to pay for any of the following:

(1) construction, acquisition or expansion of public facilities other than road improvements;

(2) repair, operation or maintenance of existing or new road improvements.

13.13. Refunds. Any transportation development fee or portion thereof collected pursuant to this Article which has not been expended within ten (10) years from the last day of the fiscal year in which it was paid, shall, upon written application by the record owner, be refunded, with accrued interest at the rate of return on investments earned by the Town on such amount, to the record owner of the property for which the development fee was paid.

To be eligible for consideration, the application for refund must be submitted not less than ninety (90) days from the date upon which the aforementioned ten (10) year threshold occurs.

13.14. Updates and Revisions. Following a public hearing, the Town shall recalculate the schedule of development fees as part of the annual budget process. The Town may do so more frequently based upon growth in residential and non-residential construction, road improvements actually constructed, changing levels-of-service, inflation, revised cost estimates for road improvements, changes in the availability of other funding sources and such other factors as may be relevant. Each time the schedule of development fees is recalculated, there shall be a public hearing prior to the adoption of the new fee schedule.

13.15. Credits. A fee payor shall be entitled to credits against transportation development fees pursuant to this Article for rights-of-way land dedications, and street construction in excess of the direct need of the development. The credits shall be determined by the Town Manager or his designee.

(a) Rights-of-way: Credits shall be granted for rights-of-way dedicated by the fee payor and accepted by the Town for streets in accordance with the following provisions:

(1) Credits shall be based on a prorata share of the appraised land value of the parent parcel as determined by calculating 120% of the appraised value according to the Wake County Tax Assessor's Office. Adjustments to the appraised value of property between property revaluations by the County will be made annually based on cumulative changes in the Consumer Price Index since the most recent revaluation.

(2) Credits shall be granted for any right-of-way in excess of the standard 60-foot right-of-way for any street the development accesses; provided, however, that there shall be no credit for right-of-way dedications necessary to install turn lanes that directly serve the development.

(3) If a right-of-way is dedicated and accepted for a street to which the development has no direct access, then the entire right-of-way will be included in the credit.

(b) Street construction: Credits shall be granted for street construction approved in advance by the Town for portions of the streets in excess of the direct need of the development as determined by the Town in accordance with the following provisions:

(1) Credits shall be based on the Town's adopted cost of construction schedule based on recent market information as of the effective date of this Article, and updated annually.

(2) Credits shall be granted for construction of the portion of the street in excess of the standard 35 feet back to back of curb for streets that are directly accessed by the development; provided, however, that there shall be no credit for construction of turn lanes that directly serve the development.

(3) All improvements to streets not directly accessed by the development will be included in the credits.

(c) For rights-of-way dedicated and accepted and streets constructed as a condition of any subdivision or site plan approval by the Town prior to the effective date of this Article, a fee payor shall be entitled to a credit against transportation development fees as provided in this section:

(1) A person owing a transportation fee for construction or intensification of use occurring in a development that involved an excess dedication or excess street construction before the effective date of this Article that would have qualified for a credit if this Article had been in effect at the time of the development shall be entitled to a pro rata portion of the net credit that would have applied to the development in the proportion that the person's part of the development bears to the entire development. "Net credit" means the credit less transportation fees that would have been owed had this Article been in effect. No credit will be granted pursuant to this section unless the dedication of the right-of-way or the street construction acceptance, as applicable, occurred within the past five (5) years immediately preceding the effective date of this Article.

(2) Credits under Sec. 13.15(c) shall be calculated as provided in sections 13.15(a) and 13.15(b), except as follows:

a. The value of land is based on 120% of the Wake County Tax Assessor's appraised value as of January 1st of the year in which the dedication and acceptance occurred.

b. Street construction costs shall be based on the cost of construction based on market information relevant to the twelve-month period prior to when the street improvements were incurred.

(d) Any fee payor seeking a credit against a transportation development fee prescribed by this Article shall submit a petition on a Town approved form to the Department Heads for the Planning Department and the Public Works and Transportation Department. To be eligible for consideration, the petition must be submitted not less than thirty (30) days prior to the date the development fee would otherwise become due pursuant to Sec. 13.10, except that a petition related to a transportation development fee that is due in connection with a certificate of occupancy must be made not more than 10 days after the date of application for the building permit. Petitions must contain:

(1) a notarized sworn statement that the petitioner is the current owner of the property;

(2) a copy of any documentation on which the fee payor relies for the claim which may pertain to the issuance of such credits;

(3) a copy of the latest recorded deed to the property;

(4) a description of land or improvements for which the credit is requested;

(5) for development involving more than one building or phase, a plan for allocating credits among the various buildings or phases proposed; and

(6) such other information which may be reasonably necessary to ascertain current ownership of the property or otherwise enable the Town to evaluate the fee payor's petition.

(e) Credits shall be applied against the payment of transportation development fees for the property being developed. The Town shall render payment for excess credits granted to the fee payor; but such payments shall not be made for dedications until after the dedication is made, and shall not be made for construction until after the construction is completed and the Town has accepted the construction. If a fee in lieu of construction is authorized for a development project, then the fee in lieu shall be reduced by the amount of any construction credit that would have been due if the street improvements had been constructed, and no separate construction credit shall be payable.

13.16. Developer Agreements. Where a development includes a thoroughfare shown on the approved Thoroughfare Plan, by mutual consent, the Town and the Developer may enter into an agreement regarding the terms of the participation of the developer in the construction and/or financing of such road. Such agreement may provide for credits or other appropriate compensation to the developer for his participation in the financing and/or construction of the road.

The agreement shall be on a form approved by the Town and shall identify:

(a) the estimated cost of the road improvement, based on the approved bidding process and using the lowest bid approved by the Town Engineer;

(b) a schedule for initiation and completion of the improvement;

(c) a requirement that the improvement be designed and completed to Town standards; and

(d) such other terms and conditions as deemed necessary by the Town.

13.17. Other Financing Methods. The Town may finance road improvements through the issuance of bonds, through the formation of assessment districts or through any other authorized mechanism, in such manner and subject to such limitations as may be provided by law, in addition to the use of transportation development fees.

Except as herein otherwise provided, the collection of a transportation development fee shall be additional and supplemental to, and not in substitution of, any other tax, fee, charge or assessment which is imposed on and due against the property under the authority granted by the State of North Carolina.

13.18. Fee as Supplemental Regulation. The transportation development fee established by this Ordinance is additional and supplemental to, and not in substitution of, any other requirements imposed by the Town on the development of land or the issuance of building permits or certificates of occupancy. Such fee is intended to be consistent with and to further the policies of the Town's comprehensive plan, capital improvements plan, zoning ordinance, subdivision regulations and other Town policies, ordinances and resolutions by which the Town seeks to ensure the provision of road facilities in conjunction with the development of land.

13.19. Traffic Impact Analysis Required.
A Traffic Impact Analysis (TIA) shall be prepared by a qualified professional engineer registered to practice in North Carolina and submitted with the initial application for any development that would generate one thousand (1,000) or more vehicular trips per day or 100 a.m. or p.m. peak hour trips, whichever is greater. A TIA is also required for a subdivision that individually or collectively (with the subdivision(s) it has its only access to a thoroughfare through whether that access is at one or more points) generates one thousand (1,000) or more vehicular trips per day or one hundred (100) a.m. or p.m. peak hour trips, whichever is greater. The calculation of vehicular trips per day as used in this section shall be determined according to the current Institute of Transportation Engineers (ITE) Trip Generation

Manual. If an applicable ITE land use is not available or contains limited data, an alternate trip generation rate may be approved by the Town. The TIA shall indicate the average daily and peak hour vehicular trips generated by the proposed development and shall indicate the trip distribution allocation on all roads and intersections within a study area approved by the Town. The recommendations provided in the TIA shall at a minimum be based on the following:

(a) The TIA shall propose geometric and/or traffic control improvements which will be required to prevent the traffic generated by the proposed development from causing any intersection or roadway approach within the study area to fall below an overall Level of Service (LOS) D, as defined by the latest edition of the Highway Capacity Manual (HCM).

(b) For intersections projected to operate worse than LOS D for background (future without proposed development) conditions, the TIA shall propose geometric and/or traffic control improvements which will be required to minimize the increase in average overall intersection delay when traffic generated by the proposed development is at least ten (10%) percent of the projected total a.m. or p.m. peak hour traffic at the intersection.

(c) Stop-controlled minor street approaches to intersections may exceed LOS D provided the addition of development traffic at the intersection is not anticipated to warrant a traffic signal upon build-out and the resulting congestion does not block traffic movements at adjacent intersections.

(d) At existing or proposed stop-controlled intersections, guidelines provided by the North Carolina Department of Transportation (NCDOT) shall be used in the evaluation of the need for and length of exclusive right and/or left turn lanes to support development traffic.

(e) For any and all turning movements in the study area where the development is anticipated to add at least ten (10%) percent to the existing a.m. or p.m. peak hour traffic volume, and the existing storage available within the turn bay(s) is shown to be exceeded by existing or projected traffic, the TIA shall propose improvements which may be required to mitigate the impact of development traffic.

The Town Council reserves the right to challenge the assumptions, methodology or conclusions of the study. For the purposes of making an individual assessment of the development traffic impacts on the roadway system, the definitions contained in Section 13.9 of the UDO shall apply to this section also.

13.20. Appeals.

(a) After the amount of a transportation development fee or credit, if any, has been determined, a fee payor may, within ten (10) days, file a written appeal contesting the amount of the development fees or credits by requesting a conference with the Town Manager or his designee. However, individual fee assessments made under Sec. 13.9 are not appealable under this Section. If the fee payor, during the pendency of the appeal before the Town, desires and is otherwise entitled to receive subdivision approval, site plan approval, a building permit, or certificate of occupancy with respect to the development for which the amount of the transportation development fees or credits, if any, has been appealed, then the appealing party shall pay the transportation development fees with such payment clearly marked as paid under protest. The Town Manager or designee shall notify the appealing party of the time and place for the conference. Failure of the appealing party, or representative thereof, to appear at the conference shall be considered an abandonment and withdrawal of the appeal.

(b) At the conference, the Town Manager or designee shall consider any statements and evidence presented by the appealing party, and any information provided by the applicable Town departments. The Town Manager or designee shall then render a decision amending or confirming the amount of transportation development fees and credits, if any. The Town Manager or designee shall make a record of the conference and of the decision rendered.

(c) A party may appeal the decision of the Town Manager to the Town Council by notifying

the Town Manager or designee in writing within ten (10) days of the date of the decision.

(d) The Town Manager or designee shall notify the appealing party by registered or certified mail, return receipt requested, at least ten (10) days in advance of the date and time of the Council meeting at which the appeal will be heard. Failure of the appealing party, or representative thereof, to appear at the Council meeting shall be considered an abandonment and withdrawal of the appeal.

(e) At the hearing before the Town Council, the Council shall hear from the appealing party and other interested persons, the Town Manager or designee, and applicable Town departments. The Council shall review the evidence presented, and enter a final decision amending or confirming the amount of transportation development fees and credits, if any. The decision shall include findings of fact and conclusions explaining the basis for the decision. The decision shall be delivered to the appealing party by personal service, or by registered or certified mail, return receipt requested.

(f) Every such decision of the Town Council shall be subject to review by the superior court by proceedings in the nature of certiorari. Any petition for review shall be filed with the clerk of superior court within 30 days after the decision of the Town Council is delivered to the appealing party.