

**LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS  
Round 24 (Roads Adequate Public Facilities)**

Town Council Meeting  
February 13, 2013

**BACKGROUND**

At its regular meeting on Thursday, December 13, 2012 and based on a recent ruling by the North Carolina Supreme Court, the Cary Town Council unanimously voted to hold a public hearing on a possible repeal of the Town's Adequate Public Facilities Planning and Development for Roads Ordinance (Roads Ordinance) and other related amendments to the Town's Land Development Ordinance (LDO). The Town adopted its Roads Ordinance in 1998 to work alongside the Town's existing transportation development fee authority to help lessen the impacts of traffic and to help facilitate the provision of adequate roads in Cary. Under the Roads Ordinance, new development cannot be approved unless it can reasonably be expected that roadway facilities will be available to support the development.

Town staff believes the Town had legal authority to adopt the Roads Ordinance in 1998. However, the North Carolina Supreme Court's recent ruling in *Lanvale v. Cabarrus County* appears to indicate a shift in how the judicial system will read and interpret state law authorizing zoning and development ordinances. Although the *Lanvale* case did not directly affect the Town and did not invalidate the Roads Ordinance, Town staff believe now is a prudent time to reevaluate the Roads Ordinance and develop an approach consistent with the Court's recent ruling.

This item was presented at an advertised public hearing on January 10, 2013 and the proposed amendments were referred to the Planning & Zoning Board for review. Following a work session prior to the regular meeting, on January 14, 2013, the P&Z Board unanimously recommended approval of the ordinance changes as presented.

Considering the numerous questions and comments received about this matter, the Town Council reviewed this item during the annual Council/Staff Retreat. Following that discussion, Council members agreed they would table action on the amendments at the meeting of January 24<sup>th</sup>, and asked staff to provide a matrix of additional options for handling site and subdivision plans, along with examples and statistical information. Further, staff was asked to conduct a "stakeholder" meeting, and to return with more information on February 13, 2013.

**TENTATIVE SCHEDULE:**

Advertisements in <i>The Cary News</i>	December 26, 2012 January 2, 2013 January 9, 2013
Public Hearing	January 10, 2013
Planning and Zoning Board Worksession	January 14, 2013
Planning and Zoning Board Meeting	January 14, 2013
Town Council Discussion at Retreat	January 19, 2013
Final Action by Town Council	<del>January 24, 2013</del> * February 13, 2013
Effective	<del>February</del> March 1, 2013*

\* Italicized dates are tentative.

**PUBLIC COMMENTS**

Several speakers addressed Town Council at the hearing, and other comments and inquiries were also received. General comments related to the proposed schedule of events for these amendments. Staff reminded Council that the proposed schedule would *permit* Council action on January 24, but *did not require* a decision that quickly if Council needed more time to understand and review the topics.

Specific concerns were expressed about the following aspects of the proposal:

- Schedule for considering changes too aggressive
- Need for quasi-judicial review of plans by council questioned and the threshold for sending subdivision or site plans to council too restrictive
- Review of plans by council will add extra time to the process and has economic development implications
- Various aspects confusing and may have unintended consequences
- Evaluation criterion for the transportation aspect of site/subdivision plans too broad

A few speakers requested the opportunity to have a “stakeholder” meeting so interested parties could ask questions, better understand the proposal, and offer input before Council took final action on these interim provisions.

### **ACTIVITY SINCE JANUARY 10, 2013**

Since the public hearing conducted by Town Council, a staff team has been meeting on a regular basis to collect and evaluate comments, review how other communities handle this issue, and develop and test alternative approaches or options.

On January 30, 2013, about 20 stakeholders (those who had spoken at the public hearing and/or had otherwise provided comments to the Town) participated in a 90-minute stakeholder session with staff. All agreed that they appreciated the opportunity to meet and provide input, and they offered a number of comments, concerns, and suggestions. The main themes included the introduction of uncertainty with the quasi-judicial review of plans by Council, the increased reliance upon traffic studies and potential mitigation of impacts at rezonings when the actual scale or intensity of a development may change, and general concerns about the effects of any changes considering the continued slow economy.

### **SUMMARY OF PROPOSED AMENDMENTS:**

#### **1. Repeal of the Roads Ordinance**

Town staff recommends repealing the Roads Ordinance, contained in Section 3.23 of the LDO. With this repeal, Traffic Impact Assessments (TIA) would no longer be required at the subdivision or site plan review stage of development, and developments would not be required to obtain a “Certificate of Adequate Public Facilities for Roads” (CAPFR) or demonstrate that adequate service levels for roads in the vicinity of the development will be maintained. However, all other existing means to evaluate traffic and its impact on the Town would remain available to staff, Council, and the Planning and Zoning Board. As discussed in a separate staff report (EN13-047a – [TC meeting minutes item H.1](#)), the Town has authority for Transportation Development Fees and may consider increasing those to cover more of the costs of financing additional road improvements caused by growth within the Town. As discussed further below, traffic impacts may also be considered at the rezoning stage and as part of certain site and subdivision plans that are reviewed by Council.

#### **Changes Since Public Hearing:**

No change to this section of the ordinance. Action on this portion will remove the existing Roads Ordinance as it applies to site plans and subdivision plans.

#### **2. Require traffic studies at rezoning**

At the rezoning stage of development, Council may currently consider the following factors related to transportation, as provided in the LDO (sections 3.4.1(E) and 1.3):

- Will the Town and other service providers be able to provide sufficient public safety and transportation services to the subject property, while maintaining sufficient levels of service to existing development?
- Does the rezoning foster convenient, compatible, and efficient relationships among land uses?
- Does the rezoning lessen congestion in the streets?
- Does the rezoning facilitate the adequate and safe provision of transportation and other public facilities and requirements?
- Will the service demands of new development exceed the capabilities of existing streets or other public facilities and services?

Council, in its discretion, may approve or deny a proposed rezoning after considering these factors as well as the other factors listed in LDO sections 3.4.1(E) and 1.3.

In addition, staff recommends that a TIA be required for most rezonings, so that more information regarding traffic will be available to Council and the Planning and Zoning Board when considering new rezoning requests. Specifically, staff recommends requiring a TIA for any rezoning in which the new zoning district proposed for the land could result in a use generating a total of one-hundred (100) or more peak hour trips. This differs from current practice, which requires a TIA for a rezoning only if the number of net new trips equals or exceeds fifty (50) peak-hour trips.

It is important to note that with this change, most schools and religious and other assembly uses would not be required to prepare a TIA, because those uses are generally allowed in all zoning districts and do not require a rezoning before proceeding to the development plan stage. Staff is considering future options to address any concerns that might be raised by this issue.

Finally, staff recommends removing the option for a “screening traffic study” for MXD rezoning, and requiring all MXD rezonings to prepare a TIA if one-hundred (100) or more peak hour trips are generated. This will ensure consistent traffic information is provided for all types of rezonings.

### **Changes Since Public Hearing:**

This section of the ordinance has been amended further to increase the trip-generation threshold for traffic studies to be done for rezonings. As originally proposed, this would have required a rezoning traffic study for a total of 50 peak-hour trips that would be generated under the proposed zoning district. Staff recommends increasing this level to 100 total, peak-hour trips instead.

### **3. Evaluate mitigation provided for traffic congestion impacts of subdivisions and site plans and expand the types of plans reviewed by Council**

Council has existing authority under the LDO to review certain site and subdivision plans in a quasi-judicial hearing process. A subdivision or site plan may be approved by the Council only if it meets the following criteria:

- (1) The plan complies with all applicable requirements of the LDO as well as all applicable Town specifications;
- (2) The plan adequately protects other property, or residential uses located on the same property, from the potential adverse effects of the proposed development;
- (3) The plan provides harmony and unity with the development of nearby properties;
- (4) The plan provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways; and
- (5) The plan provides safe ingress and egress for emergency services to the site.

Staff suggested adding an additional class of plans that would be reviewed by Council in the quasi-judicial process. The Council currently reviews all (1) plans that seek reductions or deviations from certain buffering or parking requirements of the LDO; (2) plans for uses that require approval of a Special Use;

(3) plans that seek reductions or deviations from the minimum required setbacks for telecommunications facilities, except for plans for certain telecommunications facilities for which the Zoning Board of Adjustment has final decision-making authority; and (4) appeals from the denial of a plan by staff. The January 10<sup>th</sup> version proposed that that Council also review all plans (1) for residential development located on a tract or tracts greater than five (5) acres in area, (2) that would construct greater than 10,000 square feet of nonresidential floor area, or (3) that would construct a drive-through facility.

For the January 10<sup>th</sup> public hearing, staff recommended including an additional criterion for consideration at this stage. Specifically, Council could consider whether the “plan ensures that service demands of the development will not exceed the capabilities of existing, or already funded improvements to, streets, utilities, or other public facilities and services.” This would address not only transportation service demand issues, but also other public services such as water or wastewater services.

**Changes Since Public Hearing:**

The approach proposed for handling this aspect of the development process has received the most discussion. There are concerns about the size and number of plans that would require Council review, the new criterion added for evaluation, how this would affect projects that have already addressed transportation impacts during a prior rezoning, and similar issues.

In response to Council’s direction at the Retreat, a matrix that includes a range of options has been prepared by staff for Council consideration. There are four options, starting with the original proposal and ending with another where no site or subdivision plans would be transmitted to Council for review in a quasi-judicial fashion. The two other options change the thresholds and will alter the estimated number of plans that would undergo such review.

These options and thresholds, some pros and cons, and the number of quasi-judicial hearings that that might be expected (based on 2012 projects) are provided below. In addition, the ordinance language has been clarified to note that the trigger for drive-through uses relates only to new or expanded drive-through facilities. Finally, the new evaluation criterion in Section 3.9.2 (I) has been narrowly written to read as follows: “*The plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project*”

Option	Est. # of Quasi-Judicial Hearings	Nonresidential Threshold	Residential Threshold	Pros	Cons
1	27	>= 10,000 square feet of retail or office or other nonresidential floor space or Drive-through use (new or expanded)	>= 5 acres	Will capture most development plans that require traffic studies under today’s ordinance	Lowest threshold and most burdensome set of provisions  Has generated significant concern/opposition  Cannot use existing traffic study test (LOS) to identify improvements  Some quasi-judicial hearings may not create value considering the scale or impact of the

Option	Est. # of Quasi-Judicial Hearings	Nonresidential Threshold	Residential Threshold	Pros	Cons
					project  Significant resource and time demands on staff, Council and others involved with the process
2	17	>= 50,000 square feet of retail or office or other nonresidential floor space or Drive-through use (new or expanded)	>= 50 units	Raises threshold for review in response to concerns  Reduces number of quasi-judicial review cases	May still capture development plans that did not require improvements under the current ordinance or where the improvements are not significant
3	10	>= 100,000 square feet of retail or office or other nonresidential floor space or Drive-through use (new or expanded)	>= 100 units	Significantly raises threshold for project reviews  Will capture the projects with the most significant transportation impacts	Will allow most projects to proceed without additional review  May still impact Cary's competitiveness to attract new and significant economic development opportunities
4	0	Accept short-term situation and do not require any site plans/subdivision plans to undergo any further review during this interim period		Least impact on business development in the continued slow and recovering economy  Maintains Cary's competitive advantage related to economic development opportunities  An extensive amount of administrative work can be avoided	Allows development plans to proceed without further review of transportation impacts and corresponding improvements  Applicants for rezonings may feel unfairly burdened while site and subdivision plans are allowed to proceed  Public sector responsible for mitigating traffic impacts in future with general funds

Some considerations in all of these options (except Option 4) involve these points.

- A. If a project is related to property that was rezoned after March 1, 2013, it is exempt from review under this section of the LDO altogether. This assumes that transportation impacts were considered “acceptable” during the rezoning process.
- B. Council review must be conducted in a quasi-judicial proceeding.
- C. A “sketch” version of a site or subdivision plan is already permitted under the LDO, and will be acceptable for submittal under any of the options requiring review.
- D. Sites that are a part of larger developments that are partially developed are not exempt. Future, individual site or subdivision plans would still be subject to review.

In terms of changes to this section, the staff team supports Option 3 (i.e., 100,000 square feet or 100 units) for a number of reasons. First, this much higher threshold will limit Council review to those development proposals most likely to affect the road network from a broad, general perspective while allowing most projects to proceed without the need for review mechanism that may not add value to the decision-making process. Second, this option will minimize the administrative burden on staff and will reduce the number of quasi-judicial hearings at Council meetings. Third, this option allows for most business development already and/or soon to be in the “pipeline” to continue with less uncertainty and not be subject to an extended review process. Fourth, Option 3 is a reasonable response to stakeholder concerns since it balances economic development considerations with Council’s desire to review the potential traffic impacts of certain site and subdivision plans.

**4. Provide mechanism for applicants of previously approved or submitted projects to appeal for relief from certain Roads Ordinance requirements**

To obtain a CAPFR under the Roads Ordinances, developers sometimes chose to construct required improvements on their own. For projects which obtained a CAPFR between February 1, 2011 and February 28, 2013, but which have not obtained building permits and have not constructed required improvements yet, staff recommends creating an appeal process for the developer to seek relief. Additionally, subdivision and site plans requests filed prior to March 1, 2013 but for which the Roads Ordinance would still apply (see section on “Effective Dates” below), may seek prospective relief.

The process would require a quasi-judicial hearing before Council, at which Council could relieve the developer of the requirement to build certain improvements so long as (1) those improvements could not otherwise be required by the LDO or North Carolina General Statutes; and (2) waiver of the improvements would not result in (a) unsafe conditions for pedestrians or motorists or a dangerous arrangement of pedestrian and vehicular ways; (b) unsafe ingress and egress for emergency services to the site; and (c) provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.

**Changes Since Public Hearing:**

There have been no comments on this portion of the amendments. Changes involve the date changes made due to the delay in action, and utilization of the new criterion related to mitigation of traffic congestion impacts.

**5. Other recommended amendments**

LDO section references to existing 3.23 must be corrected to reflect its repeal and the new requirement of preparing a TIA for certain rezonings.

**Changes Since Public Hearing:**

No change to this section of the ordinance.

**EFFECTIVE DATE:**

Staff recommends that the effective date of this LDO amendment be March 1, 2013.

In summary, the interim regulations would operate as follows.

- A. Rezoning applications filed on or after March 1, 2013, would require a TIA if the new zoning proposed for the land could result in a use generating one hundred (100) or more peak hour trips.
- B. Rezoning applications filed before March 1, 2013 which are still pending would not require a TIA; however, the applicant, at his/her option, may choose to have a TIA prepared or may supplement the application with additional traffic information so that Council and the Planning and Zoning Board are fully informed as to the traffic impacts of the rezoning.
- C. Site or subdivision plans which are filed before March 1, 2013, but for which no staff or council decision has been issued prior to March 1, 2013, would continue to be subject to the Roads Ordinance. However, the applicant could ask for council approval of the plan under the revised Section 3.23 process for relief from the Roads Ordinance.
- D. Site and subdivision plans filed after March 1, 2013 will not be subject to the Roads Ordinance but will remain subject to LDO provisions allowing, in certain circumstances, for council review and approval of the plan through a quasi-judicial hearing process.

**OTHER TOOLS:**

Council directed staff to also evaluate other tools that could be used in reviewing zoning map changes, and other tools and amendments that may be desirable and consistent with our understanding of how the Supreme Court is evolving the law in this area. In parallel with refining these interim provisions, staff has already begun work on the “permanent” regulations, and will be preparing a more detailed report on these items to bring to Council at a future date. That process will take several months to undertake, and may result in further changes to the LDO sections currently proposed for amendment.

**FISCAL IMPACT:**

These LDO amendments are primarily focused on the timing of when the transportation impacts of new development are considered in the development process. With the repeal of the Roads Ordinance, some road improvements that might have been the responsibility of new development may need to be considered for funding as part of the Town’s capital improvement budgeting process. In addition, the amendments may require substantially increased amounts of staff time and resources to prepare for an increased number of quasi-judicial hearings before the Council, depending upon the threshold selected.

**STAFF RECOMMENDATION:**

Staff recommends that Council adopt the amendment language with the following changes to the version of the ordinance originally presented at public hearing:

1. Increase the traffic study threshold for rezonings to 100 peak-hour total trips (versus 50 peak-hour trips);
2. Use Option 3 as the threshold for site and subdivision plan review by Council;
3. Amend the requirement for drive-throughs that would require review; and
4. Revise the evaluation criterion for site and subdivision plans to focus on potential “traffic congestion impacts.”

Staff also recommends these LDO amendments have an effective date of March 1, 2013 and that Council authorize staff to continue work on a permanent set of new ordinance provisions.

**PROPOSED TEXT**

**3.4.1 Rezonings Generally**

(D) Procedure

(3) Traffic Impact Analysis (TIA)

A Traffic Impact Analysis (TIA) is required if the nature of the proposed rezoning is such that the proposed new zoning district could result in a use that can be expected to generate one hundred (100) or more peak hour trips. Peak hour trips are those occurring on peak travel demand days on the adjacent roadway (e.g., daily trips on a Sunday may not be applicable). Trip generation shall be measured based on the current edition of the ITE Trip Generation Manual or, at the discretion of the Town, may use other sources of trip generation data (e.g., local data) if this source data is deemed more representative of the proposed development use. It is not the intent of this section to require a TIA for a use that generates trips that meet or exceed the threshold but do not occur during the adjacent roadway system's peak hour. For example, facilities designed for sporting events, concerts or other similar uses may not require a traffic analysis because the events occur during a non-peak hour or non-peak day. If a traffic study is required for a use, then the analysis shall be based upon the normal trip generation for the proposed use and not that associated with special event(s).

(a) Preparing the TIA

The Town shall prepare or have prepared (using Town staff or a retained consultant) the written TIA.

(b) Study Area Boundaries

The extent of the study area for the TIA depends upon the location and size of the rezoning and the prevailing conditions of the surrounding area. The study area is defined in the following table. Controlled access roadways are not included in the study area or analysis; the controlled access ramp intersections with non-controlled access roadways are subject to analysis. The distances described below are to be measured from the property boundaries and include those intersections within the identified area.

	<b><u>Trip Generation</u></b>	<b><u>Study Area</u></b>
<u>Base Zone</u>	<u>One hundred (100) - One hundred fifty (150) peak hour trips</u>	<u>One-half (1/2) mile plus any intersection on which at least seven (7) percent of any traffic movement approach volume is generated by the proposed project.</u>
<u>Base Zone</u>	<u>More than One hundred fifty (150) peak hour trips</u>	<u>One (1) mile plus any intersection on which at least seven (7) percent of any traffic movement approach volume is generated by the proposed project.</u>
<u>Central Zone</u>	<u>More than one hundred (100) peak hour trips within the Central Transportation Zone</u>	<u>One-quarter (1/4) mile plus any intersections on which at least seven (7) percent of any traffic movement approach volume are generated by or as a result of the proposed project.</u>

(c) Trip Generation Standards

Trip generation data for each project shall be based upon the Institute of Traffic Engineers' Trip Generation Manual or, at the discretion of the Town, other sources of trip generation data (e.g., local data) if this source data is deemed more representative of the proposed development use. The following other standards also apply to projects:

1. Credit for Mixed Use, Pass-By Trips



The determination of the number of trips generated shall also take into account pass-by trips, internal trip capture for integrated mixed use projects (e.g., roadway and/or pedestrian connectivity) and any proposed transportation demand management system, provided that adequate guarantees can be provided to the Town to ensure that such demand management system will function as claimed for the life of the project. In addition, if the proposed development is designed and integrated with an adjacent mixed use project (e.g., roadways), then a credit for trips may be permitted.

2. Estimated Trips for Rezonings/PDDs

In evaluating the impact of a proposed rezoning or planned development where the specific uses or exact number of dwelling units have not been specified, estimates shall be based upon the highest level of density or intensity of use that would be authorized by the requested approvals. However, if the highest level of intensity of use is a use that generates trips that meet or exceed the threshold but do not occur during the adjacent roadway system's peak hour, such as athletic fields, outdoor amphitheatres, or other similar uses, then the analysis shall be based upon the normal trip generation for the proposed use and not that associated with special event(s).

(d) Submission Requirements

At the time of the initial submission, the applicant is required to submit the following information:

1. Traffic analysis base information, site location map, site layout, if applicable;
2. Data on the existing/proposed land use;
3. Description of the project.
4. Additional information as may be requested by staff.
5. Study Fee

After preliminary review of the data submitted under item (d) above, the Town shall prepare an estimate of consulting fees for the analysis of traffic impact for the project. Upon receipt of payment of fees from the applicant in the amount of ninety percent (90%) of the projected cost estimate, the Town shall release the work to a consultant for analysis. After completion of the analysis, the Town shall evaluate the actual costs incurred for the study and will reimburse to the applicant any remaining balance of the fee paid.

(e) Required Factors to Include in Study

The TIA shall evaluate the projected impact of the proposed rezoning on the public facilities in question at the time of projected build-out, which will be assumed to be five years from the date the rezoning application was submitted. This analysis will take into account not only the status of existing facilities and the impact of the proposed development, but also the projected impact of the following on the capacity of those facilities:

1. Future capital improvements that will increase the capacity of the facilities in question should be considered if construction of the improvements has received all necessary governmental approvals and funding is in place, or that such approvals and funding appear reasonably certain.
2. All single-family residential building lots that have received final plat approval but that do not contain a completed dwelling.
3. All single-family residential building lots for which subdivision plan approval has been granted and all non-residential and multi-family residential developments for which a site plan has been approved, so long as such approvals have not expired.
4. For any developments for which the notice to proceed has been granted for

a traffic study, even if the traffic study is not complete at the time of scoping the background traffic for a subsequent study to be conducted. If there is no additional action with regards to the project within six (6) months after the completion to the traffic study (such as a rezoning application submitted or approved), the traffic from the completed study will no longer be included in the background traffic for the subsequent study.

5. No traffic from a previously approved planned development should be included as background traffic for the same planned development, if no subdivision or site plan approval has been granted.

6. Typical background traffic increases that are not directly related to known previously approved development.

(f) Tracking of Required Factors

The staff shall develop a system of keeping track of the factors described in subsection (e) above.

(g) Level of Service

The TIA shall measure and report the Level of Service (LOS) at peak hours for each intersection within the required study area, with LOS as defined by the most current edition of the Highway Capacity Manual. If the projected LOS for any intersection in the central zone, as defined in Section 7.11.16 of the LDO, falls below LOS "F" based upon a 90-minute average peak and a roadway volume-to-capacity ratio exceeding 1.25, the TIA shall list potential transportation system improvements that would ensure there is no increase in average delay for the intersection (measured in its entirety). If the projected LOS in the base zone, as defined in Section 7.11.6 of the LDO, falls below LOS "D" based upon the standard ITE average peak hour, the TIA shall list potential transportation system improvements that would ensure there is no increase in average delay for the intersection (measured in its entirety).

All forms of transportation system improvements should be considered at non-signalized intersections, including separate left and right turn lanes, geometric modifications, alternative access management strategies, and signalization.

Signalization should not be considered the primary solution. Installation of new signals at existing or new intersections should only be considered when the intersection meets required warrants for a signal; the signal does not cause an undesirable delay in the surrounding road system; and other transportation improvements do not result in acceptable levels-of-service.

(h) Expiration of TIA

The TIA shall expire after three (3) years.

(i) No application for a rezoning shall be accepted by the Town of Cary until the draft findings of the TIA have been received unless the Development Review Committee agrees in advance that the draft findings may be submitted within a week after the date of the rezoning application.

### **3.4.5 Rezoning to Mixed Use District (MXD)**

#### **(B) Procedure**

#### **(3) Application Materials**

##### **(c) Traffic Assessment**

~~Depending upon the scale and timing of the development, the application shall include either a detailed traffic analysis or a generalized assessment conducted by the Town's traffic consultants as specified below. The draft findings of the applicable assessment shall be submitted with the rezoning application unless the Development Review Committee agrees in advance that the draft findings may be submitted within one (1) week after submittal of the rezoning application.~~

~~4. A traffic impact analysis as required under the provisions of Section 3.23 3.4.1(D)(3) is required; or~~

2. A screening traffic study, provided that the proposed nature, characteristics, and methodology of the screening traffic study are approved in advance of the study by the Director of Engineering. In considering and approving the appropriate nature, characteristics, and methodology of the screening traffic study, the Director shall consider factors including, but not limited to, the following:
  - a) the amount of undeveloped or redevelopable land within and proximate to the area proposed to be rezoned;
  - b) the location of the area proposed to be rezoned within the Town as a whole, including whether or not the area is located on the development fringe of the Town, or within long-established and developed parts of the Town;
  - c) the type and intensity of the land uses proposed by the preliminary development plan;
  - d) the availability and currency of existing traffic models and studies for the area;
  - e) the degree to which the proposed preliminary development plan and its surrounding existing, approved, and planned land uses do or do not deviate from the assumptions of the regional NCDOT traffic model or other models used by the Town to develop elements of its Comprehensive Plan or to guide its facility planning;
  - f) the degree to which existing traffic models or studies indicate that the existing and planned roadway network is likely to have excess or deficient traffic capacity in the future;
  - g) the anticipated build-out timeframe of the preliminary development plan; and
  - h) the degree to which the proposed preliminary development plan conforms to the Comprehensive Plan.

### 3.9 SUBDIVISIONS AND SITE PLANS

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

##### (B) Application Materials

- (1) General Application Requirements

~~(e) No application for a site or subdivision plan shall be accepted until the draft findings of the TIA have been received unless the Development Review Committee agrees in advance that the draft findings may be submitted within a week after the date of the subdivision and site plan application.~~

##### (F) Approval Authority

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

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

- (a) Plans that seek reductions or deviations from the buffering (see Section 7.2) or parking requirements (see Section 7.8) of this Ordinance beyond the Minor Modifications (see Section 3.19) allowed by staff; and
- (b) Plans for uses that require approval of a Special Use (see Section 3.8); and
- (c) Plans that seek reductions or deviations from the minimum required setbacks for telecommunications facilities, except for plans for certain telecommunications facilities for which the Zoning Board of Adjustment shall have final decision-making authority [see Section 5.2.4(D)]; and
- (d) Plans that propose 100 residential units or more, or that would construct 100,000 square feet of nonresidential floor area or more, or that would construct a new drive-through facility or expand an existing drive-through facility; excepting plans meeting all of the following criteria, which plans shall be reviewed by the Planning Director:
  1. A rezoning for the property was approved after March 1, 2013; and,
  2. The plan is not otherwise subject to review by Council or the Zoning Board of Adjustment pursuant to Section 3.9.2(F)(1)(a), (b), or (c).

\* \* \*

##### (I) Approval Criteria

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

- (1) The plan complies with all applicable requirements of this Ordinance, including the development and design standards of Chapters 7 and 8 as well as the dedication and improvements provisions of Chapter 8 as well as all applicable Town specifications. (Note: Plans within Planned Developments may be subject to different requirements based on the approval).
- (2) The plan adequately protects other property, or residential uses located on the same property, from the potential adverse effects of the proposed development;
- (3) The plan provides harmony and unity with the development of nearby properties;
- (4) The plan provides safe conditions for pedestrians or motorists and prevents a dangerous arrangement of pedestrian and vehicular ways; and
- (5) The plan provides safe ingress and egress for emergency services to the site; and
- (6) The plan provides mitigation for traffic congestion impacts reasonably expected to be generated by the project.

### 3.10 MINOR ALTERATIONS

#### 3.10.2 Eligibility Requirements

In order to be eligible to use the Minor Alteration process, the proposed development plan must satisfy the

following requirements and not otherwise be subject to site plan approval. Development plans which do not satisfy all of the following requirements shall be required to utilize the Re-Use/Re-Development, Subdivision Plan, and/or Site Plan processes as appropriate.

\* \* \*

- (l) The addition of a secondary or accessory use(s) permitted by right shall not increase the number of peak hour trips for the existing use(s) on the site to the level in which a traffic study would be required per Section ~~3.233.4.1(D)(3)~~.

### **3.23 APPEAL FROM ADEQUATE PUBLIC FACILITIES PLANNING AND DEVELOPMENT FOR ROADS ORDINANCE REQUIREMENTS**

#### **[DELETE ENTIRE SECTION AND ALL SUBPARTS AND REPLACE WITH THE FOLLOWING]**

Applicants for projects which obtained a Certificate of Adequate Public Facilities for Roads between March 1 2011 and February 28, 2013, but for which improvements required by the CAPFR have not yet been constructed, may file an appeal to the Town Council seeking relief from the obligation to build the required improvements. Additionally, applicants for projects for which subdivision or site plan requests were filed prior to March 1, 2013, but for which no CAPFR has yet been issued, may request that their plan be reviewed by the Town Council pursuant to Section 3.9.2(l) and that Council determine, using the criteria of this Section 3.23, whether the applicant must construct any improvements required by a Traffic Impact Assessment. The Town Council may waive some or all of the required improvements after holding a quasi-judicial hearing on the request. Improvements that could otherwise be required pursuant to the Land Development Ordinance, or in accordance with Chapter 160A of the North Carolina General Statutes, will not be waived. Other improvements may be waived if Council finds that waiver of such improvements will not result in:

- (1) unsafe conditions for pedestrians or motorists or a dangerous arrangement of pedestrian and vehicular ways;
- (2) unsafe ingress and egress for emergency services to the site; and
- (3) traffic congestion impacts reasonably expected to be generated by the project that will not be mitigated.

### **3.26 ZONING COMPLIANCE PERMIT**

#### **3.26.2 Procedures**

##### **(C) Actions Subsequent to Decision**

In the case of approval, the Planning Director shall issue the zoning compliance permit. In the case of denial of an application, the Planning Director shall notify the applicant of the reasons for such denial and the applicant may appeal the decision of the Planning Director pursuant to Section 3.21 of this Ordinance or request approval of a special exception by the Zoning Board of Adjustment pursuant to Section ~~3.2325~~ of this Ordinance.

### **8.1.3 Required Improvements**

#### **(B) Features Not Required**

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

- (1) A change in use of an existing building or structure that does not require submittal of a traffic impact analysis per Section 3.23 generate one hundred (100) or more additional peak hour trips as defined in Section 3.4.1(D)(3);
- (2) The cumulative addition of the greater of five thousand (5,000) square feet to an existing structure, or five percent (5%) of the total square footage of the buildings on the site, provided such cumulative addition does not require submittal of a traffic impact analysis per Section 3.23 generate one hundred (100) or more additional peak hour trips as defined in Section 3.4.1(D)(3);