

# LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS

## Round 25

Town Council Meeting

June 13, 2013

### EXECUTIVE SUMMARY

The purpose of this item is to consider proposed amendments to the Land Development Ordinance, prepared in response to concerns raised by citizens and/or identified by the Town Council, Planning and Zoning Board, and staff. The proposed amendments have been developed and evaluated for consistency with the Comprehensive Plan, and the opportunity for public review and comment has been provided in accordance with Section 3.4 of the Land Development Ordinance.

Town Council conducted a public hearing for the proposed amendments on March 28, 2013. The Planning and Zoning Board discussed the proposed amendments at its work session on April 22, 2013. At its meeting on May 20, 2013, the Board unanimously recommended approval of the proposed amendments with the exception of the following:

**Item A MXD Rezoning Process:** Recommended approval with modifications, by a vote of 5-4

**Item B-2 Champion Trees:** Continued to subsequent meeting for further discussion

**Item C-2 Beekeeping:** Continued to subsequent work session for further discussion

### OVERVIEW

#### TENTATIVE SCHEDULE:

Planning and Development Committee	February 21, 2013
Advertisements in <i>The Cary News</i>	March 13, and 20, 2013
Public Hearing	March 28, 2013
Planning and Zoning Board Worksession	April 22, 2013
Planning and Zoning Board Meeting	May 20, 2013 ( <i>Items A, B1, B3-B6, C1, C3, and D-G</i> )
Final Action by Town Council	June 13, 2013
Effective	Upon Adoption

#### I. SUMMARY OF PROPOSED AMENDMENTS:

A brief summary of each proposed amendment is provided below. More detailed background information and the proposed text is provided in the section of this report entitled "PROPOSED LDO AMENDMENT TEXT". Additional time-sensitive items may be added prior to the public hearing.

##### Item A MIXED USE DISTRICT REZONING PROCESS

The proposed amendment would revise the public hearing review procedures for rezonings to the Mixed Use zoning district, such that the initial public hearing would be conducted by the Town Council instead of the Planning and Zoning Board.

##### Item B LANDSCAPING AND BUFFERS

###### B-1 Parking Lot Design Standards

The proposed amendment would increase the width of linear islands in parking lots to avoid damage to shrubs from vehicle overhang.

**B-2 Champion Trees** (*Continued to a second Planning and Zoning Board Meeting – recommendation to be presented to Town Council at a later date*).

###### B-3 Fences and Walls

The proposed amendment would clarify that the unfinished side of fences visible from a thoroughfare or collector street must face the interior of the lot.

**B-4 Setback from Buffers**

The proposed amendment would clarify existing regulations related to setbacks from buffers and address lots created prior to adoption of riparian buffer standards.

**B-5 Strings of Lights**

The proposed amendment would clarify standards related to the use of strings of lights in landscaping, along rooflines or edge of building walls, and around the perimeter of outdoor sales areas.

**B-6 Reference to Thoroughfares and Collectors**

The proposed amendment would clarify that “thoroughfares and/or collectors” referenced in Section 7.8.2(G)(6) (*Design and Location of Parking Areas/Stacking Spaces*) are those that are designated as such on the Cary Comprehensive Transportation Plan.

**Item C USE-SPECIFIC REGULATIONS**

**C-1 Modification and Clarification Related To Specific Uses**

The proposed amendment would provide clarification of definitions and standards associated with medical offices, wellness centers, shopping centers, retail uses in Town Center, personal service establishments, funeral homes and crematoria, and residential uses in the TR district.

**C-2 Beekeeping** (*Continued to a second Planning and Zoning Board Work Session – recommendation to be presented to Town Council at a later date*).

**C-3 Multi-Family Storage Area**

The proposed amendment would add a height component to storage space required for multi-family dwellings to ensure that the intended volume space is provided.

**Item D SUBDIVISION REQUIREMENTS**

**D-1 Conservation Subdivision**

The proposed amendment would modify conservation subdivision regulations related to side setbacks, utility extensions in open space, open space credits and requirements for contiguous open space. These changes are recommended based upon recent experiences with implementing the conservation subdivision requirements.

**D-2 Applicability of Road Improvements to Certain Subdivision and Site Plans**

The proposed amendment would modify requirements applicable to gift lots, single-lot subdivisions, and replacement of demolished buildings.

**Item E ENVIRONMENTAL REGULATIONS**

The proposed amendment would:

- ensure that BMP’s for residential developments are maintained by a property owners association;
- clarify that the Director of Engineering is responsible for enforcing certain sections of the LDO;
- correct a discrepancy related to nitrogen/phosphorus reduction export options; and
- provide for the Director of Engineering or his designee to allow modifications to the limits on grading area.

**Item F SUSPENDED SIGNS**

The proposed amendment would allow signs to be suspended from decorative posts in the Town Center zoning district.

**Item G ADMINISTRATIVE AND PROCEDURAL CHANGES**

**G-1 Unlisted Uses**

The proposed amendment would clarify that the Planning Director’s determination regarding an unlisted use shall be in writing and may be appealed to the Zoning Board of Adjustment.

**G-2 Vested Rights**

The proposed amendment would specify that a vested rights certificate and associated approval of a site-specific development plan pursuant to G.S. 160A-385.1 could only be requested at the time of the initial site or subdivision plan approval.

**G-3 Notice of Violation**

The proposed amendment would provide the option for a notice of violation to be sent by regular mail in addition to certified or regular mail.

**G-4 Pedestrian Facilities**

The proposed amendment would ensure pedestrian connectivity within residential and non-residential uses as recommended in the adopted Comprehensive Pedestrian Plan.

**G-5 Annexation Terminology**

The proposed amendment would change the phrase “citizen-initiated annexation” to “owner-initiated annexation” wherever it appears in the LDO.

**G-6 Decision-making Authority**

The proposed amendment would streamline text and clarify the extent of staff’s authority to make administrative decisions; correct incorrect references; clarify that certain street improvement waivers must be decided by the Town Council in a quasi-judicial proceeding; and, make the Zoning Board of Adjustment the decision-making authority for special uses on Town property.

**G-7 Prohibiting Phasing in Site and Subdivision Plans**

The proposed amendment would clarify that site and subdivision plans shall not be phased with the effect of avoiding LDO requirements if they are part of a unified plan of development and are physically proximate to one another.

**G-8 Substitute Performance Guarantees**

The proposed amendment would repeal a temporary ordinance.

**G-9 Dedication of Lakes**

The proposed amendment would clarify requirements for lakes and dams when they are proposed to be dedicated to the Town to fulfill park land dedication requirements.

**G-10 Roads APF**

The proposed amendment includes several technical revisions and corrections related to the previously-approved Roads APF amendment (Round 24 LDO Amendment).

**FISCAL IMPACT:** The majority of the proposed changes are either clarifications or requirements that would be reflected in development applications and/or construction plan submittals. Staff time to review such applications or plans should remain the same. Although LDO amendments can have a cumulative impact on staff resources, in this particular case, we believe that the overall impact of these proposed changes will have a nominal impact and can be absorbed by existing staff.

**STAFF RECOMMENDATION:**

Staff recommends approval of Items A, B1, B3 through B6, C1, C3, and D through G in Round 25 Land Development Ordinance Amendments, including Option A under Item A (*Mixed Use District Rezoning Process*).

## SUMMARY OF PROCESS AND ACTIONS TO DATE

### PUBLIC HEARING COMMENTS *(March 28, 2013)*

A summary of public hearing comments and discussion on each item is provided below. All of the proposed amendments were forwarded to the Planning and Zoning Board for a recommendation.

#### ITEM C-1 MODIFICATION AND CLARIFICATION RELATED TO SPECIFIC USES

##### Residential Use in TR District

One speaker at the public hearing spoke in support of reduced minimum lot size and building setbacks for detached single-family residential use in the TR district.

##### Medical Office

Council Member Adcock asked the Planning Board to consider changing the following language as part of C-1 (use specific regulations), Section 12.4 (other key terms defined), to bring the ordinance language in line with the health care industry's accepted language:

- Massage business: change *medical practitioner* to *health care provider*
- Medical office: after *physicians*, add *other health care providers... and other support personnel*

#### ITEM G-7 ADMINISTRATIVE AND PROCEDURAL CHANGES - Prohibiting Phasing in Site and Subdivision Plans

Council member Adcock expressed support for Item G-7.

### PLANNING AND ZONING BOARD WORK SESSION *(April 22, 2013)*

A summary of comments and discussion on each item from the work session is provided below.

#### ITEM C-1 MODIFICATION AND CLARIFICATION RELATED TO SPECIFIC USES

##### Medical Office

Several Board members expressed support for Council Member Adcock's recommended changes. It was noted that this approach effectively leaves any debate regarding status and qualifications to the State licensing boards. Mr. Swanstrom expressed concern that physical therapists would be limited to being a Massage Business, whereas they should also be allowed to be located in Medical Office facilities.

##### Crematoria

Mr. Wilson also noted that the staff would be adding an option for a crematorium to occur as an accessory use for a cemetery.

#### ITEM G-6 ADMINISTRATIVE AND PROCEDURAL CHANGES - Decision-making Authority

- A P&Z member asked about changing "possible" to "practicable." In Section 7.10.3(B)(1).
- Section 8.1.1(L) (*Item G-6 - Decision-making Authority*) requires cross-access between compatible adjacent non-residential uses, but allows the requirement to be waived by the Planning Director where impractical. The proposed amendment provides criteria related to site constraints for the Planning Director to consider when evaluating a waiver request. There was a question concerning whether the proposed change applied to the subject property or the adjacent property. (*The proposed changes are intended to apply to either the subject property or adjacent property, since constraints on either could affect the feasibility of providing cross-access*).

## **CHANGES TO PROPOSED TEXT SINCE PUBLIC HEARING**

### **ITEM B-4 LANDSCAPING AND BUFFERS - Setback from Buffers**

- Added date for applicability of buffer setback requirements in the Jordan Lake Protected Watershed

### **ITEM C-1 MODIFICATION AND CLARIFICATION RELATED TO SPECIFIC USES**

#### **Medical Office**

- Eliminated examples in definition of Massage Business such that the practitioner is referred to simply as a “*person licensed by the State and meeting the ethical and educational requirements specified by the American Massage Therapy Association*”,,
- Changed term from “Medical Office “ to “Health Care Office” and added reference to *:other health care providers” in list of examples*

#### **Crematorium**

- Added crematorium as accessory use in the definition of cemetery
- Eliminated required building setbacks in excess of setbacks and buffers currently required
- Reduced parking requirement

### **ITEM G-6 ADMINISTRATIVE AND PROCEDURAL CHANGES - Decision-making Authority**

- Changed “possible” to “practicable.” In Section 7.10.3(B)(1)
- Clarified Section 8.1.1(L) regarding waiver of cross-access requirements
- Provided option for Engineering Director to waive construction of certain CTP improvements
- Provided option for Engineering Director to approve payment in-lieu-of construction for certain road improvements
- certain road improvements

## **PLANNING AND ZONING BOARD MEETING (May 20, 2013)**

The Planning and Zoning Board unanimously (9-0) recommended approval of the Round 25 LDO amendments with the following exceptions:

### **Item A MXD Rezoning Process**

Some Board members believed that if the Town Council referred a proposed MXD rezoning request to a community workshop, then the item should be brought back to Town Council for a second public hearing, after the workshop and prior to consideration by the Planning and Zoning Board. Other Board members were concerned that this change could result in a more lengthy rezoning process, as this change would result in an extra meeting and add approximately one month to the rezoning process. The Board voted to recommend approval of the revision to staff’s recommendation, as summarized in the table below, by a vote of 5-4.

The Planning and Zoning Board recommendation is incorporated into the proposed text for Item A in the section below entitled: “*Proposed LDO Amendment Text – Item A Mixed Use District Rezoning Process*” as “Option A”. The staff recommendation, as presented at the Town Council public hearing, is identified as “Option B”.

The following table summarizes the key steps in the rezoning process as contained in the LDO, as recommended by staff, and as recommended by the Planning and Zoning Board.

<b>Current Ordinance</b>	<b>Staff Recommendation</b>	<b>Planning and Zoning Board Recommendation</b>
P & Z Public Hearing	Town Council Public Hearing	Town Council Public Hearing
Community Workshop <i>(if so directed by P&amp;Z)</i>	Community Workshop <i>(if so directed by Town Council)</i>	Community Workshop <i>(if so directed by Town Council)</i>
—	—	Town Council Public Hearing (only if Workshop held)
P& Z Public Hearing (only if Workshop held)	P& Z Meeting or Public Hearing (hearing required for changes to conditions)	P& Z Meeting or Public Hearing (hearing required for changes to conditions)
Town Council Public Hearing (and decision)	Town Council Meeting (for decision)	Town Council Meeting (for decision)

**Item B-2 Champion Trees**

The proposed amendment would require that the combined total caliper inches of trees installed as replacement trees for a removed champion tree, equals or exceeds the size of the champion tree (in caliper inches). The minimum size of replacement trees is 2 caliper inches. Some Board members expressed concern that a large tree (30" caliper, for example) couple be replaced with 15 trees as small as 2" in caliper. The Board referred this item to a future Planning and Zoning Board meeting for further discussion, by a vote of 9-0.

**Item C-2 Beekeeping**

The proposed amendment would address beekeeping in conjunction with selected uses other than detached single-family residential uses, such as community gardens and HOA common open space. The draft text includes a requirement that a responsible party with documented training in beekeeping sign the accessory use permit application, certifying that he/she will be responsible for the ongoing maintenance and care of the hives. Some members expressed concern with this provision on the basis that it treats beekeeping differently from other uses. The Board referred this item to a future Planning and Zoning Board work session for further discussion, by a vote of 8-1.

**PROPOSED LDO AMENDMENT TEXT**

**ITEM A Mixed Use District Rezoning Process**

**BACKGROUND**

The proposed amendment would revise the public hearing review procedures for rezoning to the Mixed Use zoning district such that the Town Council, rather than Planning and Zoning Board, would conduct the first public hearing, and the neighborhood workshop option would be eliminated. The resulting process would be consistent with the rezoning process currently applicable to other zoning districts.

**PROPOSED TEXT**

**3.4.5 Rezonings to Mixed Use District (MXD)**

- (A) Applicability, Scope and Purpose...**
- (B) ~~Procedure Application~~**
  - (1) ~~Pre-Application Conference...~~**

- (2) **Community Meeting.....**
- (3) **Application Materials.....**

**(C) Planning and Zoning Board Review—Review and Approval Process**

The Planning and Zoning Board shall review and make recommendations to the Town Council regarding rezoning to MXD in accordance with the following procedure.

**(1) Initial Public Hearing**

**(a) Process**

The first public hearing on the proposed MXD rezoning shall be conducted by the ~~Planning and Zoning Board in accordance with the annual schedule established by the Planning Department Town Council.~~ A rezoning to MXD will not be scheduled for an initial public hearing unless the application is found by planning staff to be complete and ready for consideration. Such hearing shall be noticed as required in Section 3.1.6 of this Ordinance, and notification should also be provided to all persons on the mailing list submitted pursuant to Section 3.4.5(B)(3)(d). Protest petitions may be filed prior to the Town Council public hearing in accordance with Section 3.4.1(F) of the LDO. At the public hearing, affected parties shall provide evidence to the ~~Board~~ Town Council as follows:

- ~~(a)~~ 1) The applicant shall present the merits of the rezoning and shall specifically address the criteria contained in Sections 3.4.1(E) and 4.5.2(E);
- ~~(b)~~ 2) The staff shall provide a report which evaluates the proposed rezoning, taking into consideration, among other factors, the Comprehensive Plan and the Land Development Ordinance; and
- ~~(c)~~ 3) The public shall also provide comments on whether or not the application meets the identified approval criteria contained in Sections 3.4.1(E) and 4.5.2(E).

**(2)(b) Action by ~~Planning and Zoning Board~~ Town Council**

**OPTION A**

Following the initial public hearing, the ~~Planning and Zoning Board~~ Town Council shall either ~~forward its recommendation to the Town Council for the Town Council public hearing~~ refer the proposed rezoning to the Planning and Zoning Board for a recommendation ~~(Option 1)~~ or require a Community Workshop and a second public hearing before the Planning and Zoning Board ~~(Option 2)~~.

**OPTION B**

Following the initial public hearing, the ~~Planning and Zoning Board~~ Town Council shall either ~~forward its recommendation to the Town Council for the Town Council public hearing~~ (Option 1) or require a Community Workshop followed by ~~and~~ a second public hearing before the ~~Planning and Zoning Board~~ Town Council ~~(Option 2)~~, or refer the proposed rezoning to the Planning and Zoning Board for a recommendation.

**(a) Option 1 – Forward to Town Council**

The ~~Planning and Zoning Board~~ shall consider the proposed rezoning based on the approval criteria of Section 3.4.1(E), Section 4.5.2(E), and any oral and written ~~comments received at or before the initial public hearing.~~ Based on this information,

~~the Planning and Zoning Board shall, within ninety (90) days of the public hearing, forward the application to Town Council with a written recommendation to the Town Council that addresses consistency with the Comprehensive Plan and other matters deemed appropriate by the Board and whether or not the proposed amendment should be approved or denied. The Planning and Zoning Board may request an extension of time from the Town Council. If no recommendation is made and no extension is granted, then the Town Council may act on the proposed rezoning without a recommendation from the Planning and Zoning Board.~~

**(b) (2) Option 2 – Require Community Workshop Process If Community Workshop is Required**

~~If, based upon the evidence presented by all parties at the public hearing, the Board members Town Council identifies substantial remaining issues related to the specific approval criteria outlined in Section 4.5.2(E), the Board it may defer action and require a single Community Workshop to allow for further review and discussion of the application. The vote to defer action and require the community workshop shall require a majority of the voting members who are present plus one (1) additional member of the Board. Within sixty (60) days, or longer as may be approved by the Planning and Zoning Board Town Council, a Community Workshop shall be conducted by the Planning Department, with support from a staff team with representatives from Development Review Committee member departments and two (2) members of the Planning and Zoning Board. Two (2) members of the Planning and Zoning Board shall be appointed by the Board Chairperson at the meeting at which the vote is taken to refer to a Community Workshop to serve as the primary and secondary contacts to oversee the Community Workshop, and to report to the full Board during subsequent steps in the review process.~~

**1- (a) Notice of Community Workshop**

The Planning Department shall send invitations to the community workshop by first class mail to all property owners located within one hundred (100) feet of the area included in the rezoning case. Additionally, invitations should be sent to any Homeowner's Associations known to represent such property owners and any other persons notified by the applicant of the required Community Meeting.

**2- (b) Community Workshop**

The Community Workshop should be conducted in accordance with guidelines established by the Planning and Zoning Board and available from the Planning Department. In general, the Community Workshop should include an evaluation of adjacent land uses, expected land uses and intensities within an activity center of the applicable size and scale, and the supporting transportation network; should utilize a general site analysis that assesses the suitability of the land for particular land uses; and should review compliance with adopted guidelines and requirements for mixed use development included in the Land Use Plan (including any specific guidelines from an area or district plan), town-wide site design standards, and this Ordinance.

**PRINCIPLES OF INTERPRETATION**

The intent of the Community Workshop is to allow the applicant, staff, Planning and Zoning Board and interested citizens to discuss the preliminary development plan and make suggestions regarding how the preliminary development plan could best meet the applicable policies, guidelines, and regulations of adopted Town plans, ordinances, and manuals, while keeping in mind that the area proposed to be rezoned has already been designated on the Land Use Plan as an area appropriate for mixed use development.

## OPTION A

### **3. (c) Second Planning and Zoning Board Public Hearing**

Within ninety (90) days of the Community Workshop, the applicant shall submit a revised preliminary development plan and revised supporting materials as appropriate, or shall advise staff in writing that it wishes to proceed with its original rezoning application materials. Upon receipt of the revised materials or the applicant's statement, Planning Department staff shall place the proposed MXD rezoning on a Planning and Zoning Board's meeting agenda for a ~~second~~ public hearing according to a schedule maintained by the Planning Department. This second public hearing on the proposed MXD rezoning shall be advertised as required in Section 3.1.6 and notification should also be provided to any other persons notified by the applicant of the required Community Meeting

#### **(d) Action by Planning and Zoning Board**

The Planning and Zoning Board shall consider the proposed rezoning based on the approval criteria of Section 3.4.1(E), Section 4.5.2(E), in accordance with Section 3.4.1(D)(5)(c).

## OPTION B

### **3. (c) Second Town Council Public Hearing**

Within ninety (90) days of the Community Workshop, the applicant shall submit a revised preliminary development plan and revised supporting materials as appropriate, or shall advise staff in writing that it wishes to proceed with its original rezoning application materials. Upon receipt of the revised materials or the applicant's statement, Planning Department staff shall place the proposed MXD rezoning on a ~~Planning and Zoning Board's~~ Town Council meeting agenda for a second public hearing ~~according to a schedule maintained by the Planning Department.~~ This second public hearing on the proposed MXD rezoning shall be advertised as required in Section 3.1.6 and notification should also be provided to any other persons notified by the applicant of the required Community Meeting

Following the second public hearing, the Town Council shall forward the rezoning request to the Planning and Zoning Board for a recommendation.

#### **(d) Action by Planning and Zoning Board**

The Planning and Zoning Board shall consider the proposed rezoning based on the approval criteria of Section 3.4.1(E), Section 4.5.2(E), in accordance with Section 3.4.1(D)(5)(b) and (c).

### **4. (3) Action by Planning and Zoning Board – Process if Community Workshop is Not Required**

The Planning and Zoning Board shall consider the proposed rezoning based on the approval criteria of Section 3.4.1(E), Section 4.5.2(E), ~~and any oral and written comments received at or before the initial public hearing. Based on this information, the Planning and Zoning Board shall, within ninety (90) days of the public hearing, forward the application to Town Council with a written recommendation to the Town Council that addresses consistency with the~~

~~Comprehensive Plan and other matters deemed appropriate by the Board and whether or not the proposed amendment should be approved or denied. The Planning and Zoning Board may request an extension of time from the Town Council. If no recommendation is made and no extension is granted, then the Town Council may act on the proposed rezoning without a recommendation from the Planning and Zoning Board in accordance with Section 3.4.1(D)(5)(b) and (c).~~

~~(3)~~ **(4) No Further Changes Allowed**

To ensure that the Town Council considers the same application presented to the Planning and Zoning Board, after the final public hearing action by the Planning and Zoning Board, the applicant shall make no changes in the development requirements that are less restrictive than those stated in the application, including, but not limited to, smaller setbacks; more dwelling or rooming units; greater height; more access points; new uses; and fewer improvements. However, more restrictive requirements or additional requirements may be added to the application if such conditions are received by the Planning Department in writing and signed by all owners of the property at least ten (10) working days before the date scheduled for the Town Council public hearing on the application.

~~(D)~~ **Town Council Review**

~~The Town Council shall review and act upon mixed use district zoning applications in accordance with the following procedure.~~

~~(1)~~ **Town Council Public Hearing**

~~A public hearing on the proposed mixed use rezoning is required before the Town Council. Such hearing shall be advertised as required in Section 3.1.6. and notification should also be provided to any other persons notified by the applicant of the required Community Meeting. At the hearing, the applicant shall present the merits of the proposed rezoning and shall specifically address the criteria contained in Sections 3.4.1(E) and 4.5.2(E). A staff report which evaluates the proposed rezoning, taking into consideration, among other factors, the Comprehensive Plan and the Land Development Ordinance, and which includes the recommendation of the Planning and Zoning Board, shall be presented to the Council by staff.~~

~~(2)~~ **Protest Petitions**

~~Protest petitions may be filed prior to the Town Council public hearing in accordance with Section 3.4.1(F) of the LDO.~~

~~(3)~~(5) **Town Council Action**

~~(a)~~ After conducting the public hearing and reviewing the staff report and recommendations of the Planning and Zoning Board, the Town Council shall take action within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation, or within ninety (90) days from the final public hearing before the Planning and Zoning Board if no Planning and Zoning Board recommendation has been made. Based on the approval criteria of Section 3.4.1(E), Section 4.5.2(E), and any oral and written comments received at or before the public hearing, the Council shall take one of the following actions:

- ~~1.~~ Approve the rezoning by ordinance;
- ~~2.~~ Reject the proposed rezoning;
- ~~3.~~ Modify the proposed rezoning with new development requirements as agreed to by the applicant; or
- ~~4.~~ Refer the proposed rezoning back to the Planning and Zoning Board or to a committee of the Town Council for further consideration.

~~(b) Failure of the Town Council to act within ninety (90) days of the delivery of the Planning and Zoning Board's recommendation, or within ninety (90) days from the final public hearing if no Planning and Zoning Board recommendation is made, shall be deemed a denial of the rezoning request unless there is a pending substantive amendment to the Comprehensive Plan (see Section 3.2.2).~~

Town Council shall take action on the rezoning request in accordance with Section 3.4.1.(D)(6) of the LDO.

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## ITEM B LANDSCAPING AND BUFFERS

### B-1 Parking Lot Design Standards

#### BACKGROUND

The proposed amendment is needed to provided consistency between the LDO and the Town's Site Design Standards

The Site Design Standards, adopted on August 9, 2012, call for a minimum width of 10 feet for linear islands in parking lots, with this width increasing to 15 feet where the island also includes a sidewalk.

Amendments to the LDO, which included revisions to Section 7.2.6(C)(10), were adopted concurrently to implement the Site Design Standards (SDS). Staff has since discovered that an error was made in the revisions to Section 7.2.6(C)(10) that incorrectly changed the width of the islands from the previous minimum width of ten feet, to five feet, rather than simply increasing the width to 15 feet where a sidewalk is provided. The purpose of the proposed amendment is to correct this error and provide consistency between the LDO and the Site Design Standards.

#### PROPOSED TEXT

### 7.2.6 PARKING LOT LANDSCAPING (C) Design Standards

- (10) A continuous ~~planted median linear island~~ no less than ~~five (5)~~ **ten (10)** feet in width ~~[fifteen (15) feet in width if sidewalk is included in island]~~ shall be installed in off-street parking areas approximately every one hundred twenty-two (122) linear feet (one (1) linear median to every two (2) double-loaded parking bays) in one (1) direction for vehicular surface areas exceeding forty thousand (40,000) square feet. Other design options may be approved provided that the intent of "visually breaking up" large areas of parking is met. Credit may be given for saving existing trees located interior to the site. This requirement does not apply to vehicular display lots, to vehicular rental lots, or to other similar lots.

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### B-3 Fences and Walls

#### BACKGROUND

The LDO currently notes that fences shall be constructed with the finished side towards the right-of-way. Staff has historically applied this provision to fences that are generally parallel to the street, and not those perpendicular to the street. In response to a citizen complaint, staff recommends applying this provision to all fences that are visible from thoroughfares or collector streets, to minimize the visibility of exposed framing.

**PROPOSED TEXT**

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

- (E) ~~Finished Side Towards Right(s) of Way~~ **Exposed Framing Toward Interior Yard**  
 Fences and walls that are visible from a thoroughfare or collector street right-of-way shall be constructed such that exposed framing faces the interior yard and not ~~the a~~ thoroughfare or collector street right-of-way.

**B-4 Setbacks from Urban Transition Buffers**

**BACKGROUND**

The proposed amendment would clarify provisions related to setbacks from buffers in response to questions to staff from the Zoning Board of Adjustment. The text has been modified to address lots created prior to the adoption of riparian buffer requirements, and rewritten in a table format to improve clarity.

**PROPOSED TEXT**

**6.3.2 Setback Requirements**

- (C) ~~Distance of Buildings and Structures~~ **Setbacks from Required Perimeter Buffers, and Streetscapes**

- (1) ~~The principal building or structure on a lot shall be no closer than ten (10) feet to any \_\_\_\_\_ required buffers or streetscape:~~
- (2) ~~With the exception of principal buildings or structures adjacent to stream buffers or within single family residential developments, this setback requirement may be less than ten (10) feet when no existing vegetation is located within the required buffer or streetscape area and new vegetation is planted to update the buffer or streetscape.~~
- (3) ~~All accessory uses and structures, including parking lots and vehicular use areas fronting rights-of way, shall be located no closer than five (5) feet to any required buffer or streetscape.~~

Buildings, structures and parking areas shall be set back from required perimeter, streetscape, and Urban Transition Buffers as provided below:

<b>Table 6.3-01 Setbacks From Required Buffers</b>				
		<b><u>Perimeter Buffer</u></b>	<b><u>Streetscape Buffer</u></b>	<b><u>Urban Transition Buffer</u></b>
<b><u>Neuse River Basin: Lot Created Prior to July 22, 1997 *</u></b>				
<b><u>Jordan Lake Protected Watershed: Lot Created Prior to July 27, 2000*</u></b>				
<b><u>Single-Family Residential Use</u></b>	<b><u>Principal Use</u></b>	<u>10' if existing vegetation meets required buffer standards;</u> <u>0' if new vegetation is installed to meet required buffer standards</u>		<u>NA</u>
	<b><u>Accessory Use or Vehicular Use Area</u></b>	<u>5' if existing vegetation meets required buffer standards;</u> <u>0' if new vegetation is installed to meet required buffer standards</u>		<u>NA</u>

Other Uses	Principal Use	10' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	10' for new development or expansion of existing development, receiving site plan approval after <i>effective date</i> ; else not applicable
	Accessory Use or Vehicular Use Area	5' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	5' for new development or expansion of existing development, receiving site plan approval after <i>effective date</i> ; else not applicable
<b><u>Neuse River Basin: Lot Created After July 22, 1997 *</u></b> <b><u>Jordan Lake Protected Watershed: Lot Created After July 27, 2000*</u></b>			
Single-Family Residential Use	Principal Use	10'	
	Accessory Use or Vehicular Use Area	5'	
Other Uses	Principal Use	10' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	10'
	Accessory Use or Vehicular Use Area	5' if existing vegetation meets required buffer standards; 0' if new vegetation is installed to meet required buffer standards	5'
*Date of adoption of Riparian Buffer Rules by the NC Department of Environment and Natural Resources.			

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**B-5 Strings of Lights**

**BACKGROUND**

The proposed amendment would allow single-strand non-blinking white lights in landscaping throughout Cary, rather than only in the Town Center and Mixed Use Overlay Districts. It would also be allowed as accent along rooflines or edge of building walls, and the perimeter of outdoor sales areas throughout town.

**PROPOSED TEXT**

**7.9.3 EXTERIOR LIGHTING - Standards**

**(J) ~~Lights in Landscaping and Illuminated Tubing for Landscaping, Building Accent, and Outdoor Sales Area~~**

~~Within the Town Center and Mixed Use Overlay Zoning Districts, Sstrings or strands of non-blinking single-point strand, horizontal white "twinkle-type" lights may be installed in landscaping, as accent along rooflines or edge of building walls, and the perimeter of outdoor sales areas. Lights are to be non-blinking, may be operational twenty-four (24) hours and may be used year round. Any illuminated tubing is not permitted, including but not limited to those outlining property lines, open sales areas, rooflines, doors, windows, landscaping, or the edges of wall, except for perimeter down-lighting that is shielded to illuminate open sales areas but no land outside these areas.~~

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**B-6 Reference to Thoroughfares and Collectors**

**BACKGROUND**

The proposed amendment would clarify that “thoroughfares and/or collectors” referenced in Section 7.8.2(G)(6) (*Design and Location of Parking Areas/Stacking Spaces*) are those that are designated as such on the Cary Comprehensive Transportation Plan.

**PROPOSED TEXT**

**7.8.2 Off-Street Parking Space Requirements:**

**(G) Design and Location of Parking Areas/Stacking Spaces**

- (6) The visibility of parking areas shall be reduced by placing at least thirty (30) percent of the parking to the rear or side of buildings for all non-residential developments greater than five (5) acres. An alternative to this requirement is to screen the parking from the public roadway with a Type A streetscape and/or berm. No parking is allowed between non-residential buildings and the right-of-way for individual buildings located on sites at the intersection of thoroughfares and/or collectors designated on the Cary Comprehensive Transportation Plan unless the building floor elevation is ten (10) feet or more below the grade of the adjacent roadway.

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**ITEM C USE-SPECIFIC REGULATIONS**

**C1 General Modification and Clarification Related To Specific Uses**

**BACKGROUND**

The proposed amendment item clarifies various definitions and standards, along with other minor changes related to several specific uses.

**Medical Office**

- In Section 12.3.4(G), add a reference to medical office in definition for use classification of “*Office, business or professional*” in permitted use table.
- In Section 12.4, add a new definition for “medical office”.
- In Table 7.8-1 (*Off-street Parking Schedule “A”*), increase parking requirement for medical office from 1 space per 300 sf to 1 space per 250 sf.

**Wellness Center**

- Add “Wellness Center” to the “Office” category in Table 5.1-2.
- Add parking requirement in Table 7.8-1.

**Shopping Centers**

- Add “Shopping Center, General” and “Shopping Center, Small” to “Retail Sales and Service” category in Tables 5.1-1 and 5.1-2.
- Revise definitions for general and small shopping centers in Section 12.3.4(L) for greater clarity.

**Retail Use in OFC/IND Sub-district of TC**

- Revise Section 5.2.3(K) to increase amount of retail space allowed in the OFC/IND sub-district of the Town Center from 20% to 33% of the building (provides for additional retail use in an area generally characterized as more commercial in nature.)

**Personal Service Use**

- Clarify definition of Personal Service Use to include hair and nail salons, and other spa-related services.

**Crematorium**

- Add “Crematorium” to the “Retail Sales and Service” category in Table 5.1-1 and 5.1-2
- Add definition of crematoria as Section 12.3.4(L)(5) and provide parking standard in Table 7.8-1.
- Expand definition for “Cemetery” to include a crematorium as an accessory use.

**Funeral Home**

- Revise Section 5.2.3(H) to eliminate standard that specifies the use class (*duplicates a standard already contained in Table of Permitted Uses*) and add a standard that would allow a crematorium as an accessory use

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**Residential Uses in TR District**

- Revise Table 6.1-1 to: reduce minimum lot size from 6,000 to 5,000 square feet; reduce minimum lot width from 60’ to 40’; and reduce combined side setbacks from 16 feet to 6 feet.
- Revise definition of “Semi-Detached/Attached Dwelling” to required that such units share common wall(s) along at least 25% of the building length

Staff has received several requests from developers for the town to consider more flexibility with lot dimensions and the allowable minimum lot size, currently 6,000 square feet, in the Transitional Residential District. Since the overall density of 6 units per acre is not being increased, staff believes that more flexibility in this district has merit in order to meet market demand for more diverse detached single family home design and layout considerations. Staff also believes clarification is needed on what constitutes a semi-attached unit.

**Other**

- In Table 5.1-1 and 5.1-2, move *Moped Sales and Rental* from “Vehicles and Equipment” Category to” Retail Sales and Service” category.
- Move definitions of “Massage Business” and “Outdoor Display/Sales Area” from Section 12.3.4(L)(4) (*which contains uses specifically listed in Table of Permitted Uses*) to Section 12.4 (*which contains other terms*), and clarify definition of “Massage Business”.

**PROPOSED TEXT**

TABLE 5.1-1: TABLE OF PERMITTED USES - GENERAL USE DISTRICTS (EXCEPT TC & CT)																		
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use																		
Use Class is listed for determining the type of required perimeter buffers, and is repeated in Section 7.2																		
Use Category	Use Type and [Use Class]	RESIDENTIAL							NON-RESIDENTIAL					MIXED USE OVERLAY DISTRICT			Use-Specific Stds	
		R80	R40	R20	R12	R8	TR	RMF	RR	OI	GC	ORD	I	NC	CC	RC		
<b>COMMERCIAL USES</b>																		
Retail Sales and Service	Crematorium [6]										P	P			P	P	P	
Retail Sales and Service	Funeral home [6]										P	P			P	P	P	5.2.3(H)
Retail Sales and Service	Shopping Center, General [6]											P			P	P	P	



**(5)(6)CT District**

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

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

6.1.1 TABLES OF DIMENSIONAL STANDARDS - Residential Districts

(A) Table of Density and Dimensional Standards

Portion of TABLE 6.1-1: TABLE OF DENSITY AND DIMENSIONAL STANDARDS - RESIDENTIAL DISTRICTS (Not Including TC District)							
Use	Minimum Lot Dimensions		Minimum Building Setbacks (Ft) (NOTE: These setbacks are minimums; streetscape and buffer width standards may require greater setbacks.)			Height (Ft) (NOTE: Height may be increased one foot for every foot provided in addition to the min. setbacks)	Max Gross Density (du/acre)
	Area (Sq Ft)	Width (Ft)	Roadway (NOTE: these setbacks apply to any portion of a lot which abuts a street)	Side	Rear		
<b>TR: Transitional Residential District</b>							
Detached single-family dwellings	<del>6,000</del> 5,000	<del>60</del> 40 per dwelling unit	From thoroughfare: 50 From collector: 30 From other streets: [1]	0/3 minimum, 46 6 combined [4]	[2]	35	6
Patio dwellings [5]	-	20 per dwelling unit	From thoroughfare: 50 From collector: 30 From other streets: [1]	Detached: 0/3 minimum, 16 combined. Attached or semi-attached: 0/3 minimum, 16 between building groupings [4]	[2]	35	6
Duplexes [5]	-	50	From thoroughfare: 50 From collector: 30 From other streets: [1]	0/3 minimum, 16 combined. [4]	[3]	35	6
Subdivided attached, semi-attached, and townhouse developments [5]	-	20 per dwelling unit	From thoroughfare: 50 From collector: 30 From other streets: [1]	0/3 minimum, 16 between building groupings [4]	[3]	35	6
All other uses	-	70 (80 for corner lot)	From thoroughfare: 50 From collector: 30 From other streets: 20	10	20	35	-

(B) Additional Regulations

**(4) Firewall Requirements for Individual Dwelling Units**

A building setback of less than three feet may be permitted where firewalls are provided in accordance with all applicable building code requirements and where it is permitted by the zoning district.

<b>TABLE 7.8-1: OFF-STREET PARKING SCHEDULE "A"</b> <b>("du" = dwelling unit; "sf" = square feet)</b>			
	<b>Land Use</b>	<b>Number of Motor Vehicle Spaces</b>	<b>Number of Bike Spaces</b>
Office	Office, business or professional	1 per each 300 sf	1 rack per bldg, or 1 rack per 50,000 sf *
Office	Office, <del>medical</del> <u>health care</u>	1 per each <del>300</del> <u>250</u> sf	1 rack per bldg, or 1 rack per 50,000 sf *
<u>Office</u>	<u>Wellness Center</u>	<u>1 per each 200 sf</u>	<u>1 rack, or 1 rack per 100 auto spaces *</u>
<u>Retail Sales and Service</u>	<u>Crematorium</u>	<u>1 per each <del>250</del> <u>500</u> sf</u>	<u>1 rack, or 1 rack per 100 auto spaces *</u>

**12.3.2 USE CLASSIFICATIONS – Residential Uses**

**(B) Household Living**

**(14) *Semi-Detached/Attached Dwelling***

A building that contains two (2) to four (4) dwelling units that share one (1) or more common walls for ~~less than~~ no less than twenty-five (25) percent and no more than fifty (50) percent of their width at the lot line the depth of the dwelling unit, with each dwelling unit located on a separate lot.

**12.3.3 USE CLASSIFICATIONS – Public/Institutional Uses**

**(B) Cemetery**

Land used or dedicated to the interment of human or animal remains, including columbarium, mausoleums, and maintenance facilities. May include crematorium as an accessory use.

**12.3.4 USE CLASSIFICATIONS – Commercial Uses**

**(E) ~~Funeral Home Reserved~~ Moved to 12.3.4(L)(4)**

~~A building, or portion thereof, used for funeral services in preparation of the dead for burial. Such uses may include a chapel or gathering area, facilities needed for cremation, storage of required materials, vehicles, or supplies, but not for the interment of remains.~~

**(G) Office**

Office uses are characterized by activities generally focusing on business, professional, ~~medical~~, health care, insurance, or financial services. Accessory uses may include cafeterias, health facilities, parking, or other amenities primarily for the use of employees in the firm or building. Specific use types include:

**(1) *Office, Business, or Professional***

A use or building where business is conducted that does not primarily involve the sale or transfer of goods by the business to the customer at that location. This includes, but is not limited to, general business offices, medical health care offices, insurance offices, law offices, and real estate sales and management offices. (Government offices are classified under "Government Services," above.)

(L) Retail Sales and Service...

(4) **Massage Business** (moved to section 12.4)

~~A commercial establishment where massage or similar treatment is administered by a medical practitioner, physical therapist, massage and bodywork therapist, or similar professional person licensed by the State and meeting the ethical and educational requirements specified by the American Massage Therapy Association, or equivalent national or state standards. These uses do not include adult businesses.~~

(5) **Outdoor Display/Sales Area** (moved to section 12.4)

~~A specific area located adjacent to the principal entrance of a retail structure which is intended for the sales and/or display of goods and products.~~

(4) **Funeral Home** move from 12.3.4(E)

A building, or portion thereof, used for funeral services in preparation of the dead for burial. Such uses may include a chapel or gathering area, facilities needed for cremation, storage of required materials, vehicles, or supplies, but not for the interment of remains.

(5) **Crematorium**

An establishment for the burning of human or animal remains.

(6) **Personal Service Establishment....**

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

(9) **Adult Business**

Any business or enterprise that has as one (1) of its principal business purposes or as a significant portion of its business an emphasis on matter and conduct depicting, describing, or related to anatomical areas and sexual activities specified in G.S. 14-202.10. The term "Adult Business" does not include "Massage Business" as defined in LDO Section ~~12.3.4(L)(4)~~ 12.4 .

(10) **Shopping Center, General**

A building or group of buildings, with common parking, pedestrian circulation, ingress and egress, either freestanding or connected, and under unified or multiple ownership of land parcels, which contains one (1) or more primary retail tenant(s) or retail anchor store(s); two (2) or more commercial or retail uses, one (1) or more of which is a primary or anchor retail tenant(s) or retail anchor store(s) with common parking, pedestrian circulation, ingress and egress, occupying a minimum of 25,000 square feet of floor area, and which is used or intended for use primarily for the retail sale of goods and services to the public. No more than forty percent (40%) of the cumulative building square footage (existing and/or proposed) of the center shall be allocated for uses other than retail sales and services (12.3.4(L)) and/or Food and Beverage Services (12.3.4(F)).

(11) **Shopping Center, Small**

A group of commercial or retail uses in one (1) or more buildings (usually lacking a main or primary tenant) which are typically one (1) story tall and one (1) store deep which front a thoroughfare or collector street and have parking located between individual store entrances and the street

A building or group of buildings, with common parking, pedestrian circulation, ingress and egress, which are typically one (1) story tall and one (1) store deep, either freestanding or connected and under unified or multiple ownership of land parcels, which contains two (2) or more commercial or retail uses, with no individual use occupying more than 25,000 square feet of floor area. No more than forty percent (40%) of the cumulative building square footage (existing and/or proposed) of the center shall be allocated for uses other than retail sales and services (12.3.4(L)) and/or Food and Beverage Services (12.3.4(F)).

## 12.4 OTHER KEY TERMS DEFINED

### **Massage Business** *(moved from Section 12.3.4(L)(4))*

A commercial establishment where massage or similar treatment is administered by a ~~medical practitioner, physical therapist, massage and bodywork therapist, or similar professional person licensed by the State and meeting the ethical and educational requirements specified by the American Massage Therapy Association, or equivalent national or state standards. These uses do not include adult businesses.~~

### **Medical Health Care Office**

Offices and laboratory facilities for the use of physicians, health care providers, and other support personnel. Such use typically involves the dispensing of medical or health-related advice and prescriptions and performance of minor medical procedures.

### **Outdoor Display/Sales Area** *(moved from Section 12.3.4(L)(4))*

A specific area located adjacent to the principal entrance of a retail structure which is intended for the sales and/or display of goods and products.

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## C-3 Required Storage Area for Multi-family Use

### BACKGROUND

The proposed amendment would add a height component to storage space required for multi-family dwellings to ensure that the intended volume space is provided.

### PROPOSED TEXT

#### 5.2.1 USE-SPECIFIC STANDARDS - Residential Uses

##### (F) Multi-Family Dwelling, and Multi-Family Dwelling, Mid-Rise

- (1) Individual storage space containing at least twenty-four (24) square feet of individual enclosed floor area with a minimum height of seven (7) feet storage space, shall be provided for each dwelling unit in a multi-family development. Such storage space shall be located either in the same building as the dwelling unit it serves or in an accessory building that may also house parking, recreational, laundry, or other facilities that serve the occupants of the development.

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## ITEM D SUBDIVISION REQUIREMENTS

### D-1 Conservation Subdivisions

### BACKGROUND

The proposed amendment would change side setbacks within these types of subdivisions as well as allow for the extension of utility lines through open space areas, provide for additional credit for open space along two lane thoroughfares, and allow regulatory open space to be used to meet the contiguous requirement. These changes are recommended based upon staff's recent experiences with implementing the conservation subdivision requirements.

## **PROPOSED TEXT**

### **4.4.3 Conservation Residential Overlay District**

#### **(G) Bonus Open Space Requirements**

All bonus open space provided must meet the following standards:

- (1) Bonus open space shall be retained in a natural, undisturbed state, with the exception of those activities allowed by this Section. No more than five percent (5%) of the bonus open space area may be disturbed and allowed to be planted with grass or improved with other pervious ground cover in order to provide common informal gardens and/or play/open areas for the development or for the extension of main water and sewer lines. The five percent (5%) does not include disturbed areas due to the installation of required pedestrian systems (e.g., sidewalks, trails). However, active recreation facilities (e.g., basketball and tennis courts) are not permitted in the bonus open space used to obtain additional lots.
- (2) In order to use the bonus density provisions of the Conservation Residential Overlay District, per part (F) of this Section, the subdivision must, at a minimum, provide an eighty (80) foot deep Type A opaque streetscape buffer along all of the subdivision's thoroughfare and collector road frontage. The amount of the eighty (80) foot deep streetscape buffer that is in excess of the amount of streetscape buffer normally required for a conventional subdivision under the requirements of Chapter 7 (See Section 7.2.4) qualifies as non-regulatory or bonus open space. Credit for bonus open space beyond a 30 foot streetscape width may be allowed along thoroughfares that are designed as only two lane roadways (similar to a collector roadway).
- (5) No portion of the bonus open space shall be separated into non-contiguous segments smaller than thirty percent (30%) of the total bonus open space area. Open space divided by a roadway shall be defined as contiguous as well as open space adjacent to or across a roadway from regulatory stream and/or urban transition buffers.

#### **(H) Additional Design Requirements**

##### **(1) Lot Dimensions**

- (a) For LCR lots, all dimensional requirements (i.e., setbacks, lot width) shall conform to R-8: Residential District standards with the exception of side yards. Side yards shall be a minimum of 5 feet and an aggregate minimum of 15 feet. Residential lots less than eight thousand (8,000) square feet shall conform to TR: Transition Residential District standards.

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## **D-2 Applicability of Road and Related Improvements**

## **BACKGROUND**

The proposed amendment would:

- a) Eliminate a specific provision to exempt gift lots from standard subdivision regulations, including requirements for roadway and other improvements (*Section 3.9.3*);
- b) Clarify provisions related to exemption of certain single-lot subdivisions from requirements for roadway and other improvements, to maintain consistency with subdivision definitions contained in G.S 160A-376 (*Sections 3.9.3 and 8.1.3(C)*); and
- c) Allow existing buildings to be demolished and replaced without triggering certain road and other improvements that would otherwise be required. This change would have the effect of removing a potential impediment to the replacement of outdated structures, including those that may be located in shopping centers. (*Section 8.1.3(B)*).

**PROPOSED TEXT**

**3.9.3 SUBDIVISIONS AND SITE PLANS - Subdivisions of Land**

**(D) Types of Approval Authority for Subdivisions**

There are ~~four~~ three approval "paths" for subdivisions, depending on the type and size of the subdivision:

**(1) Subdivisions Meeting Requirements of this Ordinance: Approval by Staff**

All subdivisions (either residential or non-residential) that meet the requirements of this Ordinance and that do not fall into paragraph (D)(2) below may be approved by the Planning Director, provided that the subdivision plan clearly meets the requirements of this Ordinance and applicable Town specifications. The subdivision shall be reviewed and approved pursuant to the procedures and requirements set forth in Section 3.9.2(G). The Director may defer approval of the subdivision to the Town Council.

**(2) Subdivisions Seeking Reductions from Requirements or Deferred by Planning Director: Approval by Town Council**

All subdivisions (either residential or non-residential) seeking reductions in Ordinance requirements beyond those that may be granted by the Planning Director by Section 3.19, *Minor Modifications*, or Section 8.1.3 *Required Improvements* or that are deferred by the Planning Director, shall be reviewed and approved by the Town Council and the Development Review Committee in accordance with Section 3.9.2(H).

**(3) Subdivisions Containing Any Lots Smaller than 8,000 Square Feet: Approval by Staff or Town Council**

All subdivisions containing any lots smaller than eight thousand (8,000) square feet shall be reviewed and approved as both a site plan and a subdivision plan. The Planning Director may approve these plans pursuant to Section 3.9.2(G) if the requirements of this Ordinance are met; otherwise, the Town Council shall approve them pursuant to Section 3.9.2(H).

~~**(4) Creation of One Additional Lot or Gift Lots: Approval by Staff**~~

~~Subdivisions comprised of the creation of one (1) additional lot or gift lots shall be reviewed and approved in accordance with Section 3.9.3(E) by the Planning Director. At such time after one (1) additional lot or gift lots are created using the option permitted under this paragraph (D)(4), any additional consecutive subdivision must follow one (1) of the procedures outlined under paragraphs (D)(1) to (D)(3) above. Nothing in this section or elsewhere in this Ordinance shall be interpreted to allow the consecutive subdivision of land using this provision in order to avoid making dedications and improvements required by the Town for subdivisions, unless provided for under Section 3.9.3(E).~~

~~**(E) Subdivisions Creating One Additional Lot or Gift Lots**~~

**~~(1) Purpose and Intent~~**

~~This Section allows a one (1)-time subdivision of one (1) additional lot that is exempt from certain roadway, sidewalk, and landscape standards. This section also allows the creation of more than one (1) lot to be exempt from those standards provided the newly created lot is (1) conveyed by deed or gift to a member of the applicant's immediate family and no monetary consideration is paid for such gift; or (2) created from an existing lot located in a previously approved subdivision containing more than three (3) lots. The intent of this provision is: (1) to ensure that future development of property in accordance with the Comprehensive Plan is not restricted; (2) to provide lots that are adjacent to public roadways so that future public services and utilities may be effectively provided and (3) to limit the number of lots that are exempt from certain subdivision standards.~~

**~~(2) Consecutive Subdivision Under This Section Not Allowed~~**

~~The provisions of this section shall only be used to create one (1) additional lot from a parent parcel or to create gift lots, or create new lots located in a previously approved subdivision as provided for in Section 3.9.3 (E)(1). The consecutive subdivision of parcel(s) under the provisions of this section is not allowed unless it meets the requirements under subsection (3) below. Any subdivision resulting in the creation of additional lots not provided for in Section 3.9.3(E)(1) follow the provisions for subdivisions listed under Section 3.9.2.~~

**~~(3) Required Conditions for Creation of One (1) Additional Lot~~**

~~(a) An exemption from the roadway, sidewalk, and landscape standards of Chapter 8 is allowed for the creation of one (1) additional lot provided the following conditions are met:~~

- ~~1. The lot must meet the minimum lot width for the respective zoning district along an adjacent existing public roadway;~~
- ~~2. If public utilities are not required, a note must be placed on the plat that states: "The approval for recording of this plat does not ensure that the properties shown hereon are developable and can be served by either Town water and sewer or private well and septic systems. It is the responsibility of the property owner(s) to obtain approval from the applicable governing entity for any well and septic permits."~~
- ~~3. If the building developed on the lot(s) is not clearly visible from the public street, then the address must be noted and clearly visible at the public street;~~
- ~~4. The pattern of lots created does not lead to further subdivision of land that will be in violation of the subdivision requirements or deny future public roadway access to the parent parcel (i.e., does not leave property landlocked or undevelopable); and~~
- ~~5. Right(s) of way must be dedicated for the entire road frontage of the newly created lot(s).~~
- ~~6. A payment in lieu of dedicating public recreation land shall be made in accordance with the requirements of Section 8.2.4.~~

**~~(b) Exceptions to Required Conditions~~**

- ~~1. The Planning Director may grant exceptions to the requirements in Subsections (3)(a)(1) and (3)(a)(4) above provided that the purpose and intent of this Section have been met in addition to the requirements for the use of a flag lot (see Section 8.2.6(C)).~~
- ~~2. The Town Council may grant additional exceptions to subsections (3)(a)(1) and (3)(a)(4) for the purpose of preserving an area of the parent parcel that is being used for farm activity or as open space.~~
  - ~~a. Documentation must be provided that this preserved area has been placed in a permanent conservation, farm use, and/or other similar easement.~~
  - ~~b. Unless otherwise granted by Council, this preserved area must include the portion of the parent property which could make the flag lot into a~~

regular-shaped lot (e.g., the minimum lot width from the edge of the public street to the wider portion of the flag lot) if a subsequent subdivision were to occur.

- c. In addition, if the preserved area is intended for inclusion in some form of easement, the area in the easement must include those portions of the parent parcel which could result in a future subdivision of land that will be in violation of the subdivision requirements.

### **3. Exception for "Land Locked" Properties**

The requirement listed in Section 3.9.3(E)(3)(a)1. above may be waived provided that the creation of the additional lot provides safe ingress and egress for emergency vehicles and the provision of a public roadway is not required by the Engineering Director. All other requirements from Section 3.9.3(E)(3)(a) shall apply.

#### **(4) ~~Provision for Exemption of Additional Gift Lots; Bona Fide Gifts~~**

More than one (1) additional lot may be created provided that the conditions in subsection (3) are met and that the owner provides documentation that the new lot is to be a "bona fide gift" to a member of the owner's immediate family. However, no more than three (3) total additional lots may be created under this provision without Town Council approval. Qualification for this provision shall require the following steps:

- (a) ~~The grantor (owner of the property) shall provide to the Planning Director a sworn and notarized written certification stating: "I intend to convey the newly created lot consisting of \_\_\_ acres of land subdivided from my parent parcel of land to \_\_\_ (grantee name) and will receive no money or other consideration for this conveyance. Grantee is my \_\_\_, a member of my immediate family."~~
- (b) ~~The proposed grantee (recipient of the property) must also provide the Planning Director with a sworn and notarized written certification stating: "I am \_\_\_ and the proposed grantee of the newly created lot consisting of \_\_\_ acres of land subdivided from \_\_\_. I will pay no money or other consideration for such conveyance."~~

## **8.1.3 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS - Required Improvements**

### **(A) Required Features-Improvements Applicable to All Site and Subdivision Plans**

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

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

### **(B) Features Not Required Improvements Not Applicable to Certain Site Plans**

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.;
- (2) The cumulative addition of the greater of five thousand (5,000) square feet to an existing structure, or the replacement of a demolished structure or five percent (5%) of the total square footage of the buildings on the site, provided such cumulative addition does not require submittal of a traffic impact analysis per Section 3.23;
- (3) The installation or expansion of components of site infrastructure such as retaining walls, entry features, and site utilities;
- (4) The installation of or expansion of un-manned utility infrastructure facilities that do not generate daily traffic, such as telecommunication facilities, utility substations and water towers;
- (5) The addition of new or expanded recreational features such as tot lots, community gardens, playgrounds, trails, gazebos and similar facilities, but not including recreational facilities that function as a destination and generate additional traffic, such as sportfields and swimming pools; or
- (6) the cumulative addition of up to thirty (30) parking spaces.

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

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

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**ITEM E ENVIRONMENTAL REGULATIONS**

**BACKGROUND**

The following changes related to environmental regulations are proposed:

- A change to Section 4.4.6 Watershed Protection Overlay is proposed to ensure that BMP's for residential developments are maintained by a property owners association for the purpose of maintenance consistency and long term compliance.
- Changes to Sections 4.4.6, 7.5, and 7.2.14 would clarify that the Director of Engineering is responsible for enforcing those sections of the LDO.
- The proposed change to Table 7.3-1 would correct a discrepancy with Section 7.3.2(D). The language in 7.3.2(D)(3) related to nitrogen/phosphorus reduction export options is correct in grouping multifamily residential use with commercial, institutional, and local government uses, instead of with residential use.
- A change to Section 7.4.3 General Erosion and Sedimentation Control Standards will allow the Director of Engineering or his designee to provide comments and allow modifications to the plans if compliance is not practicable. The engineering staff currently reviews plans to ensure compliance with this requirement as it pertains to the erosion control plans.

**PROPOSED TEXT**

**4.4.6 Watershed Protection Overlay**

**(G) Engineered Stormwater Control Structures**

**(1) Ownership and Design Requirements**

Unless otherwise approved, ownership of sStormwater control structures shall be owned by remain with the owner of the property or a property owner's association, or, for all properties except single-family residential development, the owner of the property.

All stormwater control structures shall be designed by either a North Carolina registered professional engineer or landscape architect, to the extent that the N.C. General Statutes allow. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers, landscape architects, to the extent that the N.C. General Statutes allow and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in N.C. General Statutes.

**(J) Violations; Enforcement**

This Section 7.2.14 shall be enforced by the Director of Engineering or his designee. Any person or association who fails to comply with any provision of this Ordinance-section 4.4.6, or who fails to submit a report, or who submits a fraudulent or false report, shall be in violation of this Ordinance for each occurrence or non-compliance.

**7.2.14 Urban Transition Buffer Regulations**

**(N) Violations; Fines; Enforcement**

(1) This Section 7.2.14 shall be enforced by the Director of Engineering or his designee. Any person who fails to comply with any provision of this Section 7.2.14 shall be in violation of this Ordinance for each occurrence or non-compliance. The disturbance or damage of vegetation within the UTB shall constitute a violation of this Ordinance. For purposes of this Section 7.2.14, "disturbance" shall be defined as any action that results in injury or harm to required trees, shrubbery, or other vegetation. The owner(s) of the property which term includes their agents, heirs, and assigns, shall be fined and shall replace the disturbed or damaged vegetation as set forth in subsections (N)(2) and (N)(3). In addition, the Town of Cary may assess civil penalties in accordance with Chapter 11 of the LDO. Each day that the violation continues shall constitute a separate offense.

(2) The area disturbed or damaged shall be revegetated to re-establish the natural landscape. The person to whom a notice of violation is issued must submit a vegetation plan which shall include a minimum of at least two (2) native hardwood tree species planted at a density sufficient to provide three hundred twenty (320) trees per acre at maturity. In addition, any tree with a dbh of at least six (6) inches that is damaged or removed shall be replaced with one (1) or more trees that have a caliper of at least two (2) inches and a cumulative dbh equal to or greater than the original tree.

(3) A fine of between two dollars (\$2.00) and four dollars (\$4.00) for every square foot area used by the disturbed or damaged vegetation within the UTB shall be imposed. In determining the amount of the fine, the Engineering Director shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and whether the violation was committed willfully. Fines imposed pursuant to this subsection may be appealed pursuant to section 11.2.2(B).

**7.3.2 STORMWATER MANAGEMENT – Nutrient Reduction Requirements**

**(D) Nitrogen and Phosphorus Export Standards**

- (3) Development subject to this section 7.3 shall attain a maximum nitrogen loading rate on-site of six (6) pounds per acre per year for single family, detached and duplex residential development and ten (10) pounds per acre per year for other development, including multi-family residential, commercial and industrial and shall meet any requirements for engineered stormwater controls otherwise imposed by the LDO. An applicant may achieve the additional reductions in nitrogen and phosphorus loading required by this section by making offset payments to the North Carolina Ecosystem Enhancement Program contingent upon the acceptance of payments by that program. An applicant may propose other offset measures, including providing his or her own offsite offset or utilizing a private seller. All offset measures permitted by this ordinance shall meet the requirements of 15A NCAC 02B .0273 (2) through (4) and 15A NCAC 02B .0240.

**TABLE 7.3-1: NITROGEN/PHOSPHORUS EXPORT REDUCTION OPTIONS**

<b>Residential/<del>Multifamily Residential</del></b>	<b>Commercial/Industrial/Institutional/Local Government/<u>Multifamily Residential</u></b>
If the computed export is less than 6.0 lbs/ac/yr, then the owner may either:	If the computed export is less than 10.0 lbs/ac/yr, then the owner may either:
Install BMPs .....	Install BMPs .....
Pay a one-time offset payment....	Pay a one-time offset payment .....
Do a combination of BMPs and offset payment .....	Do a combination of BMPs and offset payment .....
If the computed nitrogen export is greater than 6.0 lbs/ac/yr, the owner must use on-site BMPs to bring the development's export down to 6.0 lbs/ac/yr. Then, the owner may use one of the three options above to achieve the reduction between 6.0 and 3.6 lb/ac/yr .....	If the computed nitrogen export is greater than 10.0 lbs/ac/yr, the owner must use on-site BMPs to bring the development's export down to 10.0 lbs/ac/yr. Then, the owner may use one of the three options above to achieve the reduction between 10.0 and 3.6 lb/ac/yr .....

**7.4.3 SOIL EROSION AND SEDIMENTATION CONTROL - General Erosion and Sedimentation Control Standards**

**(H) Limit on Grading Area for Medium Density Residential Developments**

Site/subdivision plans containing residential development with a gross density not exceeding eight (8) units per acre shall not grade more than twenty-five (25) acres per phase or section of development. Each twenty-five (25) acre phase or section of development must be stabilized and seeded meeting the requirements of this ordinance prior to grading an additional phase or section of development. Exceptions to this requirement may be granted as a modification to the original plan approved by the Director of Engineering if compliance is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure.

**7.5.1 FLOOD DAMAGE PREVENTION - Purpose; Enforcement**

- (D)** This Section 7.5 shall be enforced by the Director of Engineering or his designee. Any person who fails to comply with any provision of this Section 7.5 shall be in violation of this Ordinance.

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**ITEM F SUSPENDED SIGNS**

**BACKGROUND**

Last November, the Town staff observed a non-compliant sign that had been attached to and suspended from a tree branch on S. Academy Street in the Town Center. In response to the Town staff's request to remove the illegal sign, the business owner requested that the Town revise its regulations to allow such signage to be displayed. On February 13, 2013, the Town Council subsequently directed the staff to look into a potential ordinance amendment to address this issue.



After reviewing the projecting and suspended sign sections of the LDO, Town Staff believes that some minor revisions to existing regulations would be appropriate. However, staff further believes that allowing signs to be suspended from trees would be detrimental to the health of the trees, have a negative impact on community appearance and be inconsistent with the NC State Building Code requirements related to structural stability.

Alternatively, staff recommends adding a new type of sign ("Suspended Ground Sign") to the LDO that would allow signs to be suspended from decorative posts or poles in the Town Center. In addition to avoiding negative impacts on trees, this approach would provide structural stability for such signs.

Two such signs that already exist on S. Academy Street – at Ashworth Village and at the First Baptist Church. Though non-compliant with the Town's existing regulations, these signs were lawfully established prior to the adoption of the LDO in 2003. Adding the "Suspended Ground Sign" category to the LDO for the Town Center would make these two existing signs conforming, while providing an alternative option for the inquiring business owner on Academy Street.



As proposed, this amendment would allow the two existing suspended ground signs at Ashworth Village and First Baptist Church. The Stonehaven Jewelry suspended sign could be permitted if it was attached to a decorative pole rather than the tree.



**PROPOSED TEXT**

**9A.3.1 Permanent Sign Types Allowed in All Zoning Districts**

**(J) Suspended Signs**

**(1)** Suspended signs shall be allowed under canopies or along pedestrian arcades, provided that:

- ~~(1)~~ **(a)** Such signs shall not exceed one (1) per tenant in a multi-tenant building entrance.
- ~~(2)~~ **(b)** Such signs shall not be separately illuminated.
- ~~(3)~~ **(c)** ~~Such signs shall contain only the address, suite number, logo or name of the occupant or business served by the entrance.~~
- ~~(4)~~ **(c)** The height of the top edge of the signboard or bracket shall not exceed the height of the wall from which the sign projects.
- ~~(5)~~ **(d)** ~~Suspended signs may project over a public right-of-way provided that~~ No element of the sign shall hang lower than seven (7) feet above the ground or pedestrian walkway.
- ~~(6)~~ **(e)** Such signs shall be mounted and attached in a secure manner. The sign, brackets and mounting devices shall be maintained in good repair for both safety and appearance. Such signs shall be mounted so that the method of installation is concealed to the extent practical.
- ~~(7)~~ **(f)** ~~Where mounted to a wall,~~ the signboard or the bracket shall not project more than thirty-six (36) inches from the wall.
- ~~(8)~~ **(g)** In all zoning districts except the Town Center, such signs shall not exceed two (2) square feet in area.
- ~~(9)~~ **(h)** In the Town Center zoning district, such signs may be larger than two (2) square feet in total area, but all area over two (2) square feet shall be considered as part of the property's overall allowed sign area.

**(2)** In the Town Center, suspended signs shall also be allowed to hang vertically from upright posts that are securely anchored in the ground. Such suspended ground signs are allowed provided that:

- (a)** Only one (1) suspended ground sign is permitted per street frontage.
- (b)** Such signs shall only be permitted if the buildings or structures housing the principal use(s) on the property are set back at least ten (10) feet from the abutting street right-of-way.

- (c)** Such signs shall only be hung from decorative upright posts, and may not be hung from other objects such as trees or be attached to a wall.
- (d)** Such signs shall not exceed sixteen (16) square feet of display area, and may be two-sided.
- (e)** No portion of the sign shall exceed eight (8) feet in height. No portion of the supporting post shall exceed ten (10) feet in height.
- (f)** Suspended ground signs used in lieu of a principal ground sign shall not be deducted from a property's overall allowed sign area. If a suspended ground sign is used in addition to a principal ground sign, then the display area of the suspended ground sign shall count as part of the property's total allowed sign area.
- (g)** Such signs may not extend or protrude into a sidewalk or a pedestrian walkway.

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## ITEM G ADMINISTRATIVE AND PROCEDURAL CHANGES

### G-1 Unlisted Uses

#### BACKGROUND

Amendment clarifies that Planning Director's determination regarding an unlisted use shall be in writing and may be appealed to the Zoning Board of Adjustment.

#### PROPOSED TEXT

##### 12.3.1 USE CLASSIFICATIONS - General

###### (C) Unlisted Uses

###### (3) ~~Effects of Finding Determination by the Planning Director; Effects~~

All determinations by the Planning Director made pursuant to subsection (2) above shall be in writing.

###### (a) ~~Typical Uses: Added to this Ordinance~~

In making the determination described in subsection (2) above, the Planning Director shall initiate an amendment to this Ordinance if the particular use or category of use(s) is likely to be common or to recur frequently, or that omission of specific inclusion and reference to this Ordinance is likely to lead to public uncertainty and confusion. Until final action has been taken on such proposed amendment, the determination of the Planning Director shall be binding on all officers and departments of the Town.

###### (b) ~~Atypical Uses: Determination Binding~~

~~In making a determination whether to approve an unlisted use~~ If no amendment is initiated, the Planning Director's determination shall thereafter be binding on all officers and departments of the Town, without further action or amendment of this Ordinance.

###### (4) Appeal of Determination of the Planning Director

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

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### G-2 Vested Rights

#### BACKGROUND

The proposed amendment would specify that a vested rights certificate and associated approval of a site-specific development plan pursuant to G.S. 160A-385.1 could only be requested at the time of the initial site or subdivision plan approval.

#### PROPOSED TEXT

##### 3.17.4 VESTED RIGHTS CERTIFICATE - Procedure

In order to be entitled to the vested rights period set forth in Section 3.17.3 above, the owner or developer of the property must apply for and receive a vested rights certificate from the Town, pursuant to this Section. An application for a vested rights certificate for a site-specific site and/or subdivision plan shall be filed with the Planning Department. ~~Specific submittals and procedures shall depend on the type of approvals already received by the applicant, as indicated below:~~

###### (A) ~~Property Already Subject to an Approved Site Plan~~

~~The applicant shall submit the number of copies of the site plan and an application for a vested rights certificate as determined by the Planning Department. The approved plan shall be deemed the site-specific site and/or subdivision plan. The plan shall be routed directly to Town Council for consideration, public hearing, and a decision.~~

~~(B)~~ **Property Already Subject to an Approved Subdivision Plan**

~~The applicant shall submit the number of copies of the subdivision plan and an application for a vested rights certificate as determined by the Planning Department. The subdivision plan plus the additional information required for a site-specific site and/or subdivision plan shall be routed directly to Town Council for consideration, public hearing, and a decision.~~

~~(C)~~ **(A) No Approved Site Plan or Approved Subdivision Plan Applies Applicability**

~~An applicant who wishes to obtain a vested rights certificate may apply for such at the time of the initial site or subdivision plan application. The applicant shall submit a site-specific site and/or subdivision plan and an application for a vested rights certificate. The site plan and/or subdivision plan and site specific site and/or subdivision plan shall be considered simultaneously by the Town Council, following the procedure set forth below.~~

**(1) Planning Director Review, Report, and Recommendation**

The Planning Director shall review each proposed vested rights certificate in light of the applicable approval criteria for site plans and/or subdivision plans, and shall distribute the application to the Development Review Committee. Based on the results of those reviews, the Director shall provide a report to the Town Council for consideration. This report shall include a discussion of all plans and policies that have been adopted by the Town and are relevant to the application as well as the Development Review Committee's recommendation.

**(2) Town Council Action**

The Town Council, after holding a quasi-judicial hearing, may approve, conditionally approve, or deny the application for the vested rights certificate based on the applicable approval criteria for site plans and/or subdivision plans.

~~(D)~~ **(B) Notice and Conduct of Public Hearings**

Public hearings on vested rights certificates shall be quasi-judicial hearings and shall be published and posted in accordance with the general notice requirements of Section 3.1.6, and shall be conducted in accordance with the general provisions of Section 3.1.7.

~~(E)~~ **(C) Effect of Denial or Withdrawal of Application**

No application for a vested rights certificate covering the same property will be considered until after a lapse of twelve (12) months from the date of denial or withdrawal of the application. This twelve (12)-month provision may be waived for good cause shown by a three-fourths (3/4) vote of the entire Council.

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**G-3 Notice of Violation**

**BACKGROUND**

The proposed amendment would allow a notice of violation to be sent by regular mail in addition to certified or registered mail. If the mail was not returned to the post office within 10 days of mailing, then the notice would be deemed served, even if the certified or registered mail was unclaimed or refused. This language is consistent with that used in G.S. 160A-445 Service of Complaints and Orders.

**PROPOSED TEXT**

**11.5 ENFORCEMENT PROCEDURES**

**11.5.1 Notice of Violation Procedure**

**(C) Written Notice**

Such notice of violation shall be in writing and shall be served by personal delivery or by certified or registered mail, return receipt requested. A copy of the notice may also be sent by regular mail. Service shall be deemed sufficient if the registered or certified mail is unclaimed or refused, and the regular mail is not returned by the post office within 10 days after the mailing.

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**G-4 Pedestrian Facilities**

**BACKGROUND**

These proposed ordinance amendments to connectivity requirements were recommended as part of the adopted Comprehensive Pedestrian Plan, an element of the Comprehensive Transportation Plan adopted in 2008. The purpose of the amendments is to ensure pedestrian connectivity within residential and non-residential uses in response to the Town's goal of providing safe and efficient multi-modal transportation throughout Town.

**PROPOSED TEXT**

**7.10.3 CONNECTIVITY – Standards for Streets/On-Site Vehicular Circulation**

**(B) Street Arrangement**

- (1) The proposed public or private street system shall be designed to provide vehicular and pedestrian interconnections to facilitate internal and external traffic movements in the area. .... The intent of this standard is to improve access/egress for Town neighborhoods, provide faster response time for emergency vehicles, and improve the vehicular and pedestrian connections between neighborhoods.
- (2) Any development of more than one hundred (100) residential units or additions to existing developments such that the total number of units exceeds one hundred (100) shall be required to provide for vehicular and pedestrian access to at least two (2) public streets unless such provision is modified pursuant to Section 3.19.1.
- (3) Where new development is adjacent to vacant land likely to be subdivided or redeveloped in the future, or adjacent to property that is likely to be redeveloped in the future, all streets, bicycle paths, sidewalks or pedestrian pathways, and access ways in the development's proposed street system shall continue through to the boundary lines of the area under the same ownership as the subdivision, as determined by the Planning Director or the Town Engineer, to provide for the orderly subdivision of such adjacent land and/or the transportation and access needs of the community. In addition, all redevelopment and street improvement projects shall take advantage of opportunities for retrofitting existing streets to provide increased vehicular and pedestrian connectivity, such as sidewalks, crosswalks, and pedestrian signals.
- (4) In general, permanent cul-de-sacs are discouraged in the design of street systems, and should only be used when topography, the presence of natural features, and/or vehicular safety factors make a vehicular connection impractical. Where cul-de-sacs are unavoidable, site and/or subdivision plans shall incorporate provisions for future vehicular and pedestrian connections to adjacent, undeveloped properties, and to existing adjacent development where existing connections are poor.

**(C) Cross Access**

All non-residential development shall be designed to allow for both vehicular and pedestrian cross-access to adjacent properties to encourage shared parking and shared access points on public or private streets. A minimum distance of one hundred (100) feet shall be required between a cross-access way and an intersection or driveway entrance. This requirement may be modified pursuant to Section 3.19.1 provided that appropriate bicycle and pedestrian connections are provided between adjacent developments or land uses. A cross access easement must be recorded prior to issuance of a Certificate of Occupancy for the development

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**G-5 Annexation Terminology**

**BACKGROUND**

The proposed amendment would change the phrase “citizen-initiated annexation” to “owner-initiated annexation” wherever it appears in the LDO.

**PROPOSED TEXT**

**3.1.9 Simultaneous Processing of Development Applications**

- (B) No rezoning application shall be accepted or processed while an application for any of the permits or approvals listed in this chapter is pending for the same property, and vice versa. This general rule has the following exceptions:
  - (1) A rezoning application may be submitted along with ~~a citizen-initiated~~ an owner-initiated annexation petition (see Section 3.1.10 below).

**3.1.10 Common Review and Approval Procedures – ~~Citizen~~ Owner-Initiated Annexation Petitions**

- (A) Where the owner or developer of a property wishes the Town to annex the property into the Town's corporate boundaries as well as to approve proposed development on the property, then ~~a citizen-initiated~~ an owner-initiated annexation petition must be processed ...
  - (1) All ~~citizen~~ owner-initiated annexation petitions shall be submitted and reviewed in accordance with the Town's policy statements on ~~citizen~~ owner-initiated annexation petitions and annexation policy, as may be amended from time to time by the Town Council. The Town Council has discretion as to whether it annexes the property. The ~~citizen~~ owner-initiated annexation petition shall include all the property that is subject to the rezoning or site and/or subdivision plan.

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

- (B) **Application Materials...**
  - (1) **General Application Requirements...**
    - (a) The application shall also be accompanied by other applications, if appropriate, such as a Special Use application (Section 3.8) and/or ~~a citizen-initiated~~ an owner-initiated annexation petition.

**(C) ~~Citizen~~ Owner-Initiated Annexation Petition Required**

**3.17.8 Vested Rights Certificate - ~~Citizen~~ Owner -Initiated Annexation**

TABLE 3.1-1: NOTICE REQUIREMENTS				
Type of Application or Procedure	Section	Notice Required		
		Published See 3.1.6(B)	Mailed See 3.1.6(C)	Posted 3.1.6(D)
<del>Citizen</del> - <u>Owner</u> - Initiated Annexation Petition	3.1.10	Yes	N/A	N/A

## **G-6 Decision-Making Authority**

### **BACKGROUND**

This amendment streamlines text and clarifies the extent of staff's authority to make administrative decisions; corrects incorrect references, clarifies that certain street improvement waivers must be decided by the Town Council in a quasi-judicial proceeding, and makes the Zoning Board of Adjustment the decision-making authority for special uses on town property.

### **PROPOSED TEXT**

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

##### **(F) Approval Authority**

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

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

- (a) Plans that seek reductions or deviations from the 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 or that otherwise require Town Council waivers pursuant to the terms of this Ordinance; and
- (b) Plans for uses that require approval of a Special Use (see Section 3.8), except for properties owned by the Town, for which the Zoning Board of Adjustment shall have final decision-making authority; 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)].

#### **3.19.1 MINOR MODIFICATIONS Minor Modifications to Development and Zoning District Standards**

##### **(C) Procedure**

###### **(1) Minor Modifications Approved by Planning Director**

- (d) The Planning Director's decision on a request for minor modification may be appealed to the ~~Zoning Board of Adjustment pursuant to Section 3.21~~ Town Council.

#### **6.1.1 TABLES OF DENSITY AND DIMENSIONAL STANDARDS - Residential Districts (not including TC District)**

##### **(B) Additional Regulations**

###### **(5) Permanent Common Open Space Required**

One (1) of the following shall be provided, whichever is greater:

- (a) Five Hundred (500) square feet per unit as required in Section 8.3.2; or
- (b) Twenty (20) percent of the total parcel proposed for development, excluding dedicated right-of-way. The Planning Director may allow this requirement to be reduced to ten (10) percent of the total parcel area when ~~a portion of this~~ common space preserves significant and healthy trees located outside of required buffers or streetscapes.

#### **7.2.3 Requirements for Perimeter Buffers and Landscape Areas**

##### **(A) Applicability**

- (3) ~~If the Town Council or Planning Director determines that~~ an undisturbed buffer does not exist on the site, or has been disturbed as allowed in this section, then a re-vegetated natural buffer may be installed. The intent of the re-vegetated buffer is to restore the natural area (i.e., sufficient upper-story trees to achieve a closed canopy in the future and, preferably, no installation of turf grasses).

**(G) Existing Vegetation, Fences, Walls, and Berms**

- (1) Existing significant vegetation within the required buffer shall be preserved and credited toward standards for the type of buffer required, unless ~~otherwise approved by the Planning Director at the time of site plan approval, or unless~~ the existing vegetation is seriously diseased, damaged and treatment would not be practical, or vegetation has or will give rise to a nuisance situation. Wherever practical, vegetation removal will be limited to just those portions of the vegetation area necessary to correct any problems, while the remainder of the vegetation area without problems shall be left intact.

**(J) Ownership of Buffers**

- (4) ~~The Town Council may allow buffers to~~ Buffers may be included within residential lots only when all of the following conditions are met:
- (a) The subdivision is ~~limited~~ less than ten (10) acres in size and has no homeowners association; and
  - (b) There is no reason for the formulation of a homeowner's association (e.g. covenant, other common areas or engineered stormwater control structures);and
  - (c) The buffer is placed within a permanent conservation easement or other legal instrument dedicated to the Town (required documents must be provided prior to recording the plat for the impacted area).

**7.2.4 Streetscape Landscaping**

**(A) Preservation of Existing Vegetation Along Roadways**

**(2) Non-Residential Development**

- (c) All proposals for thinning streetscapes ~~must be justified and approved by the Planning Director, who may require that a portion of existing saplings be left intact to help ensure that the streetscape can function as a natural tree stand into the future. All requests for thinning shall be accompanied by a report from a registered landscape architect, certified arborist, or other such specialist justifying the request and containing a more detailed tree survey showing all plant material two (2) inches in caliper or larger that is located within the area of streetscape to be thinned. The Planning Director may require that a portion of existing saplings be left intact to help ensure that the streetscape can function as a natural tree stand.~~

**(C) Required Width of Streetscapes for all Types of Development**

- (6) The Town Council may reduce the prescribed width of streetscape to as little as ten (10) feet at the time of site plan or subdivision plan approval. On redeveloped sites or existing non-conforming sites, the staff may reduce the streetscape to no less than the streetscape shown on a previously approved plan for the site less than ten (10) feet to promote redevelopment and reuse of existing sites where it is impractical to meet current requirements (see Section 7.2.10, *Allowable Modifications and Reductions*). The applicant shall submit a statement justifying the reduction based on the below criteria:
- (a) The relationship of existing topography to the finished street grades.
  - (b) The type, amount, and location of existing vegetation within thirty (30) feet of the right-of-way line.

- (7) All streetscapes are to be made up of existing trees and supplemented if necessary, unless approved by the Planning Director (see subsection 7.2.4(A)).

**(G) Stabilizing Steep Slopes**

All slopes two to one (2:1) and steeper shall be stabilized with permanent slope retention devices or suitable combination of plantings and retention devices. Slopes greater than three to one (3:1) shall not be stabilized with turf grass (e.g., grasses that need to be mowed), but with other permanent ground cover such as Weeping Love Grass (*Eragrostis Curvala*), Low Junipers, etc. No permanent overhead spray-type irrigation is allowed on slopes greater than two to one (2:1); ~~unless allowed by the Planning Director.~~

**7.2.5 Tree Surveys, Protection, and Replacement**

**(C) Protection of Champion Trees Required**

No champion tree may be removed during development, unless a report from a registered landscape architect, certified arborist, or other such specialist states that the tree is seriously diseased or damaged and treatment would not be practical. ~~the Planning Director and/or Town Council~~ The approval authority may approves replacement of such tree pursuant to paragraph (D) below.

**(D) Replacement of Champion Trees**

- (1) When a champion tree is removed from a site during construction, or dies within one (1) year following construction, the applicant or developer shall replace such tree with a tree of native species planted at least thirty (30) feet from any other tree according to the following schedule and requirements:

**7.2.7 Fences and Walls**

**(J) Rails Required for Retaining Walls and Steep Grade Changes**

- (1) All retaining walls over thirty (30) inches in height and steep grade changes at a one to one (1:1) ratio or greater, ~~which are located within five (5) feet of a sidewalk or other constructed system designed and placed as to direct public pedestrian traffic or provide vehicle access or parking which would attract or facilitate public pedestrian traffic~~ shall include guards rails or other acceptable fencing/barricades measuring a minimum thirty-six (36) inches in height on a residential lot with a detached dwelling, townhouse, duplex, bed and breakfast, group home, or a family care home with 4 or fewer residents. Guards or other acceptable fencing/barricades measuring forty-two (42) inches in height shall be required for all other uses. Guards rails shall be constructed ~~with intermediate rails or ornamental closures with no opening larger~~ greater than four (4) inches apart. ~~Residential or commercial lawn areas and similar landscaping may be, at the discretion of the Zoning Compliance Officer, considered as public pedestrian traffic areas.~~

**7.2.9 Miscellaneous Landscaping Requirements**

**(E) Design Standards for Berms**

All berms used in a perimeter buffer (or in a streetscape) shall meet the following design standards:

- (1) The slope of all berms shall not exceed a two to one (2:1) ratio (horizontal to vertical), shall have a top width at least one-half ( $\frac{1}{2}$ ) the berm height, and a maximum height of four (4) feet above the toe of the berm. The Planning Director shall approve all berms. ~~(Berms proposed to be greater than four (4) feet in height may be permitted if deemed appropriate by the Director if the four (4) foot maximum height is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure.)~~

**(K) Soil Amendments Required**

(2) Prior to the issuance of a Certificate of Occupancy, a certified statement shall be provided to town staff Cary Site Inspector attesting to the fact that the soil amendment schedule was followed as specified in the approved site and/or subdivision plan. This statement shall be certified by a registered landscape architect, certified arborist, or other such specialist ~~as determined acceptable by the Planning Director.~~

**(L) Reforestation of Cut and Fill Slopes**

Where portions of a site have been graded due to, but not limited to, topography, cut and fill slopes associated with road and/or parking lot construction; with transitional perimeter grading; or with the installation of major utilities, and other similar areas, the development plan shall contain a reforestation plan prepared by a landscape architect, a certified arborist, a registered forester, or another such professional specialist ~~as determined acceptable by the Planning Director.~~ The reforestation plan shall conform to the following standards:.....

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

**(A) Maintenance Responsibility**

The owners of the property which term includes their agents, heirs, and assigns, shall be responsible for the installation, preservation, and maintenance of all planting and physical features (installed or vegetated natural areas) required under ~~this sections 7.2.1 through 7.2.12, or Section 4.4.4, Thoroughfare Overlay, Section 4.4.6, Watershed Protection Overlay, or Section 7.2.14~~ these sections 7.2.1 through 7.2.12, or Section 4.4.4, Thoroughfare Overlay, Section 4.4.6, Watershed Protection Overlay, or Section 7.2.14 Damage to these areas shall result in revegetation requirements and fines (see paragraphs (B), (C) and (D) below) or other penalties as required under this Ordinance.

**(B) Replacement of Disturbed and Damaged Vegetation**

The disturbance or damage of vegetation within any required buffers, streetscapes, vehicular

(3) In situations where existing required vegetation on a developed site or vacant site with an approved site and/or subdivision plan has been removed or damaged in violation of this Ordinance, the Planning Director may require that the ~~entire site area in which the vegetation was removed or damaged~~ area in which the vegetation was removed or damaged be reviewed and revegetated consistent with the current provisions of this Ordinance, in addition to any applicable fines.

**(C) Fines and Replacement of Existing, Original, or Installed Vegetation**

Where the vegetation that has been disturbed or damaged existed on the site prior to the time of approval of a Tree Clearing Certificate, or the time a site and/or subdivision plan was approved or was installed at a later date, the owner and/or any person responsible for the disturbance or damage to vegetation shall be fined and shall replace the disturbed or damaged vegetation in accordance with the standards set forth as listed below or as required in other parts of this Ordinance, taking into account any unique site conditions and significant vegetation remaining within the landscaped area. Perimeter buffers within private property boundaries shall be planted and/or installed to a Type "B" buffer standard. This section shall also apply to all ~~Urban Transition Buffers~~, required vegetation protection areas, and vacant, undeveloped properties that due to zoning conditions and/or requirements of this Ordinance have protective vegetated areas, (including but not limited to vegetation in the Thoroughfare Corridor Buffer. If the developer caused or is responsible for such disturbance of the buffer, and the developer is not the owner of the buffer, then the developer shall also be responsible for the consequences of such disturbance. For purposes of this Section 7.2.13, "disturbance" shall be defined as any action that results in injury or harm to required trees, shrubbery, or other vegetation.

(1) Where the size (caliper, height, spread) and quantity of damaged vegetation can be documented, an equal amount of new vegetation ("inch for inch") shall be used to

quantify the replacement vegetation. Replacement vegetation shall meet or exceed the current requirements of this section. Fines and replacement shall consist of item (a) and any combination of the measures listed in paragraphs (b) and (c).

**(a) Fines**

- (1) An initial fine of one thousand dollars (\$1,000) shall be imposed for any unauthorized disturbance within the boundaries of the a tree protection areas. This disturbance includes but is not limited to: parking or intrusion of equipment or vehicles; storage of any materials, and any unauthorized damage and/or removal of vegetation.
- (2) In addition to the initial fine, a A base fine of between two dollars (\$2.00) and four dollars (\$4.00) for every square foot area used by the damaged vegetation within any areas required to be protected under this Ordinance shall be imposed. The areas covered under this section include but are not limited to: vegetation protection areas, Urban Transition Buffer zones on undeveloped sites, buffers, streetscapes, vehicular use areas, and other landscape areas on developed sites. In determining the amount of the fine, the Planning Director shall consider the degree and extent of harm caused by the violation, the cost of rectifying the damage, and whether the violation was committed willfully. Payment of fines shall be made to the Town at a time deemed appropriate by the Planning Director.
- (3) Fines imposed pursuant to this subsection may be imposed concurrently and may be appealed pursuant to section 11.2.2(B).

**7.7 BUILDING DESIGN STANDARDS - General Requirements**

**(D) Review Considerations**

~~The Town Council or the Planning Director approval authority may consider alternative colors and designs for buildings provided that they meet the intent of this section. The Town Council or the Director approval authority should consider criteria such things as the intensity of the colors, the extent of the design difference and the spatial separation of each building. Plans or proposals that are not consistent with the Design Guidelines Manual shall require Town Council approval. The use of high intensity colors, metallic, or fluorescent pigments is prohibited.~~

**7.8.2 OFF-STREET PARKING AND LOADING - Off-Street Parking Space Requirements**

**(C) Computation of Off-Street Parking Requirements**

**(10) *Unimpeded Parking***

Generally, no parking spaces shall be located so as to require the moving of any vehicle on the premises in order to enter or leave any other space. Notwithstanding the above, the Planning Director may, ~~on a case-by-case basis,~~ allow stacking spaces provided for auto-related uses to count toward the minimum required parking, as long as such spaces are not part of areas required for site ingress or egress, or areas intended for fueling

**7.8.3 OFF-STREET PARKING AND LOADING – Parking Alternatives**

The Planning Director shall be authorized to approve alternatives to providing the number of off-street parking spaces required by Table 7.8-1 in accordance with the following standards:

**(E) Other Eligible Alternatives**

The Planning Director may approve any other alternative to providing off-street parking spaces on the site of the subject development if the applicant demonstrates ~~to the satisfaction of the Director~~ that the proposed plan will protect surrounding neighborhoods, maintain traffic circulation patterns, and promote quality urban design to at least the same

extent as would strict compliance with otherwise applicable off-street parking standards. The Planning Director may approve different parking requirements for mixed use projects. The different parking requirement must be based on studies and documentation validated by national studies and/or research and recommendations from nationally accredited institutions.

### 7.9.2 EXTERIOR LIGHTING - Lighting Plan Required

- (A) A point-by-point lighting plan is required for site plan approval that indicates the foot-candles at grade grid points that cover the site. The Planning Director ~~can~~ may waive this requirement for ~~small independent~~ projects on less than an acre if the fixture types are specified on the plan and will comply with the Community Appearance Manual.

### 7.10.3 CONNECTIVITY - Standards for Streets/On-Site Vehicular Circulation

#### (B) Street Arrangement

- (1) The proposed public or private street system shall be designed to provide vehicular interconnections to facilitate internal and external traffic movements in the area. In addition to the specific connectivity requirements described above, roadway interconnections shall be provided during the initial phase of any development plan between the development site and its adjacent properties with one roadway interconnection every one thousand two hundred fifty (1,250) to one thousand five hundred (1,500) linear feet for each direction (north, south, east, west) in which the subject property abuts. If the common property boundary in any direction is less than one thousand two hundred fifty (1,250) linear feet, the subject property will be required to provide an interconnection if it is determined by the Planning Director that the interconnection in that direction can best be accomplished through the subject property due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure, on the subject property or other properties in the area. When the Planning Director deems a vehicular connection not possible practicable due to topographical and/or environmental constraints, he/she may increase the length requirement and/or require pedestrian connections. The Planning Director may delay the interconnection if such interconnection requires state approval. The intent of this standard is to improve access/egress for Town neighborhoods, provide faster response time for emergency vehicles, and improve the connections between neighborhoods

### 7.10.4 Standards for Pedestrian Facilities

All sidewalks, greenways and multi-use trails shall be designed to comply with the standards provided in the Site Design Standards, the Downtown Design Guidelines, the Standard Specifications and Details Manual, the Comprehensive Transportation Plan, and the Parks, Recreation and Cultural Resources Facilities Master Plan. In addition to the general provisions of Section 7.10.3 above, the following specific standards shall be met in designing and achieving a pedestrian circulation system:

#### (C) Multi-Use Trails

- (2) All multi-use trails shall be designed and constructed according to Town of Cary standards and specifications as provided by the Parks, Recreation and Cultural Resources Department. ~~Paving material shall be determined by the Parks, Recreation and Cultural Resources Department.~~

### 8.1.1 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS - General Design Standards

- (L) All non-residential development shall be designed to allow for cross access to compatible adjacent properties to encourage shared access points on public or private streets. This requirement may be waived if the Planning Director determines that cross access is impractical due to physical site constraints, such as topography, presence of stream

buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure on the proposed site or an adjacent site.

#### 8.1.4 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS - Improvements

##### (A) Streets

- (2) The street layout in the development shall conform to the arrangement, width, and location indicated on the Comprehensive Transportation Plan Thoroughfare Plan Maps. For streets not indicated on that plan, the streets shall be designed and located with regard to existing and proposed streets, to the topography of the area, to such natural features as streams and tree growth, to public convenience and safety, and to the proposed use of land to be served by such streets. The proposed street layout shall be consistent with good land planning practices for the type of development proposed, and shall be coordinated with the street system of surrounding areas. All streets shall provide for the continuation or extension of the principal streets in surrounding areas and shall provide reasonable means of ingress and egress for surrounding properties. The Engineering Director may waive construction of the required road improvements identified in the current Comprehensive Transportation Plan where the roadway was previously widened with curb & gutter to dimensional width standards consistent with the 2000 Thoroughfare Plan.
- (10) Land needed for right-of-way as depicted on the Comprehensive Transportation Plan shall be dedicated at the time of final plat for approval, unless such dedication is waived by the Town Council as part of approving the site plan in a quasi-judicial hearing or the subdivision/site plan is classified as an "exempt" subdivision/site plan. The amount of land to be dedicated shall be based upon the requirements listed in the Comprehensive Transportation Plan.

#### 8.1.5 SUBDIVISION AND SITE PLAN GENERAL PROVISIONS Payment of Fees in Lieu of Required Improvements

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

##### (1) Approval by Engineering Director

The Engineering Director may approve payment in lieu of required road improvements where road improvement costs do not exceed \$100,000, as estimated by a registered engineer, provided that:

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

##### (2) Approval By Town Council

~~provided that the~~ The Town Council or Planning and Zoning Board may approve such payment as part of approving the site plan in a quasi-judicial hearing, upon determining that such improvements are not necessary or desirable at the time but will be needed in the future. This section shall not apply, however, to street improvements, which are governed by the fee provisions in Section 8.1.4(A).

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

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

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

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

**8.5.4 ALTERNATIVE DEVELOPMENT OPTION: TRADITIONAL NEIGHBORHOOD DEVELOPMENT - Development Standards**

**(B) Permitted Types and Mix of Land Uses**

- (1) TNDs, by design, provide opportunities for diversification and integration of land uses in a balanced mix. However, the extent of diversification and integration may be limited by the size of the development, based on use-specific land or population-based needs, ~~as may be determined through the Planned Development review process.~~
- (4) To encourage a diversity of residents, while at the same time preventing visual monotony in neighborhoods, no single housing type may comprise more than twenty-five (25) percent of a TND, unless the applicant can demonstrate that a less diverse mix is more appropriate.

**8.5.6 ALTERNATIVE DEVELOPMENT OPTION: TRADITIONAL NEIGHBORHOOD DEVELOPMENT – Approval Process**

TNDs shall be approved using the process for rezoning to PDD or MXD, set forth in Section 3.4.3 or 4.5.2.

**G-7 Prohibiting Phasing in Site and Subdivision Plans**

**BACKGROUND**

Amendment clarifies that site and subdivision plans shall not be phased with the effect of avoiding LDO requirements if they are part of a unified plan of development and are physically proximate to one another.

**PROPOSED TEXT**

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

#### (B) Application Materials

All subdivision and site plan applications shall include a set of application materials prepared pursuant to this section. Approval of these materials shall be a prerequisite to the review and approval procedures set forth in this section.

##### (1) General Application Requirements.....

##### (2) Prohibiting Phasing to Avoid Requirements

It is the Town's intent to ensure that larger developments are not phased or subdivided in piecemeal fashion in order to comply with numerical requirements of this Ordinance. Two or more developments, represented by their owners or developers to be separate developments, shall be aggregated and treated as a single development when they are determined to be part of a unified plan of development and are physically proximate to one another. The following factors will be considered to determine whether there is a unified plan of development:

- (a) There is unified ownership, indicated by the fact that:
  - (1) The same person has retained or shared control of the developments;
  - (2) The same person has ownership or a significant legal or equitable interest in the developments; or
  - (3) There is common management of the developments controlling the form of physical development or disposition of parcels of the development.
- (b) There is a reasonable closeness in time between the completion of 80 percent or less of one development and the submission to the Town of a master plan or series of plans or drawings for the other development that is indicative of a common development effort.
- (c) The voluntary sharing of infrastructure that is indicative of a common development effort or is designated specifically to accommodate the developments.
- (d) There is a common advertising scheme or promotional plan in effect for the developments.
- (e) Any information provided by the applicant that the project is not being phased or subdivided to avoid requirements of this Ordinance.

##### (2) (3) Two Types of Plans

For both subdivisions and site plans, the applicant has the option to submit either a "full plan" application or a "sketch plan" application:

#### **G-8 Substitute Performance Guarantees**

#### **BACKGROUND**

This section was adopted by Council on September 30, 2010, and was always intended to be a temporary ordinance to address a very specific situation where both the developer and the bank have defaulted in their obligations related to the completion of public infrastructure and where a substantial amount of that infrastructure is installed such that public health and safety does not appear to be an issue. The temporary ordinance was put in place to accept a substitute financial guarantee apportioned such that it will enable building to recommence and will be available to complete the required public infrastructure. Under the current economic conditions, it does not appear that this specific situation will occur again and therefore staff is recommending that the temporary ordinance be eliminated.

#### **PROPOSED TEXT**

##### ~~8.1.9 Substitute Performance Guarantees~~

~~This ordinance applies only where all of the following requirements are met:~~

- ~~(A) A development plan, or phase of a development plan, achieved final plat approval based on the posting of financial guarantees in lieu of completing required public infrastructure; and~~

- ~~(B) A financial guarantee was issued by a financial institution that has failed and been closed and the FDIC, as receiver, has disaffirmed and repudiated such financial guarantee(s); and~~
- ~~(C) The developer has failed or refused to provide a replacement financial guarantee(s) or to complete such required public infrastructure; and~~
- ~~(D) The developer sold and conveyed lots to third parties prior to the date on which the Town was notified by the FDIC that the financial guarantees were disaffirmed and repudiated ('Notification Date'); and~~
- ~~(E) Sufficient public infrastructure has been installed by the developer in such phase or phases such that only minor repairs and the final inch of asphalt on streets need to be applied, and/or only minor adjustments or repairs need to be made to the installed water and sewer system in order that it may qualify for inspection and acceptance by the Town.~~

~~If all of the requirements set forth above are met, then, in such developments or phases thereof, lot owners who purchased lots before the notification date wishing to build new heated square footage or additions of heated square footage may provide a substitute financial guarantee (SFG) on a per lot basis. The SFG shall be determined by Council based on the amount of the repudiated letters of credit issued for phase of development and the number of undeveloped lots in that phase. Once the SFG is determined, the Town may issue a building permit upon receipt of the SFG. Certificates of occupancy shall not be withheld by the Town based on incomplete public infrastructure or the failure to provide or maintain a financial guarantee if a SFG was provided for such lot, although other LDO requirements will continue to apply.~~

~~Because this SFG is not a fee, and therefore not subject to the payment provisions of Section 3.14.3(A) of the LDO, half of the SFG will be collected at or prior to issuance of a building permit and half will be collected prior to the issuance of a certificate of occupancy. Such SFG shall be maintained by the Town and shall be used by the Town to complete the infrastructure in that particular phase of the subdivision. In the event the infrastructure in that phase of the development is completed by the developer or their successor without cost to the Town, or in the event the Town completes the infrastructure and discovers that it does not need all of the SFG funds provided for, the Town shall refund a proportionate share of such SFG's not needed to the persons who provided them.~~

~~This temporary ordinance shall not obligate the Town to complete public infrastructure for which SFG's have been provided until such time as adequate funds exist to complete the public infrastructure, although the Town, in its sole discretion, may undertake such completion at any time. The Town reserves the right to transfer these funds to a third party to ensure completion and acceptance by the Town.~~

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## **G-9 Dedication of Lakes**

### **BACKGROUND**

The following amendments are intended to clarify requirements for lakes and dams when they are proposed to be dedicated to the Town to fulfill park land dedication requirements. The amendments clarify the name of the State regulations to which dams must adhere and that evidence that lakes and dams meet such criteria are to be provided at the time when Council approves or denies the acceptance of such lakes/dams.

Amendments to Section (F) below refine the existing requirement for submission of a survey of all park land dedications by requiring that the survey indicate the location and area of certain features which are described in other sections of this chapter of the LDO, and which are criteria for determining the amount of park land to be dedicated.

### **PROPOSED TEXT**

### 8.2.3 Dedication Land for Parks and Greenways

#### (C) Nature of Park Land to be Dedicated

Except as otherwise required or approved by the Town Council at the time of Planned Development master plan approval, site and/or subdivision plan approval, or Mixed Use District preliminary development plan approval, all dedications of land shall meet the following criteria. These criteria should be considered general guidelines to ensure that the dedication of land is suitable for park development.

#### (7) *Dedication of Lakes*

The subdivider or developer may propose to include an existing or proposed lake as part of a park dedication. The dedication of such lake ~~should~~ shall meet the following criteria, and will be subject to the approval of the Town Council. Evidence that the lake meets the following criteria shall be provided to Town Council at the time of Council review and approval of acceptance of the lake:

- (a) It shall be a minimum of ten (10) acres in size. The average width of the lake should be not less than one-third (1/3) of its average length.
- (b) ~~Its Dam~~ construction shall comply with the latest versions of Stormwater Best Management Practices and Dam Operation and Safety Manual Dam Safety Rules by the North Carolina Department of Environmental and Natural Resources, ~~where applicable,~~ and shall comply with with the rules appropriate to the class of the dam, except all dams shall meet the lowest threshold criteria. All lakes shall include a primary spillway, emergency spillway, and drain, and all materials shall meet Town specifications. Lake and dam construction shall also comply with the latest version of the Stormwater Best Management Practices Manual by the North Carolina Department of Environment and Natural Resources, if lake will function as a stormwater best management practice.
- (c) The land surrounding and adjacent to the lake shall be dedicated to the Town, at a minimum width of one hundred (100) feet measured from top of bank.
- (d) The lake dam shall not be utilized to support a public or private street.

#### (F) Submission of Deed and Survey

Unless otherwise stipulated in a planned development master plan or Mixed Use District preliminary development plan, or required by law, an executed general warranty deed, free and clear of all liens, encumbrances and restrictive covenants, conveying the land to the Town of Cary, and a reproducible paper boundary survey indicating the location and area of all wetlands, alluvial soils, regulated riparian buffers, floodplain, waterbodies, and slopes greater than 15%, shall be submitted no later than two (2) years after the approval of the site plan, Planned Development master plan, Mixed Use District preliminary development plan, or prior to the issuance of fifty percent (50%) of the Certificates of Occupancy for the development (based on approved site/subdivision plans and approved master plan), whichever is earlier. The Town Council may grant an extension of time.

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#### G-10 Roads APF

#### BACKGROUND

The proposed amendment includes several technical revisions and corrections related to the previously-approved Roads APF amendment (Round 24 LDO Amendment).

#### PROPOSED TEXT

<i>(Portion of) Table 2.1-1: SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES</i>							
<i>NOTE: This table summarizes the general review and decision-making responsibilities for the procedures contained in Chapter 3.</i>							
<b>Exceptions to these general rules may apply; see Chapter 3 for complete details on each procedure.</b>							
<b>Review = Responsible for Review and/or Recommendation    Hearing = Public Hearing Required</b>							
<b>Decision = Responsible for Final Decision to Approve or Deny    Appeal = Authority to Hear and Decide Appeals</b>							
<b>Procedure</b>	<b>Section</b>	<b>Town Council</b>	<b>Planning and Zoning Board</b>	<b>Zoning Board of Adjustment</b>	<b>PRCR Advisory Board</b>	<b>Staff Departments</b>	<b>Notes</b>
Adequate Public Facilities for Roads and Transportation Development Fees	3.23	-	-	Appeal	-	Review/Decision	
Adequate Public Facilities Planning and Development for Roads	3.23	Appeal	-	-	-	-	-
Transportation Development Fees	7.11	Hearing/Decision : Appeal	-	-	-	-	[7]
<b>NOTES to Table 2.1-1:</b>							
[7] (reserved) The Town Council makes the final decision on requests for individual assessments and hears appeals of assessments.							

**4.2.3 GENERAL USE DISTRICTS - PDD: Planned Development Districts**

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

**(3) Applicable Standards**

- (b)** Notwithstanding paragraph (a) above, in no case shall the decision-making body waive or modify the following standards for a proposed PDD zoning district:
1. Zones 1, 2, and 3 of stream buffers;
  2. Design guidelines;
  3. Adequate public facility ordinance requirements; **[Reserved]**
  4. Ownership requirements for any open space, buffers, or streetscapes unless otherwise permitted within this Ordinance;
  5. Preservation of existing vegetation in streetscapes, floodplains, and/or buffers;
  6. Street connectivity requirements;
  7. Sidewalk and greenway requirements;
  8. Mixed Use Center requirements (if applicable);
  9. Stormwater control requirements;
  10. Nitrogen reduction requirements, and
  11. Setback reduction below the minimum required by section (c) below.

**4.5.2 FLEXIBLE USE DISTRICTS - MXD District –**

**(D) General Use and Development Standards**

**(2) Applicable Standards**

- (b) Notwithstanding paragraph (a) above, in no case shall the Town Council waive or modify environmental or infrastructure adequacy standards for a proposed MXD zoning district including but not limited to:
1. Zones 1, 2, and 3 of urban transition buffers;
  2. ~~Adequate public facility ordinance requirements~~ [Reserved];
  3. Stormwater control requirements, and
  4. Nitrogen reduction requirements.

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