

LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS
Round 26, Items B,C, E-H
 Town Council Meeting
 September 26, 2013

EXECUTIVE SUMMARY

The proposed amendments to the Land Development Ordinance for consideration at this time were presented at Town Council public hearings and Planning and Zoning Board work sessions, and were unanimously recommended for approval by the Planning and Zoning Board at its meeting on August 22, 2013. Staff recommends approval of the proposed amendments.

Item 25 B-2 (Champion Trees), Round 25 Item C-2 (Beekeeping) and Round 26 Item A (Signage) were also recommended for approval by the Planning and Zoning Board on August 19, 2013. However, the vote was either not unanimous, or was not consistent in all aspects with the staff recommendation and therefore those items are included in a separate staff report in this meeting agenda under Discussion Items. Round 26 Item D (Setbacks for Telecommunication Towers), also discussed at the August 19th Planning and Zoning Board meeting, was tabled for further discussion and will be forwarded to the Town Council at a later date.

OVERVIEW

SCHEDULE:

Planning and Development Committee	May 16, 2013
Public Hearing	June 27, 2013
Planning and Zoning Board Work Session	April 22, 2013 July 22, 2013
Planning and Zoning Board Meeting	August 19, 2013
Final Action by Town Council	September 26, 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 "DETAILS REGARDING PROPOSED LDO AMENDMENTS".

Item 26 B Outdoor Display and Sales of Goods

The proposed amendment would allow outdoor display and sales of goods to occur on the side of large retail buildings under certain conditions.

Item 26 C Sunrooms and Screened Porches

The proposed amendment would remove a confusing term (deck enclosures) and clarify how setbacks apply to sunrooms and porches.

Item 26 E Severe Pruning

The proposed amendment would provide flexibility to not require replacement of severely pruned trees if there is a likelihood that the trees would recover. In addition, increased flexibility in the spacing and location of understory streetscape trees is recommended to provide limited opportunities for increased visibility of wall signage as part of an effort to potentially reduce the amount of severe pruning by businesses.

Item 26 F Group Homes

A previous LDO amendment updated the Town's group home provisions to be consistent with current regulations and best practices. This amendment also added an additional screening requirement for parking spaces. After further review, and implementation issues experienced, staff recommends revision of the screening requirement to provide greater

specificity and clarity. In addition, the proposed amendment moves “Family Care Home” and “Group Home” from the “Group Living” to the “Household Living” Use Classification in the Table of Permitted Uses, reflecting their protected status as a residential living arrangement by the Federal Fair Housing Act.

Item 26 G Mixed Use Overlay District Development Standards

In response to direction from Town Council at its meeting on May 23, 2013, staff has prepared an LDO amendment to eliminate the 65-foot maximum buffer width in the Mixed Use Overlay District.

Item 26 H Zoning Board of Adjustment and Special Use Hearings

The proposed amendment would clarify and modernize provisions related to Zoning Board of Adjustment and special use hearings consistent with recent North Carolina General Statute revisions, including changes to the appeal process, standards for granting a variance, and voting rules, among other items.

FISCAL IMPACT: Implementation of most of the proposed changes will be absorbed by existing staff during the review and approval process for various development applications and/or construction plan submittals. However, implementation of Items E (Severe Pruning) and Item H (Zoning Board of Adjustment) are expected to result in an increased workload for staff due to the potential for additional review and evaluation of a wider range of landscaping options and associated site visits, and the potential for processing a higher volume of variance requests for the Zoning Board of Adjustment. Staff will need to closely monitor the impact of these amendments after adoption, in order to identify future staffing needs for budget consideration.

STAFF RECOMMENDATION: Staff recommends that the Town Council approve the proposed amendments to the Land Development Ordinance identified Round 26 Items B, C, E, F, G and H.

SUMMARY OF PROCESS AND ACTIONS TO DATE

Town Council Public Hearing (June 27, 2013)

The Town Council conducted a public hearing on the proposed Round 26 LDO Amendments on June 27, 2013. One citizen speaker, and Council Member Adcock, expressed support for the screening provisions for parking included in Item B (Group Homes).

Changes After the Town Council Public Hearing

Clarifications, corrections, and minor revisions made since the public hearing are shown in double-underline/strike-through text, and are summarized as follows:

- Clarify that screened porches may not encroach into building setbacks
- Require parking screening for large or small day care homes where additional parking area must be constructed, or an existing driveway must be widened, to meet parking requirements.

Planning and Zoning Board Work Session (July 22, 2013)

Most of the discussion at the Planning and Zoning Board work session focused on Round 26, Item A (Signage) which will be presented as a separate item on this agenda.

Revisions After Planning and Zoning Board Work Session

Item 26C – Sunrooms and Screened Porches- This proposed amendment was revised to clarify that areas under a roof are not intended to be located in setbacks. In addition, the section was modified to include other architectural elements and residential mechanical/electrical equipment that have historically been permitted to encroach into setbacks.

Planning and Zoning Board Meeting (September 26, 2013)

The Planning and Zoning Board recommended approval of the proposed LDO Amendment Items 26 B, C, E-H by a vote of 7-0, with the following related comments:

Item 26 B – Outdoor Display and Sale of Goods - Recommendation included a request that staff look into whether or not fertilizers are potential pollutants or hazards when a stored in outdoor storage and display areas. Staff will research this issue and report its findings to the Board at a future meeting.

DETAILS REGARDING PROPOSED LDO AMENDMENTS

ITEM 26 B – OUTDOOR DISPLAY AND SALES OF GOODS

BACKGROUND

A large retail tenant has requested the ability to conduct outdoor display and sales on the side and/or rear of the building. Given that the Town recently adopted an amendment (August 9, 2012) allowing temporary retail sales in parking lots in response to requests from local businesses; we believe that it is appropriate to consider adding flexibility regarding the outdoor display/sales of products immediately adjacent to the storefront (which is an activity that is already allowed by the LDO).

PROPOSED TEXT

5.3.4 Accessory Uses and Structures Allowed

(D) Outdoor Display and Sales

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

(1) Procedural Requirements..

(2) Where Permitted

- (a) All outdoor display and/or sale of goods shall be located immediately adjacent to the storefront and not in drive aisles, loading zones, fire lanes, or parking lots, except as otherwise provided in this Section 5.3.4(D)(2).
- (b) The area ~~in front of a store that may be~~ used for outdoor display and/or sales shall ~~not occur on the sides and rear of buildings~~ shall be limited to no more than one-half (1/2) of the length of the ~~store~~ front of the building. In the case of a shopping center, the "~~storefront~~ front of the building" shall include the entire frontage of the shopping center, meaning that the total amount of display for all the in-line tenants combined shall not exceed fifty (50) percent of the aggregate ~~store~~ building frontage of the overall shopping center.

If the store is located in a building that is 100,000 square feet or larger in size and meets a minimum setback of 300 feet from a thoroughfare, then the area on one side of the building may be used for outdoor display and/or sales, as long as the area is limited to no more than three-quarters (3/4) of that side of the building.

- (c) The area of outdoor display and/or sales shall not encompass the width of the entrance doors to the facility as projected straight out from the facility. For example, if the width of the entrance doors is ten (10) feet, then there shall be at least a ten (10) foot clearance from the doors as projected straight out and away from the facility.
- (d) At least five (5) feet along the parking lot side of the display shall be maintained free of obstruction to allow for pedestrian and handicap movement, such that handicapped pedestrians and others do not have to enter the parking lot or drive aisle to walk around the display.

- (e) No goods shall be attached to a building's wall surface.
- (f) The height of the outdoor display shall not exceed six (6) feet, unless an exception to this provision has been granted by the Planning Director.
- (g) The outdoor display and/or sales area shall take place on an improved surface such as the sidewalk or pavement. Either the outdoor display and/or sales area, or the required area of pedestrian/handicap movement, must be clearly marked by a contrasting paint color or a unique surface treatment (e.g., use of different materials, scored surface, etc.).
- (h) Retail sales or display of goods, products, or services from a motor vehicle, trailer, or shipping container is prohibited, unless explicitly allowed in this Section 5.3.4(D)(2).

[Return to Top](#)

ITEM 26 C - Sunrooms and Screened Porches

BACKGROUND

The LDO currently allows decks, covered porches and “deck enclosures” to encroach up to three (3) feet into a setback, but no closer than five (5) feet to a property line. The term “deck enclosures” has proven problematic for staff however, especially since this term is not defined in the NC State Building Code. In particular, it is unclear whether or not this term is intended to include sunrooms (which are considered to be part of a principal structure and would not be allowed to project into building setbacks) and screen-in porches (which are considered to be an accessory structure and are thus allowed to project into building setbacks up to three feet beyond the limits set for the principal structure).

The proposed amendment would remove the use of the term deck enclosure, and would expand the definition of porches to include those enclosed by screening. The amendment would also clarify that covered areas are not intended to be located in setbacks, although any such existing features that were previously approved to encroach into setbacks prior to the date of this change will be exempted and considered to be conforming features going forward. Finally, we have also modified this section to include other architectural elements and residential mechanical/electrical equipment that have historically been permitted to encroach into setbacks.

PROPOSED TEXT

TABLE 6.3-1: PROJECTIONS PERMITTED INTO REQUIRED SETBACKS	
Feature That May Encroach Into Setback	Limitation
<u>Eave, soffit, sill, cornice, or ornamental feature</u>	May project up to eighteen (18) inches into any required setback or building restriction line, except where a lesser projection is required to assure conformance with building separation requirements of the North Carolina Building Code.
<u>Bay windows that project outward but do not touch the ground, and similar features projecting from the principal building (does not include cantilevered floor area or cantilevered walls)</u>	May project up to three (3) feet into any required yard or building restriction line shown on the subdivision plat for the property, but no closer than five (5) feet to the property line or buffer.**
<u>Bay windows, Uncovered porches, stoops, balconies, and decks, and deck enclosures, chimneys, uncovered porches steps, and similar features</u>	

projecting from the principal building. <u>(Roofs may not encroach into building setbacks).</u>	
<u>Chimneys</u>	
<u>Patios, terraces, and similar features that are not covered and are located on the ground and constructed at grade level</u>	If constructed at grade level, May project into a required yard or building restriction line shown on the subdivision plat for the property, but no closer than five (5) feet to the property line or buffer.
<u>Accessory buildings and/or structures that are detached from the principal structure.</u>	May project no closer than five (5) feet to the rear lot line and no closer than five (5) feet to the side lot lines. No projection is allowed into the required roadway setbacks.
<u>Driveway (may not be covered)</u>	May encroach up to lot line(s)
<u>HVAC equipment, utility equipment, mechanical equipment, and electrical panels related to the operation of a detached residential dwelling.</u>	
<u>Retaining walls and fences eight (8) feet or less in height that are not located within thirty (30) feet of a street that is classified as a collector or thoroughfare.</u>	

** Such features that encroach into setbacks and were approved prior to <insert date of adoption> are exempt from this limitation and shall be considered to be a conforming feature on such properties.

12.4 OTHER KEY TERMS DEFINED

DECK ENCLOSURE

The addition of sides and roof on a deck which allows for the protection from wind, sun, rain and insects but does not involve the addition of central air conditioning/heating or the teardown of any portion of the dwelling unit including the deck flooring and support system.

PORCH

An unenclosed exterior appendage to a building, forming a covered or uncovered approach to a doorway.

STOOP

A covered or uncovered porch, platform, or entrance stairway at a house door.

..
[Return to Top](#)

ITEM 26 E - Severe Pruning

BACKGROUND

The LDO does not provide enough flexibility to allow staff to permit existing trees that have been severely pruned a second time to remain on site, even where the trees have the potential to survive. The proposed amendment would provide flexibility needed to allow such vegetation to remain, where appropriate.

In addition, many of the severe pruning violations deal with business owners who want to increase the visibility of their business. Staff believes that the ordinance could be revised to allow the same amount of required trees to be placed in the streetscape while allowing for gaps in the streetscape for some views of businesses to occur. This action may result in less severe pruning violations.

PROPOSED TEXT

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

(D) Fines and Replacement for Severe or Excessive Pruning of Required Plant Material.

All upper-story and understory trees (i.e., Crape Myrtle) used on-site are intended to grow naturally and not be excessively pruned. Such trees shall only be pruned so as to promote the natural growth of the tree as was intended to meet any streetscape and buffer requirements. In some cases, pruning may take place to prevent damage to utilities, to address sight distance requirements, or to prevent damage to buildings. Therefore, upon approval by the Planning Department, some pruning may be allowed ~~to remove limbs to allow visibility on non-residential properties~~ in accordance with Section 7.2.4, Streetscape Landscaping. Required shrubs on sites shall be maintained according to the approved site plan and the specific landscape requirements mentioned in this Ordinance. When plant material is deemed to have been severely or excessively pruned:

- (1) The first time a violation is cited, the plants will be evaluated to determine the extent of the damage. ~~In addition, the site will be reviewed to determine if it meets the approved site plan requirements. If the planning staff determines that the life spans of the pruned plants have been reduced or that the structural integrity of the plants has been permanently damaged, then A recommendation will be made by the planning staff to the property owner and/or any person responsible for the severe or excessive pruning to either shall be required to~~ replace the damaged plant material with comparably sized material, or replace the damaged plant material with smaller material and provide supplemental the plant material elsewhere on the site in such quantity so as to make up the difference between the damaged plant material and the smaller replacement material.

If the planning staff determines that the excessive pruning has not compromised the lifespan or structural integrity of the plants, then the excessively pruned material shall remain in place and supplemental plant material may be required by the planning staff to compensate for the reduced screening.

- (2) If a second violation is cited, the property owner and/or any person responsible for the severe or excessive pruning will be assessed one hundred dollars (\$100) per shrub or one hundred dollars (\$100) per caliper inch for trees for any severe or excessive pruning. ~~If the planning staff determines that the life spans of the pruned plants have been reduced or that the structural integrity of the plants has been permanently damaged, then t~~The owner and/or any person responsible for the severe or excessive pruning shall also be subject to replacing any severely or excessively pruned plant material on a site using the "inch for inch" or "area replacement" standards. If the planning staff determines that the excessive pruning has not compromised the lifespan or structural integrity of the plants, then the excessively pruned material shall remain in place and supplemental plant material shall be required by the planning staff to compensate for the reduced screening. Under either scenario, the plant material on the site shall be or supplemented ing the plant material on the site to meet current ordinance landscape requirements.
- (3) If any additional violations are cited, a base fine of one thousand dollars (\$1,000) will be assessed in addition to the one hundred dollars (\$100) per shrub or one hundred dollars (\$100) per caliper inch for trees for any severe or excessive pruning. The property owner ~~and/or any person responsible for the severe or excessive pruning will also shall~~ be responsible for the replacement of plant material using the "inch for inch" or "area replacement" standards ~~or and shall~~ supplement ~~ing~~ the plant material on the site as necessary to meet current ordinance landscape requirements.

7.2.4 Streetscape Landscaping

(D) Plantings in Streetscape

- (1) The property owner or developer shall preserve existing healthy trees or, if none exist, install or maintain one (1) upper-story tree of at least two (2) inches in caliper for each forty (40) linear feet of streetscape. One (1) understory ornamental tree of at least two (2) inches in caliper for every twenty (20) linear feet is also required.
- (2) Shrubs and other types of vegetation shall be planted to meet the performance requirements of the streetscape.
- ~~(3) The planting throughout the streetscape should be designed to achieve a natural tree stand area in future years.~~
- (3) If existing trees that meet the intent of upper-story trees are preserved, then credit will be provided such that these requirements are reduced proportionally.
- (4) Where required trees are located under overhead power lines, the selected tree type may reach a maximum height of twenty to twenty-five (20-25) feet at maturity. ~~Such trees shall be at least two (2) inches in caliper at the time of installation, and~~ In place of the required upper story tree every forty (40) feet, two (2) such smaller trees shall be installed or maintained for every forty (40) linear feet of streetscape, in addition to the required understory ornamental trees. ~~rather than the one (1) larger tree per forty (40) feet required above.~~
- ~~(5) If existing trees that meet the intent of upper-story trees are preserved, then credit will be provided such that these requirements are reduced proportionally.~~
- ~~(65)~~ The calculation of road frontage to meet the spacing requirements for trees shall not include driveway widths measured at the right-of-way line. Upper-story trees shall be planted at appropriate distances from public rights-of-way, sidewalks, and other utilities as recommended in the Community Appearance Manual.
- ~~(6)~~ Sites with streetscapes that meet all LDO requirements and have a minimum width of at least 30 feet, may cluster understory ornamental trees in accordance with the following requirements:
 - (a) Up to 20% of the required understory ornamental trees (or a minimum of two) along a specific frontage may be relocated elsewhere in the streetscape along the same frontage;
 - (b) Gaps that are created between understory ornamental trees may not exceed 80 feet in length; and there shall be a minimum of 200 linear feet between gaps.
 - (c) When understory ornamental trees are removed from existing streetscapes, at least an equal number of replacement trees shall be provided and the total diameter of all replacement trees shall be a minimum of 50% of the total tree diameter removed.
- ~~(7) The above requirements also apply to the Thoroughfare Corridor Overlay district (Section 4.4.4).~~

ITEM 26 F – GROUP HOME PARKING SCREENING REQUIREMENT

BACKGROUND

A previous LDO amendment updated the Town's group home provisions to be consistent with current regulations and best practices. This amendment also added an additional discretionary screening requirement for parking spaces. After further review, and implementation issues experienced, staff recommends revision of the screening requirement to provide greater specificity and clarity. In addition, the proposed amendment moves "Family Care Home" and "Group Home" from the "Group Living" to the "Household Living" use Classification in the Table of Permitted Uses, reflecting its protected status as a residential living arrangement by the Federal Fair Housing Act.

PROPOSED TEXT

5.2.1 USE-SPECIFIC STANDARDS - Residential Uses

(D) Group Home; Family Care Home

(1) Group Home

- (a)** Group homes shall be limited to a maximum of ten (10) residents.
- (b)** Group homes with four (4) or more residents shall be spaced at least one-quarter mile (1,320 feet) from any other group or family care home with four (4) or more residents.
- (c)** Parking shall be as required for group homes by Table 7.8-1 of this Ordinance.
- (d)** Where four (4) or more parking spaces are required, ~~such area shall be screened from view from adjacent properties in accordance with the applicable requirements of this Ordinance~~ parking areas shall be clearly delineated, and shall be screened to a minimum height of three (3) feet from the view of ~~contiguous adjacent~~ residential properties. Such screening may be provided by evergreen plantings that will attain a minimum height of three (3) feet within three (3) years of planting, or by the use of a fence made of wood (or a comparable composite material) that is at least three (3) feet in height and is designed to screen at least three-quarters of the view through the fence from ~~contiguous adjacent~~ properties. Screening shall not be required for parking areas located in the portion of a one-or two-car wide driveway between the street and the front of the residence or located adjacent to non-residential property except where such areas are being expanded to meet parking requirements.

5.3.4 USE-SPECIFIC STANDARDS - Accessory Uses and Structures Allowed

(L) Day Care Homes, Large

- (1)** A large day care home is intended for the care of seven (7) to twelve (12) children at any given time. Large day care home uses may be permitted as a special use in any single-family residential dwelling unit on lots which are twelve thousand (12,000) square feet or greater in size provided that all the following provisions are met:
 - (a)** Appropriate licensing by the North Carolina Department of Health and Human Services, Division of Child Development is maintained;
 - (b)** The home shall be reviewed and approved as a special use in accordance with the procedures and standards set forth in Section 3.8 of this Ordinance;
 - (c)** No building modifications may be made to the structure to accommodate the use except those required by the Building Code;
 - (d)** The home shall comply with or exceed the parking standards in Table 7.8-1 *requirement: four spaces plus one additional space if there is an employee that does not live in the home]* and the number and location of parking spaces shall be adequate to provide for child drop-off and pick-up in a safe manner;
 - (e)** If construction of additional parking area or driveway width is needed in order to meet minimum parking requirements, then such areas shall be clearly delineated, and shall be screened to a minimum height of three (3) feet from the view of adjacent residential properties. Such screening may be provided by evergreen plantings that will attain a minimum height of three (3) feet within three (3) years of planting, or by the use of a fence made of wood (or a comparable composite material) that is at least three (3) feet in height and is designed to screen at least three-quarters of the view through the fence from adjacent properties. Screening shall not be required for parking areas located in the portion of a one-or two-car wide driveway between the street and the front of the residence or located adjacent to non-residential property.
 - (e) (f)** A sketch of the site shall be provided showing the residence, driveway and parking areas, outdoor play area, fencing, residences located on adjoining lots;
 - (f) (g)** The principal person or persons operating the day care home must reside on the premises;

- ~~(g)~~ **(h)** The day care home shall employ no more than one (1) person who does not reside on the premises; and
- ~~(h)~~ **(i)** The operator obtains all required permits and licenses from the Town of Cary.

(M) Day Care Homes, Small

- (1)** A small day care home is intended for the care of up to six (6) children not related to the care provider by birth, marriage, or adoption at any given time. Adult care is limited to three (3) adults eighteen (18) years old or older. Small day care home uses shall be permitted as an accessory use in a residential dwelling unit provided that all the following provisions are met:
 - (a)** Appropriate licensing by the North Carolina Department of Health and Human Services, Division of Child Development is maintained;
 - (b)** The home shall comply with the parking standards in Table 7.8-1 *[requirement: 3 spaces plus one additional space if there is an employee that does not live in the home]*. No less than three (3) on-site parking spaces shall be provided, and the number and location of parking spaces shall be adequate to provide for child drop-off and pick-up in a safe manner;
 - (c)** If construction of additional parking area or driveway width is needed in order to meet minimum parking requirements, then such parking areas shall be clearly delineated, and shall be screened to a minimum height of three (3) feet from the view of adjacent residential properties. Such screening may be provided by evergreen plantings that will attain a minimum height of three (3) feet within three (3) years of planting, or by the use of a fence made of wood (or a comparable composite material) that is at least three (3) feet in height and is designed to screen at least three-quarters of the view through the fence from adjacent properties. Screening shall not be required for parking areas located in the portion of a one-or two-car wide driveway between the street and the front of the residence or located adjacent to non-residential property.
 - ~~(e)~~ **(d)** The principal person or persons operating the day care home must reside on the premises;
 - ~~(d)~~ **(e)** The day care home shall employ no more than one (1) person who does not reside on the premises; and
 - ~~(e)~~ **(f)** The operator obtains all required permits and licenses from the Town of Cary.

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

PZ=Permitted Use Requiring Zoning Compliance Permit; AZ= Accessory Use Requiring Zoning Compliance Permit

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	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	

Class]																		
RESIDENTIAL USES																		
Group Living	Family Care Home [5]	PZ	PZ	PZ	PZ	PZ	PZ	PZ						PZ	PZ	PZ	5.2.3 (D)(2)	
Group Living	Group Home [5]	PZ	PZ	PZ	PZ	PZ	PZ	PZ						PZ	PZ	PZ	5.2.3 (D)(4)	
Household Living	Family Care Home [5]	PZ														5.2.1 (D)(2)		
Household Living	Group Home [5]	Allowed in all residential dwellings as otherwise permitted by law, and may not be prohibited through zoning conditions																

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use PZ=Permitted Use Requiring Zoning Compliance Permit; AZ=Assessory Use Requiring Zoning Compliance Permit																
Use Category		HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR-12	CB&R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
RESIDENTIAL USES																
Group Living	Family Care Home	PZ	PZ	PZ	PZ	PZ										5.2.1 (D)(2)
Group Living	Group Home	PZ	PZ	PZ	PZ	PZ										5.2.1 (D)(4)
Household Living	Family Care Home	PZ														5.2.1 (D)(2)
Household Living	Group Home	Allowed in all residential dwellings as otherwise permitted by law, and may not be prohibited through zoning conditions														

TABLE 5.1-3: TABLE OF CORRIDOR TRANSITION (CT) DISTRICT USES

Walnut Street Corridor

P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use

PZ=Permitted Use Requiring Zoning Compliance Permit (Uses not listed are prohibited)

Corridor Sub-Area	Nursing home	Detached dwelling	Family Care & Group Home ¹	Multi-family dwelling	Live/work unit	Day care home	Public utility facility	Park, public	Religious assembly	Club, lodge or hall	Office	Guest house	Funeral home	Personal service establishment	Retail store	Restaurant
Conversion Area		P	<u>PZ</u>		S/P	S/P		P			S/P	S/P		S/P		
Redevelopment Area (on parcels less than 1 acre)		P	<u>PZ</u>		P	P		P			P	P		P		
Redevelopment Area (on parcels with 1 or more acres)	P	P	<u>PZ</u>	P	P	P	P	P	P	P	P	P	P	P	P	P
Infill Area (1st 300 feet from Walnut St.)	P	P	<u>PZ</u>	P	P	P	P	P	P	P	P	P	P	P	P	P
Infill Area (301 or more feet from Walnut St.)		P	<u>PZ</u>					P	P							
Use Specific Standards	5.2.1 (G)	5.2.1 (M)	<u>5.2.1 (D)</u>	5.2.1 (F)		5.2.2 (B)		5.2.2 (A) & (D)	5.2.2 (E)	5.2.2 (E)		5.2.3 (D)		5.2.3 (K)	5.2.3 (K)	5.2.3 (K)

¹ Family care Homes and Group Homes are allowed in all residential dwellings as otherwise permitted by law, and may not be prohibited through zoning conditions.

12.3.2 USE CLASSIFICATIONS: Residential Uses

(A) Group Living

This category is characterized by residential occupancy of a structure by a group of people who do not meet the definition of "Household Living." Tenancy is arranged on a monthly or longer basis, and the size of the group may be larger than a family. Generally, Group Living structures have a common eating area for residents. The residents may receive care, training, or treatment, and caregivers may or may not also reside at the site. Accessory uses commonly include recreational facilities and vehicle parking for occupants and staff. Specific use types include:

(1) ***Dormitory...***

(2) ***Group Home [Reserved]***

A dwelling unit in which persons with handicaps, as such term is defined in the Federal Fair Housing Act, 42 U.S.C. § 3602, or persons with disabilities, as such term is defined in G.S. Chapter 168, Article 3, live together as a single housekeeping unit without the assistance of support and supervisory personnel.

(3) ***Life Care Community...***

(4) ***Nursing Home...***

(5) ***Boarding House...***

(6) ***Family Care Home***

A dwelling unit in which room and board, personal care and habilitation services, with the assistance of support and supervisory personnel, are provided for not more than six (6) persons with disabilities, as such term is defined in the Federal Fair Housing Act, 42

~~U.S.C. § 3602, or persons with handicaps, as such term is defined in G.S. Chapter 168, Article 3.~~

(B) Household Living

This use category is characterized by residential occupancy of a dwelling unit by a family or by persons with handicaps, as such term is defined in the Federal Fair Housing Act, 42 U.S.C. § 3602, or persons with disabilities, as such term is defined in G.S. Chapter 168, Article 3. Tenancy is arranged on a month-to-month or longer basis (lodging where tenancy may be arranged for a period of less than thirty (30) days is classified under the "Visitor Accommodation" category). Common accessory uses include recreational activities, raising of pets, gardens, personal storage buildings, hobbies, and parking of the occupants' vehicles. Home Occupations, Accessory Dwelling Units, and Caretaker's Residence are accessory uses that are subject to additional regulations (see Section 5.3.4). Specific use types include, but are not limited to:

- (1) ***Accessory Dwelling Unit...***
- (2) ***Bed and Breakfast...***
- (3) ***Caretaker's Residence...***
- (4) ***Detached Dwelling...***
- (5) ***Duplex Dwelling...***

(6) Family Care Home

A dwelling unit in which room and board, personal care and habilitation services, with the assistance of support and supervisory personnel, are provided for not more than six (6) persons with disabilities, as such term is defined in the Federal Fair Housing Act, 42 U.S.C. § 3602, or persons with handicaps, as such term is defined in G.S. Chapter 168, Article 3.

(7) Group Home

A dwelling unit in which persons with handicaps, as such term is defined in the Federal Fair Housing Act, 42 U.S.C. § 3602, or persons with disabilities, as such term is defined in G.S. Chapter 168, Article 3, live together as a single housekeeping unit without the assistance of support and supervisory personnel.

- ~~(6)~~ **(8) *Live/Work Unit...***
- ~~(7)~~ **(9) *Manufactured Home...***
- ~~(8)~~ **(10) *Manufactured Home Park...***
- ~~(9)~~ **(11) *Mid-Rise Multi-Family Dwelling...***
- ~~(10)~~ ***{Reserved}***
- ~~(11)~~ **(12) *Modular Home...***
- ~~(12)~~ **(13) *Multi-Family Dwelling...***
- ~~(13)~~ **(14) *Patio Dwelling...***
- ~~(14)~~ **(15) *Semi-Detached/Attached Dwelling...***
- ~~(15)~~ **(16) *Townhouse...***
- ~~(16)~~ **(17) *Utility Dwelling Unit...***

[Return to Top](#)

ITEM 26 G Mixed Use Overlay District Development Standards

BACKGROUND

In response to direction from Town Council at its meeting on May 23, 2013, staff has prepared an LDO amendment to eliminate the required maximum buffer width in the Mixed Use Overlay District.

PROPOSED TEXT

4.4.2 OVERLAY ZONING DISTRICTS: Mixed Use Overlay

(F) Development Standards

Notwithstanding an approved ACCP/MUSP or existing planned development master plan, any development and/or redevelopment proposed for parcels located within a Mixed Use Overlay District shall meet the following development standards:

- (1) Any conditions related to allowable land uses and/or landscaping buffer provisions applied through a conditional use rezoning shall continue to apply unless the property is subsequently rezoned to the MXD district and said conditions are not included as development requirements of the MXD district; and
- ~~(2) Buffer widths shall not exceed the requirements otherwise specified within this Ordinance. The maximum perimeter buffer type and width shall be a sixty-five (65) foot Type A opaque buffer as described in Section 7.2.3, unless otherwise controlled through a previous conditional use rezoning; and~~
- ~~(3)~~(2) The road network shall be designed to ensure that adjacent residential areas will have direct access to the non-residential portions of the activity center in lieu of entering and exiting through thoroughfares and/or collector streets; and
- ~~(4)~~(3) The development/redevelopment shall provide or contribute to a pedestrian and road network that connects non-residential and existing residential uses (multi-family and single-family) developments in accordance with town-wide design guidelines.

Exceptions may be considered to items ~~3 and 4~~ 2 and 3 above where adjacent established single family residential developments (not part of an approved mixed use sketch plan or an existing master plan) are proposed to connect through a roadway to a Regional Mixed Use Center. This exemption shall not apply when public uses (including but not limited to schools, libraries, and parks) are proposed within a Regional Mixed Use Center.

[Return to Top](#)

ITEM 26 H Zoning Board of Adjustment and Special Use Hearings

BACKGROUND

The proposed amendments would clarify and modernize provisions related to the Zoning Board of Adjustment (ZBOA) consistent with recent statutory revisions (*H.B 276, An Act to Clarify and Modernize Statutes Regarding Zoning Boards of Adjustment*,) which become effective on October 1, 2013. Additional information regarding the statutory revision can be found at: <http://canons.sog.unc.edu/?p=7155>

The statute governing Boards of Adjustment dictates methods of procedures and standards of review for certain quasi-judicial proceedings, including requests for special use permits, variances, and reasonable accommodations under the Federal Fair Housing Act, as well as appeal of staff decisions regarding the Land Development Ordinance (LDO). In the Town of Cary, the ZBOA hears most requests for variances and reasonable accommodations and all appeals, and a certain limited number of special use permit requests (the Town Council hears the majority of special use permit requests).

Because both the Town Council and ZBOA perform duties regulated by this statute, certain procedures and standards have been amended that affect both the Town Council and ZBOA. These potential amendments are identified conceptually by key issue, as identified in the table below. A summary of current ordinance requirements is provided for context, and proposed changes required by the new legislation are then listed.

NOTICE OF QUASI-JUDICIAL HEARINGS (SPECIAL USE, VARIANCE, APPEAL, REASONABLE ACCOMMODATION, SITE AND SUBDIVISION PLANS)	
Existing	Proposed
Published notice required for all hearings.	To ensure consistency with state law, staff suggests eliminating the published notice requirement for all quasi-judicial hearings.
Mailed notice required to all property owners within 100 feet of the subject property.	To ensure consistency with state law, staff suggests requiring a mailed notice to abutting owners only. (<i>The requirement for a mailed notice to property owners within 100 feet would continue to apply to required mailings for hearings that are <u>not</u> quasi-judicial</i>).
Posted notice must remain posted for 7 days.	Text clarifies that posted notice must be placed at least 10, but no more than 25, days before the hearing.
VOTING REQUIREMENTS FOR THE ZBOA	
Existing	Proposed
All ZBOA decisions must be made by a 4/5 majority of the Board.	A 4/5 majority is only required for decisions on variances; a simple majority vote is required for special use, appeal, and reasonable accommodation determinations.
VARIANCES	
Existing	Proposed
Allows variances from: <ul style="list-style-type: none"> • lot width, setback, height, building coverage, or structure spacing standards • buffer width standards for perimeter buffers & landscaped areas • off-street parking and loading standards • setback standards for real estate signs • square footage standards of verandah and wall signs • requirements for signage in the Town Center 	Allows variances from all LDO standards, except (1) those that would constitute a use variance or (2) those for which alternative waiver or modification procedures are already in place.

<p>Standards for granting a variance include:</p> <ul style="list-style-type: none"> • Special circumstances or conditions exist that are not common to other areas or buildings and practical difficulty may result from strict compliance with the LDO • In determining "practical difficulty," the following factors are considered: <ul style="list-style-type: none"> ○ Whether there can be any beneficial use of the property without the variance; ○ Whether the essential character of the neighborhood would be substantially altered or adjoining properties would suffer a substantial detriment; ○ Whether the variance would adversely affect the delivery of public services such as water and sewer; ○ Whether the applicant purchased the property with knowledge of the requirement; and ○ Whether the applicant's predicament can be mitigated through some method other than a variance. 	<p>New standards for granting a variance, as mandated by the legislation:</p> <ul style="list-style-type: none"> • Applicant must show unnecessary hardship would result if variance is not granted • Applicant is not required to show that "no reasonable use" could be made of the property without the variance • The hardship must result from conditions peculiar to property (similar to current LDO criteria) • The hardship must not result from actions of applicant • The variance must be consistent with spirit & purpose of LDO, public safety secured, substantial justice achieved
--	---

APPEALS OF DECISIONS OF OFFICIALS CHARGED WITH ENFORCEMENT OF THE LDO

Existing	Proposed
Notice of appeal filed with Planning Department	Notice of appeal filed with Town Clerk
Anyone aggrieved by the decision has 30 days from the date of the decision to file an appeal with the ZBOA	<p>The owner or party who sought the decision has 30 days from receipt of the written notice of decision to file an appeal with the ZBOA.</p> <p>Anyone else with standing to appeal the decision has 30 days from receipt of actual or constructive notice to file an appeal with the ZBOA</p> <ul style="list-style-type: none"> • "Constructive notice" will be presumed if a sign is posted on the subject property stating "Zoning Decision" or "Subdivision Decision" and such sign remains posted for 10 days • Posting the sign is the responsibility of the owner or party who sought the decision, though the Town may elect to post the sign
Filing an appeal stays all proceedings in furtherance of the contested action unless the stay would cause imminent peril to life or property.	<p>Appealing a Notice of Violation stays enforcement of the action appealed from unless the stay would cause imminent peril to life or property. If enforcement proceedings are not stayed, the appellant may ask for an expedited hearing with the ZBOA which must take place within 15 days.</p> <p>Appeals of a decision granting a permit or affirming a proposed use of property shall not stay further review of an application for permits or permission to use such property.</p>
Planning Department transmits all records relating to the appeal to the ZBOA.	Official who made the decision must be present at the ZBOA hearing; must prepare the record of documents and exhibits upon which the action appealed from is taken; and must provide a copy to the appellant and property owner as well as the ZBOA.

Mediation not formally addressed but also not precluded by current practice.	Statute specifically provides that the parties to an appeal may agree to mediation or other forms of alternative dispute resolution. The Town may set standards and procedures for facilitating this in the LDO but staff has not chosen to do that as this time.
MISCELLANEOUS	
Existing	Proposed
The ZBOA may issue subpoenas compelling people to testify or produce evidence.	Process for asking for and obtaining subpoena is further described. Removes current statutory protection of testimony from being used against the witness in a separate criminal or civil proceeding.
Decisions on special use, variance, appeal, and reasonable accommodations requests may be delivered by personal delivery or certified mail.	Removes requirement for certified mail and allows delivery by electronic mail or first class mail.
Allows the ZBOA to hear requests for special exceptions from the ordinance to accommodate uses protected by the Federal Fair Housing Act.	Removes reference to "special exception" as such term has been removed from the statute. ZBOA has jurisdiction to hear and decide "all matters" that the LDO requires it to hear, including reasonable accommodation requests.

PROPOSED TEXT

(portion of) **TABLE 2.1-1: SUMMARY OF ORDINANCE ADMINISTRATION AND REVIEW ROLES**
NOTE: This table summarizes the general review and decision-making responsibilities for the procedures contained in Chapter 3.

Exceptions to these general rules may apply; see Chapter 3 for complete details on each procedure.
Review = Responsible for Review and/or Recommendation Hearing = Public or Quasi-Judicial Hearing Required
Decision = Responsible for Final Decision to Approve or Deny Appeal = Authority to Hear and Decide Appeals

Procedure	Section	Town Council	Planning and Zoning Board	Zoning Board of Adjustment	PRCR Advisory Board	Staff Departments	Notes
Appeals from and review of any order, requirement, decisions of, or determination made by an administrative official, including fines and penalties	3.21	Hearing/ Decision (some)	-	Hearing/ Decision	-	Review	[11] [13]
<u>Special Exception Reasonable Accommodation</u>	3.25			Hearing/ Decision		Review	[13]

2.4.2 ZONING BOARD OF ADJUSTMENT: Other Powers and Duties

The Zoning Board of Adjustment shall have the following additional powers and duties, to be carried out in accordance with the terms of this Ordinance:

- (A) ~~To interpret zoning maps, district boundary lines, and similar questions as they arise as appeals from the Planning Director's interpretation of this Ordinance subpoena witnesses and compel production of evidence pursuant to the provisions of NCGS 160A-388(g); and~~

- (B) Such additional powers and duties as may be set forth for the Zoning Board of Adjustment elsewhere in this Ordinance and other ordinances of the Town.

3.1.6 COMMON REVIEW AND APPROVAL PROCEDURES: Notice Requirements

(A) **Content of Notices**

All notices required under this Ordinance shall comply with notice requirements set forth in the North Carolina General Statutes. Generally, all notices of public or quasi-judicial hearing should, unless otherwise specified in this Ordinance: (1) identify the date, time, and place of the public hearing, (2) if applicable, describe the property involved in the application by street address or by Property Identification Number (PIN) and nearest cross street; (3) describe the nature of the proposed action and in the case of zoning map amendments, that the proposed change may be made to the entire area described or any part or parts of each area to the classification designated or to any more restrictive classification; (4) indicate that interested parties may appear at the hearing and speak on the matter; and (5) indicate where additional information on the matter may be obtained.

(C) **Written (Mailed) Notice**

(1) Application or Procedure Not Requiring a Quasi-Judicial Hearing

When the provisions of this Ordinance or law require that written or mailed notice be provided for any application or procedure that does not require a quasi-judicial hearing, the Planning Director shall cause to be prepared a list of all owners of all properties located within one hundred (100) feet of the subject property and their current addresses, compiled from the current tax abstracts of Wake County or Chatham County, as the case may be. The Director shall deliver a notice of the hearing to those property owners by first class mail, with such notices being deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. The Town staff person who mails such notices shall keep a record of the notices mailed, and the date of mailing.

(2) Application or Procedure Requiring a Quasi-Judicial Hearing

When the provisions of this Ordinance or law require that written or mailed notice be provided for any application or procedure that requires a quasi-judicial hearing, notice of such hearing shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; and to the owners of all parcels or land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the Town may rely on the county tax listing to determine owners of property entitled to mailed notice. The Director shall deliver a notice of the hearing to those property owners by first class mail, with such notices being deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of mailing shall not be counted, but the day of the hearing shall be counted. The Town staff person who mails such notices shall keep a record of the notices mailed, and the date of mailing.

(D) **Posted Notice**

When the provisions of this Ordinance or law require that notice be posted, the Planning Director shall cause a notice to be posted on the property for at least seven (7) days ~~before the scheduled hearing date.~~ Such notice should be posted at least ten (10) but not more than twenty-five (25) days prior to the scheduled date of the hearing. In computing such period, the day of posting shall not be counted, but the day of the hearing shall be counted. If no part of the subject property is visible from the public right-of-way, the notice shall be posted along the nearest street in the public right-of-way. Posted notices shall ~~list contact~~ provide information for interested parties to utilize in order to obtain information regarding the proposed application. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but sufficient notices shall be posted to provide reasonable notice to interested persons.

<i>(portion of)</i> 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)
Special Uses	3.8	Yes No	Yes	Yes
New Subdivisions and Site Plans Reviewed by Planning Director	3.9.2(G)	N/A	N/A	N/A
<u>Subdivisions and Site Plans Reviewed by Town Council or Zoning Board of Adjustment</u>	<u>3.9.2(H)</u>	<u>No</u>	<u>Yes</u>	<u>Yes</u>
Variances	3.20	Yes No	Yes	Yes
Appeals of Administrative Decisions	3.21	Yes No	Yes	Yes
<u>Reasonable Accommodation</u>	<u>3.25</u>	<u>No</u>	<u>Yes</u>	<u>Yes</u>

3.1.7 COMMON REVIEW AND APPROVAL PROCEDURES: ~~Public~~ Hearing Procedures

The procedures and requirements set forth in this section shall apply to all ~~public~~ hearings required by this Ordinance, both legislative public hearings and at quasi-judicial ~~public~~ evidentiary hearings at which evidence is submitted and testimony given under oath, unless a contrary intent is indicated.

- (A) When the Town has determined that an application is complete and that a ~~public~~ hearing is required by this Ordinance, the Director shall schedule a date, time, and place for the required hearing, and shall ensure that all notices are provided pursuant to Section 3.1.6 above.
- (B) Any person may appear and speak at the ~~public~~ hearing. Legislative public hearing comments should be directed toward the substance of the proposed action. In quasi-judicial evidentiary hearings, the applicant and any person supporting or opposing the request may submit evidence in explanation or support of or rebuttal or opposition to the application being considered.
- (C) Each person who appears at a ~~public~~ hearing shall identify himself or herself and his or her address and, if appearing on behalf of an organization, shall state the name and mailing address of the organization, and shall observe any rules related to the conduct of the ~~public~~ hearing adopted by Council or the appropriate board.
- (D) All testimony and evidence given in a quasi-judicial ~~public~~ evidentiary hearing in front of the Zoning Board of Adjustment or the Town Council shall be given under oath or by affirmation to the body conducting the hearing.
- (E) In a quasi-judicial ~~public~~ evidentiary hearing, any party participating in the hearing or their legal representative may, upon receiving proper recognition from the chairperson of the body conducting the hearing, question or cross-examine other persons appearing as witnesses who present adverse evidence or testimony.
- (F) In a quasi-judicial ~~public~~ evidentiary hearing, the chairperson of the body conducting the hearing may exclude any testimony, evidence, or questioning that the chairperson finds to be incompetent, irrelevant, immaterial, or unduly repetitious.
- (G) In a quasi-judicial ~~public~~ evidentiary hearing, at any time upon reasonable request, any person may examine the application and materials submitted in support of or in opposition to an application. The Town shall ensure that copies of such materials are made available.

3.8.1 SPECIAL USES: General Provisions

- (A) **Purpose and Applicability**
Special uses are generally compatible with other land uses permitted in a zoning district yet, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Town as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may require the imposition of individualized conditions in order to ensure

that the use is appropriate at a particular location. Any use designated in Chapter 5 of this Ordinance as a "special use" shall not be established without the approval of the Town Council or the Zoning Board of Adjustment, as appropriate, in accordance with the procedures and requirements set forth in this section. The Town Council shall have final decision-making authority on special use requests, except for properties owned by the Town, which shall be reviewed by the Zoning Board of Adjustment, and for any other category of uses for which this Ordinance designates the Zoning Board of Adjustment as the decision-making body.

3.8.2 SPECIAL USES: Procedures

(E) Review and Decision

- (1) The decision-making body shall hold at least one (1) ~~public quasi-judicial~~ hearing on the proposed special use and, based on the staff report, the approval criteria of Section 3.8.3, and any applicable use-specific standards of Section 5.2 or 5.3, approve, approve with modifications, or deny the proposed special use. ~~The Town Council decision-making body may approve, or approve with modifications, any special use by a majority vote. The Zoning Board of Adjustment shall not approve, or approve with modifications, any special use unless there is a concurring vote of at least four-fifths (4/5) of the members of the Board.~~
- (2) If the special use also requires a site plan, then the decision-making body shall also review the site plan in accordance with Section 3.9. Final action to approve the site plan shall not occur until after approval of the special use.
- (3) The decision-making body shall determine contested facts and make its decision within a reasonable time. The decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and shall be ~~Any approval or denial of a special use permit application shall not be considered final until a written resolution or decision that includes findings is signed by the Mayor, or his designee, on behalf of the Town Council and filed with the Clerk, or by the Chair of the Zoning Board of Adjustment, or his designee, on behalf of the Zoning Board of Adjustment and filed with the Clerk to the Board. The date of the signed resolution or decision shall be considered the date of final action.~~ The decision is effective upon filing with the appropriate Clerk.
- (4) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.8.4 SPECIAL USES: Effect of Approval or Denial

(A) Conditions

In approving a special use, the decision-making body may attach such conditions as it deems necessary to have the proposed use meet the standards set forth in this Ordinance and to protect the public health, safety, general welfare. All such conditions shall be reasonable and appropriate and shall be stated in the resolution approving the application.

3.8.6 SPECIAL USES: Appeal

Every decision on a request for a special use permit shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160A-393. Any appeal from the decision of the decision-making body on an application for special use shall be to the Superior Court for Wake County (or Chatham County if the subject property is located within that jurisdiction) by petition for a writ of certiorari. Any such petition for review shall be filed with the clerk of the Superior Court shall be filed with the Court Clerk no later than by the later of thirty (30) days after the date of final action the decision is effective, or after a written copy thereof is given in accordance with Section 3.8.2(E)(4). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition, as specified in Section 3.8.2(E)(3), by the decision-making body on the application.

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

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

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

The application, recommendations, and comments of the Development Review Committee and other appropriate review bodies shall be forwarded to the Town Council or Zoning Board of Adjustment, as appropriate, for action. The Town Council or Zoning Board of Adjustment shall review this information, hold a quasi-judicial hearing, and approve, conditionally approve, or reject the plan within ninety (90) days of receipt of the plan unless the applicant has caused additional delay beyond this ninety (90)-day period by failing to provide necessary or accurate information. Notice of the hearing shall be provided and the hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7. The decision-making body ~~Town Council~~ may approve, or conditionally approve, any plan by a majority vote. ~~The Zoning Board of Adjustment shall not approve, or conditionally approve, any plan unless there is a concurring vote of at least four-fifths (4/5) of the members of the Board.~~ The decision shall be reduced to writing and reflect the decision-making body's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Mayor, or his designee, on behalf of the Town Council and filed with the Clerk, or by the Chair of the Zoning Board of Adjustment, or his designee, on behalf of the Zoning Board of Adjustment and filed with the Clerk to the Board. The decision is effective upon filing the written decision with the Clerk. The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.20 VARIANCES

3.20.1 Purpose and Scope

The variance process is intended to provide limited relief from the requirements of this Ordinance in those cases where strict application of a particular requirement will create an practical difficulty or unnecessary hardship prohibiting the use of land in a manner otherwise allowed under this Ordinance. It is not intended that variances be granted merely to remove inconveniences or financial burdens that the requirements of this Ordinance may impose on property owners in general. Rather, it is intended to provide relief where a hardship results from conditions peculiar to ~~the requirements of this Ordinance render the land difficult or impossible to use because of some unique physical attribute of the property itself or some other factor unique to the property for which the variance is requested.~~ State and/or federal laws or requirements may not be varied by the Town.

3.20.2 Provisions From Which Variances Are Allowed

~~Only t~~The following standards of this Ordinance are eligible for a variance:

- ~~(A) Any of the development or zoning district standards listed in Table 3.19-1 or any building encroachment into a required setback, but only when the Minor Modification procedures in Section 3.19 are unable to address the hardship; and, The lot width, setback, height, building coverage, or structure spacing standards set forth in Chapters 6 and 7;~~
- ~~(B) Any other provision of this Ordinance, so long as the Ordinance does not provide a mechanism for modification or waiver of the provision, and the requested variance would not constitute a use variance as further described in Section 3.20.4(E).
The buffer width standards set forth in Section 7.2.3 when the Minor Modification procedures in Section 3.19 are unable to address the hardship;~~
- ~~(C) Any of the off-street parking and loading standards set forth in Section 7.8 when the Minor Modification procedures in Section 3.19 are unable to address the hardship;~~
- ~~(D) The setback standards for real estate signs set forth in Section 9.3.2(Q) or 9B.2(D), whichever is applicable;~~

- ~~(E) The square footage standards of verandah and wall signs set forth in Section 9.3.2(W) and (X), or 9A.3.1(K) and (L), whichever is applicable; and~~
- ~~(F) The requirements for signage in the Town Center area set forth in Section 9.6 or 9A.3, whichever is applicable.~~

3.20.3 Application Requirements; Determination of Completeness

(A) Persons Authorized to File Applications

An application for a variance may be filed only by the owner of the land affected by the variance; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

(B) Pre-Application Conference

Before filing a variance application, the applicant shall request a pre-application conference with the Planning Department. See Section 3.1.5.

(C) Application Filing

An application for a variance shall be filed with the Planning Department. Once the application is complete, the Planning Department shall schedule the application for consideration at a public hearing before the Zoning Board of Adjustment, and shall transmit to the Zoning Board of Adjustment all applications and other records pertaining to such variance prior to the hearing on the application.

3.20.4 Action by the Zoning Board of Adjustment

- (A) Upon receiving the application materials from the Planning Department, the Zoning Board of Adjustment shall hold a quasi-judicial public hearing on the proposed variance. Notice of the public hearing shall be provided and the quasi-judicial public hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.
- (B) In considering the application, the Zoning Board of Adjustment shall review the application materials, the approval criteria of Section 3.20.5, and all testimony and evidence received at the public hearing.
- (C) After conducting the public hearing, the Zoning Board of Adjustment may: deny the application; conduct an additional public hearing on the application; or grant the requested variance. ~~Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the variance meets or does not meet each of the criteria set forth in Section 3.20.5, stating the reasons for such findings. The Zoning Board of Adjustment shall not grant any variance unless there is a concurring vote of at least four-fifths (4/5) of the members.~~
- (D) In granting any variance, the Zoning Board of Adjustment may attach such conditions to the approval as it deems necessary and appropriate to satisfy the criteria set forth in Section 3.20.5, to reduce or minimize any injurious effect of such variance upon other property in the neighborhood, and to ensure compliance with other terms of this Ordinance provided such conditions are reasonably related to the ~~condition or circumstance that gives rise to the need for a variance.~~
- (E) Under no circumstances shall the Zoning Board of Adjustment grant a variance to allow a use not permitted, or a use expressly or by implication prohibited under the terms of this Ordinance for the zone district containing the property for which the variance is sought.
- (F) Under no circumstances shall the Board of Adjustment grant a variance from any written conditions attached by the Town Council to its approval of a Special Use (Section 3.8), conditional use district (Section 3.4), aspect of an approved planned development master plan (Section 3.4) or preliminary development plan or site plan associated with a mixed use district zoning (Section 3.4.5). Development standards for subdivisions and site plans (Section 3.9) that were approved by Town Council but could, by current standards, be approved administratively may be eligible for a variance.
- (G) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the approval criteria of Section 3.20.5. The written decision shall be signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Clerk to the Board.
- (H) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a

copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.20.5 Approval Criteria

The Zoning Board of Adjustment may approve the variance only if it finds that all of the criteria below have been met:

- (A) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property. Special circumstances or conditions exist (e.g., narrowness, exceptional topographic conditions, or the shape of the property) that are not common to other areas or buildings that are similarly situated and practical difficulty may result from strict compliance with this Ordinance's standards, provided that the requested variance will not have the effect of nullifying or impairing the intent and purposes of either the specific standards, this Ordinance, or the Comprehensive Plan. In determining "practical difficulty," the Zoning Board of Adjustment shall consider the following factors:
 - (1) ~~Whether there can be any beneficial use of the property without the variance;~~
 - (2) ~~Whether the essential character of the neighborhood would be substantially altered or whether adjoining properties would suffer a substantial detriment as a result of the variance;~~
 - (3) ~~Whether the variance would adversely affect the delivery of public services such as water and sewer;~~
 - (4) ~~Whether the applicant purchased the property with knowledge of the requirement; and~~
 - (5) ~~Whether the applicant's predicament can be mitigated through some method other than a variance.~~
- (B) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardship resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. No variance shall be granted if the conditions or circumstances affecting the applicant's property are of so general or recurrent a nature as to make reasonably practicable the formulation of a general regulation for such conditions or situations.
- (C) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship. If authorized, the variance shall represent the least deviation from the regulations that will afford relief.
- (D) The requested variance is consistent with the spirit, purpose, and intent of the Ordinance, such that public safety is secured, and substantial justice is achieved.

3.20.6 Effect of Approval or Denial

- (A) After the Zoning Board of Adjustment approves a variance, the applicant shall follow the Procedures set forth in this Chapter 3 for the approval of all permits, certificates, and other approvals required in order to proceed with development of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the variance granted by the Zoning Board of Adjustment.
- (B) The Zoning Board of Adjustment shall refuse to hear a variance request that has been previously denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

3.20.7 Lapse

In situations where a variance was a prerequisite to site plan and/or subdivision approval, failure of an applicant to apply for a building permit and commence construction or action with regard to the variance approval within one (1) year of receiving approval of the variance shall automatically render the decision of the Zoning Board of Adjustment null and void.

3.20.8 Appeal

Every decision on a request for a variance shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to NCGS 160A-393. Any appeal from the decision of the Zoning Board of Adjustment shall be to the Superior Court for Wake County (or Chatham County if the subject property is located within that jurisdiction) by petition for a writ of certiorari.

~~Any such petition for review shall be filed with the clerk of the Superior Court shall be filed with the court clerk no later than by the later of thirty (30) days after the date the decision is effective of the Zoning Board of Adjustment is filed in the Planning Department, or after the date a written copy of the decision is given in accordance with Section 3.20.4(H). When first-class mail is used to deliver notice, three days shall be added to the time to file the petition. delivered to every aggrieved party who has filed a written request for such copy with the Zoning Board of Adjustment at the public hearing, whichever is later. The copy of the decision shall be delivered to the aggrieved party either by personal delivery or by registered or certified mail, return receipt requested.~~

3.21 APPEALS OF ADMINISTRATIVE DECISIONS

3.21.1 Purpose and Scope

The Zoning Board of Adjustment shall hear appeals as provided below, and the duties of the Town Council in connection with this Ordinance shall not include the hearing or passing upon disputed questions that may arise in connection with the enforcement thereof, unless otherwise specifically required by this Ordinance.

3.21.2 Decisions That May Be Appealed

~~An appeal may be brought by the Town or any person who has standing under NCGS 160A-393(d) aggrieved by from any order, requirement, decision, or determination that is made by an administrative official charged with enforcement of the Land Development Ordinance. As used in this section, "decision" includes any final and binding order, requirement, or determination. Appeal shall be made to the Zoning Board of Adjustment, unless this Ordinance requires that the appeal be made to the Town Council.~~

3.21.3 Filing of Appeal; Effect of Filing

- ~~(A) An application for an appeal shall be filed with the Planning Department Town Clerk. The notice of appeal shall state the grounds for the appeal. Once the application is complete, the Planning Department shall schedule the appeal for consideration at a public hearing before the Zoning Board of Adjustment. The Department and the administrative officer from whom the appeal is taken shall transmit to the Zoning Board of Adjustment all applications and other records pertaining to such appeal. The application shall be filed no later than thirty (30) days after the date of the contested action.~~
- ~~(B) The official who made the decision shall give written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.~~
- ~~(C) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt of any source or actual or constructive notice of the decision within which to file appeal.~~
- ~~(D) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign, no greater than five (5) square feet in area, containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact the Planning Department for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant, although the Town may elect to post such sign after any decision is made. If the landowner or applicant posts such sign, verification of the posting in the form of a certification under oath made by the applicant or landowner shall be provided to the official who made the decision.~~
- ~~(E) The official who made the decision shall transmit to the Board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.~~
- ~~(F) Except for appeals of civil penalty amounts, the filing of an appeal shall stay all proceedings in furtherance of the contested action, unless the Planning Director certifies to the Zoning Board of Adjustment that, in his or her opinion by reason of facts stated in the certification, such a stay would cause imminent peril to life and property. In such case, proceedings shall~~

~~not be stayed except by a restraining order granted by the Zoning Board of Adjustment or by the Wake County Superior Court (or Chatham County if the subject property is located within that jurisdiction) on notice to the administrative official from whom the appeal is taken, with due cause shown. An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision certifies to the Board after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of the Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the official a request for an expedited hearing of the appeal, and the Board shall meet to hear the appeal within 15 days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with the ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications or building permits affected by the issued being appealed.~~

- (G)** The parties to an appeal may agree to mediation or other forms of alternative dispute resolution.

3.21.4 Action by the Zoning Board of Adjustment

- (A)** ~~Upon receiving the application materials from the Planning Director, t~~The Zoning Board of Adjustment shall hold a public quasi-judicial hearing on the appeal and shall decide the appeal upon a majority vote of the members within a reasonable time, subject to the provisions of 3.21.3(F). Notice of the public hearing shall be provided and the quasi-judicial public hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7. The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board shall continue the hearing.
- (B)** ~~Either at the public hearing or a subsequent meeting, the Zoning Board of Adjustment shall adopt a written resolution reversing, or affirming, wholly or partly, or modifying the contested action decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. In reversing, affirming, or modifying the contested action, the Zoning Board of Adjustment shall have all relevant powers of the administrative officer from whom the appeal is taken.~~
- (C)** ~~The Zoning Board of Adjustment shall not reverse or modify the contested action unless it finds that the administrative officer erred in the application or interpretation of the terms of this Ordinance or related policies adopted by the Town.~~
- (D)** When hearing an appeal pursuant to NCGS 160A-400.9(e) (certificate of appropriateness, historic district) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in NCGS 160A-393(k). ~~The Zoning Board of Adjustment shall not reverse or modify the contested action unless there is a concurring vote of at least four-fifths (4/5) of the members.~~
- (E)** ~~When hearing an appeal regarding a civil penalty amount, in t~~ determining the penalty or fine, the Zoning Board of Adjustment shall consider the following:
- (1)** The gravity of the violation;
 - (2)** Any action taken by the violator to correct the violation;
 - (3)** The cost of the action to correct the violation, and
 - (4)** Any previous violation committed by the violator, on the same or different site.
- (F)** The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Clerk to the Board.
- (G)** The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.21.5 Effect of Reversal or Modification

In the event that the Zoning Board of Adjustment reverses or modifies the contested action, all subsequent actions taken by administrative officers with regard to the subject matter shall be in accordance with the reversal or modification granted by the Zoning Board of Adjustment.

3.21.6 Appeal from Zoning Board of Adjustment

Any appeal from a decision of the Zoning Board of Adjustment shall be to the Superior Court for Wake County (or Chatham County if the subject property is located within that jurisdiction) by petition for a writ of certiorari. Any such petition to the Superior Court shall be filed with the Court Clerk ~~no later than~~ by the later of thirty (30) days after the date the decision of the Zoning Board of Adjustment is effective ~~filed in the Planning Department~~, or after the date a written copy of the decision is given in accordance with Section 3.21.5(G) ~~delivered to every aggrieved party who has filed a written request for such copy with the Zoning Board of Adjustment at the public hearing, whichever is later~~. The copy of the decision shall be delivered to the aggrieved party either by personal delivery or by registered or certified mail, return receipt requested. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

3.25 SPECIAL EXCEPTION REASONABLE ACCOMMODATION

3.25.1 Authority and Purpose

The Zoning Board of Adjustment is authorized to grant ~~special exceptions for the circumstances set forth in this section to allow for a~~ reasonable accommodations under the Federal Fair Housing Act for the circumstances set forth in this section.

3.25.2 Application Requirements; Determination of Completeness

(A) **Persons Authorized to File Applications**

An application for a reasonable accommodation ~~special exception~~ may be filed only by the owner of the land affected by the reasonable accommodation ~~special exception~~; an agent, lessee, or contract purchaser specifically authorized by the owner to file such application; or any unit of government that is not the owner of the lot but proposes to acquire the lot by purchase, gift, or condemnation.

(B) **Pre-Application Conference**

Before filing an application for a reasonable accommodation ~~special exception~~, the applicant may request a pre-application conference with the Planning Department. See Section 3.1.5.

(C) **Application Filing**

An application for a reasonable accommodation ~~special exception~~ shall be filed with the Planning Department. No filing fee is required for such application. Once the application is complete, the Planning Department shall schedule the application for consideration at a public hearing before the Zoning Board of Adjustment, and shall transmit to the Zoning Board of Adjustment all applications and other records pertaining to such reasonable accommodation ~~special exception~~ prior to the hearing on the application.

3.25.3 Action by the Zoning Board of Adjustment

(A) Upon receiving the application materials from the Planning Department, the Zoning Board of Adjustment shall hold a quasi-judicial public hearing on the proposed reasonable accommodation ~~special exception~~ and shall decide the request upon a majority vote of the members within a reasonable time. Notice of the public hearing shall be provided and the quasi-judicial public hearing shall be conducted in accordance with Sections 3.1.6 and 3.1.7.

(B) In considering the application, the Zoning Board of Adjustment shall review the application materials, the approval criteria of Section 3.25.4, and all testimony and evidence received at the public hearing.

(C) After conducting the public hearing, the Zoning Board of Adjustment may: deny the application; conduct an additional public hearing on the application; or grant the requested reasonable accommodation ~~special exception~~. Any approval or denial of the request shall be by resolution, accompanied by written findings of fact that the special exception meets or does not meet both of the criteria set forth in Section 3.25.4, stating the reasons for such findings. The Zoning Board of Adjustment shall not grant any special exception unless there is a concurring vote of at least four-fifths (4/5) of the members.

(D) The Zoning Board of Adjustment's decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and reflect the Board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the Chair of the Board or his designee. The decision is effective upon filing the written decision with the Clerk to the Board.

(E) The decision shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

3.25.4 Approval Criteria

The Board of Adjustment shall grant a reasonable accommodation ~~special exception~~ to any provision of this ordinance ~~as a reasonable accommodation under the Federal Fair Housing Act~~ if the Board finds by a greater weight of the evidence that the proposed reasonable accommodation ~~special exception~~ is determined to be both reasonable and necessary, in accordance with the following:

(A) "Reasonable"

An accommodation will be determined to be reasonable if it would not undermine the legitimate purposes and effects of existing zoning regulations, and if it will not impose significant financial and administrative burdens upon the Town and/or constitute a substantial or fundamental alteration of the Town's ordinance provisions; and

(B) "Necessary"

An accommodation will be determined to be necessary if it would provide direct or meaningful therapeutic amelioration of the affects of the particular disability or handicap, and would afford handicapped or disabled persons equal opportunity to enjoy and use housing in residential districts in the Town.

3.25.5 Effect of Approval or Denial

(A) After the Zoning Board of Adjustment approves a reasonable accommodation ~~special exception~~, the applicant shall follow the procedures set forth in this Chapter 3 for the approval of any permits, certificates, and other approvals required in order to proceed with development or use of the property. All orders, decisions, determinations, and interpretations made by administrative officers under those procedures shall be consistent with the reasonable accommodation ~~special exception~~ granted by the Zoning Board of Adjustment.

(B) The Zoning Board of Adjustment shall refuse to hear a reasonable accommodation ~~special exception~~ request that has been previously denied, unless it finds that there have been substantial changes in the conditions or circumstances relating to the matter.

3.25.6 Lapse

In situations where a reasonable accommodation ~~special exception~~ was a prerequisite to site plan and/or subdivision approval, failure of an applicant to apply for a building permit and commence construction or action with regard to the special exception approval within one (1) year of receiving approval of the reasonable accommodation ~~special exception~~ shall automatically render the decision of the Zoning Board of Adjustment null and void.

3.25.7 Appeal

Any appeal from the decision of the Zoning Board of Adjustment shall be to the Superior Court for Wake County (or Chatham County if the subject property is located within that jurisdiction) by petition for a writ of certiorari. Any such petition to the Superior Court shall be filed with the court clerk ~~no later than~~ by the later of thirty (30) days after the date the decision of the Zoning Board of Adjustment is effective ~~filed in the Planning Department, or after the date a written copy of the decision is given in accordance with Section 3.25.3(E) delivered to every aggrieved party who has filed a written request for such copy with the Zoning Board of Adjustment at the public hearing,~~ whichever is later. The copy of the decision shall be delivered to the aggrieved party either by personal delivery or by registered or certified mail, return receipt requested. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

5.2.1 USE-SPECIFIC STANDARDS: Residential Uses

(D) Group Home; Family Care Home

(1) *Group Home*

- (f) The property owner may request a ~~special exception~~ reasonable accommodation to the requirements of Section 5.2.1(D)(1)(a) through (d), or any other standards of this ordinance as needed to ensure ~~reasonable accommodation~~ in compliance with the Federal Fair Housing Act.

(2) *Family Care Home*

- (d) The property owner may request a ~~special exception~~ reasonable accommodation to the requirements of Section 5.2.1(D)(2)(a) and (b), or any other standards of this ordinance as needed to ensure ~~reasonable accommodation~~ in compliance with the Federal Fair Housing Act.

10.1.8 NON-CONFORMITIES: Enlargement, Expansion, Alteration, or Major Repair

(C) Findings

After holding the ~~public~~ hearing on the special use, the Town Council shall determine whether to approve the proposed enlargement, expansion, alteration, or major repair. The Town Council shall not approve the proposed activity unless and until it finds, based on the evidence and testimony received at the ~~public~~ hearing or otherwise appearing in the record of the case, that the proposed enlargement, expansion, alteration, or major repair meets the standards of review set forth in Section 3.8.3, Approval Criteria, of this Ordinance, as well as the following:

[Return to Top](#)