

LAND DEVELOPMENT ORDINANCE TEXT AMENDMENTS

Round 23, Items A,C,D,E, and H Town Council Meeting October 11, 2012

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 June 28, 2012. The Planning and Zoning Board unanimously recommended approval of Items A, C, D, E, and H. (*Item B [Home Occupations], Item F [Clothing Donation Drop-off Stations], and Item G [Electronic Gaming]*) are included as separate discussion items on this agenda).

OVERVIEW

SCHEDULE

Planning and Development Committee	May 17, 2012
Advertisements in <i>The Cary News</i>	June 13, 2012 June 20, 2012
Public Hearing	June 28, 2012
Planning and Zoning Board Work Session	August 20, 2012
Planning and Zoning Board Meeting	August 20, 2012 (Items A, C, D, E, H1, H2, H4 & H5) September 10, 2012 (Item H-3)
Final Action by Town Council	October 11, 2012
Effective	October 11, 2012

SUMMARY OF PROPOSED AMENDMENTS

A brief summary of each proposed amendment is provide below. More detailed background information and the proposed text is provide in the section of this report entitled "PROPOSED LDO AMENDMENT TEXT".

Item A Life Care and Nursing Home Density

Increase certain density restrictions for life care and nursing home facilities located in non-residential zoning districts.

Item C Signs

- C-1 Modify existing standards related to signage on theatre marquees.
- C-2 provide standards for pedestrian-oriented directory signs.
- C-3 Extend sunset provisions related to increased flexibility for open house signs.

Item D Stormwater Rules

Ensure compliance with the Jordan Water Supply Nutrient Strategy as part of the required Session Law passed on August 26, 2009.

Item E Conditional Rezonings

Conform LDO text to statutory language and ensure that rezoning conditions proposed by applicants are offered freely by the applicant, with the intent to bind future property owners.

Item H Minor Revisions and Clarification

- H-1 Clarify that general requirements pertaining to non-conformities apply to both non-conforming uses and non-conforming structures.
- H-2 Clarify that the time period allowed to provide for protection of exposed slopes is 15 calendar days.
- H-3 Specify that a recreational vehicle, where allowed as a temporary residence, may be located to the side or rear of a residence, but not between the residence and the street.
- H-4 Clarify terminology related to projection of certain building features into building setbacks, and allow applicants to request a variance from the Zoning Board of Adjustment in certain types of developments where such a request is not currently an option.
- H-5 Correct section references related to home day care use.

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, staff believes that the overall impact of these proposed changes will have a nominal impact and can be readily absorbed by existing staff.

STAFF RECOMMENDATION

1. Staff recommends that the Town Council approve LDO Amendment Round 23, Items A,C,D,E, and H.
2. Staff recommends that the Town Council approve Option A or Option B related to consistency and reasonableness of the proposed amendment as stated below:

Option A *(recommended if the proposed LDO amendments are approved):*

CONSISTENCY AND REASONABLENESS STATEMENT

LDO Amendment Round 23, Items A,C,D,E, and H

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: LDO Amendment Round 23, Items A,C,D,E, and H, are consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, LDO Amendment Round 23, Items A,C,D,E, and H, are reasonable and in the public interest.

Approved: October 11, 2012

Harold Weinbrecht, Jr.
Mayor

Date

Option B (recommended if any proposed LDO amendment Item is denied):

CONSISTENCY AND REASONABLENESS STATEMENT

LDO Amendment Round 23, Item(s) _____

THE TOWN COUNCIL OF THE TOWN OF CARY HEREBY STATES:

Section 1: LDO Amendment Round 23, Item(s) _____ is/are consistent with the Comprehensive Plan.

Section 2: Based upon information presented at the public hearings, and based upon the recommendations and detailed information developed by staff and/or the Planning & Zoning Board contained in the staff report, and considering the criteria of Section 3.3.3 of the Town of Cary Land Development Ordinance, denial of LDO Amendment Round 23, Item(s) _____ is reasonable and in the public interest.

Approved: October 11, 2012

Harold Weinbrecht, Jr.
Mayor

Date

SUMMARY OF PROCESS AND ACTIONS TO DATE

PUBLIC HEARING COMMENTS (June 28, 2012)

The Town Council public hearing was held on June 28, 2012. A summary of 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 A Life Care and Nursing Home Density *No Comments*

Item C-2 Pedestrian-Oriented Directory Signs

Mr. Eric Lott of Rodney's Custom Cut Sign Company spoke in favor of the wayfinding sign ordinance amendment for multi-tenant sites. He believes illuminated signage will benefit retail stores that are open after dark. He said the increased signage height will assist in locating directories in large retail areas.

A council member asked if staff considered taller and/or illuminated directory signage. Staff responded that this could be considered as the proposed amendment moves forward to the Planning and Zoning Board.

Item D Stormwater Rules *No Comments*

Item E Conditional Rezonings *No Comments*

Item H Minor Revisions and Clarification *No Comments*

CHANGES TO PROPOSED TEXT AFTER PUBLIC HEARING

Item C-2 Pedestrian-Oriented Directory Signs

The proposed text has been modified to allow pedestrian-oriented directory signs to be internally illuminated. Additional input from the Planning and Zoning Board is needed regarding the sign height, including whether or not a height greater than seven feet should be allowed.

Item H-3 Minor Revisions and Clarification: RV Parking in Front Yard

The proposed text has been modified to clarify that the proposed parking restriction applies to both the storage of an RV, and the temporary use of an RV as a residence.

PLANNING AND ZONING BOARD WORK SESSION (August 20, 2012)

Item C-2 Pedestrian-Oriented Directory Signs

In response to direction from Town Council, staff requested specific input regarding the height of pedestrian-oriented directory signs (Item C-2). Board members expressed a preference to allow a maximum height of nine (9) feet for directory signs, provided that sign text was limited to the word "Directory" on the portion of the sign structure taller than seven (7) feet.

Item H-3 Minor Revisions and Clarification: RV Parking in Front Yard

There was board discussion concerning allowing boats, trailers or RVs on a corner lot to be parked in the side or rear yard adjacent to a public street, where screened from the view from the street (Item H-3). There appeared to be support for providing screening through fencing or a combination of fencing and landscaping, as needed to screen the full height of the boat, trailer or RV from the street.

PLANNING AND ZONING BOARD MEETING (August 20, 2012)

The Planning and Zoning Board recommended approval of Items A, C, D, E, and H by a vote of 8-0.

Additional Comments Regarding Item H-3 (RV Parking)

In response to discussion at the work session regarding parking of boats, RVs and trailers (Item H-3), staff's presentation included a suggestion that screening be provided by an opaque fence with a minimum height of six feet, with additional opaque fencing (up to a height of eight feet) and/or evergreen trees sufficient to obscure the view from the street of any portions of the boat, trailer or RV taller than six feet. Although the board took action to forward the proposed amendment to the Town Council with a recommendation of approval, there was no specific indication of whether or not the board intended to include these revisions to address the issue discussed at the work session.

PLANNING AND ZONING BOARD MEETING (SEPTEMBER 10, 2012)

At its meeting on August 20, 2012, the board recommended approval of Item H-3 as drafted in the staff report for that meeting. Because there was no specific mention of the screening discussed in the work session held immediately prior to the meeting, staff was unsure of the intent of the board in making its recommendation. Staff revised the proposed text to reflect the discussion that took place during the August 20, 2012 work session and presented the alternate text to the board for consideration at its September 10, 2012 meeting. The board recommended approval of the revised text, including the additional screening option, by a vote of 9-0.

PROPOSED LDO AMENDMENT TEXT

ITEM A Density Calculations for Nursing Home and Life Care Community Uses

BACKGROUND

Town staff has been approached by one of the Town’s life care communities with a request to consider increasing the permitted density allowed for such facilities that are located in the OI and ORD zoning districts. After reviewing this request, Town staff believes that allowing the opportunity for life care communities that are located in non-residential zoning districts to achieve additional density is a reasonable and sustainable use of such properties, assuming that other performance standards (parking, buffers, stormwater requirements, etc.) can still be achieved by the owner/developer.

PROPOSED TEXT

5.2.1 USE-SPECIFIC STANDARDS: Residential Uses

(E) Life Care Community

- (1) The life care community shall be for the sole residency of persons sixty-two (62) years old or older, and shall not exceed the density set forth in the following table, not including the number of persons occupying hospital or clinic beds:

District	Density (units/acre)
TR	7
RMF	8
OI ORD	9-12
TC Mixed Use Overlay	no density limit

- (2) The number of persons who may be housed in non-independent rooms or apartments (not including hospital or clinic beds) shall not exceed the number of persons housed in independent dwelling units by a ratio of greater than three to one (3:1);
- (3) The number of hospital or clinic beds shall not be more than fifty (50) percent of the total number of permitted dwelling units;
- (4) All retail stores and personal service establishments located within the life care community shall be part of an existing building and may not exceed twenty (20) percent of the floor area of the building; and
- (5) The life care community shall provide open space and/or recreational facilities in the same amount and ratios as required in Section 8.3.2 of this Ordinance.

12.3.2 USE CLASSIFICATIONS - Residential Uses

(A) Group Living

(3) Life Care Community

A building or group of buildings that contains dwelling units where the occupancy is restricted to persons who are at least sixty-two (62) years of age, or married couples in which one of the persons is at least sixty-two (62) years of age, and which provides nursing and/or medical care as well as support services, such as common dining facilities, retail stores, and personal service establishments, which are operated by the owner of the life care community or

lessees of the owner. Life care communities are designed to meet the residents' basic needs for shelter, food, and health care, regardless of the level of independence of the individual resident and regardless of how these needs may change over time.

(4) Nursing Home

A licensed facility where three (3) or more elderly, chronically ill, infirm, or incurable persons, not members of a family residing on the premises, are provided with food, lodging, and medical care for compensation. This definition includes congregate care facilities but not hospitals, clinics, or life care communities (even though a life care community may include a nursing home as one (1) of its components).

[Return to Top](#)

ITEM C Signs

C1 Marquee Signs

BACKGROUND

The proposed amendment would clarify that the background of illuminated signage on a theatre marquee is not required to be opaque, as is the case with internally-illuminated ground signs. Current standards prohibiting use of digital changeable copy would continue to apply, thus limiting changeable copy to manually-applied individual letters. The amendment would also clarify that signage is allowed on marquees that project into a public right-of-way. Such projections are customary and may be permitted with an encroachment agreement over sidewalk in areas where no setback from the right of way is required for the building. In addition, the proposed amendment would limit changeable copy signage on theatre marquees to three lines of text, which would not count towards wall sign area limits.

PROPOSED TEXT

CHAPTER 9A PERMANENT SIGNS

9A.1.3 GENERAL PROVISIONS: Applicability

(C) Prohibited Signs

- (15)** Signs in the public right-of-way, except for the following:
 - (a)** Signs on awnings per Section 9A.3.1(A);
 - (b)** Suspended Signs per Section 9A.3.1(J);
 - (c)** Projecting Signs per Section 9A.3.1(I); and
 - (d)** Signage on marquees per Section 9A.3.1(L)(5); and
- ~~**(18)** Use of a single enclosed cabinet containing all sign text, logos and symbols, except for Principal Ground Signs meeting requirements of Sections 9A.2.2 and 9A.2.4(C)(1) and secondary components of wall signs meeting requirements of Section 9A.2.4(C)(2). [Reserved]~~

9A.2.2 GENERAL DESIGN STANDARDS: Materials

- (A)** Except for flags permitted per Section 9A.3.1(C), all signs shall be constructed of permanent materials and shall be attached to the ground, a building or another structure by direct attachment to a wall, frame or structure.

- (B) Unless otherwise specified in a Master Sign Plan, the structural supports and foundation of principal ground signs shall match the principal material found in the principal structure(s) on the site.
- (C) Background material of principal ground signs shall match the primary material found in the principal structure(s) or be architecturally compatible in style and color (e.g., materials such as synthetic wood and other similar materials may be considered).
- (D) Materials such as metal, PVC and acrylic may be used for individual letters and raceways.
- (E) Changeable copy shall be allowed only on signs permitted in accordance with Section 9A.3 for theaters, service stations, and for property with an institutional use provided that:
 - (1) A theater with a marquee may display ~~one (1)~~ changeable copy sign on ~~each of two (2) sides~~ of the marquee. A theater without a marquee may display one (1) changeable copy sign on each wall permitted to have wall signs.
 - (2) A service station may use up to one-half (½) of the area of its principal ground sign or one-half (½) of the area of any wall sign for changeable copy displaying current fuel prices.
 - (3) A property with an institutional use may have changeable copy on up to fifty percent (50%) of the principal ground sign and/or the entire area of detailed directory signs. When used on a principal ground sign, the materials must follow the standards for principal ground signs stated in this chapter.

9A.2.4 ILLUMINATION

- (A) **Uniformity...**
- (B) **External Illumination....**
- (C) **Internally-illuminated Cabinet Signs....**
 - (2) Internally-illuminated enclosed cabinets may be permitted as a component of a wall sign subject to the following:
 - (a) the principal sign message consists of internally-illuminated channel letters attached directly to the building wall, or on a raceway;
 - (b) the background of the cabinet-type sign component is opaque, except where:
 - (i) the sign message is a state- or federally registered logo or trademark; or
 - (ii) the sign is a theatre marquee sign or poster box per section 9A.3.1(L)(5)
 - (c) no more than one such cabinet may be incorporated in a wall sign where the tenant space contains less than 50,000 square feet of floor area.
 - (d) a maximum of two such cabinets may be incorporated in a wall sign where the tenant space contains 50,000 square feet or more of floor area.
 - (e) the combined area of such cabinet component shall not exceed one-third (1/3) of the total area of the wall sign
 - (f) such signs are included in and comply with an approved uniform sign plan, where such plan is applicable; and
 - (g) construction methods and materials are consistent with the associated channel letters.

9A.3.1 STANDARDS APPLICABLE TO SPECIFIC SIGN TYPES: Permanent Sign Types Allowed in All Zoning Districts

(L) Wall Sign

Wall signs are allowed on principal buildings as provided below:

(5) Theatres

In addition to other permitted walls signs, marquee signs with internally-illuminated or back-lit changeable copy, and internally-illuminated or back-lit poster boxes may be allowed on theatres subject to the following:

- (a) ~~Changeable copy on marquee signs may cover no more than one (1) square foot of sign area for each linear foot of theater building frontage. For such signs shall be subject to total wall sign area limits. shall be limited to three lines of text, and shall not be subject to total wall sign area limits.~~
- (b) Poster boxes shall not exceed thirty-six (36) by fifty-four (54) inches each in size, shall not extend more than ten (10) feet above ground, and shall be permanently mounted to the building wall.

C-2 Pedestrian-Oriented Directory Ground Signs

BACKGROUND

The current dimensional standards for directory signs were written to serve vehicular use. With increased pedestrian activity in shopping centers such as Waverly Place, Stone Creek Village, and Arboretum, staff recommends adding additional standards to the LDO for pedestrian-oriented directory signs that would promote way-finding. The proposed pedestrian-oriented directory signs would not be legible from the public right-of-way or private streets or drive aisles.

PROPOSED TEXT

9A.3.1 STANDARDS APPLICABLE TO SPECIFIC SIGN TYPES

TABLE 9A.3-1: TABLE OF PERMITTED PERMANENT SIGNS			
Sign Type		Sign Permit	Conditions
Awning Sign		Required	9A.3.1(A)
Directory Sign	<u>Vehicle-oriented</u> Directory Ground Sign	Required	9A.3.1(B)(1)
	Wall-Mounted Directory Sign	Required	9A.3.1(B)(2)
	<u>Pedestrian-oriented</u> Directory Ground Sign	<u>Not Required</u>	<u>9A.3.1 (B) (3)</u>
Permanent Flagpoles With Flags		Not Required	9A.3.1(C)
Identification Sign		Not Required	9A.3.1(D)
Incidental sign		Not Required	9A.3.1(E)
Menu Board		Required	9A.3.1(F)
Principal Ground Sign		Required	9A.3.1(G)
Entry Monument Alternative to Principal Ground Sign		Required	9A.3.1(H)
Projecting Sign		Required	9A.3.1(I)
Suspended Sign		Required	9A.3.1(J)
Verandah Sign		Not Required	9A.3.1(K)
Wall Sign	Single-Tenant Buildings	Required	9A.3.1(L)(2)
	Multi-Tenant Buildings	Required	9A.3.1(L)(3)
	Multi-family or Institutional Buildings in Residential Districts or PDDs	Required	9A.3.1(L)(4)
	Theatres	Required	9A.3.1(L)(5)

Menu Box (Allowed only in Town Center and Mixed Use Overlay District)	Not Required	9A.3.2(A)
Neon Sign (Allowed only in Town Center and Mixed Use Overlay District)	Required	9A.3.2(B)

(B) Directory Sign

(1) Vehicle-oriented Directory Ground Signs

Vehicle-oriented Directory ground signs shall be allowed in addition to Primary Ground Signs near each principal entrance to a parking area or at principal intersections within the parking area of a development project, or as shown on an approved Master Sign Plan. Such signs shall be located at least fifty (50) feet away from any public right-of-way in a manner that drivers can conveniently pull up to and read the directory without impeding traffic on any driveway or entrance serving the development.

- (a) Vehicle-oriented Directory ground signs within a shopping center shall be allowed as follows:**
 - (i) One (1) vehicle-oriented directory ground sign may have a maximum height of five (5) feet, a maximum sign area ten (10) square feet, and a maximum letter height of four (4) inches that shall not be legible from the public right-of-way.
 - (ii) All other vehicle-oriented directory ground signs in the shopping center shall have a maximum height of forty-two (42) inches, a maximum sign area of sixteen (16) square feet, and shall not be separately illuminated.
- (b) Vehicle-oriented Directory ground signs for other project types shall have a maximum height of five (5) feet, a maximum sign area ten (10) square feet, and a maximum letter height of four (4) inches that shall not be legible from the public right-of-way.**

(2) Pedestrian-Oriented Directory Ground Signs

Pedestrian-oriented directory ground signs shall be allowed within multi-tenant sites in accordance with the following:

- (a) Such signs shall not be legible from the public right of way or private street or drive aisle;**
- (b) Such signs shall have a maximum sign area of fifteen (15) square feet;**
- (c) The sign structure may reach a maximum height of nine (9) feet, provided that any signage on the portion of the sign structure above seven (7) feet in height is limited to the word "Directory"; otherwise, such sign structure shall have a maximum height of seven (7) feet; and**
- (e d) The location and design characteristics of such signs shall be included in the uniform sign plan for the development.**

~~(2)~~ **(3) Wall-mounted Directory Signs....**

9A.2.4 ILLUMINATION

- (A) Uniformity...**
- (B) External Illumination....**
- (C) Internally-illuminated Cabinet Signs**

(3) Pedestrian-oriented directory ground signs may be internally-illuminated.

~~(3)~~**(4) All other internally-illuminated cabinet-style ground and wall signs shall be prohibited.**

C-3 Open House Signs

BACKGROUND

On February 25, 2010, the LDO was amended to temporarily provide additional flexibility for open house signs by: increasing the allowable number of residential open house events per address from two to five per year; allowing the posting of open house signs between midnight on Fridays and midnight Sundays, rather than 10 a.m. on Saturdays to 6 p.m. on Sundays; and adding black as an allowable sign color. The amendment was put into place for two years, and the text specified a sunset date of February 25, 2012. On May 8, 2012, staff received a request from a citizen to extend the sunset provision for at least one additional year due to current economic conditions. Staff proposes to extend the sunset date from February 25, 2012 to December 31, 2013.

PROPOSED TEXT

9.3.2 PERMITTED SIGNS: LOCATION, SIZE, NUMBER - Conditions

(R) Off-premise Open House Residential Real Estate Sign

Off-premise Open House Residential Real Estate Signs shall be allowed provided that the following requirements are met:

- (1) There shall be no more than three (3) total off premise signs for any open house event. These signs shall include a realtor's license number or homeowner's number and the street address where the event is taking place.
- (2) Signs can only be placed on residential lots or in residential common open space with no more than two (2) signs directing prospective buyers in the same direction at any one (1) intersection.
- (3) Such signs may be in place on Saturdays and Sundays. This provision shall sunset on ~~February 25, 2012, December 31, 2013~~, after which such signs may be in place only from 10 a.m. on Saturday to 6 p.m. on Sundays.
- (4) Such signs shall not exceed two (2) square feet in sign area.
- (5) Such signs shall not exceed twenty-four (24) inches in height.
- (6) Such signs shall only use a combination of burgundy (Color No. 491 C Pantone) or black and white. This provision shall sunset on ~~February 25, 2012, December 31, 2013~~, after which such signs shall only use a combination of burgundy (Color No. 491 C Pantone) and white.
- (7) o more than five (5) open house events per year for any one (1) home, residential project or structure. This provision shall sunset on ~~February 25, 2012, December 31, 2013~~, after which there shall be no more than two (2) open house events per year for any one (1) home, residential project or structure.

[Return to Top](#)

ITEM D Stormwater Rules

BACKGROUND

The LDO is proposed to be modified to ensure compliance with the Jordan Water Supply Nutrient Strategy (part of the Session Law passed by the General Assembly on August 26, 2009). In May of 2011, the NC Environmental Management Commission (NC EMC) passed a model Jordan Lake New Development ordinance to incorporate into local ordinances. The purpose of the rule is to achieve and maintain nitrogen and phosphorus loading goals from new development within the Jordan Lake Watershed, to provide stormwater controls, and to protect water supply uses of the Jordan Lake Reservoir and its tributaries. The Town currently has regulations regarding new development within the Jordan Lake Watershed. The proposed amendments provide the Town with rules regarding both new development and redevelopment in the watershed.

The proposed amendment changes were reviewed by the NC Division of Water Quality and were approved by NC EMC on May 10, 2012. The NC General Assembly passed HB 953 (Session Law 2012-201), signed by the governor on August 1, 2012, which moved the date of implementation to August 10, 2014. The Town is moving forward with the adoption of the ordinance to comply with the rule and help protect the water quality of Jordan Lake. The Towns of Apex and Morrisville, Durham and Wake Counties have also adopted the new development rule within their jurisdictions.

PROPOSED TEXT

4.4.6 OVERLAY ZONING DISTRICTS: Watershed Protection Overlay

(I) Modifications and Variances

Requests for relief from the requirements of this Section 4.4.6 shall be decided either by the Town Council or by the Environmental Management Commission, depending on the watershed and the type of standard from which relief is sought.

(1) *Variances Granted by the Environmental Management Commission*

The Environmental Management Commission shall have the sole authority to grant major variances from the provisions of this Section 4.4.6 for properties in the Jordan Lake Watershed and Jordan Lake Watershed Critical Area. For purposes of this section, a major variance is a variance from the minimum statewide watershed protection or Jordan Rules (contained in 15A NCAC Chapter 2B) that results in (a) the relaxation, by factor greater than five percent of any buffer, density or built upon area requirement under the high density option; (b) any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or (c) relaxation by a factor greater than 10 percent, of any management requirement under the low density option.

(2) *Modifications Granted by Town Council....*

The Town Council shall have primary, but not sole, authority to grant modifications from the provisions of this Section 4.4.6 for properties in the Swift Creek Watershed, pursuant to this Sub-section.

(a) In the Swift Creek Watershed, the Town Council may modify the standards of Section 4.4.6(F), Limitations on Impervious Area and Density, where using perimeter or adjacent roadways in the impervious surface calculation causes a development to exceed the allowed impervious surface percentage.

(b) In the Swift Creek Watershed, the Town Council may modify the standards of Section 4.4.6(F), Limitations on Impervious Area and Density, to allow impervious surface ratios greater than twelve (12) percent but less than twenty-four (24) percent. However, requests for relief greater than twenty-four (24) percent shall be forwarded for review and decision by the Environmental Management Commission.

(3) *Recommendation by Town Council to the Environmental Management Commission*

If an application calls for the granting of a modification as listed in paragraph (2b) or paragraph (1) above that requires a decision by the Environmental Management Commission, the Town Council shall first reach a recommendation on the modification in accord with the requirements of Section 3.19.....

7.3 STORMWATER MANAGEMENT

7.3.1 Purpose and Definitions

- (A) This section is intended to protect water quality for present and future residents of the Town and surrounding regions by limiting the amount of pollutants, including but not limited to nitrogen and phosphorus, in stormwater runoff. Specific objectives include: control of nitrogen and phosphorus export from development, control of peak stormwater runoff, and the use of best management practices.
- (B) For the purpose of this section 7.3, the following definitions shall apply:

LARGER COMMON PLAN OF DEVELOPMENT OR SALE

Any area where multiple separate and distinct construction or land-disturbing activities will occur under one plan. For purposes of this definition only, a plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or survey markings) indicating that construction activities may occur on a specific plot.

REDEVELOPMENT

Any development on previously-developed land.

7.3.2 Nutrient Reduction Requirements

(A) Nitrogen and Phosphorus Control Plan Required

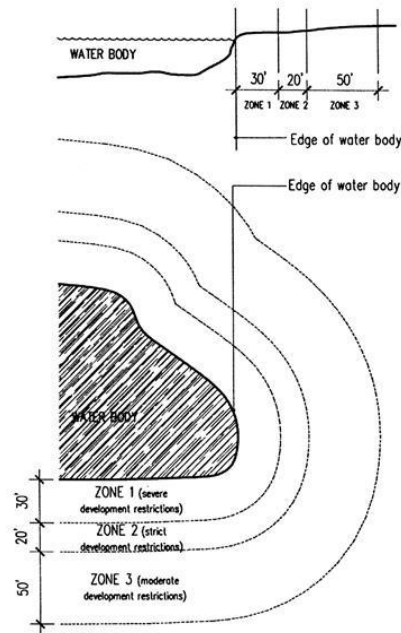
For purposes of this section, nitrogen and phosphorus control plans shall be required for the following:

- (1) Any activity that, alone or as part of a larger common plan of development or sale, disturbs greater than one (1) acre of land in order to establish, expand, or modify a single-family or duplex residential development or a recreational facility.
- (2) Any activity that, alone or as part of a larger common plan of development or sale, disturbs greater than twelve thousand (12,000) square feet of land in order to establish, expand or modify a multifamily residential development or a commercial, industrial or institutional facility.
- (3) Any grubbing, stump removal, and/or grading activity that disturbs greater than twelve thousand (12,000) square feet.
- (4) Demolition and subsequent construction upon a previously developed site.

(B) Exemptions

- (1) For purposes of this section, development or land disturbance shall not include agriculture, mining, or forestry activities.
- (2) Existing development as of March 1, 2001 in the Neuse River Basin, is not subject to the requirements of this Section. Expansions to existing development must meet the requirements of this Section. The impervious surface area of the existing development is not required to be included in the nitrogen load attributed to the site expansion; nitrogen calculations must follow Town procedures for allocating undeveloped land to the site.
- (3) Redevelopment and/or rebuilding activity which results in no net increase in the built-upon area from that that previously existed and which provides equal or greater stormwater control than that provided by previous development.
- (4) In the Cape Fear River Basin any proposed new development that would replace or expand structures or improvements that existed as of December 1, 2001, and that would not result in a net increase in built-upon area shall not be

required to meet the nutrient loading targets or high-density requirements except to the extent that it shall provide stormwater control at least equal to the previous development.



Water Body Development Restrictions *(new graphic)*

(C) Calculation of Nitrogen and Phosphorus Export

- (1)** The nitrogen export from each development in the Neuse River Basin must be calculated per Town procedures and approved by the Stormwater Manager or his or her designee. This export will be calculated in pounds per acre per year (lb/ac/yr). For calculating nitrogen export, refer to Controlling Urban Runoff: A Practical Manual for Planning and Designing Urban BMPs (Schueler's Simple Method), or to the Neuse River Basin: Model Stormwater Program for Nitrogen Control Manual (Methods 1 & 2), or for calculating nitrogen export loading:
 - (1)-(a)** Method 1 is intended for residential developments where lots are shown but the actual footprint of the buildings is not shown on the plans.
 - (2)-(b)** Method 2 is for residential, commercial, and industrial developments when the entire footprint of the buildings, parking lots, road, and any other built-upon area is shown.
 - (3)-(c)** The Scheuler Simple Method may be used for new development on a case-by-case basis as approved by the Town.
- (2)** The developer shall determine the need for engineered stormwater controls to meet the loading rate targets in the Cape Fear River Basin by using the most current approved accounting tool for nutrient loading approved by the North Carolina Environmental Management Commission pursuant to 15A NCAC 2B .0265.

(D) Nitrogen and Phosphorus Export Standards

- (1)** All developments Any activity that is required to submit a nitrogen control plan in the Neuse River Basin must achieve a nitrogen export of less than or equal to 3.6 pounds per acre per year. Any activity that is required to submit a nitrogen and phosphorus control plan in the Cape Fear River Basin must achieve an export rate of less than or equal to 2.2 pounds per acre per year of nitrogen and 0.82 pounds per acre per year of phosphorus in the Upper New Hope and 4.4 pounds per acre per year of nitrogen and 0.78 pounds per acre per year in the Lower New Hope. If the development contributes greater than three and six-tenths (3.6) pounds per acre per year of nitrogen in the Neuse River Basin, greater than 2.2 pounds per acre per year of nitrogen and/or 0.82 pounds per acre per year of phosphorus in the Upper New Hope, or greater than 4.4 pounds per acre per year of nitrogen and/or 0.78 pounds per acre per year of phosphorus in the Lower New Hope, then the table below explains the options available depending whether the development is residential or non-residential. The offset payment option shown below is only available for developments within the Neuse River basin.
- (2)** Notwithstanding the foregoing, in the Cape Fear River Basin, redevelopment that would replace or expand existing structures or improvements and would result in a net increase in built-upon area shall have the option of either meeting the loading standards identified in 7.3.2 (D)(1) or meeting a loading rate that achieves the following nutrient loads compared to the existing development: in the Upper New Hope Watershed, 35 percent reduction in nitrogen and 5 percent reduction in phosphorus; and in the Lower New Hope Watershed, no increase for nitrogen or phosphorus.
- (3)** Development subject to this section 7.3 shall attain a maximum nitrogen loading rate on-site of six pounds per acre per year for single family, detached and duplex residential development and ten 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	
Residential/Multifamily Residential	Commercial/Industrial/Institutional/Local Government
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 to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr in the Neuse River Basin. Install BMPs to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.	Install BMPs to remove enough nitrogen to bring the development down to 3.6 lbs/ac/yr in the Neuse River Basin. Install BMPs to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.

Pay a one-time offset payment to the UTB Restoration Fund to bring the nitrogen down to the 3.6 lbs/ac/yr in the Neuse River Basin. Pay a one-time offset payment to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.	Pay a one-time offset payment to the UTB Restoration Fund to bring the nitrogen down to the 3.6 lbs/ac/yr in the Neuse River Basin. Pay a one-time offset payment to bring the nitrogen down to 2.2 lbs/ac/yr and phosphorus to 0.82 lbs/ac/yr in the Upper New Hope and the nitrogen down to 4.4 lbs/ac/yr and the phosphorus to 0.78 lbs/ac/yr Lower New Hope in the Cape Fear River Basin.
Do a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr export in the Neuse, 2.2 lbs/ac/yr nitrogen and 0.82lbs/ac/yr phosphorus in the Upper New Hope and 4.4 lbs/ac/yr nitrogen and 0.78 lbs/ac/yr phosphorus in the Lower New Hope.	Do a combination of BMPs and offset payment to achieve a 3.6 lbs/ac/yr export in the Neuse, 2.2 lbs/ac/yr nitrogen and 0.82lbs/ac/yr phosphorus in the Upper New Hope and 4.4 lbs/ac/yr nitrogen and 0.78 lbs/ac/yr phosphorus in the Lower New Hope.
If the computed <u>nitrogen</u> 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 in the Neuse River Basin, 2.2 lbs/ac/yr in the Upper New Hope or 4.4 lbs/ac/yr in the Lower New Hope of the Cape Fear River Basin.	If the computed <u>nitrogen</u> export is greater than 10.0 lbs/ac/yr, the owner must use on-site BMPs to bring the development's export down to 6.0 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 in the Neuse River Basin, 2.2 lbs/ac/yr in the Upper New Hope or 4.4 lbs/ac/yr in the Lower New Hope of the Cape Fear River Basin.

Once it has been determined that an offset payment is forthcoming, the owner shall furnish the Town with evidence that ~~the North Carolina Division of Water Quality has received payment for the reductions in nitrogen and/or phosphorus has been made prior to the Town's issuance of a grading permit.~~

- (4) The nitrogen and phosphorus export standards in this ordinance are supplemental to, not replacements for, stormwater standards otherwise required by federal, state or local law, including without limitation any riparian buffer requirements applicable to the location of the development. This includes, without limitation, the riparian buffer protection requirements of 15A NCAC 2B .0267 and .0268.

~~For developments outside of the Neuse River Basin, the owner must provide evidence of intent to reduce nitrogen export to the levels required by this section to the maximum extent practicable.~~

7.3.4 Allowable Best Management Practices

Neuse River buffers and Jordan Lake Buffers required by the Division of Water Quality may not be used for compliance with nitrogen reduction requirements; however, additional 50-foot buffers (including locally required buffers) may be used as nitrogen control BMPs. ~~New development outside of the Neuse basin may use UTBs for nitrogen control. The following best management practices may be utilized for nitrogen reduction:~~ All BMPs shall meet the standards of the most current version of the North Carolina Division of Water Quality Stormwater Best Management Practices Manual ("BMP Manual"). If specifications or guidelines of the BMP Manual are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the BMP Manual. If the standards, specifications, guidelines, policies, criteria, or other information in the BMP Manual are amended subsequent to the submittal of an application for approval pursuant to this section 7.3 but prior to approval, the new information shall control and shall be utilized in the reviewing the application and in implementing this section 7.3 with regard to the application. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the BMP Manual, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of

this section 7.3. The applicant may be required to provide the documentation, calculations, and examples necessary to determine whether such an affirmative showing is made.

- (A) Wet detention ponds;
- (B) Constructed wetlands;
- (C) Grass swales;
- (D) UTBs;
- (E) Bioretention;
- (F) Dry detention;
- (G) Proprietary BMPs;
- (H) Others, as approved by the Town of Cary and the North Carolina Division of Water Quality

The total nitrogen (TN) BMP removal rates are provided in the table below.

BMP Types	TN Removal Rate Based on Current Literature Studies	Design Standards
Wet detention ponds	25%	NC and MD Design Manuals
Constructed wetlands	40%	NC and MD Design Manuals
Grass swales	20%	NC and MD Design Manuals
UTBs	30%	Neuse UTB Rule (15A NCAC2B.0233)
UTBs with a greenway	20%	
Vegetated filter strips with level spreader	20%	NC and MD Design Manuals and other literature information
Bioretention	35%	NC and MD Design Manuals
Sand filters	35%	NC and MD Design Manuals
Dry detention	10%	NC and MD Design Manuals
Proprietary BMPs	Varies	Per manufacturer subject to DWQ approval
Other BMPs	Varies	Subject to DWQ approval

~~Staff may modify the effective removal efficiency for a BMP based on deviations from design standards. For example, where there are significant impacts to buffers, no nitrogen removal credits will be allowed.~~

If more than one BMP is installed in series on a development, then the removal rate shall be determined through serial rather than additive calculations. For example, if a wet detention pond discharges through a UTB, then the removal rate shall be estimated to be 47.5 percent. The pond removes 25 percent of the nitrogen and discharges 75 percent into the buffer. The buffer then removes 30 percent of the nitrogen discharged from the pond, which is 22.5 percent. The sum of 25 and 22.5 is 47.5. The removal rate is not 25 percent plus 30 percent.

7.3.5 Maintenance of Best Management Practices

All best management practices that are implemented to achieve nitrogen or phosphorus reduction and flow attenuation will require complete legal documentation and a maintenance plan and must comply with all requirements of ~~For the purposes of this section refer to~~ Section 4.4.6(HG), Engineered Stormwater Control Structures.

7.3.7 Town of Cary NPDES Phase II Post Construction Runoff Controls for ~~Walnut Creek Watershed / Middle Creek Watershed / Crabtree Creek Watershed~~

To meet the requirements of the Town of Cary NPDES Phase II Permit any new development or redevelopment ~~as of July 1, 2005 in the Walnut Creek, Middle Creek, or Crabtree Creek Watershed~~ not exempted pursuant to Section 7.3.2(B) must meet either the low density or high density option requirements described below. New development or redevelopment in the Swift Creek or Jordan Lake Watersheds must meet the requirements of Section 4.4.6 of the LDO. For purposes of this Section 7.3.7, impervious surface area shall be calculated pursuant to Section 4.4.6(D)(2) of the LDO and the provisions of Section 4.4.6(G) of the LDO shall apply to all engineered stormwater control structures.

7.3.8 Variance

To the extent any state or federal law or regulations requires the Town to establish a variance procedure for any requirement of this section 7.3, excluding section 7.3.6, the variance procedure established in Section 4.4.6(I) of the LDO shall be utilized. The provisions of section 7.3.6 shall not be subject to this requirement.

12.4 OTHER KEY TERMS DEFINED

IMPERVIOUS SURFACE AREA

Any hard-surfaced, man-made area that allows little or no infiltration of precipitation into the soil. Impervious surface areas include that portion of a development project that is covered by buildings; areas paved with concrete, asphalt or brick; gravel road; recreation facilities such as tennis courts; patios, driveways, and streets. "Impervious surface area" does not include slatted decks and the water surface area of a swimming pool.

ONE YEAR, TWENTY FOUR HOUR STORM

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once every 12 months and with a duration of 24 hours.

OUTFALL

A point at which stormwater enters surface water or exits the property of a particular owner.

[Return to Top](#)

ITEM E Conditional Rezoning

BACKGROUND

Amendments are proposed to conform LDO text to statutory language and to ensure that conditions proposed by applicants as part of a conditional rezoning (including rezoning to PDD or MXD) are offered freely by the applicant; that applicants understand that other parties may rely on the offered conditions; and that applicants intend to bind future property owners to the conditions and will ensure that future property owners are made aware of the conditions.

PROPOSED TEXT

3.1.8 COMMON REVIEW AND APPROVAL PROCEDURES; Conditions of Approval

Some procedures set forth in this chapter authorize the decision-making body to impose such conditions upon the premises benefited by the approval as may be necessary to reduce or minimize any potential adverse impact upon other property in the area, or to carry out the general purpose and intent of the Comprehensive Plan and this Ordinance. In such cases, any conditions attached to approvals shall be directly related to the impacts of

the proposed use or development and shall be ~~reasonable and appropriate roughly proportional in both extent and amount to the anticipated impacts of the proposed use or development.~~ In no case shall a condition of approval be less restrictive than the requirements of this Ordinance.

3.4.2 Rezoning to Conditional Use Districts

(B) Process Required...

(1) Conditional Use Rezoning Process

Rezoning to a conditional use district shall require submission and approval of an application for a rezoning in accordance with the general procedures set forth in Section 3.4.1, as modified by this Section 3.4.2. A rezoning to a conditional use district may be initiated only by an application signed by all of the owners of the property or by an agent authorized by all of the owners to file such application, which application shall include the affidavit required by Section 3.4.2(C)(4) and (5). If the application is approved, the Town Council shall adopt an ordinance authorizing the requested use with such reasonable conditions as mutually approved by the applicant and Town Council and determined to be desirable in promoting public health, safety and general welfare.

(C) Conditions

- (1)** The conditional use rezoning application shall specify the use or uses that are intended for the property or any use or uses that are prohibited, as well as any additional conditions on the use of the property that the applicant may propose be conditions of the rezoning. Conditions are limited to:
 - (a)** Those that address conformance of the development and use of the site to ordinances and officially adopted plans and
 - (b)** Those that address the impacts reasonably expected to be generated by the development or use of the site.
- (2)** No condition shall be less restrictive than the standards of the parallel general use district or the standards of any overlay district that applies to the property.
- (3)** No condition shall be made part of the application, or shall be attached to approval of the conditional use district, which specifies the ownership status, race, religion, or character of the occupants of housing units, the minimum value of improvements, or any illegal exclusionary device; or which states that the use of the property will not be subject to regulations or restrictions set forth in this Ordinance which would apply to the property in any event, such as the regulations for an overlay district which covers the property.
- (4)** After the Town has delivered to the newspaper the notice of public hearing for the application, the applicant shall make no changes in the conditions 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 conditions or additional conditions 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, together with a revised affidavit meeting the requirements of Section 3.4.2(C)(5), at least ten (10) working days before the date scheduled for final Town Council action on the application.

(5) The conditional use rezoning application shall include an affidavit listing all proposed zoning conditions and provisions and stating that:

- (a) all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- (b) the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- (c) the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- (d) the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- (e) the property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

(D) Changes to Conditions of Approved Conditional Use District

Any change to the conditions attached to an approved conditional use rezoning shall be considered a change to the conditional use district and shall be processed as a new conditional use application in accordance with the procedures set forth in this Section 3.4.2.

3.4.3 Rezoning to Planned Development Districts

(D) Procedure

(1) Pre-Application Conference...

(2) Application Filing

An application for a PDD rezoning approval shall be filed and processed in accordance with the rezoning procedures set forth in Section 3.4.1. In addition, the application shall be accompanied by a master plan and supporting plans and documents as specified by the Planning Department. The application shall also include an affidavit stating that:

- (a) all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- (b) the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- (c) the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and

(d) the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and

(e) the property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

(G) Submission of Conditions

Conditions proposed by the applicant in the master plan are limited to those that address conformance of the development and use of the site to ordinances and officially adopted plans, and those that address the impacts reasonably expected to be generated by the development and use of the site. After the Town has delivered to the newspaper the notice of public hearing for the application, the applicant shall make no changes to the conditions 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 conditions or additional conditions 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 final Town Council action on the application.

3.4.5 Rezoning to Mixed Use District (MXD)

(B) Procedure

(3) Application Materials

Applications for rezoning to MXD shall be submitted in a form and in such number as specified by the Planning Director and available from the Planning Department. Applications shall include all of the following:

(d) Supporting Materials

The application shall also be accompanied by information regarding the following:

1. a copy of the mailing list used to provide notification of the Community Meeting required by Section 3.4.5(B)(2), together with the results of the Community Meeting and other public input and any changes made as a result of the Community Meeting;
2. a notarized statement that the property was posted in accordance with Section 3.4.5(B)(2)(a);
3. a statement regarding compliance with the Comprehensive Plan, including any applicable area plan;
4. a statement analyzing the reasonableness of the proposed rezoning as required by G.S. 160A-382; ~~and~~
5. a statement about how the rezoning meets each approval criterion spelled out in Sec. 3.4.1(E) and 4.5.2(E)- and;
6. an affidavit stating that:

- i all zoning conditions and provisions are freely offered as proposed zoning laws, based solely on the property owner/applicant's independent judgment; and
- ii the property owner/applicant is not relying upon any statement by the Town staff or any member of the Town Council in connection with the decision to offer any zoning conditions or provisions; and
- iii the property owner/applicant understands that other parties that have standing in the rezoning proceeding are relying on the validity of the zoning conditions and provisions; and
- iv the property owner/applicant intends for all future owners of the property to be bound by the zoning conditions and provisions should the Town Council adopt them as part of the rezoning; and
- v the property owner/applicant will take all appropriate measures to ensure that future property owners are aware of the zoning conditions and provisions.

[Return to Top](#)

ITEM H Clarification and Correction

H-1 Non-Conforming Uses and Structures

BACKGROUND

Minor change to clarify that section 10.1.7 applies to non-conforming structures as well as non-conforming uses.

PROPOSED TEXT

CHAPTER 10 NONCONFORMITIES:

10.1.7 GENERAL PROVISIONS: Continuation, Maintenance, and Minor Repair

The continuation of a nonconforming use or structure and the maintenance or minor repair of a structure containing a nonconforming use are permitted, provided that the continuation, maintenance, or minor repair does not extend or expand the nonconforming use or structure. For the purposes of this section, "maintenance or minor repair" shall mean:

- (A) Repairs that are necessary to maintain and to correct any damage or deterioration to the structural soundness or interior appearance of a building or structure without expanding or altering the building or structure;
- (B) Maintenance of land areas to protect against health hazards and promote the safety of surrounding land uses; and
- (C) Repairs that are required to remedy unsafe conditions that cause a threat to public safety

[Return to Top](#)

H-2 Civil Penalties

BACKGROUND

Minor correction to modify time period allowed for providing protection for exposed slopes to create consistency between sections 11.4.3(C) and 7.4.3(B).

PROPOSED TEXT

CHAPTER 11 ENFORCEMENT

11.4.3 REMEDIES AND PENALTIES: Civil Penalties

(C) In addition to the fine schedule listed below, the Stormwater Services Manager may assess a one (1)-time civil penalty of up to five thousand dollars (\$5,000.00) for the day the violation is detected based upon whether the violation has resulted in off-site sedimentation.

(1) Fine schedule for willful violation of the requirements in Section 7.4:

(f) ***Failure to Protect Exposed Slopes***

Two thousand five hundred dollars (\$2,500.00) per day for failure, within fifteen (15) ~~working calendar days~~ ~~or thirty (30) calendar days~~ of completion of any phase of grading, whichever period is shorter, to plant or otherwise provide exposed, graded slopes or fills with ground cover, devices, or structures sufficient to restrain erosion.

[Return to Top](#)

H-3 RV Parking in Front Yard

BACKGROUND

The Land Development Ordinance currently specifies that boats, recreational vehicles, and utility or travel trailers shall be located within side or rear yards. This amendment proposes additional language to confirm that boats, RVs and trailers shall not be placed in the front yard or corner side yard of a lot (i.e. no closer to the street than the principal structure). This amendment will also promote consistency with the revisions regarding the location of detached accessory structures on single-family lots that were recently adopted on February 23, 2012.

PROPOSED TEXT

5.3.1 ACCESSORY USES AND STRUCTURES: Purpose

This section authorizes the establishment of accessory uses that are incidental and customarily subordinate to principal uses. The Town's intent in adopting this Section is to allow a broad range of accessory uses, so long as such uses are located on the same site as the principal use, and so long as they comply with the performance criteria set forth in this section in order to reduce potentially adverse impacts on surrounding properties.

5.3.2 ACCESSORY USES AND STRUCTURES: General Standards and Limitations

(D) **Location of Accessory Buildings, Structures, or Vehicles**

- (3) Storage or parking of all boats, recreational vehicles and utility or travel trailers or other vehicles allowed by this Section shall be located as follows: within side or rear yards such that they are not closer to the front of a lot and/or a street than the principal structure.
- (a) within a side yard (not including corner side yards) such that they are not closer to the front of a lot or the street than the principal structure;
 - (b) within a rear yard (not including rear yards adjacent to a public street); or
 - (c) within a corner side yard, or rear yard that is between the principal structure and an adjacent public street, where screened from the view of the street by an opaque fence with a minimum height of six feet, plus additional opaque fencing (up to a height of eight feet) and/or evergreen trees sufficient to obscure the full height of the boat, recreational vehicle, or trailer.

Storage of such boats, vehicles or trailers shall not occur within a front yard (defined as the yard between the façade with the front door and the street) or within a side or rear building setback.

5.3.3 Accessory Uses Prohibited

(A) Prohibited in All Zoning Districts

The following activities shall not be regarded as accessory to a principal use on any site and are prohibited in all zoning districts:

(1) *Use of Travel Trailer, Recreational Vehicle, or Tent as Residence*

The use of a travel trailer, recreational vehicle, or tent as a residence, permanent or temporary is prohibited, with the exception of a trailer approved as a temporary use for security under Section 5.4. However, a recreational vehicle (RV) may be used as a temporary residence for up to two (2) weeks, provided the vehicle is located in the driveway or a side or rear yard, such that the RV is no closer to the front or corner side of a lot than the principal structure. Utilization of an RV as a temporary residence is not considered as "storage" as described in Section 5.3.2.

[Return to Top](#)

H-4 Variances for and Projections into Setbacks

BACKGROUND

LDO Table 6.3-1 allows certain features of a dwelling to be constructed closer to a property line than would otherwise be permitted by primary dwelling setbacks. Such setbacks are currently referred to as encroachments, implying an advance beyond proper limits. However, the table below describes setbacks that are indeed permitted by right. This amendment would replace the word "encroachment" with the word "project" or "projection" to more appropriately describe the nature of the setbacks permitted in the table below.

Table 6.3-1 also includes language that would prohibit the submittal of a request for a variance or reduction to the setback projections established for certain features projecting from the principal building. The proposed amendment would remove this limitation and create an opportunity for a variance or reduction to be considered, and perhaps granted with appropriate justification.

Further, the LDO does not currently allow the Zoning Board of Adjustment to consider variances to any buffers or setbacks if they were part of written conditions attached by the Town Council to its

approval of a subdivision or site plan. Prior to the late 1990s, most all development plans required Town Council approval. This proposed amendment would allow the Zoning Board of Adjustment to consider variances on site plans that could today, be approved administratively by staff, but would continue to prohibit an applicant from seeking a variance to modify or eliminate rezoning conditions approved by the Town Council.

PROPOSED TEXT

Feature That May Encroach Into Setback	Limitation
Sill, cornice, or ornamental feature	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.
Bay windows, covered porches, balconies, decks, and deck enclosures, chimneys, uncovered porches and similar features projecting from the principal building	(1) May project encroach 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. (2) No variance shall be granted to the standards in this Ordinance for decks, covered porches and uncovered porches, except that a modification may be considered for the purpose of correcting a construction error.
Patios, terraces, and similar features	If constructed at grade level, may project encroach 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.
Accessory buildings and/or structures	May project encroach 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 encroachment is allowed into the required roadway setbacks.

3.20.5 VARIANCES: Approval Criteria

3.20.4 Approval Criteria

(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), ~~subdivision plat or site plan (Section 3.9)~~, 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 an Mixed Use District Zoning (Section 3.4.5). Development Standards for Subdivisions and Site Plans (3.9) that were approved by Town Council but could, by current standards, be approved administratively may be eligible for a variance.

[Return to Top](#)

H-5 Correction to References – Day Care Homes

BACKGROUND

The proposed amendment would correct typographical errors and incorrect references related to small and large day care homes.

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	
ACCESSORY USES																	
Accessory Uses	Day care home, large	S	S	S	S	S	S	S						S	S	S	5.2.2(L) 5.3.4(L)
Accessory Uses	Day care home, small	A/S	A/S	A/S	A/S	A/S	A/S	A/S						A/S	A/S	A/S	5.2.2(L) 5.3.4(M)

TABLE 5.1-2: TABLE OF TOWN CENTER (TC) DISTRICT USES																
P = Permitted Use; S = Special Use (see Section 3.8); A = Accessory Use																
Use Category	Use Type	HMXD	MXD	HDR Mid-Rise	MXDR	HDR Garden	MDR	LDR	LDR-12	CB&R	COM	CLI	OFC/INS	INS	OFC/IND	Use Specific Stds
		ACCESSORY USES														
Accessory Uses	Day care home, small	A	A						P/A		A	A	A	A		5.2.2(B) 5.3.4(M)
	Day care home, large	S	S						S					A	A	5.3.4(B) 5.3.4(L)

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

(Uses not listed are prohibited)

Corridor Sub-Area	Nursing home	Detached dwelling	Multi-family dwelling	Live/work unit	Day care home, large	Day care home, small	Public utility facility	Town owned rd/operated facilities and services	Park, public	Religious assembly	Club, lodge or hall	Office	Guest house	Funeral home	Personal service establishment	Retail store	Restaurant
Conversion Area		P		S/P	S/P	P						S/P	S/P		S/P		
Redevelopment Area (on parcels with less than 1 acre)		P		P	P	P			P			P	P		P		
Redevelopment Area (on parcels with 1 or more acres)	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P
Infill Area (1st 300 feet from Walnut Street)	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P
Infill Area (301 or more feet from Walnut Street)		P							P	P							
Use Specific Standards	5.2.1 (G)	5.2.1 (M)	5.2.1 (F)		5.2.2 (B) 5.3.4 (L)	5.3.4 (M)			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)