



**Chapel Hill, North Carolina**

# **DEVELOPMENT ORDINANCE**

**October, 2002 Edition**

Adopted May 11, 1981.  
Revised with Town Council  
Amendments through October 31, 2002.

**Town of Chapel Hill  
Planning Department  
306 North Columbia Street  
Chapel Hill, NC 27516-2124  
(919) 968-2728  
FAX: (919) 969-2014**

For North Carolina general laws which authorize the Town to regulate zoning, subdivision of land and other land use and development matters, and which establish some procedural requirements for the Town, see N.C. G.S. 160A-299, -360 through 458.2 and other statutes listed in Section 1.2 of this ordinance. See also in the Town Code book, Sections 5.8 through 5.33 of the Town's Charter and Sections 5 and 17, 24 and 25 of the Charter Appendix.

# CHAPEL HILL DEVELOPMENT ORDINANCE

## TABLE OF CONTENTS

<b>ARTICLE</b>	<b>TITLE</b>
1	General Provisions
2	Definitions
3	Zoning Districts
4	Mixed Use Zoning Districts
5	Resource Conservation District
6	Historic District
7	Special Appearance Districts
8	Airport Hazard District
9	Water Quality District
10	Watershed Protection District
11	Tree Protection
12	Use Regulations
13	Intensity Regulations
14	Design Standards
15	Site Analysis Data and Conceptual Development Plans
16	Office/Institutional – 4 Zoning District
17	Subdivision of Land
18	Special Use Permits
19	Site Plan and Master Plan Approvals and Permits
20	Amendments
21	Reserved
22	Non-conformities
23	Enforcement
24	Interpretations, Appeals, and Variances
25	Administrative Mechanisms
26	Legal Status

## DETAILED TABLE OF CONTENTS

Page

### **Article 1. General Provisions**

1.1	Short Title .....	1
1.2	Authority .....	1
1.3	Jurisdiction .....	1
1.4	Intent .....	1
	1.4.1 Declaration of Necessity .....	1
	1.4.2 Purpose .....	1
1.5	Required Conformance to Chapter Provisions .....	1
1.6	Fees .....	2
1.7	Effective Date .....	2

### **Article 2. Definitions** ..... 3

### **Article 3. Zoning Districts**

<b>3.1</b>	<b>Establishment and Intent</b> .....	<b>23</b>
	3.1.1 Town Center 1 and 2 .....	23
	3.1.2 Community Commercial .....	23
	3.1.3 Neighborhood Commercial .....	23
	3.1.4 Office/Institutional 3 .....	23
	3.1.5 Office/Institutional 2 .....	23
	3.1.6 Office/Institutional 1 .....	23
	3.1.7 Industrial .....	23
	3.1.8 Residential .....	24
	3.1.9 Rural Transition .....	24
	3.1.10 Overlaying Districts .....	24
	3.1.11 Conditional Use Districts .....	24
<b>3.2</b>	<b>Zoning Atlas</b> .....	<b>24</b>
	3.2.1 Authentication .....	25
	3.2.2 Status of Copies .....	25
	3.2.3 Amendment Entries .....	25
	3.2.4 Authentication of Amendment Entries .....	25
	3.2.5 Zoning Atlas Replacement .....	25

### **Article 4. Mixed Use Zoning Districts**

<b>4.1</b>	<b>Intent</b> .....	<b>26</b>
<b>4.2</b>	<b>Establishment of Mixed Use Districts</b> .....	<b>26</b>
<b>4.3</b>	<b>Permitted Uses and Development Intensities - Mixed Use -OI-1</b> .....	<b>26</b>
	4.3.1 Permitted Uses and Intensities .....	26
	4.3.2 Mixed Use Threshold .....	26
	4.3.3 Mixed Use Development Intensity and Use Regulations .....	27
	4.3.4 Mixed Use Development Design Standards .....	28
	4.3.5 Additions to Approved Mixed Use Developments .....	28
<b>4.4</b>	<b>Permitted Uses and Development Intensities - Mixed Use R-1</b> .....	<b>29</b>
	4.4.1 Permitted Uses and Intensities .....	29
	4.4.2 Mixed Use Threshold .....	29
	4.4.3 Mixed Use Development Intensity and Use Regulations .....	29
	4.4.4 Mixed Use Development Design Standards .....	31
	4.4.5 Additions to Approved Mixed Use Developments .....	31
<b>4.5</b>	<b>Review and Approval Procedure</b> .....	<b>32</b>

**Article 5. Resource Conservation District**

<b>5.1</b>	<b>Intent</b> .....	33
<b>5.2</b>	<b>Definitions</b> .....	33
<b>5.3</b>	<b>Establishment</b> .....	33
	5.3.1 Elevation .....	33
	5.3.2 Establishment .....	33
<b>5.4</b>	<b>Development</b> .....	34
	5.4.1 Development in Resource Conservation District .....	34
	5.4.2 Application of Resource Conservation District Ordinance to Development Existing .....	34
	5.4.3 Exemptions for Expansion, Reconstruction, Rehabilitation, or Renovation.....	34
	5.4.4 Application of the Resource Conservation District to the Expansion, Reconstruction, Rehabilitation or Renovation .....	35
<b>5.5</b>	<b>Permitted Uses Within Resource Conservation District</b> .....	35
	5.5.1 Permitted Uses .....	35
	5.5.2 Intensity Regulations .....	36
	5.5.2.1 Land Use Intensity Regulations .....	36
	5.5.2.2 Additional Intensity Regulations .....	36
<b>5.6</b>	<b>Standards for Development in Resource Conservation District</b> .....	37
<b>5.7</b>	<b>Variance from Board of Adjustment</b> .....	39
	5.7.1 Application .....	39
	5.7.2 Required Findings .....	39
	5.7.3 Burden of Proof .....	40
	5.7.4 Presumption.....	40
	5.7.5 Referral .....	40
	5.7.6 Review Criteria .....	40
<b>5.8</b>	<b>Requirements for Development Applications</b> .....	42
<b>5.9</b>	<b>Correction of Violations</b> .....	43
<b>5.10</b>	<b>Warning and Disclaimer of Liability</b> .....	43
<b>5.11</b>	<b>Other Approvals Required</b> .....	43
<b>5.12</b>	<b>Records and Filings</b> .....	43
<b>5.13</b>	<b>Resource Conservation District Guide</b> .....	44

**Article 6. Historic District**

<b>6.1</b>	<b>Intent</b> .....	45
<b>6.2</b>	<b>Establishment</b> .....	45
<b>6.3</b>	<b>Certificate of Appropriateness Required</b> .....	45
<b>6.4</b>	<b>Certain Changes Not Prohibited</b> .....	46
<b>6.5</b>	<b>Procedures</b> .....	46
	6.5.1 Application Submittal Requirements .....	46
	6.5.2 Notification of Affected Property Owners .....	47
	6.5.3 Public Hearing .....	47
	6.5.4 Action on the Application .....	47
	6.5.5 Actions Subsequent to Decision .....	47
	6.5.6 Appeal of Decision.....	47
	6.5.7 Submission of New Application .....	48
<b>6.6</b>	<b>Review Criteria</b> .....	48

**Article 7. Special Appearance Districts**

<b>7.1</b>	<b>Intent</b> .....	49
<b>7.2</b>	<b>Establishment</b> .....	49

<b>7.3</b>	<b>Certificate of Appropriateness Required</b> .....	49
<b>7.4</b>	<b>Certain Changes Not Prohibited</b> .....	50
<b>7.5</b>	<b>Procedures</b> .....	50
	7.5.1 Application Submittal Requirements .....	50
	7.5.2 Notification of Affected Property Owners .....	50
	7.5.3 Public Hearing .....	50
	7.5.4 Commission Action.....	50
	7.5.5 Actions Subsequent to Decision .....	51
	7.5.6 Appeal of Decision.....	51
	7.5.7 Submission of New Application.....	51
<b>7.6</b>	<b>Review Criteria</b> .....	51

**Article 8. Airport Hazard District**

<b>8.1</b>	<b>Intent</b> .....	52
<b>8.2</b>	<b>Establishment</b> .....	52
<b>8.3</b>	<b>Modified Intensity Regulations</b> .....	52

**Article 9. Water Quality District**

<b>9.1</b>	<b>Intent</b> .....	53
<b>9.2</b>	<b>Definitions</b> .....	53
<b>9.3</b>	<b>Establishment of Water Quality District</b> .....	53
<b>9.4</b>	<b>Development in Water Quality District</b> .....	53
<b>9.5</b>	<b>Permitted Uses</b> .....	54
	9.5.1 Residential.....	54
	9.5.2 Industries/Businesses.....	54
	9.5.3 Toxic or Hazardous Waste Disposal.....	54
	9.5.4 Underground Fuel or Chemical Tanks.....	54
<b>9.6</b>	<b>Intensity Regulations</b> .....	54
	9.6.1 Land Use Intensity Regulations .....	54
	9.6.2 Additional Intensity Regulations .....	54
<b>9.7</b>	<b>Sewer Service Standards for Development in the Water Quality District</b> .....	55
	9.7.1 Wastewater Treatment Facilities.....	55
	9.7.2 Pretreatment Plants.....	55
	9.7.3 Private Surface Discharge Facilities .....	55
<b>9.8</b>	<b>Variance from Board of Adjustment</b> .....	55
	9.8.1 Application .....	55
	9.8.2 Required Findings .....	55
	9.8.3 Burden of Proof .....	56
	9.8.4 Referral .....	56
	9.8.5 Review Criteria .....	56
<b>9.9</b>	<b>Correction of Violations</b> .....	57
<b>9.10</b>	<b>Other Approvals Required</b> .....	57
<b>9.11</b>	<b>Records and Filings</b> .....	57

**Article 10. Watershed Protection District**

<b>10.1</b>	<b>Intent</b> .....	58
<b>10.2</b>	<b>Establishment of Watershed Protection District</b> .....	58
<b>10.3</b>	<b>Development in the Watershed Protection District</b> .....	58
	10.3.1 Application to Development Existing on July 1, 1993.....	58
	10.3.2 Application to Existing Single- and Two-Family Lots.....	59
	10.3.3 Application to Redevelopment or Expansion of Development .....	59
<b>10.4</b>	<b>Permitted Uses Within the Watershed Protection District</b> .....	59

<b>10.5</b>	<b>Intensity Regulations</b> .....	59
	10.5.1 Land Use Intensity Regulations .....	59
	10.5.2 Additional Intensity Regulations .....	59
<b>10.6</b>	<b>Stream Buffer Requirements</b> .....	60
<b>10.7</b>	<b>Performance Standards</b> .....	60
	10.7.1 Hazardous Materials.....	60
	10.7.2 Solid Waste Minimization .....	61
	10.7.3 Ownership, Design, Maintenance of Stormwater Controls.....	61
	10.7.4 Construction Standards.....	61
	10.7.5 Cluster Provisions.....	61
<b>10.8</b>	<b>Variances from the Board of Adjustment</b> .....	62
	10.8.1 Application .....	62
	10.8.2 Required Findings .....	63
	10.8.3 Burden of Proof.....	64
	10.8.4 Referral .....	64
	10.8.5 Review Criteria .....	64
<b>10.9</b>	<b>Correction of Violations</b> .....	64
<b>10.10</b>	<b>Other Approvals Required</b> .....	65
<b>10.11</b>	<b>Records and Filings</b> .....	65

**Article 11. Tree Protection.**

<b>11.1</b>	<b>General Provisions</b> .....	66
	11.1.1 Short Title.....	66
	11.1.2 Finding .....	66
	11.1.3 Purpose.....	66
	11.1.4 Definitions .....	66
<b>11.2</b>	<b>Permits Required</b> .....	67
	11.2.1 Activities Requiring a Permit .....	67
	11.2.2 Applicability .....	67
	11.2.3 Permit Display.....	67
	11.2.4 Emergency Waiver .....	67
	11.2.5 Enforcement .....	68
<b>11.3</b>	<b>Permitted Activities and Standards Applicable to Undeveloped Land and Woodlands</b> .....	68
	11.3.1 Area Protected.....	68
	11.3.2 Permitted Uses .....	68
<b>11.4</b>	<b>Permitted Activities and Standards Applicable to Developing Land</b> .....	68
	11.4.1 Landscape Protection Plan Required .....	68
	11.4.2 Landscape Protection Plan .....	68
	11.4.3 Surveying.....	69
	11.4.4 Pre-Construction Conference.....	69
	11.4.5 On-Site Supervision.....	69
	11.4.6 New and Required Plantings.....	69
	11.4.7 Protective Fencing.....	70
	11.4.8 Treatment of Trees During Construction.....	70
	11.4.9 Public Hazard .....	70
	11.4.10 Enforcement .....	70
<b>11.5</b>	<b>Public Land</b> .....	71
	11.5.1 Permits Required.....	71
	11.5.2 Tree Planting .....	71
	11.5.3 Prohibited Trees .....	71
	11.5.4 Tree Maintenance.....	71
	11.5.5 Abuse and Mutilation of Trees .....	72
	11.5.6 Public Hazards.....	72
	11.5.7 Removal of Trees .....	72

11.5.8	Construction and Repair Activity on or Adjacent to Public Land .....	73
<b>11.6</b>	<b>Rare and Specimen Trees</b> .....	73
11.6.1	Specimen Tree Defined.....	73
11.6.2	Rare Tree Defined.....	73
11.6.3	Rare and Specimen Trees on Developing Land.....	74
11.6.4	Voluntary Protection of Rare and Specimen Trees on Private Land .....	74
<b>11.7</b>	<b>Administrative Mechanisms</b> .....	75
11.7.1	Application Requirements .....	75
11.7.2	Permits.....	75
11.7.3	Penalties .....	76
11.7.4	Appeals.....	76
11.7.5	Fees.....	76
11.7.6	Revision Provision.....	76

**Article 12. Use Regulations.**

<b>12.1</b>	<b>Intent</b> .....	77
<b>12.2</b>	<b>Establishment</b> .....	77
<b>12.3</b>	<b>Schedule of Use Regulations</b> .....	78
<b>12.4</b>	<b>Applicability</b> .....	86
<b>12.5</b>	<b>Use Groups</b> .....	86
<b>12.6</b>	<b>Modified Use Regulations for Certain Uses</b> .....	86
12.6.1	Uses Requiring Special Frontage.....	86
12.6.2	Outdoor Skateboard Ramps.....	86
12.6.3	Fine Arts Educational Institutions .....	87

**Article 13. Intensity Regulations.**

<b>13.1</b>	<b>General Intent</b> .....	88
<b>13.2</b>	<b>Establishment of Intensity Regulations</b> .....	88
<b>13.3</b>	<b>General Applicability of Intensity Regulations</b> .....	88
<b>13.4</b>	<b>Bonus Intensities</b> .....	88
13.4.1	Intent .....	88
13.4.2	Applicability.....	88
13.4.3	Benefits .....	89
<b>13.5</b>	<b>Gross Land Area</b> .....	89
13.5.1	Defined.....	89
13.5.2	Minimum Gross Land Area.....	90
<b>13.6</b>	<b>Lot Width and Street Frontage Width</b> .....	90
13.6.1	Lot Width Defined .....	90
13.6.2	Minimum Lot Width.....	91
13.6.3	Street Frontage Width Defined.....	91
13.6.4	Minimum Street Frontage Width .....	92
<b>13.7</b>	<b>Land Use Intensity Ratios</b> .....	92
13.7.1	Applicability.....	92
13.7.2	Floor Area Defined .....	92
13.7.3	Maximum Floor Area .....	93
13.7.4	Outdoor Space Defined.....	93
13.7.5	Minimum Outdoor Space.....	93
13.7.6	Livability Space Defined .....	93
13.7.7	Minimum Livability Space.....	93
13.7.8	Recreation Space Defined .....	94
13.7.9	Minimum Recreation Space .....	94
13.7.10	Payments in Lieu of Improved Recreation Space .....	94

<b>13.8</b>	<b>Maximum Number of Dwelling Units</b> .....	95
<b>13.9</b>	<b>Setback and Height Regulations</b> .....	95
	13.9.1 Intent.....	95
	13.9.2 Applicability.....	95
	13.9.3 Street Setback Defined .....	96
	13.9.4 Minimum Street Setback .....	96
	13.9.5 Interior Setback Defined.....	97
	13.9.6 Minimum Interior Setback.....	97
	13.9.7 Solar Setback Defined.....	97
	13.9.8 Minimum Solar Setback .....	97
	13.9.9 Zero Lot Line Setback Modifications .....	98
	13.9.10 Height Defined.....	99
	13.9.11 Maximum Height.....	100
	13.9.12 Exceptions to Setback and Height Regulations.....	100
	13.9.13 Minimum Building Spacing.....	101
<b>13.10</b>	<b>Transitional Control Intensity Modifications</b> .....	103
<b>13.11</b>	<b>Schedule of Intensity Regulations</b> .....	103

**Article 14. Design Standards**

<b>14.1</b>	<b>Intent</b> .....	111
<b>14.2</b>	<b>Applicability</b> .....	111
<b>14.3</b>	<b>Design Manual</b> .....	111
<b>14.4</b>	<b>General Site Arrangement</b> .....	111
	14.4.1 Site Plan Criteria.....	111
	14.4.2 Site Design .....	112
<b>14.5</b>	<b>Access and Circulation</b> .....	112
	14.5.1 External Circulation .....	112
	14.5.2 Internal Circulation.....	113
	14.5.3 Reserved .....	113
	14.5.4 Sight Line Triangle Easements .....	113
<b>14.6</b>	<b>Off-Street Parking and Loading</b> .....	113
	14.6.1 Off-Street Parking and Loading Required.....	113
	14.6.2 Methods of Providing.....	113
	14.6.3 Combined Parking.....	115
	14.6.4 Use of Required Parking and Loading Space.....	115
	14.6.5 Parking Design Standards.....	115
	14.6.6 Parking Landscaping Standards .....	117
	14.6.7 Minimum Off-Street Parking Space Requirements.....	117
	14.6.8 Loading Space Design Standards .....	120
	14.6.9 Minimum Off-Street Loading Space Requirements .....	120
<b>14.7</b>	<b>Drainage and Storm Water Management</b> .....	120
<b>14.8</b>	<b>Erosion and Sedimentation Control</b> .....	120
<b>14.9</b>	<b>Water and Sewerage</b> .....	121
	14.9.1 Service by Public Systems.....	121
	14.9.2 Service by Individual Systems.....	121
<b>14.10</b>	<b>Other Utilities</b> .....	121
<b>14.11</b>	<b>Collection of Solid Waste and Recyclables</b> .....	122
<b>14.12</b>	<b>Buffer and Screening</b> .....	122
	14.12.1 Purpose of Bufferyards.....	122
	14.12.2 Buffers Required.....	122
	14.12.3 Location of Buffers.....	123
	14.12.4 Use of Buffer.....	123
	14.12.5 Responsibility for Buffer.....	123
	14.12.6 Schedule of Required Buffers .....	124
	14.12.7 Other Required Screening.....	125

14.12.8	Alternative Buffers and Screening.....	125
14.12.9	Existing Vegetation.....	125
14.12.10	Maintenance of Landscaping .....	125
<b>14.13</b>	<b>Signs</b> .....	<b>125</b>
14.13.1	Intent.....	125
14.13.2	Sign Defined .....	125
14.13.3	Signs Subject to Control.....	125
14.13.4	Signs Exempt from Regulation.....	125
14.13.5	Traffic Safety Precautions .....	127
14.13.6	General Limitations.....	127
14.13.7	Signs in Residential and Rural Transition Districts and in PD-H Developments.....	128
14.13.8	Signs in TC-2, TC-I, CC, NC, OI-3, OI-2, OI-1 and I Districts .....	128
14.13.9	Sign Area and Height Limitations.....	132
14.13.10	Location Requirements .....	132
14.13.11	Signs in PD-SC, PD-OI, PD-MU and PD-I Developments .....	132
14.13.12	Signs in Mixed Use OI-1 or Mixed Use R-1 Zoning Districts.....	132
14.13.13	Sign Area and Number.....	133
<b>14.14</b>	<b>Outdoor Lighting</b> .....	<b>134</b>
<b>14.15</b>	<b>Accessibility for the Handicapped</b> .....	<b>134</b>

**Article 15. Site Analysis Data and Conceptual Development Plans**

<b>15.1</b>	<b>Intent</b> .....	<b>135</b>
<b>15.2</b>	<b>Site Analysis Data Defined</b> .....	<b>135</b>
<b>15.3</b>	<b>Conceptual Development Plan Defined</b> .....	<b>135</b>
<b>15.4</b>	<b>Site Analysis Data and Conceptual Development Plan Required</b> .....	<b>135</b>
<b>15.5</b>	<b>Procedures for Review of Site Analysis Data and Conceptual Plans</b> .....	<b>135</b>
15.5.1	Application Submittal Requirements .....	135
15.5.2	Action on Site Analysis Data and Conceptual Plans.....	136
15.5.3	Aspects of Review .....	136
15.5.4	Community Design Commission Review of Site Analysis Data and Conceptual Plan.....	136

**Article 16. Office/Institutional – 4 Zoning District** ..... 137

<b>16.1</b>	<b>Purpose and Intent</b> .....	<b>137</b>
<b>16.2</b>	<b>Overview of Development Review Procedure</b> .....	<b>137</b>
<b>16.3</b>	<b>Development Plan</b> .....	<b>138</b>
16.3.1	Submittal Requirements .....	138
16.3.2	Off-site Components.....	138
<b>16.4</b>	<b>Permitted Uses and Development Intensities</b> .....	<b>138</b>
<b>16.5</b>	<b>Standards</b> .....	<b>138</b>
<b>16.6</b>	<b>Perimeter Transition Areas</b> .....	<b>139</b>
<b>16.7</b>	<b>Procedures for Approval of Development Plans</b> .....	<b>139</b>
16.7.1	Application Submittal Requirements .....	139
16.7.2	Process for Review.....	139
16.7.3	Council Action.....	140
<b>16.8</b>	<b>Actions After Decision on Development Plan</b> .....	<b>140</b>
16.8.1	Recording Approval .....	140
16.8.2	Individual Site Development Permits .....	140
16.8.3	Expiration, Abandonment, Revocation of Development Plan .....	141
<b>16.9</b>	<b>Process for Amending Development Plan</b> .....	<b>141</b>

**Article 17. Subdivision of Land**

<b>17.1</b>	<b>Intent</b> .....	142
<b>17.2</b>	<b>Subdivision Defined</b> .....	142
<b>17.3</b>	<b>Applicability</b> .....	142
<b>17.4</b>	<b>Classification of Subdivision</b> .....	143
<b>17.5</b>	<b>Procedures for Approval of Minor Subdivisions</b> .....	143
	17.5.1 Application Requirements .....	143
	17.5.2 Town Manager Action .....	144
	17.5.3 Amended Applications.....	144
	17.5.4 Actions Subsequent to Decision .....	144
	17.5.5 Appeal.....	145
<b>17.6</b>	<b>Procedures for Approval of Major Subdivisions</b> .....	145
	17.6.1 Preliminary Plat Approval .....	145
	17.6.1.1 Application Submittal Requirements.....	145
	17.6.1.2 Town Manager's Analysis .....	145
	17.6.1.3 Preliminary Conference with Applicant.....	145
	17.6.1.4 Town Manager's Report to Planning Board.....	145
	17.6.1.5 Planning Board Review.....	146
	17.6.1.6 Council Review.....	146
	17.6.1.7 Council Action .....	146
	17.6.1.8 Amended Applications .....	147
	17.6.1.9 Actions After Decision .....	147
	17.6.1.10 Expiration of Preliminary Plat Approval .....	147
	17.6.1.11 Appeal of Decision .....	147
	17.6.2 Final Plat Approval .....	147
	17.6.2.1 Application Submittal Requirements.....	147
	17.6.2.2 Town Manager Action .....	148
	17.6.2.3 Amended Applications .....	148
	17.6.2.4 Actions Subsequent to Decision .....	148
	17.6.2.5 Appeal of Decision .....	149
<b>17.7</b>	<b>Design of Subdivisions</b> .....	149
	17.7.1 Intent .....	149
	17.7.2 Applicability of Lot Design Standards.....	149
	17.7.3 Lot Arrangement.....	150
	17.7.4 Access to Streets.....	150
	17.7.5 Lot Dimensions .....	150
	17.7.6 Flag Lots .....	150
	17.7.6.1 Intent.....	150
	17.7.6.2 Lot Standards .....	151
	17.7.6.3 Location of Lot Lines .....	152
	17.7.7 Zero Lot Line Setback Modifications .....	152
<b>17.8</b>	<b>Cluster Developments</b> .....	152
	17.8.1 Intent.....	152
	17.8.2 General Approval Requirements.....	153
	17.8.3 Reductions in Lot and Setback Requirements.....	153
<b>17.9</b>	<b>Dedication of Recreation Areas</b> .....	154
	17.9.1 Applicability.....	154
	17.9.2 Minimum Recreation Area.....	154
	17.9.3 Suitability of Land .....	154
	17.9.4 Method of Provision or Dedication .....	155
	17.9.5 Payments in Lieu of Provision or Dedication .....	155
	17.9.6 Exemptions.....	156
	17.9.7 Substitution of Off-Site Land for Dedicated Recreation Space.....	156
<b>17.10</b>	<b>Neighborhood or Homeowners' Associations</b> .....	156

**17.11 Elevations and Benchmarks** ..... 156  
**17.12 Permanent Monuments and Markers** ..... 157  
**17.13 Specifications for Drawings** ..... 157  
    17.13.1 Compliance with Article ..... 157  
    17.13.2 Preliminary Plat..... 157  
    17.13.3 Final Plat..... 158  
    17.13.4 Detailed Engineering Plans - Final Plat ..... 159  
**17.14 Certificates and Endorsements on Final Plat** ..... 159  
    17.14.1 Certificate of Survey and Accuracy ..... 159  
    17.14.2 Certificate of Dedication and Maintenance ..... 159  
    17.14.3 Certificate of Improvements ..... 160  
    17.14.4 Town Manager Endorsement..... 160  
    17.14.5 Notary Public Required ..... 160  
**17.15 As-Built Drawings of Improvements** ..... 160

**Article 18. Special Use Permits**

**18.1 Intent** ..... 161  
**18.2 Special Use Permit Required** ..... 161  
**18.3 Findings of Fact** ..... 161  
**18.4 Procedures for Approval of Special Use Permits** ..... 162  
    18.4.1 Application Submittal Requirements ..... 162  
    18.4.2 Town Manager's Analysis ..... 162  
    18.4.3 Preliminary Conferences with Applicant ..... 162  
    18.4.4 Town Manager's Report to Planning Board ..... 162  
    18.4.5 Planning Board Review ..... 163  
    18.4.6 Public Hearing ..... 163  
    18.4.7 Town Manager's Report to Council..... 164  
    18.4.8 Council Action..... 164  
    18.4.9 Effect of Denial or Withdrawal on Subsequent Applications..... 164  
    18.4.10 Amended Applications..... 164  
    18.4.11 Notice of Decision and Issuance of Special Use Permits..... 164  
    18.4.12 Appeal of Decision..... 165  
    18.4.13 Final Plan Approval ..... 165  
    18.4.14 Issuance of Development Permits ..... 165  
**18.5 Modifications of Special Use Permits** ..... 165  
**18.6 Expiration & Revocation of Special Use Permit Approvals** ..... 166  
    18.6.1 Special Use Permit Binding on Land ..... 166  
    18.6.2 Starting Time Limit..... 167  
    18.6.3 Completion Time Limit..... 167  
    18.6.4 Abandonment of Special Use Permit..... 167  
    18.6.5 Cessation of Use ..... 168  
    18.6.6 Revocation of Special Use Permit..... 168  
**18.7 Special Uses** ..... 168  
    18.7.1 Permitted Modifications of Regulations..... 168  
    18.7.2 Adult Day Care Facility ..... 169  
    18.7.3 Cemetery ..... 169  
    18.7.4 Fraternity or Sorority House ..... 169  
    18.7.5 Group Care Facility..... 169  
    18.7.6 Extraction of Earth Products..... 169  
    18.7.7 Landfill..... 170  
    18.7.8 Reserved ..... 170  
    18.7.9 Park/Ride Terminal..... 171

18.7.10	Place of Assembly - over 2000 seats.....	171
18.7.11	Reserved .....	171
18.7.12	Public Service Facility.....	171
18.7.13	Radio/Television Transmitting/Receiving Facility .....	171
18.7.14	Reserved .....	171
18.7.15	Service Station.....	171
18.7.16	Reserved .....	171
18.7.17	Temporary Portable Building, other than related to construction.....	171
18.7.18	Window, Drive-In, as Accessory Use .....	172
18.7.19	Car Wash.....	172
<b>18.8</b>	<b>Planned Developments .....</b>	<b>172</b>
18.8.1	Establishment of Planned Developments .....	172
18.8.1.1	Relation to Major Transportation Facilities .....	173
18.8.1.2	Relation to Public Utilities, Facilities, Services .....	173
18.8.1.3	Relation to Physical Character of Site .....	173
18.8.1.4	Relation to Energy Use .....	174
18.8.2	Reduction/Increase in Required Land Areas .....	174
18.8.3	Reserved .....	174
18.8.4	Permitted Modifications of Regulations.....	174
18.8.5	Relation to Subdivision Review.....	174
18.8.6	Planned Development - Housing .....	174
18.8.6.1	Intent.....	175
18.8.6.2	Minimum Land Area .....	175
18.8.6.3	Permitted Uses.....	175
18.8.6.4	Intensity Regulations.....	175
18.8.6.5	Design Standards.....	175
18.8.7	Planned Development - Shopping Center .....	176
18.8.7.1	Intent.....	176
18.8.7.2	Land Area Requirements .....	176
18.8.7.3	Permitted Uses.....	176
18.8.7.4	Intensity Regulations.....	177
18.8.7.5	Design Standards.....	177
18.8.8	Planned Development - Office and Institutional.....	177
18.8.8.1	Intent.....	177
18.8.8.2	Land Area Requirements .....	178
18.8.8.3	Permitted Uses.....	178
18.8.8.4	Intensity Regulations.....	178
18.8.8.5	Design Standards.....	178
18.8.9	Planned Development - Mixed Use .....	178
18.8.9.1	Intent.....	178
18.8.9.2	Land Area Requirements .....	179
18.8.9.3	Permitted Uses.....	179
18.8.9.4	Intensity Regulations.....	179
18.8.9.5	Design Standards.....	179
18.8.10	Planned Development - Industrial .....	180
18.8.10.1	Intent.....	180
18.8.10.2	Land Area Requirements .....	180
18.8.10.3	Permitted Uses.....	180
18.8.10.4	Intensity Regulations.....	181
18.8.10.5	Design Standards.....	181
<b>18.9</b>	<b>Uses in Conditional Use Districts.....</b>	<b>181</b>

**Article 19. Site Plan and Master Plan Approvals and Permits**

<b>19.1</b>	<b>Zoning Compliance Permit Required.....</b>	<b>182</b>
-------------	---	------------

**19.2 Site Plan Review Required** ..... 182

**19.3 Sign Plan Review Required** ..... 183

**19.4 Procedures** ..... 183

    19.4.1 Application Submittal Requirements ..... 183

    19.4.2 Action on the Application ..... 183

    19.4.3 Performance and Maintenance Guarantees ..... 184

    19.4.4 Actions Subsequent to Decision ..... 185

    19.4.5 Appeal of Decision ..... 185

**19.5 Modification of Zoning Compliance Permits** ..... 186

**19.6 Expiration and Revocation of Zoning Compliance Permit Approvals** ..... 186

    19.6.1 Starting Time Limit ..... 186

    19.6.2 Completion Time Limit ..... 186

    19.6.3 Revocation of Zoning Compliance Permit ..... 186

**19.7 Master Land Use Plan** ..... 187

    19.7.1 Master Land Use Plan Defined ..... 187

    19.7.2 Master Land Use Plan Design Criteria ..... 187

    19.7.3 Procedures for Approval of Master Land Use Plan ..... 187

        19.7.3.1 Application Submittal Requirements ..... 187

        19.7.3.2 Action on the Application ..... 188

        19.7.3.3 Preliminary Conference with the Applicant ..... 188

        19.7.3.4 Town Manager's Report to Planning Board and  
                the Council ..... 188

        19.7.3.5 Planning Board Review ..... 188

        19.7.3.6 Public Hearing ..... 189

        19.7.3.7 Council Action ..... 189

        19.7.3.8 Amended Applications ..... 190

    19.7.4 Actions After Decision ..... 190

    19.7.5 Expiration of Master Land Use Plan Approval ..... 190

    19.7.6 Minor Changes and Modifications of  
        Master Land Use Plan ..... 190

    19.7.7 Relation to Special Use Permit ..... 191

    19.7.8 Abandonment or Revocation of an Approval Master  
        Land Use Plan ..... 191

    19.7.9 Relation to Preliminary Plat Application ..... 192

    19.7.10 Additions to Master Plans ..... 192

**Article 20. Amendments**

**20.1 Intent** ..... 193

**20.2 Amendment Initiation** ..... 193

**20.3 Procedures** ..... 193

    20.3.1 Council Acceptance of Requests ..... 193

    20.3.2 Application Submittal Requirements ..... 193

    20.3.3 Town Manager's Report to Planning Board ..... 194

    20.3.4 Planning Board Review ..... 194

    20.3.5 Public Hearing ..... 194

    20.3.6 Town Manager's Report to Council ..... 195

    20.3.7 Council Action ..... 195

    20.3.8 Relationship of Conditional Use District Zoning  
        and Special Use Permits ..... 195

    20.3.9 Protest Petition ..... 195

    20.3.10 Effect of Denial or Withdrawal on Subsequent Applications ..... 196

    20.3.11 Amended Application ..... 196

    20.3.12 Actions Subsequent to Decision ..... 196

**20.4 Site Specific Development Plans** ..... 196

<b><u>Article 21.</u></b>	<b>Reserved</b>	197
<b><u>Article 22.</u></b>	<b>Nonconformities</b>	
22.1	<b>Intent</b>	198
22.2	<b>Nonconforming Lots</b>	198
	22.2.1 Definition	198
	22.2.2 Required Combination/Recombination of Lots	198
	22.2.3 Use of Nonconforming Lots	198
22.3	<b>Nonconforming Uses</b>	198
	22.3.1 Definition	198
	22.3.2 Regulations	199
	22.3.3 Discontinuance	199
22.4	<b>Nonconforming Features</b>	199
	22.4.1 Definition	199
	22.4.2 Regulations	200
	22.4.3 Discontinuance	200
22.5	<b>Non-conforming Signs</b>	200
	22.5.1 Definition	200
	22.5.2 Regulations	200
	22.5.3 Amortization of Non-conforming Signs	200
22.6	<b>Non-conforming Outdoor Skateboard Ramps</b>	201
	22.6.1 Definition	201
	22.6.2 Regulations	201
	22.6.3 Amortization of Non-conforming Outdoor Skateboard Ramps	201
22.7	<b>Nonconforming Parking Areas in Front Yards</b>	201
22.8	<b>Repairs and Maintenance</b>	202
22.9	<b>Nonconformity Survey and Notice</b>	202
<b><u>Article 23.</u></b>	<b>Enforcement</b>	
23.1	<b>Violations</b>	203
23.2	<b>Liability</b>	203
23.3	<b>Procedures Upon Discovery of Violations</b>	203
23.4	<b>Penalties and Remedies</b>	203
<b><u>Article 24.</u></b>	<b>Interpretations, Appeals, and Variances</b>	
24.1	<b>Interpretations</b>	204
24.2	<b>Appeals</b>	204
	24.2.1 Applicability	204
	24.2.2 Stay of Further Action	205
24.3	<b>Variances</b>	205
	24.3.1 Variances from Dimensional Regulations	205
	24.3.2 Reserved	205
24.4	<b>Procedures for Appeals and Variances</b>	205
	24.4.1 Application Submittal Requirements	205
	24.4.2 Public Hearing	206
	24.4.3 Action on the Application	206
	24.4.4 Actions Subsequent to Decision	207
	24.4.5 Appeal of Decision	207
<b><u>Article 25.</u></b>	<b>Administrative Mechanisms</b>	
25.1	<b>Council</b>	208

<b>25.2</b>	<b>Planning Board</b> .....	208
25.2.1	Establishment; Qualifications .....	208
25.2.2	Tenure.....	208
25.2.3	Officers.....	208
25.2.4	Powers .....	208
25.2.5	Meetings .....	210
25.2.6	Attendance.....	210
25.2.7	Quorum and Voting .....	210
25.2.8	Annual Report.....	210
25.2.9	Comprehensive Review .....	211
<b>25.3</b>	<b>Board of Adjustment</b> .....	211
25.3.1	Establishment; Qualifications .....	211
25.3.2	Tenure.....	211
25.3.3	Officers.....	211
25.3.4	Powers .....	211
25.3.5	Meetings .....	212
25.3.6	Attendance.....	212
25.3.7	Quorum and Voting .....	212
25.3.8	Appeals .....	213
<b>25.4</b>	<b>Historic District Commission</b> .....	213
25.4.1	Establishment .....	213
25.4.2	Qualifications .....	213
25.4.3	Tenure.....	213
25.4.4	Officers.....	213
25.4.5	General Responsibilities.....	213
25.4.6	Powers .....	214
25.4.7	Meetings .....	215
25.4.8	Attendance.....	215
25.4.9	Quorum and Voting .....	215
25.4.10	Annual Report.....	215
25.4.11	Significance Maps .....	216
<b>25.5</b>	<b>Community Design Commission</b> .....	216
25.5.1	Establishment .....	216
25.5.2	Qualifications .....	216
25.5.3	Tenure.....	216
25.5.4	Officers.....	217
25.5.5	Powers .....	217
25.5.6	Meetings .....	218
25.5.7	Attendance.....	218
25.5.8	Quorum and Voting .....	219
25.5.9	Annual Report.....	219
<b>25.6</b>	<b>Town Manager</b> .....	219

**Article 26. Legal Status**

<b>26.1</b>	<b>Severability</b> .....	220
<b>26.2</b>	<b>Conflict with Other Laws</b> .....	220
<b>26.3</b>	<b>Repeal of Existing Zoning Regulations</b> .....	220

**LIST OF ILLUSTRATIONS**

<b>Figure</b>	<b>Page</b>
13-1 Gross Land Area .....	90
13-2 Lot Width and Street Frontage Width .....	91
13-3 Building Envelope .....	96
13-4 Setbacks .....	98
13-5 Height .....	99
13-6 Building Spacing .....	102
17-1 Flag Lot.....	147
17-2 Flag Lot.....	147
17-3 Flag Lot.....	147

**ARTICLE 1 - GENERAL PROVISIONS**

**1.1 Short Title**

This chapter shall be known as and may be cited as the Chapel Hill Development Ordinance.

**1.2 Authority**

This chapter is adopted pursuant to the authority contained in Chapter 160A, Article 19; Chapter 143, Article 21 (Part 6) and Article 33C; Chapter 13A, Article 4; Chapter 136, Article 34; and Chapter 63, Article 4 of the N.C. General Statutes; as well as Chapter 473 of the Session Laws of 1975 and Chapter 278 of the Session Laws of 1965.

**1.3 Jurisdiction**

This chapter shall be effective throughout the Town's planning jurisdiction. The planning jurisdiction of the Town comprises the area described by Chapter 473 of the Session Laws of 1975, as modified from time to time in accordance with Section 160A-360 of the North Carolina General Statutes.

**1.4 Intent**

**1.4.1 Declaration of Necessity**

In order to protect and promote the health, safety, and general welfare of the Town and its extraterritorial area, this chapter is adopted by the Town Council to regulate and restrict by means of zoning regulations the height, number of stories, and size of buildings and other structures, the percentage of lots that may be occupied, the size of yards, courts, and other open spaces, the density of population, and the location and use of buildings, structures, and land for trade, industry, residence, and other purposes.

**1.4.2 Purpose**

The purpose of the regulations set forth in this chapter shall be to accomplish compatible development of the land within the planning jurisdiction of the Town in a manner which will best promote the health, safety, and general welfare; to promote efficiency, energy conservation, and economy in development; to make adequate provisions for traffic; to secure safety from fire, flooding, panic, and other hazards; to provide for adequate light and air; to prevent the over-crowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements; to promote desirable living conditions and the stability of neighborhoods; to protect property against blight and depreciation; to ensure accessibility for handicapped persons; to regulate placement and design of telecommunications facilities and equipment so as to protect the public health, safety, and general welfare; and to achieve other purposes in accord with the Comprehensive Plan for the Town's planning jurisdiction.

**1.5 Required Conformance to Chapter Provisions**

Except as otherwise specifically provided in this chapter, no land or structure shall hereafter be used or occupied, and no excavation, removal of soil, clearing of a site, or placing of fill shall take place on lands contemplated for development, and no structure, or part thereof, shall be constructed, erected, altered, renovated, or moved, except in compliance with all of the applicable provisions of this chapter.

**1.6      Fees**

Reasonable fees sufficient to cover the costs of administration, inspection, publication of notice, and similar matters may be charged to applicants for Zoning Compliance Permits, Special Use Permits, Certificates of Appropriateness, zoning amendments, appeals, variances, and other administrative relief. The amount of such fees shall be fixed by the Council.

**1.7      Effective Date**

The provisions of this chapter shall become effective on May 12, 1981.

**ARTICLE 2 - DEFINITIONS**

**2.1**        **Interpretation of Terms or Words:** For the purpose of this chapter, certain terms or words used herein shall be interpreted as follows:

- 1.    The word "shall" is always mandatory and the word "may" is permissive.
- 2.    The words "used" or "occupied" include the words "intended, designed, or arranged to be used or occupied".

Terms not herein defined shall have the meanings customarily assigned to them.

**2.1.1**      **Above Average Rainfall:** The hydrologic condition that exists when rainfall for the preceding 30 days is greater than 120% of the average rainfall for the same period, as recorded by the National Weather Service.

**2.2**        **Adult Day Care Facility:** A use of land and buildings that provides care on a regular basis to aging, disabled or handicapped adults away from their homes, and by persons other than family members, guardians, or custodians, and where a payment, fee or grant is made for such care. The term Adult Day Care Facility shall not be construed to include a Group Care Facility.

**2.2.1**      **Area of shallow flooding:** A designated AO or VO Zone on a community's Flood Insurance Rate Map (FIRM) with base flood depths from one to three feet where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity may be evident.

**2.2.2**      **Area of special flood hazard:** The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year.

**2.3**        **Agriculture, Non-Livestock:** The use of land for the production of cash grains, field crops, vegetables, fruits, and nuts, and for horticulture and floriculture.

**2.4**        **Agriculture, Livestock:** The use of land for the keeping, grazing, feeding, or breeding of livestock, including cattle, hogs, sheep, goats, and poultry, and also animal specialties such as horses, breeding of livestock, including cattle, hogs, sheep, goats, and poultry, and also animal specialties such as horses, rabbits, bees, and fish and fur-bearing animals in captivity.

**2.5**        **Alley:** A publicly dedicated and maintained right-of-way twenty (20) feet or less in width that provides only a secondary means of access to abutting property and is not intended for general traffic circulation.

**2.6**        **Automotive Repair:** The repair, rebuilding, or reconditioning of motor vehicles or parts thereof, including collision service, painting, and steam cleaning of vehicles.

**2.7**        **Automotive, Trailer, Farm Implement Sales or Rental:** The sale or rental of new and used motor vehicles, travel trailers, or farm implements to be displayed and sold on the premises, but not including repair work except incidental warranty repair of the above.

**2.8**        **Bank:** Financial institution engaged in deposit banking and closely related functions such as the extension of credit by means of loans and investments, and fiduciary activities.

**2.9**        **Barber Shop/Beauty Salon:** An establishment that provides services generally involving the cutting and styling of hair, and including customary accessory uses such as shoe

polishing, manicure work, facial treatment, the sale and fitting of wigs, and the sale of hair treatment products.

- 2.9.1** **Base Flood:** The flood having a one percent chance of being equaled or exceeded in any given year (the 100 year flood).
- 2.9.2** **Basement:** That portion of a building between floor and ceiling, that is wholly or partly below grade.
- 2.9.3** **Best Management Practice (BMP):** A structural or nonstructural management-based practice used singularly or in combination to reduce non-point source pollution inputs to receiving waters in order to achieve water quality protection goals.
- 2.10** **Building:** Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, chattels, or property.
- 2.11** **Building, Accessory:** A subordinate building detached from, but located on the same lot as the principal building, the use of which is incidental and accessory to that of the principal building.
- 2.12** **Building, Principal:** A building or, where the context so indicates, a group of buildings in which is conducted the principal use of the lot on which such building is located.
- 2.13** **Building envelope:** The three-dimensional space within which a structure is permitted to be built on a zoning lot, and which is defined by setback and height regulations.
- 2.13.1** **Built-upon area:** That portion of a development project that is covered by impervious or partially impervious surfaces including buildings, pavement, gravel roads, recreation facilities (e.g. tennis courts), etc. (Note: Wooden slatted decks and the water area of a swimming pool are considered pervious.)
- 2.14** **Bonus Level:** A higher level of land use intensity ratios for which development may qualify if it provides specified public benefits. Bonus intensity ratios are designed to provide an incentive for the achievement of specified public objectives.
- 2.15** **Business, Convenience:** Commercial establishments that generally serve day-to-day commercial needs of a residential neighborhood, including drugstores, tobacco shops, newsstands, bakeries, confectioneries, delicatessens, meat and produce markets, food stores with less than ten thousand (10,000) square feet in floor area, and eating and drinking establishments.
- 2.16** **Business, General:** Commercial establishments that, in addition to serving day-to-day commercial needs of a community, also supply the more durable and permanent needs of a whole community, including supermarkets, department stores, discount stores, variety stores, hardware and garden supply stores, apparel and footwear stores, florists, gift shops, jewelry stores, book and stationery stores, specialty shops, sporting goods stores, furniture and home furnishing stores, automotive supply stores, and appliance stores.
- 2.17** **Business, Office-Type:** Quasi-commercial uses that generally accommodate occupations such as administrative, executive, legal, accounting, writing, clerical, stenographic, and drafting occupations, and including institutional offices of a charitable, philanthropic, religious, or educational nature.
- 2.18** **Business, Wholesale:** Commercial establishments that generally sell commodities in large quantities or by the piece to retailers, jobbers, other wholesale establishments, or

manufacturing establishments, basically for use in the fabrication of a product or for use by a business service.

- 2.19**     **Business Services:** Any profit-making activity that renders services primarily to other commercial or industrial enterprises, or which services and repairs appliances and machines used in homes and businesses.
- 2.19.1**    **Car Wash:** A facility for the washing, cleaning, vacuuming and polishing of automobiles, pick up trucks and other light trucks, but not construction equipment or semi tractor trailer trucks, and for the sale of automotive washing, cleaning and polishing supplies.
- 2.20**     **Cemetery:** Land used or intended to be used for the burial of the human dead and dedicated for cemetery purposes, including crematories, mausoleums, and mortuaries if operated in connection with and within the boundaries of such cemetery.
- 2.21**     **Certificate of Appropriateness:** A document issued by the Historic District Commission or Community Design Commission certifying compliance with the provisions of Article 6 or Article 7, respectively.
- 2.22**     **Certificate of Occupancy:** A document issued by the Building Inspector certifying compliance with all applicable state and local laws, including all terms of an approved Zoning Compliance Permit, and authorizing occupancy of a building or structure.
- 2.22.1**    **Channel:** The defined course (eg. bed, ditch, or depression) where a natural or man-made stream of water is transmitted.
- 2.23**     **Child Day Care Facility:** A use of land and buildings that provides care to preschool children away from their homes, and by persons other than family members, guardians, or custodians, and where a payment, fee, or grant is made for such care.
- 2.24**     (**Church** definition changed 3/11/92 to **Place of Worship**, 2.92.1 )
- 2.25**     **Clinic:** An establishment used for the care, diagnosis, therapy, or counseling of sick, ailing, infirm, or injured persons or non-medical therapy and counseling on an outpatient basis.
- 2.26**     **Club:** An establishment operated by a corporation or association of persons for social, literary, political, educational, fraternal, or charitable purposes, but which is not operated for profit or to render a service which is customarily conducted as a business.
- 2.27**     **Cluster Development:** A subdivision in which building lots are grouped together through a transfer of allowable density within the subdivided tract. Cluster development permits more efficient development by creating lots with gross land areas smaller than those required for conventional lot-by-lot development, yet maintains application of normal lot density standards to the subdivided tract as a whole by requiring that land area saved by lot size reductions be reserved as permanent recreation area.
- 2.28**     **College, University, or Professional School:** A degree-granting establishment, and its associated programs, centers, and functions, providing formal academic education and generally requiring for admission at least a high school diploma or equivalent academic training, including colleges, junior colleges, universities, technical institutes, seminaries, and professional schools (architectural, dental, engineering, law, medical, etc.)
- 2.28.1**    **Commercial Subdivision:** The subdivision of a development on a zoning lot that consists of uses from Use Group B and/or Use Group C of the Schedule of Use Regulations. Such

a subdivision would create two (2) or more individual lots plus land developed and designated for the common use and benefit of the occupants/owners of the individual commercial subdivision lots, provided:

- 1) That an entity is designated to be legally responsible for maintenance and control of the common land areas;
- 2) That the Special Use Permit Approval or Site Plan Approval which encumbers the entire zoning lot be recorded at the Orange or Durham County Register of Deeds Office, whichever is appropriate;
- 3) That an application for any change to a Special Use Permit Approval or Site Plan Approval shall require that the application be signed by all property owners of the zoning lot for which the Special Use Permit Approval or Site Plan Approval applies;
- 4) That a Zoning Compliance Permit shall be issued and valid for the development prior to application for commercial subdivision;
- 5) That all parking area, drive aisles, and required Outdoor Space shall be the common land area; and
- 6) The individual lots within a commercial subdivision shall not be required to meet the lot design standards of Article 17 or the intensity regulations of Article 13, provided the zoning lot containing the commercial subdivision meets such standards.

**2.29** **Comprehensive Plan:** A plan, or any portion thereof, adopted by the Chapel Hill Planning Board and Council, establishing goals, objectives, and policies designed to manage the quantity, type, cost, location, timing, and quality of development and redevelopment in the Chapel Hill community.

**2.29.1** **Contiguous Property:** Property adjoining, neighboring, and nearby the outer boundary of a proposed development. For development proposals that are small in scale and similar in proposed use to existing uses in the immediate vicinity, contiguous property shall be construed to be those properties immediately adjacent. For large development proposals and/or proposed uses that are significantly different from existing uses nearby, or proposals that have significant topographic features that could impact nearby properties, contiguous property shall be construed to include those properties in a larger area, and those likely to experience negative impacts resulting from the proposed development. But in every case, for a proposal over 10 but less than 100 acres, at a minimum all property within 500 feet shall be considered contiguous; for development proposals that are over 100 acres, at a minimum all properties within 1,000 feet shall be considered contiguous.

**2.30** **Council:** The governing body of the Town of Chapel Hill, consisting of a mayor and eight (8) council members, as established in Chapter III of the Charter of the Town of Chapel Hill.

**2.30.1** **Critical Root Zone:** A circular area surrounding a tree, of which the center is the center of the tree trunk and the radius is the distance from the outside of the trunk to any point twelve (12) times the diameter at breast height (DBH), which points constitute the circumference of the critical root zone. The critical root zone shall extend to a depth of five (5) feet below surface ground level.

**2.30.2.1** **DBH - Diameter at Breast Height:** The total cross-sectional diameter of the trunk(s) of a tree measured 4 1/2 feet from the ground at the center of the tree.

- 2.31**      **Density:** The average number of families, persons, or housing units per acre of land.
- 2.31.1**    **Developing Land:** A zoning lot on which surveying for development is currently taking place or for which an application is currently being reviewed for development by the Town Planning staff or for which development activities are approved
- 2.32**      **Development:** Any man-made change to improved or unimproved real estate, including, but not limited to: the construction, erection, structural alteration, enlargement, or rehabilitation of any buildings or other structures, including farm buildings; mining; dredging; filling; grading; paving; excavation or drilling operations; clearing of vegetation; any division of a parcel of land into two (2) or more parcels and any use or change in use of any structures or land. Development shall also include any land disturbing activity on improved or unimproved real estate that changes the amount of impervious or partially impervious surfaces on a parcel, or that otherwise decreases the natural infiltration of precipitation into the soil.
- 2.33**      **Drive-In Window:** A window or other opening in the wall of a principal building through which goods or services are provided directly to customers in motor vehicles by means that eliminate the need for such customers to exit their motor vehicles.
- 2.34**      **Driveway:** A vehicular way, other than a street or alley, that provides vehicular access from a street to or through off-street parking and/or loading areas.
- 2.34.1**    **Drought:** The hydrologic condition that exists when rainfall for the proceeding 30 days is less than 80% of the average rainfall for the same period, as recorded by the National Weather Service.
- 2.35**      **Dwelling:** Any building or structure (except a mobile home) that is wholly or partly used or intended to be used for living or sleeping by one or more human occupants.
- 2.36**      **Dwelling, Single-Family:** A detached dwelling consisting of a single dwelling unit only. A single family structure with more than five (5) bedrooms shall be classified as a Rooming House unless the structure is occupied by persons related by blood, adoption, marriage, or domestic partnership, with not more than two unrelated persons.
- 2.37**      **Dwelling, Two-Family:** A dwelling or combination of dwellings on a single lot consisting of two (2) dwelling units.
- 2.38**      **Dwelling, Two-Family -- Including Accessory Apartment:** A dwelling or combination of dwellings on a single zoning lot consisting of two (2) dwelling units, provided the floor area of one of the dwelling units does not exceed fifty percent (50%) of the floor area of the other dwelling unit, nor is greater than 750 square feet and further provided the dwelling's exterior design and entry locations give the dwelling the appearance of a single-family dwelling. A two-family dwelling that includes an accessory apartment, as described above, with more than six (6) bedrooms within the two-family dwelling shall be classified as a Rooming House unless each dwelling unit is occupied by persons related by blood, adoption, or marriage, or domestic partnership, with not more than two unrelated persons.
- 2.39**      **Dwelling, Two-Family -- Duplex:** A single dwelling consisting of two (2) dwelling units (other than a two-family dwelling - including accessory apartment - see Section 2.38 above), provided the two dwelling units are connected by or share a common floor-to-ceiling wall, or, if the two units are arranged vertically, that they share a common floor/ceiling and not simply by an unenclosed passageway (e.g., covered walkway) and provided that each dwelling unit contains no more than three (3) bedrooms per unit. A duplex structure with more than three (3) bedrooms within either dwelling unit shall be

classified as a Rooming House unless each dwelling unit is occupied by persons related by blood, adoption, marriage, or domestic partnership, with not more than two unrelated persons.

- 2.40** **Dwelling, Multi-Family:** A dwelling or combination of dwellings on a single lot consisting of three (3) or more dwelling units.
- 2.41** **Dwelling Unit:** A room or group of rooms within a dwelling forming a single independent habitable unit used or intended to be used for living, sleeping, sanitation, cooking, and eating purposes by one family only; for owner occupancy or for rental, lease, or other occupancy on a weekly or longer basis; and containing independent kitchen, sanitary, and sleeping facilities; and provided such dwelling unit complies with Chapel Hill's Minimum Housing Code.
- 2.42** **Efficiency Dwelling Unit:** A dwelling unit in which living and sleeping activities are conducted or intended to be conducted within a single room.
- 2.42.1** **Engineered Stormwater Controls:** A structural best management practice (BMP) used to reduce non-point source pollution to receiving waters in order to achieve water quality protection.
- 2.43** **Essential Services:** The erection, construction, alteration, or maintenance by public utilities or governmental agencies of traffic distribution systems; water, sewage, steam, gas, electrical, or communication transmission or distribution systems; and storm water collection and distribution systems; including streets, sidewalks, street lights, bus passenger shelters, traffic signals, pipes, hydrants, pumping stations, wires, curb-and-gutter, catch basin, drains, or other similar equipment and accessories reasonably necessary for the provision of adequate service by such public utilities or governmental agencies, but not including buildings or other substantial above-ground structures (see Public Service Facility and Radio or Television Transmitting and/or Receiving/Facility).
- 2.44** **Extraction of Earth Products:** The process of removal of natural deposits of mineral ores, soils, or other solid matter from their original location, not including any processing of such material beyond incidental mechanical consolidation or sorting to facilitate transportation off-site.
- 2.45** **Family:** An individual living alone or two (2) or more persons living together as a single housekeeping unit, using a single facility in a dwelling unit for culinary purposes. The term "family" shall include an establishment with support and supervisory personnel that provides room and board, personal care and habitation services in a family environment for not more than 6 residents who are handicapped, aged, disabled, or who are runaway, disturbed or emotionally deprived children and who are undergoing rehabilitation or extended care. The term "family" shall not be construed to include a fraternity or sorority, club, rooming house, institutional group or the like.
- 2.45.1** **Fine Arts Educational Institution:** Private entities that provide instruction and facilities for training and education in the fine arts, such as ballet schools, music conservatories, and visual arts schools. These uses may include performances and exhibits as accessory activities associated with the principal use.
- 2.46** **Flag Lot:** An irregularly shaped lot where the buildable portion of the lot is, connected to its street frontage by an arm of the lot, that does not meet the minimum lot width and street frontage standards specified in Section 13.11 for the zoning district in which the lot is located (see Figures 17-1 to 17-3).

- 2.46.1 Flood or flooding:** A general and temporary condition of partial or complete inundation of normally dry land areas from:
- 1) the overflow of inland or tidal waters;
  - 2) the unusual and rapid accumulation of runoff of surface waters from any sources.
- 2.46.2 Flood Hazard Boundary Map (FHBM):** The official map of a community, on which the Federal Emergency Management Agency has delineated both the areas of special flood hazard and the risk premium zones applicable to Chapel Hill.
- 2.46.3 Flood Insurance Study:** The official report provided by the Federal Emergency Management Agency (FEMA) containing flood profiles as well as the Flood Boundary-Floodway Map and the water surface elevation of the base flood.
- 2.46.4 Floor:** The top surface of an enclosed area in a building (including basement), i.e. top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.
- 2.47 Floor Area:** The sum of enclosed areas on all floors of a building or buildings measured from the outside faces of the exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and any below-grade floor areas used for access and storage. Not countable as floor area are open terraces, patios, atriums, balconies, carport garages, and breezeways.
- 2.48 Floor Area Ratio (FAR):** A decimal fraction that, when multiplied by the gross land area of a zoning lot, determines the maximum floor area permitted within the zoning lot. The Floor Area Ratios for the various zoning districts and use groups are in the Schedule of Intensity Regulations.
- 2.48.1 Footprint:** The area bounded by the external walls of any structure.
- 2.49 Fraternity or Sorority Dwelling:** A dwelling or combination of dwellings on a single lot occupied by and maintained exclusively for college, university, or professional school students who are affiliated with a social, honorary, or professional organization recognized by the college, university, or professional school.
- 2.50 Funeral Home:** An establishment primarily engaged in preparing the dead for burial, conducting funerals, and cremating the human dead.
- 2.51 Gross Land Area:** All area within the boundaries of a zoning lot (net land area) plus half of the adjoining 1) publicly-owned or otherwise permanently dedicated open space, such as parks, recreation areas, water bodies, cemeteries and the like, and 2) public streets, provided: a) the width of such credited open space and streets shall be limited to a number of feet equal to the Land Use Intensity (LUI) rating applying to the lot: and b) the total amount of credited open space and public streets shall not exceed ten percent (10%) of the net land area of the zoning lot, except that such limit shall not apply to open space dedicated to the Town between May 12, 1981 and December 5, 1983 and open space in the Town Center-1 and Town Center-2 districts.
- 2.52 Group Care Facility:** An establishment qualified for a license by the State of North Carolina for the provision of resident services to seven (7) or more individuals of whom one or more are unrelated, and who are handicapped, aged, disabled, or who are runaway, disturbed, or emotionally deprived children and who are undergoing rehabilitation or extended care, and who are provided services to meet their needs. Included are group

homes for all ages, halfway houses, boarding homes for children, and convalescent and nursing homes.

- 2.52.1 Hazardous Materials:** Those materials listed in the most current Consolidated List of Chemicals covered by Superfund Amendments and Reauthorization Act of 1986 (SARA), Title III.
- 2.52.2 Healthy Living Tree:** A tree that is relatively free of disease or rotten wood and that has prospects for longtime survival.
- 2.53 Height (of a Structure or Part thereof):** The vertical distance from the mean natural grade at the foundation to the highest portion of the structure, or part thereof.
- 2.54 Height Limitation, Primary:** The maximum height allowed for any structure located at the minimum setback required for such structure, as shown in Section 13.11.
- 2.55 Height Limitation, Secondary:** The absolute maximum height allowed for any structure, as shown in Section 13.11.
- 2.55.1 High Density Option:** One of two approaches available for development in watershed overlay districts. Generally, the high density option relies on density limits and engineered stormwater controls to minimize the risk of water pollution.
- 2.55.2 Highest Adjacent Grade:** The highest natural elevation of the ground surface, prior to construction, next to the proposed walls of a structure.
- 2.56 Home Occupation:** An occupation conducted as an accessory use of a dwelling unit, provided that:
- a) Home occupations shall have a limit of one full-time equivalent employee who is not a member of the family residing in the home with the home occupation; “Full-time equivalent employee” refers to one or more employees who work a total of no more than 40 combined hours on-site per week;
  - b) The use of the dwelling unit or accessory buildings for the home occupation shall be clearly incidental and subordinate to the use of the property for residential purposes, and not more than thirty-five percent (35%) nor more than 750 square feet of the floor area of the dwelling unit and any accessory buildings combined shall be used in the conduct of the home occupation; provided, that the floor area defined as used in the home occupation is the area dedicated to or primarily used for the home occupation, and does not include areas incidentally used for the home occupation
  - c) No external evidence of the conduct of the home occupation, including commercial signs, shall be visible;
  - d) Traffic and Parking Regulations
    - (1) The home occupation shall not generate traffic volumes or parking area needs greater than would normally be expected in the residential neighborhood;
    - (2) In addition, normally there shall be no more than 3 vehicles parked at a given time on- or off-street for non-residential purposes including but not limited to parking by non-resident employees, customers, delivery services, etc.; but excluding drop-offs and pick-ups. Home occupations for arts education or similar educational purposes are exempt from any parking restrictions.

(3) There shall be no regular pick-up and delivery by vehicles other than those of a size normally used for household deliveries.

- e) No equipment or process shall be employed that will cause noise, vibration, odor, glare, or electrical or communication interference detectable to the normal senses off the lot; in the case of detached dwelling units, or outside the dwelling unit, in the case of attached dwelling units;
- f) The on-premises sale and delivery of goods which are not the products of the home occupation are prohibited, except that the sale of goods which are incidental to a service of the home occupation is permitted;
- g) A zoning compliance permit is issued for the home occupation(s). The permit shall describe the nature of the business and include the applicant’s certification that the home occupation will be conducted in accord with the Development Ordinance and other applicable laws and ordinances. Once a home occupation permit has been granted, it shall remain in effect until: (1) it is revoked by the Town, (2) the home occupation is terminated by the resident or residents for 180 or more days, or (3) the holder of the permit moves from the residence.

**2.57**     **Hospital:** An institution providing physical and mental health services primarily for human in-patient medical or surgical care for the sick or injured, including related facilities such as laboratories, out-patient services, training facilities, central service facilities, and staff offices.

**2.58**     **Hotel or Motel:** A building or group of buildings containing in combination ten (10) or more lodging units intended primarily for rental or lease to transients by the day or week, as distinguished from residence halls, in which occupancy is generally by residents rather than transients.

**2.58.1**   **Impervious Surface:** A surface composed of any material that impedes or prevents natural infiltration of water into the soil.

**2.59**     **Intensity:** The degree to which land is used, generally measured by a combination of the type of land use and the amount of land or floor area devoted to that use.

**2.60**     **Kenel:** Any lot or premises on which four (4) or more domesticated animals more than four (4) months of age are housed, groomed, bred, boarded, trained, or sold.

**2.61**     **Landfill:** Any lot or premises on which is deposited solid waste material, including trash, construction debris, stumps, branches and limbs, garbage, and industrial waste.

**2.61.1**   **Landscape Protection Certificate:** A certificate granted by the Town Manager to any individual who completes the Landscape Protection Seminar.

**2.61.2**   **Landscape Protection Plan:** A plan identifying existing landscape elements, proposed changes, and protection measures to be used to aid the survival of such landscape elements as defined in Section 4.2 of Article 11 of this document.

**2.61.3**   **Landscape Protection Seminar:** A presentation administered by the Town to all persons seeking certification as a Landscape Protection Supervisor.

**2.61.4**   **Landscape Protection Supervisor:** A person who has attended the Landscape Protection Seminar, and acquired a Landscape Protection Certificate.

- 2.62** **Land Use Intensity (LUI) Ratios:** A scale of established ratios that are applied to the gross land area of a zoning lot to determine maximum floor area, minimum outdoor space, minimum livability space, and minimum recreation space requirements for development within the zoning lot. Each LUI scale is identified by a LUI rating.
- 2.62.1** **Life of the Design:** The total number of years in which single planting maintains its intended purpose.
- 2.63** **Livability Space:** That part of total outdoor space appropriately improved and, if necessary, located as outdoor living space and for aesthetic appeal, including natural areas, lawns and other landscaped areas, walkways, paved terraces and sitting areas, outdoor recreational areas, and landscaped portions of street rights-of-way, but not including outdoor space used for motorized vehicles, except for incidental service, maintenance, or emergency actions.
- 2.64** **Livability Space Ratio (LSR):** A decimal fraction that, when multiplied by the gross land area of a zoning lot, determines the minimum livability space required within the gross land area of the zoning lot. The Livability Space Ratios for the various zoning districts and use groups are in the Schedule of Intensity Regulations.
- 2.65** **Loading, Off-Street:** Space located outside of any street right-of-way or easement and designed to accommodate the temporary parking of vehicles used for bulk pickups and deliveries.
- 2.66** **Lodging Unit:** A room or group of rooms forming a separate habitable unit used or intended to be used for living and sleeping purposes by one family only, without independent kitchen facilities; or a separate habitable unit, with or without independent kitchen facilities, occupied or intended to be occupied by transients on a rental or lease basis for periods of less than one week.
- 2.67** **Lot:** Land bounded by lines legally established for the purpose of property division. As used in this chapter, unless the context indicates otherwise, the term refers to a zoning lot.
- 2.68** **Lot Line:** A line that marks the boundary of a lot.
- 2.69** **Lot Line, Interior:** Any lot line that is not a street lot line; a lot line separating a lot from another lot.
- 2.70** **Lot Line, North:** Any portion of a lot line that has an alignment within forty-five degrees of an East/West axis.
- 2.71** **Lot Line, Street:** Any lot line separating a lot from a street right-of-way or easement. Where a lot line is located within such street right-of-way or easement, the right-of-way or easement boundary adjacent to the lot shall be considered the street lot line.
- 2.72** **Lot Line, Zero:** Any interior or north lot line along which a structure is allowed with no setback in accord with the zero lot line development standards of Subsections 13.9.9 and 17.7.7.
- 2.73** **Lot Width:** The horizontal distance measured along a straight line connecting the points at which a line demarcating the minimum street setback required from a street lot line intersects with interior lot lines and/or other street lot lines (See Figure 13-2).

- 2.74**      **Low Density Option:** One of two approaches available for development in watershed overlay districts. Generally, the low density option relies on non-structural means, specifically density limits, to minimize risk of water pollution.
- 2.75**      **Maintenance and or Storage Facility:** Land, building, or structure devoted primarily to the maintenance and/or storage of equipment and materials.
- 2.75.1**    **Manufactured Home:** A structure, transportable in one or more sections, which is built on a permanent chassis and is designed for use with or without a permanent foundation when connected to the required utilities. The term "manufactured home" also includes park trailers, travel trailers, and other similar vehicles placed on a site.
- 2.75.2**    **Manufactured Home Park or Subdivision:** A parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.
- 2.75.3**    **Mean Sea Level:** The average height of the sea for all stages of the tide. It is used as a reference for establishing various elevations within the flood plain. For purposes of this chapter, the term is synonymous with National Geodetic Vertical Datum (NGVD). For purposes of national flood insurance programs, the National Geodetic Vertical Datum (NGVD) of 1929 or other datum, to which base flood elevations shown on a community's flood insurance rate map are referenced.
- 2.76**      **Manufacturing, Light:** Manufacturing, processing, creating, renovating, painting, cleaning, assembly of goods, merchandise, and equipment, or other industrial uses which have all operations and storage within enclosed structures.
- 2.77**      **Mobile Home:** A single portable manufactured housing unit, or a combination of two (2) or more such units connected on-site, that is a) designed to be used for living, sleeping, sanitation, cooking, and eating purposes by one family only and containing independent kitchen, sanitary, and sleeping facilities; b) designed so that each housing unit can be transported on its own chassis; c) placed on a temporary or semi-permanent foundation; and d), is over thirty-two (32) feet in length and over eight (8) feet in width.
- 2.78**      **Mobile Home, Class A:** A mobile home that meets the U.S. Department of Housing and Urban Development Mobile Home Construction and Safety Standards and which is certified by the Town Manager as meeting the following appearance performance criteria:
- a) The mobile home shall have a length not exceeding four (4) times its width;
  - b) The pitch of the mobile home's roof shall have a minimum vertical rise of one foot for each five (5) feet of horizontal run;
  - c) The exterior materials shall be of a color, material, and scale compatible with those existing in the immediate vicinity, and in no case shall the degree of reflectivity of exterior finishes exceed that of gloss white paint;
  - d) A continuous permanent masonry foundation, unpierced except for required ventilation, shall be installed under the mobile home; and
  - e) The tongue and undercarriage chassis shall be removed subsequent to final placement.
- 2.79**      **Mobile Home, Class B:** A mobile home that meets the U.S. Department of Housing and Urban Development Mobile Home Construction and Safety Standards or, after inspection by the Building Inspector, is found to be in good condition and fit and safe for human

occupancy, but which is not certified as meeting the appearance performance criteria contained in Section 2.78 above.

- 2.80**     **Mobile Home Park**: A combination of two (2) or more mobile homes on a single zoning lot.
- 2.81**     **Reserved**
- 2.81.1**   **National Geodetic Vertical Datum (NGVD)**: A vertical control, as corrected in 1929, used as a reference for establishing varying elevations within the flood plain.
- 2.82**     **Nonconforming Feature**: A physical feature or characteristic or a use, building, structure, or other development of land that was lawfully established prior to the effective date of this chapter or a subsequent chapter thereto, but does not conform to the Intensity Regulations of Article 13 or the Design Standards of Article 14 applicable to such use, building, structure, or development of land, including, but not limited to, nonconforming structures, nonconforming signs, nonconforming parking facilities, and nonconforming lighting.
- 2.83**     **Nonconforming Lot**: A lot that was lawfully created prior to the effective date of this chapter or a subsequent amendment thereto, but does not conform to the minimum gross land area or minimum lot width requirements established in Article 13 for the zoning district in which it is located.
- 2.84**     **Nonconforming Use**: A use of land, buildings, or structures that was lawfully established prior to the effective date of this chapter or a subsequent amendment thereto, but does not conform to the Use Regulations of Article 12 for the zoning district in which it is located.
- 2.84.1**   **Non-point Source Pollution**: Pollution that enters waters mainly as a result of precipitation and subsequent collective runoff from lands that have been disturbed by man's development activities and includes all sources of water pollution which are not required to have a permit in accordance with G.S. 142-215.1(c).
- 2.84.2**   **Normal Flow**: The volume of water carried by a stream in times other than droughts or above average rainfall.
- 2.84.3**   **Open Space**: Land devoted to uses characterized by vegetative cover or water bodies, such as agricultural uses, pastures, meadows, parks, recreational areas, lawns, gardens, cemeteries, ponds, streams and the like.
- 2.85**     **Outdoor Space**: The total horizontal area of uncovered outdoor space plus half the total horizontal area of covered outdoor space.
- 2.86**     **Outdoor Space, Covered**: Usable outdoor space closed to the sky but having two (2) clear unobstructed open or partially open sides. Partially open is construed as fifty percent (50%) open or more. The horizontal area countable as covered outdoor space shall not exceed the number of square feet equal to the vertical areas of the open sides. Examples of covered outdoor space are covered balconies, covered portions of improved roof areas, or spaces under buildings supported on columns or posts, or cantilevered.
- 2.87**     **Outdoor Space, Uncovered**: The total gross land area not covered by buildings, plus open exterior balconies, and roof areas improved as livability space.
- 2.88**     **Outdoor Space Ratio (OSR)**: A decimal fraction that, when multiplied by the gross land area of a zoning lot, determines the minimum outdoor space required within the gross land

area of the zoning lot. The Outdoor Space Ratios for the various zoning districts and use groups are in the Schedule of Intensity Regulations.

- 2.88.1 Outdoor Skateboard Ramp:** A ramp or other similar type of structure used for skateboarding or similar or related purposes which is between four (4) feet and ten (10) feet in height, and between twelve (12) feet and thirty (30) feet in length. Ramps smaller than four (4) feet in height and twelve (12) feet in length are not subject to the regulations in this Chapter. Ramps greater than ten (10) feet in height or thirty (30) feet in length are prohibited.
- 2.89 Parking, Off-Street:** Space located outside of any street right-of-way or easement and designed to accommodate the parking of motor vehicles.
- 2.90 Park/Ride Terminal:** An off-street parking facility designed or intended to provide peripheral collection and storage of vehicles to accommodate commuter traffic into or out from the Chapel Hill community, including accessory structures such as bus passenger shelters.
- 2.90.1 Perennial Stream:** Those areas shown as streams on the Town's Aerial Topographic Maps, subject to field verification, in addition to streams confirmed to be perennial after on-site inspection by the Town Engineering Department. The presence of a perennial stream shall be confirmed by the presence of two (2) or more of the following:
- water;
  - aquatic and/or water-loving vegetation;
  - aquatic craniate vertebrates (fish), and/or aquatic arthropods having a chitinous (or calcareous and chitinous) exoskeleton (crayfish), or evidence of such recent presence.
- 2.90.2 Person:** Any person, firm, partnership, association, corporation, company, or organization of any kind.
- 2.91 Personal Services:** An establishment that primarily provides services generally involving the care of a person or his apparel, such as seamstress shops, shoe repair shops, dry cleaning and laundry pickup facilities, and coin-operated laundry and dry cleaning facilities, but not including barber shops and beauty salons.
- 2.92 Place of Assembly:** A place designed to accommodate the assembly of persons attending athletic events, musical performances, dramatic or terpsichorean performances, speeches or ceremonies, motion picture presentations, and other entertainment events, including stadiums, coliseums, athletic centers, theaters, concert halls, night clubs, amphitheaters, and arenas.
- 2.92.1 Place of Worship:** A structure in which persons regularly assemble for religions worship and which is maintained and controlled by a religious body organized to sustain public worship.
- 2.93 Planned Development:** Land that is under unified control and planned and developed as a whole in a single development operation or a definitely programmed series of development operations. A Planned development includes principal and accessory structures and uses substantially related to the character and purposes of the planned development. A planned development is constructed according to comprehensive and detailed plans which include not only streets, utilities, lots or building sites, and the like, but also site plans and floor plans for all buildings as intended to be located, constructed, used, and related to each other, and detailed plans for other uses and improvements on

the land as related to the buildings. A planned development includes a program for the provision, operation, and maintenance of such areas, facilities, and improvements as will be for common use by some or all of the occupants of the planned development district, but which will not be provided, operated, or maintained at general public expense.

**2.94 Reserved**

**2.95 Public Cultural Facility:** The use of land, buildings, or structures by a municipal or other governmental agency to provide cultural services directly to the general public, including public libraries and museums.

**2.95.1 Public Hazard:**

- a) Any tree, plant, shrub or vegetation which so overhangs any sidewalk or public street either dedicated or proposed to be dedicated, or which is growing thereon (or adjacent thereto), in such a manner as to obstruct or impair the free and full use of the sidewalk or public street by the public as determined by the Town Manager; or
- b) Any tree, plant, shrub or vegetation in the vicinity of utility lines which has the potential to interfere with the provisions of reliable utility service as determined by the Town Manager.

**2.95.2 Public Land:** Land owned by the Town of Chapel Hill, or any other governmental entity or agency thereof.

**2.96 Public Service Facility:** The use of land, buildings, or structures by a public utility, railroad, or governmental agency, including water treatment plants or pumping stations, sewage treatment plants or pumping stations, non-nuclear power plants and substations, telephone exchanges, bus and railroad terminals, and other similar public service structures, but not including land, buildings, or structures devoted solely to the storage and maintenance of equipment and materials.

**2.97 Public Use Facility:** The use of land, buildings, or structures by a municipal or other governmental agency to provide protective, administrative, social, and recreational services directly to the general public, including police and fire stations, municipal buildings, community centers, public parks, and any other public facility providing the above services, but not including public land or buildings devoted solely to the storage and maintenance of equipment and materials and not including public cultural facilities or public service facilities.

**2.98 Publishing and Printing:** An establishment primarily engaged in preparing, publishing, and printing newspapers, periodicals, books, and pamphlets.

**2.99 Radio or Television Transmitting and/or Receiving Antenna, Accessory:** An antenna designed for the above-ground transmission and/or reception of airborne radio or television signals, customarily incidental to a permitted principal use, provided that any antenna located on a zoning lot containing a single-family or two-family dwelling shall serve only the needs of the occupants of such dwellings.

**2.100 Radio or Television Transmitting and/or Receiving Facility:** The use of land, buildings, or structures for the above-ground transmission and/or reception of airborne radio or television signals, including all transmitting and receiving towers, dishes and antennas except accessory radio or television transmitting and/or receiving antennas.

- 2.101 Recreation Facility, Non-Profit:** A non-profit facility providing recreational activities, including private country clubs, golf courses, riding stables, tennis clubs, and athletic fields.
- 2.102 Recreation Facility, Commercial:** A private profit-making facility providing recreational activities enclosed within buildings, including commercially operated indoor swimming pools and tennis courts, health clubs, gymnasiums, amusement arcades, bowling alleys, indoor skating rinks, and pool halls.
- 2.102.1 Recreation Facility, Outdoor Commercial:** A private profit-making facility providing recreational activities outdoors, including commercially operated outdoor swimming pools and tennis courts, outdoor miniature golf, driving ranges, golf courses, and outdoor batting cages.
- 2.103 Recreation Space:** That part of exterior livability space, plus enclosed floor area, which is appropriately improved for the common recreational use of residents of multifamily developments and planned developments.
- 2.104 Recreation Space Ratio (RSR):** A decimal fraction that, when multiplied by the gross land area of a zoning lot, determines the minimum recreation space required within the zoning lot. The Recreation Space Ratios for the various zoning districts and use groups are in the Schedule of Intensity Regulations.
- 2.104.1 Regulatory Flood Plain:** Areas of inundation during the base flood discharge as delineated on the Flood Hazard Boundary Maps and Flood Insurance Study for the Town of Chapel Hill, North Carolina, Orange, Durham, and Chatham Counties, latest revisions, as defined by the Associate Director of the Federal Emergency Management Agency.
- 2.104.2 Regulatory Floodway:** The channel of a river or other watercourse and the adjacent land areas as delineated on the Flood Hazard Boundary Maps and Flood Insurance Study for the Town of Chapel Hill, North Carolina, Orange, Durham, and Chatham Counties, latest revisions, as defined by the Associate Director of the Federal Emergency Management Agency, that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one foot above the 100 year flood water surface elevation.
- 2.105 Research Activities:** Research, development, and testing related to such fields as chemical, pharmaceutical, medical, electrical, transportation, and engineering, provided such activities are conducted within entirely enclosed buildings and produce no noise, smoke, glare, vibration, or odor detectable outside the buildings.
- 2.106 Residence Hall:** A building or group of buildings containing in combination ten (10) or more lodging units intended primarily for rental or lease for periods of thirty (30) days or longer, provided, however, that temporary lodging units for guests of regular tenants may be provided, with the number of such units limited to not more than ten percent (10%) of the total number of lodging units.
- 2.107 Residential Support Facility:** A building or group of buildings owned or operated by a nonprofit organization intended to be used solely for temporary occupancy by family members of patients being treated at a local hospital, with occupancy not to exceed thirty (30) families.
- 2.107.1 Riverine:** Areas formed by, or resembling a river.
- 2.108 Rooming House:** A building or group of buildings containing in combination three (3) to nine (9) lodging units intended primarily for rental or lease for periods of longer than one

week, with or without board. Emergency shelters for homeless persons and residential support facilities, as defined elsewhere in this ordinance, are not included. A Rooming House shall include a single-family dwelling, two-family dwelling including accessory apartment, or a two-family dwelling duplex if used in a manner described in the applicable definition sections so as to constitute a Rooming House. A Rooming House shall also include a building or group of buildings intended for occupancy by or occupied by more than four (4) persons who are not related by blood, adoption, marriage or domestic partnership.

**2.109 School, Elementary:** A facility providing a curriculum of elementary academic instruction, including kindergartens, elementary schools, junior high schools, and comparable private schools.

**2.110 School, Secondary:** A facility providing a curriculum of secondary academic instruction, including high schools and comparable private schools.

**2.111 Service Station:** An establishment where gasoline or diesel fuel is supplied and dispensed at retail and where, in addition, the following services only may be rendered and sales made:

- a) Sales and service of spark plugs, batteries, and distributor and ignition system parts;
- b) Sales, service, and repair of tires, but not recapping or regrooving;
- c) Replacement of mufflers, tail pipes, water hose, fan belts, brake fluid, light bulbs, fuses, floor mats, seat covers, windshield wipers and blades, grease retainers, wheel bearings, mirrors, and the like;
- d) Radiator cleaning, flushing, and fluid replacement;
- e) Sale of automotive washing and polishing supplies;
- f) Greasing and lubrication;
- g) Providing and repairing fuel pumps, oil pumps, and lines;
- h) Minor adjustment and repair of carburetors;
- i) Emergency repair of wiring;
- j) Minor motor adjustment not involving removal of the head or crankcase;
- k) Sale of beverages, packaged foods, tobacco products, and similar convenience goods for customers, as accessory and incidental to principal operations;
- l) Provision of road maps and other travel information to customers;
- m) Provision of restroom facilities;
- n) Warranty maintenance and safety inspections.

Uses permissible at a service station do not include major mechanical and body work, straightening of body parts, painting, welding, storage of automobiles not in operating condition, or other work involving noise, glare, fumes, smoke, or other characteristics to an extent greater than normally found in service stations.

- 2.112 Reserved**
- 2.113 Setback, Interior:** The horizontal distance between the interior lot line of a zoning lot and any structure on such zoning lot, measured perpendicular to the interior lot line (See Figure 13-4).
- 2.114 Setback, Solar:** The horizontal distance between the north lot line of a zoning lot and any structure on such zoning lot, measured along the north/south axis in a southerly direction from the north lot line (See Figure 13-4).
- 2.115 Setback, Street:** The horizontal distance between the street lot line of a zoning lot and any structure on such zoning lot, measured perpendicular to the street lot line (See Figure 13-4).
- 2.115.1 Shelter:** A building or group of buildings owned or operated by a non-profit organization intended to be used solely for temporary occupancy by not more than 25 homeless persons, with on-site supervision during all hours of operation, with or without board for the occupants and staff of the shelter.
- 2.116 Sign:** Any device designed to inform or attract the attention of persons not on the premises on which the device is located.
- 2.116.1 Sign, Cantilevered Ground:** A sign supported in a cantilevered fashion by an upright post.
- 2.117 Sign, Free-Standing:** A sign attached to, erected on, or supported by a structure whose primary function is to support a sign and which is not itself an integral part of a building or other structure and including signs attached to or painted on a motor vehicle if such motor vehicle is located on a site in such a way as to serve as a sign, as defined in Section 2.116 above.
- 2.118 Sign, Ground:** A free-standing sign attached to a contiguous structural base or planter box, which base or box shall be of the same width as or greater width than the message portion of the sign, and is permanently affixed to the ground. Ground signs do not include free-standing signs supported by poles.
- 2.119 Sign, Projecting:** A sign attached to and supported by a building and extending beyond the building to which it is attached at an angle.
- 2.120 Sign, Wall:** A sign attached to or painted on a wall or building, with the exposed display surface of the sign in a plane parallel to the plane of the wall to which it is attached or painted, and including signs affixed to or otherwise displayed on or through a facade window.
- 2.120.1 Sign Plan, Unified:** An overall plan for placement and design of multiple signs for a building or group of buildings on a single zoning lot.
- 2.121 Site Plan Review:** The process whereby the Council or Planning Board reviews plans of a development proposal which is a permitted use to assure that it complies with applicable development regulations and standards.
- 2.121.1 Site Specific Development Plan:** A Special Use Permit issued by the Council authorizing the development of a zoning lot.

- 2.121.2 Solid Waste Management Facility:** Solid Waste Management Facility shall be operated by or on behalf of a governmental agency and shall include, but not be limited to, a solid waste transfer facility and a materials recovery facility. A solid waste management facility shall not include the burial of any waste material.
- 2.122 Special Use:** A use of land, buildings, or structure that is identified in this chapter as a use that because of its inherent nature, extent, and external effects, requires special care in the control of its location, design, and methods of operation in order to ensure protection of the public health, safety, and welfare.
- 2.123 Special Use Permit:** A permit issued by the Council authorizing the development of a zoning lot for a special use or a planned development.
- 2.123.1 Stream Bank:** The point(s) where the wetted perimeter of a stream's cross section has the highest elevation (as referenced to mean sea level) during normal flow.
- 2.123.2 Stream Buffer:** A natural or vegetated area adjacent to watercourses through which stormwater runoff flows in a diffuse manner, so that runoff does not become channelized and that provides for the infiltration of runoff and filtering of pollutants.
- 2.124 Street:** A right-of-way or easement thirty (30) feet or more in width containing a roadway which provides or is used primarily for vehicular circulation.
- 2.125 Street, Private:** A street consisting of a private easement and a privately maintained roadway.
- 2.126 Street, Public:** A street consisting of a publicly dedicated right-of-way and a roadway maintained by the Town of Chapel Hill or the State of North Carolina.
- 2.127 Street Frontage Width:** The horizontal distance measured along a straight line connecting the points at which the street lot line abutting a street intersects with interior lot lines and/or other street lot lines (See Figure 13-2).
- 2.128 Structural Alteration:** Any change, except for repair or replacement, in the supporting members of a structure, such as, but not limited to, bearing walls, columns, beams, or girders.
- 2.129 Structure:** Anything constructed or erected which requires location on the ground or attachment to something having a fixed location on the ground, including but not limited to principal and accessory buildings, signs, fences, walls, bridges, monuments, flagpoles, antennas, and transmission poles, towers, and cables.
- 2.130 Structure, Accessory:** A subordinate structure detached from, but located on the same lot as the principal structure, the use of which is incidental and accessory to that of the principal structure.
- 2.131 Structure, Principal:** A structure or, where the context so indicates, a group of structures in or on which is conducted the principal use of the lot on which such structure is located.
- 2.131.1 Substantial Improvement:** Any repair, reconstruction, or improvement of a structure, the cost of which equals or exceeds fifty percent (50%) of the assessed taxable value of the structure, either (1) before the improvement or repair is started, or (2) if the structure has been damaged and is being restored, before the damage occurred. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor, or other structural part of the building commences, whether or not

that alteration affects the external dimensions of the structure. The term does not, however, include either (1) any project for improvement of a structure to comply with existing state or local health, sanitary, or safety code specifications which are solely necessary to assure safe living conditions, or (2) any alteration of a structure listed on the National Register of Historic Places or a State Inventory of Historic Places.

- 2.132** **Supply Yard:** A commercial establishment storing and offering for sale building supplies, steel supplies, coal, heavy equipment, feed and grain, and similar goods.
- 2.133** **Temporary Portable Building:** A building intended for nonresidential use for a limited time period, consisting of one or more modules constructed off the ultimate site of use and transported to that site either on its own wheels or otherwise.
- 2.134** **Temporary Portable Building, Construction-Related:** A temporary portable building directly related to the development of a lot and limited in duration to a time period extending from issuance of the initial Zoning Compliance Permit for such development to issuance of the final Certificate of Occupancy for the development.
- 2.135** **Tourist Home:** A building or group of buildings containing in combination three (3) to nine (9) lodging units intended for rental or lease primarily to transients for daily or weekly periods with or without board, as distinguished from rooming houses in which occupancy is generally by residents rather than transients. Emergency shelters for homeless persons and residential support facilities, as defined elsewhere in this ordinance, are not included.
- 2.136** **Townhouse Development:** A development of a zoning lot that consists of two (2) or more dwelling units or buildings, each of which is located on its own individual lot, plus land developed and designated for the common use and benefit of the occupants of the townhouse lots, provided an entity is designated to be legally responsible for maintenance and control of the common land areas. The gross land area of the commonly held land shall be not less than ten percent (10%) of the zoning lot's total gross land area. The individual lots within a Townhouse Development shall not be required to meet the lot design standards of Article 17 or the intensity regulations of Article 13, provided the zoning lot containing the Townhouse Development meets such standards.
- 2.137** **Transportation Plan:** A plan, or any portion thereof, adopted by the Chapel Hill Town Council, establishing goals, objectives, policies, and recommendations designed to manage vehicular, transit, bicycle, and pedestrian transportation access and circulation patterns in the Chapel Hill community. The Transportation Plan is composed of the transportation sections of the Comprehensive Plan, the Thoroughfare Plan, the Street Classification Standards, the Functional Classification of Existing Streets, the Bikeways Plan, the Sidewalk Plan, and any Council-adopted plans for area traffic circulation and parking.
- 2.137.1** **Tree:** Any upright plant whose trunk diameter at Breast Height (DBH) measures a minimum of 6 inches.
- 2.137.2** **Tree - Rare or Specimen:** A tree that meets those qualifications as outlined in Section 11.6 of this document.
- 2.137.3** **Undeveloped Land:** A zoning lot on which no residential, commercial, office or industrial activity is taking place.
- 2.138** **Use:** The specific activity or function for which land, a building, or a structure is designated, arranged, intended, occupied, or maintained.

- 2.139**     **Use, Accessory:** A use on the same lot or in the same structure with, and of a nature and extent customarily incidental and subordinate to, the principal use of the lot or structure.
- 2.140**     **Use, Principal:** The primary use and chief purpose of a lot or structure.
- 2.141**     **Variance:** A relaxation of the strict terms of a specific provision of this chapter authorized by the Board of Adjustment in accord with the provisions of Article 24.
- 2.142**     **Veterinary Hospital or Clinic:** An establishment used for the care, grooming, diagnosis, and treatment of sick, ailing, infirm, or injured animals in need of medical or surgical attention.
- 2.142.1**   **Water and Wastewater Treatment Plant:** The use of land, buildings, or structures by a public utility or governmental agency to provide sanitary treatment of community water supplies and wastewater discharges.
- 2.142.2**   **Watercourse:** Any area of a perennial stream or regulatory flood plain which is inundated during the base flood discharge.
- 2.143**     **Watershed Buffer:** A natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.
- 2.143.1**   **Wetted Perimeter:** The line of intersection between water and any other part of a stream's cross section.
- 2.143.2**   **Woodlands:** Land which is undeveloped except for roads and utilities, and contains stands of native trees.
- 2.144**     **Zoning Compliance Permit:** A permit issued by the Town Manager authorizing the recipient to make use of property in accord with the requirements of this chapter.
- 2.145**     **Zoning Lot:** A legally subdivided lot shown on a legally recorded plat or deed, or a combination of such legally subdivided and recorded adjacent lots.

## ARTICLE 3 - ZONING DISTRICTS

### 3.1 **Establishment and Intent of Zoning Districts**

The Town and its extraterritorial planning jurisdiction is hereby divided into zoning districts as enumerated below. The use regulations and intensity regulations applicable for such zoning districts are designated in Articles 12 and 13.

#### 3.1.1 **Town Center Districts (TC-2, TC-1)**

The Town Center (TC) districts are intended to provide for the development of the commercial, service, and social center of Chapel Hill while maintaining its character, its pedestrian-oriented scale, and its nature as a concentration of business, administrative, financial, governmental, and support functions serving the community; and to encourage further residential development in the central area of Chapel Hill.

#### 3.1.2 **Community Commercial District (CC)**

The Community Commercial (CC) district is intended to provide for the development of high-intensity commercial and service centers that serve community-wide or regional commercial and service needs.

#### 3.1.3 **Neighborhood Commercial District (NC)**

The Neighborhood Commercial (NC) district is intended to provide for the development of low-intensity commercial and service centers that are accessible by pedestrians from the surrounding neighborhoods, serve the daily convenience and personal service needs of the surrounding neighborhood, and are of such a nature as to minimize conflicts with surrounding residential uses.

#### 3.1.4 **Office/Institutional - 3 District (OI-3) and Office/Institutional-4 (OI-4)**

The Office/Institutional - 3 (OI-3) and Office/Institutional-4 districts are intended to provide for major educational, research, public service, and office uses, and their necessary support functions, while minimizing conflicts with adjacent land uses.

#### 3.1.5 **Office/Institutional - 2 (District (OI-2)**

The office/institutional-2 (OI-2) district is intended to provide for medium - intensity office and institutional development.

#### 3.1.6 **Office/Institutional - 1 District (OI-1)**

The Office/Institutional - (OI-1) district is intended to provide for low-intensity office and institutional development and, where appropriate, to serve as a buffer zone between residential zoning districts and high-intensity nonresidential zoning districts.

#### 3.1.7 **Industrial District (I)**

The Industrial (I) district is intended to provide for public and private uses of a wholesale, distribution, limited processing, and production nature serving the needs of the Chapel Hill community, and to ensure the compatibility of such uses with their surroundings.

### **3.1.8 Residential Districts (R-SS-C, R-6, R-5, R-4, R-3, R-2, R-2A, R-1, R-1A, R-LD1,R-LD5)**

The Residential (R-) districts are intended to provide for residential development of appropriate intensities consonant with the suitability of land, availability of public services, accessibility to major activity centers and transportation systems, and compatibility with surrounding development.

### **3.1.9 Rural Transition Districts (RT)**

The Rural Transition (RT) district is intended to be applied to land which is used for agricultural, very low-intensity residential, or open space uses, but which is projected in the Comprehensive Plan for conversion to more intensive urban uses at such time as community services are available and community needs for such uses are present.

#### **3.1.9.1 Materials Handling District (MH)**

The Materials Handling (MH) district is intended to provide for public operation of a Solid Waste Management Facility.

### **3.1.10 Overlaying Districts**

It is the intent of this chapter to provide for Airport Hazard (AH) Districts, Historic Districts, Special Appearance Districts, Resource Conservation Districts, Water Quality Districts, and Watershed Protection Districts, which shall overlay the zoning districts enumerated in Section 3.1.1 through 3.1.10 above, and which shall provide for special review of development within such overlay districts in accord with the intents, procedures, and standards established for the districts in Articles 5, 6, 7, 8, 9 and 10.

### **3.1.11 Conditional Use Districts**

For the TC-2, TC-1, CC, NC, OI-1, I, R-6, R-5, R-4, R-3, R-2, R-2A, R-1, R-1A, R-LD1, and R-LD5 districts hereinabove described, there are hereby established parallel conditional use districts designated TC-2-C, TC-1-C, CC-C, NC-C, OI-2-C, OI-1-C, I-C, R-6-C, R-5-C, R-4-C, R-3-C, R-2-C, R-2A-C, R-1-C, R-1A-C, R-LD1-C, and R-LD5-C pursuant to North Carolina General Statutes Section 160A-382. Under each conditional use district, all uses allowed as a permitted use or special use by Section 12.3 of this ordinance, Schedule of Use Regulations, for the parallel general use district are permitted only upon issuance of a Special Use Permit by the Council pursuant to Article 18 of this Ordinance.

A Residential-Special Standards-Conditional (R-SS-C) is hereby established, pursuant to North Carolina General Statutes Section 160A-382. Uses allowed in this district shall be those described in Section 12.3 of this ordinance, Schedule of Use Regulations, and are permitted only upon issuance of a Special Use Permit by the Council pursuant to Article 18 of this Ordinance.

## **3.2 Zoning Atlas**

The boundaries of the above zoning districts are hereby established as shown on the official Zoning Atlas which accompanies this ordinance and which, with all notations, references, and other information shown thereon, shall be as much a part of this ordinance as if fully described herein.

**3.2.1 Authentication**

The official Zoning Atlas shall be authenticated by the Planning Director and shall be retained in the office of the Planning Department.

**3.2.2 Status of Copies**

Copies of the Zoning Atlas, or portions thereof, may be made. However, the official Zoning Atlas is the final and sole authority as to the zoning status of land within the Town and its extraterritorial jurisdiction.

**3.2.3 Amendment Entries**

Amendments to the official Zoning Atlas shall be entered by the Planning Director within five (5) working days of the effective date of such amendments. Maps and descriptions accompanying enacted amendments shall be displayed in the office of the Planning Department until such time as such amendments are entered on the official Zoning Atlas.

**3.2.4 Authentication of Amendment Entries**

The Planning Director shall authenticate the entry of each amendment on the official Zoning Atlas and shall maintain a record of the nature and date of entry of each amendment. Changes to the official Zoning Atlas other than those authorized by duly approved amendments to this chapter shall be prohibited.

**3.2.5 Zoning Atlas Replacement**

When all or part of the official Zoning Atlas becomes damaged, lost, destroyed, worn, or difficult to interpret because of its age, condition, number of changes, or otherwise, replacement may be authorized by resolution of the Council. A new edition of the official Zoning Atlas shall not change the zoning status of any property, but it may correct previous errors or omissions. Such replacements shall be authenticated by the Planning Director and shall bear the date and number of the authorizing resolution.

**ARTICLE 4 - MIXED USE ZONING DISTRICTS**

**4.1 Intent**

The Mixed Use Districts are intended to provide for the coordinated development of office, commercial, and residential uses and their necessary support functions in the vicinity of key highway intersections in Chapel Hill. They are designed to facilitate stated public policies to encourage design which emphasizes lively, people oriented environments and compatible, visually interesting development. This district provides areas where moderate scale mixed use centers can locate with an emphasis on development of a balance of residential, office and commercial uses.

It is further intended that the Mixed Use Districts shall encourage development within which mutually supporting residential, commercial and office uses are scaled, balanced and located to reduce general traffic congestion by providing housing close to principal destinations, and convenient pedestrian circulation systems and mass transit to further reduce the need for private automobile usage. Mixed Use districts are intended to encourage development that allows multiple destinations to be achieved with a single trip.

When such districts adjoin residential development or residential zoning districts, it is intended that arrangement of buildings, uses, open space, and vehicular or pedestrian access shall be such as to provide appropriate transition and reduce potentially adverse effects.

**4.2 Establishment of Mixed Use Districts**

Two Mixed Use (MU) districts are hereby established. The boundaries of the Mixed Use District are as shown on the official Zoning Atlas. The districts are identified as Mixed Use-OI-1, and Mixed Use-R1.

**4.3 Permitted Uses and Development Intensities - Mixed Use -OI-1**

**4.3.1 Permitted Uses and Intensities**

The uses permitted in the Mixed Use OI-1 Zone, except in situations described in Section 4.3.2 below, are single and two family dwellings, and those other non-residential uses listed in Section 12.3 as permitted in the OI-1 zone, except that "Medical Aircraft Hangar" is not permitted.

The land use intensity ratios, setbacks, and height limitations that apply in the Mixed Use Zone, except in situations described in Section 4.3.2 below, are those that apply to the OI-1 zone, as set forth in Section 13.11.

**4.3.2 Mixed Use Threshold**

If development of property in a Mixed Use-OI-1 zone is proposed, and the proposal meets all of the following thresholds, then the set of permitted use and intensity regulations described in Section 4.3.3 shall apply. Those thresholds are:

- (a) Minimum lot size of 20 contiguous acres (may include parcels on both sides of a street).
- (b) Uses proposed in one of the following combinations:
  - (i) Office, Commercial, and Residential uses

- (ii) Office and Commercial uses
  - (iii) Office and Residential uses.
- (c) At least 60% of floor area devoted to "business, office-type" uses, as defined in this Development Ordinance.
- (d) No more than 85% of floor area devoted to "business, office-type" uses.

#### **4.3.3 Mixed Use Development Intensity and Use Regulations**

If a development proposal in a Mixed Use-OI-1 District meets all of the thresholds listed in Section 4.3.2, then the following use and intensity regulations shall apply:

- (a) For commercial floor area, permitted uses shall be those listed in Section 12.3 as permitted uses in the Community Commercial District, except as noted in paragraph (d) below;
- (b) For residential floor area, permitted uses shall be those listed in Section 12.3 as permitted uses in the Residential-5 District, except that in addition multifamily development of more than 7 units shall be permitted;
- (c) For office floor area, permitted uses shall be those listed in Section 12.3 as permitted uses in the OI-1 District;
- (d) The following uses are not permitted in the Mixed Use-OI-1 Zone:
  - Automotive Repair
  - Automotive, Trailer, and Farm Implement Sales or Rental
  - Kennel
  - Supply Yard
  - Veterinary Hospital
- (e) Land Use Intensity Ratios shall be those listed in Section 13.11, referring to Use Group B uses in a Community Commercial Zone;
- (f) For the portions of a site devoted to residential development, the dwelling unit per acre limitations described in Section 13.8 for the R-5 zone shall apply.
- (g) Minimum Setbacks from the perimeter boundary of the specified development tract shall be as follows:
  - (i) Street: 50 feet
  - (ii) Interior: 50 feet
  - (iii) Immediately Adjacent to Residential Use or Residentially Zoned Property: 50 feet

Minimum Setbacks internal to the specified development tract shall be as follows:

- (i) Street: 0 feet
- (ii) Interior: 0 feet

Minimum Parking Setbacks from the perimeter boundary of the specified development tract shall be as follows:

- (i) Street: 75 feet

- (h) Maximum Height Limits shall be as follows:
- (i) Primary: 44 feet
  - (ii) Secondary: 90 feet
- (i) Type "C" buffers shall be required around all perimeters of the development tract, except in circumstances where a higher level of buffer is required.

A Type "D" buffer with a minimum width of 50 feet shall be required adjacent to a non-interstate principal arterial street or a minor arterial street.

#### **4.3.4 Mixed Use Development Design Standards**

All design standards specified in Article 14 of this Chapter and in the Town's Design Guidelines in effect at the time a proposal is being reviewed shall apply to the design of development proposed as a mixed use development as defined by this Article with the following special provisions:

- (a) Site Analysis: Any application for mixed use development shall include a site evaluation analysis which identifies the physical character and structure of the site. Elements of the site to be investigated include topography, slope conditions, soil characteristics and subsurface constraints, drainage patterns, vegetation, and other existing conditions.
- (b) Outparcels: Outparcels are hereby defined as development or parcels of land generally located at the perimeter boundary of a mixed use development and physically separated from the remainder of the development. All plans for outparcels within a mixed use development proposal shall include a set of design criteria for the outparcel(s). These design criteria shall be prepared to maintain visual compatibility and overall design compatibility with the entire development. The criteria shall address the location, form, scale, materials and colors of structures as they relate to the design concept of the entire development, and shall be consistent with the Design Guidelines.
- (c) Off-street parking requirements shall be 80% of the requirements listed in Section 14.6.7.

#### **4.3.5 Additions to Approved Mixed Use Developments**

Development tracts of between ten (10) and twenty (20) acres can meet the Mixed Use Threshold in the following manner:

If development of property in a Mixed Use-OI-1 zone is proposed, and the proposal meets all the following thresholds, then the set of permitted use and intensity regulations described in Section 4.3.3 shall apply. Those thresholds are:

- (a) Development is proposed on tracts of size between ten (10) and twenty (20) contiguous acres (may include parcels on both sides of a public street if at least five acres of the total are located on both sides of the street).
- (b) The proposed development tract is adjacent to, or across a public street from, a Mixed Use Development that has been approved by the Town Council in accordance with the provisions of this Article.

- (c) The proposed uses, circulation patterns and buffers are demonstrated to be compatible with the adjacent approved Mixed Use Development. In addition, landscape treatments and architecture shall be demonstrated to be compatible with the adjacent approved Mixed Use Development to the extent such landscape treatments and architecture have been specified in the adjacent Special Use Permit approved by the Town Council.
- (d) Uses for the proposed tract are proposed in one of the following combinations:
  - (i) Office, Commercial, and Residential Uses,
  - (ii) Office and Commercial uses, or
  - (iii) Office and Residential uses.
- (e) At least 60% of the proposal's floor area shall be devoted to "business, office-type" uses, as defined in this Development Ordinance.
- (f) No more than 85% of the proposal's floor area shall be devoted to "business, office-type" uses.

#### **4.4 Permitted Uses and Development Intensities - Mixed Use R-1**

##### **4.4.1 Permitted Uses and Intensities**

The uses permitted in the Mixed Use-R-1 Zone, except in situations described in Section 4.4.2 below, are single-family dwellings, and those other non-residential uses listed in Section 12.3 as permitted in the R-1 zone.

The land use intensity ratios, setbacks, and height limitations that apply in the Mixed Use Zone, except in situations described in Section 4.4.2 below, are those that apply to the R-1 zone, as set forth in Section 13.11.

##### **4.4.2 Mixed Use Threshold**

If development of property in a Mixed Use-R-1 Zone is proposed, and the proposal meets all of the following thresholds, then the set of permitted use and intensity regulations described in Section 4.4.3 shall apply. Those thresholds are:

- (a) Minimum lot size of 20 contiguous acres (may include parcels on both sides of a street).
- (b) Uses proposed in one of the following combinations:
  - (i) Office, Commercial, and Residential uses
  - (ii) Office and Commercial uses
  - (iii) Office and Residential uses
- (c) At least 60% of floor area devoted to "business, office-type uses," as defined in this Development Ordinance.
- (d) No more than 85% of floor area devoted to "business, office-type uses."

##### **4.4.3 Mixed Use Development Intensity and Use Regulations**

If a development proposal in a Mixed Use-R-1 District meets all of the thresholds listed in Section 4.4.2, then the following use and intensity regulations shall apply:

- (a) For commercial floor area, permitted uses shall be those listed in Section 12.3 as permitted uses in the Community Commercial District, except as noted in paragraph (d) below:
- (b) For residential floor area, permitted uses shall be those listed in Section 12.3 as permitted uses in the Residential-5 District, except that in addition multifamily development of more than 7 units shall be permitted;
- (c) For office floor area, permitted uses shall be those listed in Section 12.3 as permitted uses in the OI-1 District;
- (d) The following uses are not permitted in the Mixed Use Zone:
  - Automotive Repair
  - Automotive, Trailer, and Farm Implement Sales or Rental
  - Kennel
  - Supply Yard
  - Veterinary Hospital
- (e) Land Use Intensity Ratios shall be those listed in Section 13.11, referring to Use Group B uses in a Community Commercial Zone;
- (f) For the portions of a site devoted to residential development, the dwelling unit per acre limitations described in Section 13.8 for the R-5 zone shall apply.
- (g) Minimum Setbacks from the perimeter boundary of the specified development tract shall be as follows:
  - (i) Street: 50 feet
  - (ii) Interior: 50 feet
  - (iii) Immediately Adjacent to Residential Use or Residentially Zoned Property: 50 feet

Minimum Setbacks internal to the specified development tract shall be as follows:

- (i) Street: 0 feet
- (ii) Interior: 0 feet

Minimum Parking Setbacks from the perimeter boundary of the specified development tract shall be as follows:

- (i) Street: 75 feet

- (h) Maximum Height Limits shall be as follows:

- (i) Primary: 29 feet
- (ii) Secondary: 90 feet

- (i) Type "C" buffers shall be required around all perimeters of the development tract, except in circumstances where a higher level of buffer is required.

A Type "D" buffer with a minimum width of 50 feet shall be required adjacent to a non-interstate principal arterial street or a minor arterial street.

#### 4.4.4 Mixed Use Development Design Standards

All design standards specified in Article 14 of this Chapter and in the Town's Design Guidelines in effect at the time a proposal is being reviewed shall apply to the design of development proposed as a mixed use development as defined by this Article with the following special provisions:

- (a) Site Analysis: Any application for mixed use development shall include a site evaluation analysis which identifies the physical character and structure of the site. Elements of the site to be investigated include topography, slope conditions, soil characteristics and subsurface constraints, drainage patterns, vegetation, and other existing conditions.
- (b) Outparcels: Outparcels are hereby defined as development or parcels of land generally located at the perimeter boundary of a mixed use development and physically separated from the remainder of the development. All plans for outparcels within a mixed use development proposal shall include a set of design criteria for the outparcel(s). These design criteria shall be prepared to maintain visual compatibility and overall design compatibility with the entire development. The criteria shall address the location, form, scale, materials and colors of structures as they relate to the design concept of the entire development, and shall be consistent with the Design Guidelines.
- (c) Off-street parking requirements shall be 80% of the requirements listed in Section 14.6.7.

#### 4.4.5 Additions to Approved Mixed Use Developments

Development tracts of between ten (10) and twenty (20) acres can meet the Mixed Use Threshold in the following manner:

If development of property in a Mixed Use-R-1 zone is proposed, and the proposal meets all the following thresholds, then the set of permitted use and intensity regulations described in Section 4.4.3 shall apply. Those thresholds are:

- (a) Development is proposed on tracts of size between ten (10) and twenty (20) contiguous acres (may include parcels on both sides of a public street if at least five acres of the total are located on both sides of the street).
- (b) The proposed development tract is adjacent to, or across a public street from, a Mixed Use Development that has been approved by the Town Council in accordance with the provisions of this Article and Section 19.7.
- (c) The proposed uses, circulation patterns and buffers are demonstrated to be compatible with the adjacent approved Mixed Use Development. In addition, landscape treatments and architecture shall be demonstrated to be compatible with the adjacent approved Mixed Use Development to the extent such landscape treatments and architecture have been specified in the adjacent Special Use Permit approved by the Town Council.
- (d) Uses for the proposed tract are proposed in one of the following combinations:
  - (i) Office, Commercial, and Residential Uses,
  - (ii) Office and Commercial uses, or
  - (iii) Office and Residential uses.

- (e) At least 60% of the proposal's floor area shall be devoted to "business, office-type" uses, as defined in this Development Ordinance.
- (f) No more than 85% of the proposal's floor area shall be devoted to "business, office-type" uses.

#### **4.5 Review and Approval Procedure**

Review and approval procedures specified in Articles 13, 18, and 19 shall apply to applications for development approval in a Mixed Use Zone. All development proposed under the conditions specified in Sections 4.3.2, 4.3.3, 4.4.2 and 4.4.3 shall be considered to be Special Uses.

**ARTICLE 5 - RESOURCE CONSERVATION DISTRICT**

**5.1 Intent**

The Resource Conservation District (herein sometimes RCD) is intended to be applied to the areas within and along watercourses within the Town's planning jurisdiction in order to preserve the water quality of the Town's actual or potential water supply sources, to minimize danger to lives and properties from flooding in and near the watercourses to preserve the water-carrying capacity of the watercourses and to protect them from erosion and sedimentation, to retain open spaces and greenways to protect their environmentally-sensitive character, to preserve urban wildlife and plant life habitats from the intrusions of urbanization, to provide air and noise buffers to ameliorate the effects of development, and to preserve and maintain the aesthetic qualities and appearance of the Town.

In the interpretation and application of this Article, all provisions shall be: (a) considered as minimum requirements, (b) strictly construed in favor of the public interest and community benefit, and (c) deemed neither to limit nor repeal any other powers provided by Town ordinance or State statute.

**5.2 Definitions**

Definitions of terms used in this Article, where not otherwise defined in this Article, are contained in Article 2.

**5.3 Establishment of Resource Conservation District**

**5.3.1 Resource Conservation District Elevation**

A Resource Conservation District Elevation is hereby established, and defined to be the elevation two (2) feet above the 100-year floodplain elevation (with reference to mean sea level), as:

- 1) The regulatory floodplain as delineated in the latest revision of the Flood Insurance Rate Maps, Flood Boundary Floodway Maps, and Flood Insurance Study, for the Town of Chapel Hill, North Carolina, Orange, Durham, and Chatham Counties, as designated by the Associate Director of the Federal Emergency Management Agency, or
- 2) calculated for unmapped or undefined areas using engineering methodology compatible (as determined by the Town Manager) with that used to develop the Flood Insurance Rate Maps, Flood Boundary, Floodway Maps, and Flood Insurance Study.

**5.3.2 Resource Conservation District Established**

The Resource Conservation District is hereby established as a district that overlays other zoning districts established in Article 12. The Resource Conservation District shall consist of 1) the Resource Conservation District Elevation, and 2) the areas within buffer zones established as follows:

- a. Seventy-five (75) feet from the stream bank of a perennial stream draining less than one square mile.
- b. One hundred (100) feet from the stream bank of a perennial stream draining one square mile or more.

These distances shall be measured as the horizontal, linear distance from the stream banks.

The perennial stream determination shall be in accordance with the criteria established in Section 2.90.1 of the Development Ordinance and shall take into account information provided by individuals familiar with the surrounding area.

#### **5.4 Development in Resource Conservation District**

##### **5.4.1 Development in Resource Conservation District after March 19, 1984.**

Development and land-disturbing activities within the RCD are prohibited after the effective date (March 19, 1984) of this Article unless exempted by this Section, or permitted by Section 5.5, or allowed pursuant to a variance authorized by this Article and approved by the Board of Adjustment.

##### **5.4.2 Application of Resource Conservation District Ordinance to Lawfully Established Development Existing on October 21, 2002 (or for which a vested right has been established) Outside of the Regulatory Floodplain.**

This Article shall not apply to the continued use, operation or maintenance of any lawfully established development (outside of the regulatory floodplain) existing, or for which construction had substantially begun, on or before October 21, 2002 (or for which a vested right had been established). With respect to the requirements of this Article, such development shall not be considered as nonconforming within the meaning of Article 22 of this Chapter.

##### **5.4.3 Exemptions for Expansion, Reconstruction, Rehabilitation, or Renovation of Lawfully Established Development Existing on October 21, 2002 (or for which a vested right has been established) Outside of the Regulatory Floodplain.**

- a) This Article shall not apply to use, operation, maintenance, reconstruction, rehabilitation, or renovation of any lawfully established development (outside of the regulatory floodplain) existing, or for which construction had substantially begun, on or before October 21, 2002 (or for which a vested right had been established). With respect to the requirements of this Article, such development shall not be considered as nonconforming within the meaning of Article 22 of this Chapter.
- b) Within the part of the Resource Conservation District that is outside of the regulatory floodplain, expansion of development is allowed only under the following circumstances:
  - 1) With respect to the requirements of this Article any single family or two-family dwelling or single dwelling unit within a townhouse development may be expanded. With respect to the requirements of this Article, the dwelling or dwelling unit as expanded pursuant to this subsection shall not be considered as nonconforming within the meaning of Article 22;
  - 2) With respect to the requirements of this Article, development, other than single-family or two-family dwellings or single dwelling units within a townhouse development, on any single zoning lot may be expanded to the extent of ten percent (10%) or less of its footprint as it existed on October 21, 2002; however, this exemption shall not apply in cases where a development has been expanded one or more times since October 21, 2002, and where the past and proposed expansions, considered together, would increase the

development's footprint by a total of more than ten percent (10%) of its footprint as it existed on October 21, 2002. With respect to the requirements of this Article, such development as expanded pursuant to this subsection shall not be considered as nonconforming within the meaning of Article 22.”

**5.4.4 Application of the Resource Conservation District to the Expansion, Reconstruction, Rehabilitation or Renovation of Development Existing Within the Regulatory Floodplain.**

- a) Within the regulatory floodplain, the expansion of a development existing, or for which construction had substantially begun, on or before March 19, 1984, is prohibited unless:
  - 1) the expansion is permitted by Section 5.5 and meets the design standards of Section 5.6; or
  - 2) the expansion is permitted by a variance authorized by this Article and approved by the Board of Adjustment.
- b) Within the regulatory floodplain, the reconstruction, rehabilitation, or renovation of a development existing, or for which construction had substantially begun, on or before March 19, 1984, is prohibited unless:
  - 1) the reconstruction, rehabilitation, or renovation complies with the requirements of the Federal Emergency Management Agency in place at the time of reconstruction, rehabilitation, or renovation.

**5.4.5 Development Within Floodway Portion of the Regulatory Floodplain.**

- a) Within the floodway portion of the regulatory floodplain, the expansion of a development existing, or for which construction had substantially begun, on or before March 19, 1984, is prohibited unless:
  - 1) the expansion is permitted by Section 5.5 and meets the design standards of Section 5.6; or
  - 2) the expansion is permitted by a variance authorized by this Article and approved by the Board of Adjustment.
- b) Within the floodway portion of the regulatory floodplain, the reconstruction, rehabilitation, or renovation of a development existing, or for which construction had substantially begun, on or before March 19, 1984, is prohibited unless:
  - 1) the reconstruction, rehabilitation, or renovation complies with the requirements of the Federal Emergency Management Agency in place at the time of reconstruction, rehabilitation, or renovation.

**5.5 Permitted Uses Within Resource Conservation District**

**5.5.1 Permitted Uses**

Provided they are permitted within the underlying zoning district, and subject to the provisions of Sections 5.6 and 5.8, the following uses shall be permitted uses within the Resource Conservation District:

- a) pasture, outdoor plant nurseries, horticulture, forestry, wildlife sanctuary, and other similar agricultural and related uses that do not require extensive land-disturbing activities or extensive use of fences or walls;
- b) ground level loading areas, parking areas, and other similar ground level area uses;
- c) lawns, gardens, play areas and other similar uses;
- d) golf courses, archery ranges, picnic grounds, parks, hiking or horseback riding trails, open space, and other similar public and private recreational uses that do not require extensive use of fences or walls;
- e) public utility and storm drainage facilities where there is a practical necessity to their location within the Resource Conservation District;
- f) streets, bridges, and other similar transportation facilities where there is a practical necessity to their location within the Resource Conservation District;
- g) accessory land-disturbing activities ordinarily associated with a single-family or two-family dwelling, such as driveways, utility service lines, gardens, and similar uses;
- h) public maintenance of streets, bridges, other similar transportation facilities and/or public utility and storm drainage facilities;
- i) lakes, ponds, and associated infrastructure, such as dams, spillways, riser pipes and stilling basins, that are located outside of the regulatory floodplain, shall be permitted with a Special Use Permit pursuant to Article 18 of this chapter and only if a demonstrated public purpose is served.

**5.5.2 Intensity Regulations**

**5.5.2.1 Land Use Intensity Regulations**

In lieu of the intensity regulations generally applicable to the underlying zoning district, the following LUI ratios shall be applicable within the Resource Conservation District:

LUI Rating	Use Group	FAR	OSR	LSR	RSR
6	A, B, C	.019	.93	.85	N/A

Application of these regulations shall be established in Section 5.8 of this chapter.

**5.5.2.2 Additional Intensity Regulations**

Any development in the Resource Conservation District shall be subject to the following limitations on the amount of impervious surface and land disturbance on any zoning lot.

The amount of impervious surface shall be limited to that which allows a property owner to make a legally reasonable use of the property subject to the following limitations:

Impervious Surface Limitation: In sewered areas: twenty percent (20%) of land within the Resource Conservation District;

In unsewered areas: twelve percent (12%) of land within the Resource Conservation District.

In Town-Designated Water Critical Areas: Six percent (6%) of land within the Resource Conservation District.

Land Disturbance Limitation: Minimal land disturbance within the Resource Conservation District.

## **5.6 Standards for Development in Resource Conservation District**

The following standards and criteria shall apply to any portion of a development or, as appropriate, to any land disturbance, within the Resource Conservation District:

- a) the lowest floor elevation of all permanent structures shall be placed at least eighteen (18) inches above the Resource Conservation District elevation and in such a manner as not to adversely impede the flow of waters; (This clause refers to floors of buildings. It does not refer to bridges or roads.)
- b) wherever practicable, a natural vegetative buffer at least fifty (50) feet wide from either bank of the channel shall be retained;
- c) wherever practicable no stormwater discharge shall be allowed directly off an impervious surface into the channel of a watercourse;
- d) safe and convenient access, such as streets and driveways shall be provided to any development at or above the Resource Conservation District elevation unless otherwise authorized by the Town Manager; utility lines, roads and driveways shall be located, as much as practicable, parallel to the flow of waters. Where a road, driveway, or utility line necessarily must cross a watercourse, such crossing shall be located and designed so as to allow convenient access by wildlife through and beyond such crossing, and shall be designed to safely convey floodwaters to the same extent as before construction of said crossings;
- e) street crossings, utility lines, recreational and greenway facilities and recreational-related surfaces may be permitted in the vegetative buffer required in Section 5.6.b, but only to the minimum extent necessary;
- f) the site plan shall be designed to minimize adverse environmental and flooding effects on the Resource Conservation District and to achieve the purposes of this ordinance; permanent structures shall be located, to the maximum extent feasible, as far from the watercourse, and as close to the outer boundary of the Resource Conservation District, as is practical, permanent structures shall be clustered as much as practical, to minimize land disturbance, to maximize undeveloped open space, and to maximize retention of natural vegetation and buffers;
- g) water supply, sanitary sewer, on-site waste disposal systems, shall be designed to;
  - 1) prevent the infiltration of flood waters into the system(s),
  - 2) prevent discharges from the system(s) into flood waters and,
  - 3) avoid impairment during flooding to minimize flood damage; finished floor elevations to be served by sanitary sewer shall be at or above the rim elevation of the nearest upstream manhole cover or be otherwise approved by the Town

Manager; sanitary sewer manholes must be provided with locking, watertight manhole covers, or be elevated to a height sufficient to prevent submersion or infiltration by floodwaters; all sewer and sewer outfall lines shall use gravity flow to a point outside the Resource Conservation District or be otherwise approved by the Town Manager and OWASA;

- h) electrical, heating, ventilation, plumbing, gas, air-conditioning, and other service/utility facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding during the base flood discharge;
- i) to the maximum extent feasible, all utility and service facilities shall be installed, constructed and otherwise protected so as to remain operational should floodwaters reach the Resource Conservation District elevation;
- j) land disturbing activity shall be kept to the minimum feasible; the smallest practicable area of land shall be exposed at any one time during development; such minimal area shall be kept exposed as short a duration of time as is practical; temporary vegetation or mulching shall be used as needed to protect exposed areas; natural plant covering and vegetation shall be retained and protected to the maximum degree practical when developing the site, as shall natural features and terrain; disturbed areas shall be replanted with native trees, shrubs and ground cover;
- k) Cutting or filling shall be permitted within the watercourse only if the resulting change to the hydraulic characteristics of the watercourse will:
  - 1) Reduce or maintain the water surface elevation during the base flood discharge in the vicinity of the development; provided however, that in no case will cutting or filling be permitted within the watercourse if greater than a one foot per second increase in the velocity would result; or
  - 2) Reduce or maintain the velocity of flow during the base flood discharge in the vicinity of the development; provided however, that in no case will cutting or filling be permitted within the watercourse if greater than 1/2 foot rise in the base flood elevation would result.
- l) all new construction and/or substantial improvements (including the placement of prefabricated buildings and manufactured homes) shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure;
- m) all manufactured homes permitted to be placed within Resource Conservation District shall be anchored to resist flotation, collapse, or lateral movement by meeting the minimum requirements of the North Carolina Building Code (latest revision).
- n) any manufactured home, new manufactured home park or new manufactured home subdivision permitted to be placed within the Resource Conservation District shall:
  - 1) have stands or lots elevated on compacted fill or on pilings so that the lowest floor of the mobile home will be at or above the Resource Conservation District elevation;
  - 2) have adequate surface drainage;
  - 3) provide access for haulers;

- 4) have lots large enough to permit steps when the mobile home is placed on pilings;
  - 5) have pilings placed in stable soils no more than ten (10) feet apart, and reinforcement shall be provided for pilings more than six feet above ground level.
- o) development shall not be permitted if it results in any increased regulatory floodway elevation, during base flood discharge, as certified by a registered professional engineer;
  - p) for all new construction and substantial improvements, fully enclosed areas below the lowest floor that are subject to flooding shall be designed to automatically equalize hydrostatic flood forces on exterior walls by allowing for the entry and exit of floodwaters. Designs for meeting this requirement must either be certified by a registered professional engineer or architect or must meet or exceed the following minimum criteria: A minimum of two openings having a total net area of not less than one square inch for every square foot of enclosed area subject to flooding shall be provided. The bottom of all openings shall be no higher than one foot above grade. Openings may be equipped with screens, louvers, or other covering or devices provided that they permit the automatic entry and exit of floodwaters.

## **5.7 Variance From Board of Adjustment**

### **5.7.1 Application**

An owner of property who alleges that the provisions of this Article leave no legally reasonable use of the property may apply to the Board of Adjustment for a variance. An application for a variance shall be filed with the Town Manager in accord with the provisions of Subsection 24.4.1. In addition to the materials required by that subsection, the application must also comply with the submittal requirements of Section 5.8.

On receipt of a complete application, the Town Manager shall cause an analysis to be made by appropriate Town staff based on the findings required in Subsection 5.7.2. Within a reasonable period of time, the Town Manager shall submit the application and a report of his or her analysis to the Board of Adjustment.

### **5.7.2 Required Findings**

- a) The review of the Board of Adjustment shall extend to the entire zoning lot that includes area within the Resource Conservation District. The Board of Adjustment shall grant a variance, subject to the protections of this Article, if it finds:
  - 1) That the provisions of this Article leave an owner no legally reasonable use of the portion of the zoning lot outside of the regulatory floodplain; and
  - 2) That a failure to grant the variance would result in extreme hardship.

In making such findings, the Board of Adjustment shall consider the uses available to the owner of the entire zoning lot that includes area within the Resource Conservation District.

- b) The Board of Adjustment shall grant the minimum variance necessary to afford appropriate relief under this section. The Board may attach such reasonable conditions to the grant of a variance as it deems necessary to achieve the purposes of this Article.

- c) The Board of Adjustment shall not grant any variance if it finds that such a variance would:
  - 1) result in any increased regulatory floodway water surface elevation during the base flood discharge as certified by a registered professional engineer; or
  - 2) result in significantly increased velocity of flow or deposit of sediment; or
  - 3) result in significantly increased erosion, significant additional threats to public safety; or
  - 4) result in significant threats to water quality; or
  - 5) result in the removal of significant wildlife habitat; or
  - 6) result in extraordinary public expense; or
  - 7) result in public nuisance; or
  - 8) impede the provision of greenway paths called for by the Town's Greenway Plan; or
  - 9) conflict with the provisions of any other law or ordinance.
- d) The Board of Adjustment may refuse to grant any variance if it finds that the owner of a lot, or any predecessor in interest, has subdivided such lot or has otherwise acted in an attempt to avoid or evade the provisions or intent of this Article.

**5.7.3 Burden of Proof**

Any owner of property applying to the Board of Adjustment for a variance from the provisions of this Article shall have the burden of establishing that such variance should be granted by the Board.

**5.7.4 Presumption**

Notwithstanding 5.7.3, a showing that the portion of the Resource Conservation District outside of a regulatory floodplain overlays more than seventy-five percent (75%) of the area of a zoning lot, shall establish a rebuttable presumption that the Resource Conservation District leaves the owner no legally reasonable use of the zoning lot outside of the regulatory floodplain. Such presumption may be rebutted by substantial evidence before the Board of Adjustment.

**5.7.5 Referral**

The Board of Adjustment, before taking final action on an application for a variance, may refer such application to Town advisory boards or commissions.

**5.7.6 Review Criteria**

In reviewing applications for variances pursuant to this Article, the Board of Adjustment shall consider all technical evaluations, all relevant factors, other provisions of statute or ordinance, and:

- a) the danger to life and property due to flooding, sedimentation, and/or erosion damage at the site;
- b) the danger that structures or materials may be swept onto other lands to the injury of others;
- c) the danger to life and property from flood waters backed up or diverted by any obstruction or by debris collected by the obstruction;
- d) the susceptibility of the proposed development and its contents to flood damage and the effect of such damage on the individual owner;
- e) the importance of the services provided by the proposed development to the community;
- f) the necessity to the facility of a waterfront or low-lying location, where applicable;
- g) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
- h) the compatibility of the proposed use with existing and anticipated development within the vicinity;
- i) the relationship of the proposed use to the comprehensive plan and the stormwater management program for that area;
- j) the safety of access to the property in times of flood for ordinary and emergency vehicles;
- k) the expected heights, velocity, duration, rate of rise, and sediment transport of the flood waters expected at the site;
- l) the effects of the proposed development on the heights, velocity, duration, and rate of rise of the flood waters upstream and down-stream of the proposed site;
- m) the costs of maintaining or restoring public services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical, and water systems, and streets and bridges;
- n) the susceptibility of water supply and sanitation systems to contamination and unsanitary conditions during and after floods; and
- o) the danger that issuance of the variance will set a precedent for future development in the Resource Conservation District which cumulatively may increase the flood hazard.
- p) the impact of the proposed use on the Town's open spaces and Greenway System.
- q) the effect to water quality of the Town's actual or potential water supply sources.
- r) the effect on urban wildlife and plant life habitats.
- s) the effect on air and noise buffers which ameliorate the effects of development.

- t) the degree to which drainage and flooding conditions in the vicinity would be improved by the proposed development.

## 5.8 **Requirements for Development Applications**

Every application which proposes development or land-disturbing activities wholly or partially within the Resource Conservation District, shall include the following, unless affirmatively exempted by the Town Manager in part or entirely, for the whole area covered by the application:

- a) a utilities plan;
- b) a grading plan showing existing and final contours;
- c) a sedimentation and erosion control plan;
- d) a storm water management plan;
- e) a soils analysis;
- f) plans view showing: the topography of the site at a minimum horizontal scale of 1:60, at two-foot contour intervals; the location of streams, watercourses, stormwater runoff channels, etc; the limits of the floodway and floodplain; existing or proposed storm and sanitary sewers and sewer outfalls; septic tank systems and outlets, if any; existing and proposed structures and development; and the 100-year, 10-year flood, and RCD elevations and limits; existing and proposed tree lines;
- g) profile view showing: at a minimum horizontal scale of 1:60, and minimum vertical scale of 1:10, the elevations of the watercourses bed; waterway openings of existing and proposed culverts and bridges within or near the site; size and elevation of existing or proposed sewer and drain outlets; the 100-year and 10-year flood water surface elevations and limits; and the elevation of the Resource Conservation District.
- h) a description of existing vegetation, including significant trees and shrubs; and a landscape plan for the completed development;
- i) a description of wildlife habitats, noting the types of habitat on site and their potential as habitats for various species of wild-life and identifying any relevant limiting factors;
- j) description of proposed storage of materials and of waste disposal facilities;
- k) certificate from a registered professional engineer or architect, with respect to floodproofing, or from a registered professional engineer or surveyor with respect to elevation, that any floodproofing measures on nonresidential uses or finished elevations meet the requirements of this article.
- l) copies of notifications to and responses by adjacent communities, the North Carolina Department of Crime Control and Public Safety, and the Federal Emergency Management Agency regarding any proposed alteration or relocation of a riverine watercourse.
- m) the increase in elevation of the 100-year flood upstream from the development, velocity changes and rate of rise changes, runoff, water quality change, sediment deposit rate changes, and the duration of the flood. The Town Manager shall approve the methodology used to determine the changes.

All applications shall include a list of owners of properties located within 500 feet of the subject property boundaries with the full name and address of each property owner, and shall include stamped, pre-addressed mailing envelopes for each owner on the mailing list.

When considering affirmative exemption requests, the Town Manager shall examine the particular parcel of land, existing information related to the parcel or the area, and other relevant information. Requests for affirmative exemption shall be in writing and shall include an explanation of the request.

#### **5.9 Correction of Violations**

The owner of any land within the Resource Conservation District shall be presumed responsible for any violation of this Article committed on his or her property. The owner of any land within the Resource Conservation District shall be responsible for correcting any activity undertaken therein in violation of this Article. In addition, any other person found in violation of this article shall be liable as provided by law. The Town may institute any appropriate action to restrain or prevent any violation of this ordinance or to require any person who has committed any such violation to correct the violation or restore the conditions existing before the violation. The Town Manager shall enforce this article as provided for in Article 23.

#### **5.10 Warning and Disclaimer of Liability**

With respect to flood hazard, the degree of protection required by this Article is considered reasonable for regulatory purposes. Larger floods than anticipated or protected against herein will occur on occasion. This Article does not imply that land outside the Resource Conservation District or uses or variances permitted or allowed within such district will be free from flooding or flood damages. This Article shall not create any liability on the part of the Town, or any officer or employee thereof, for any flood damages that result from reliance on this Article or any administrative decision or process lawfully made thereunder.

#### **5.11 Other Approvals Required**

No permit or approval required to be issued by the Town under the provisions of this article shall be valid until all other permits or variances for the same proposal required by any other ordinance of the Town or statute of the State of North Carolina or United States have been received from those agencies from which such permits or variances are required.

#### **5.12 Records and Filings**

The Town Manager shall maintain records of all development permits, approvals, certification of as-built finish floor elevation(s), certification of floodproofing measures, or variances regarding development within the Resource Conservation District. Such records shall include all actions on applications for such permits, approvals, or variances, as well as any conditions attached thereto. The Town Manager shall report variances granted for the relocation or alteration of riverine watercourses to adjacent communities, the N.C. Department of Crime Control and Public Safety and the Federal Emergency Management Agency. Such report shall contain assurance that the relocation or alteration maintains the watercourse's flood carrying capacity.

The Town Manager shall notify any applicant in writing of the decision on any application for any permit, approval, or variance with respect to property within the Resource Conservation District and shall file a copy of it with the Town's Planning Department.

The applicant shall record any variance with the Orange County Register of Deeds within sixty (60) days after written notice of approval of such variance by the Board of Adjustment.

**5.13 Resource Conservation District Guide**

The Town Manager shall cause to be prepared a Resource Conservation District Guide. Such guide shall contain appropriate descriptive maps, presumptive criteria and guidelines for interpretation of this Article and evaluation of applications to develop or disturb land within the Resource Conservation District, as well as design and construction standards, consistent with the general performance standards contained in this Article.

**ARTICLE 6 - HISTORIC DISTRICT**

**6.1 Intent**

The Historic District is intended to protect and conserve the heritage and character of the Chapel Hill community by providing for the preservation of designated areas within the planning jurisdiction, including individual properties therein that embody important elements of social, economic, political, or architectural history, and by promoting the stabilization and enhancement of property values throughout such areas. The purpose of requiring regulation of placement and design of telecommunications equipment in this district is to help achieve these objectives and to protect the special character of the Historic District.

It is intended that these regulations ensure, insofar as possible, that buildings or structures in the Historic District shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings, or to prohibit the demolition or removal of such buildings, or to impose architectural styles from particular historic periods, but rather to encourage design whether contemporary or traditional, which is harmonious with the character of the Historic District.

**6.2 Establishment of Historic District**

The Historic District is hereby established as a district which overlays other zoning districts established in Article 3. The boundaries of the Historic District are as shown on the official Zoning Atlas.

No new historic district or any change to the boundaries of any existing historic district shall be designated until the North Carolina Department of Cultural Resources shall have been given an opportunity, in accord with Chapter 160A, Article 19, Part 3C of the N.C. General Statutes, or its successor statutes, to make recommendations with respect to the establishment of such new district or change in the boundaries of an existing district.

The use and development of any land or structure within the Historic District shall comply with use regulations and intensity regulations applicable to the underlying zoning district.

**6.3 Certificate of Appropriateness Required**

No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features), or any aboveground utility structure, or any type of outdoor advertising sign shall be erected, altered, restored, moved, or demolished within the Historic District until after an application for a Certificate of Appropriateness as to exterior architectural features has been approved.

For purposes of this article, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size, and location of all such signs.

Such a Certificate of Appropriateness shall be issued prior to the issuance of a Zoning Compliance Permit or any other permit granted for purposes of constructing, altering, or demolishing buildings or structures. A Certificate of Appropriateness shall be required

whether or not a Zoning Compliance Permit is required. Any Zoning Compliance permit or other permit not issued in conformity with this section shall be invalid.

The Town and all public utility companies shall be required to obtain a Certificate of Appropriateness prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures, and buildings on property, easements, or streets owned or franchised by the Town of Chapel Hill or public utility companies.

- (a) Certificate of Appropriateness may be approved by either the Town Manager or the Historic District Commission. A Certificate of Appropriateness application may be reviewed and approved by the Town Manager according to specific review criteria contained in State law and guidelines approved by the Commission when the application is determined to involve minor work. Minor works are defined as those exterior changes that do not involve any substantial alterations, and do not involve additions or removals that could impair the integrity of the property and/or the district as a whole. Such minor works shall be limited to those listed in the Commissions' Rules of Procedure. No application involving a minor work may be denied without the formal action of the Commission. Ordinance requirements for notification of affected property owners must be met for all applications.

#### **6.4 Certain Changes Not Prohibited**

Nothing in this article shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the Historic District that does not involve a change in design, material, or outer appearance thereof, or to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any such feature that the Building Inspector or similar official shall certify is required by the public safety because of unsafe or dangerous condition.

On the basis of preliminary sketches or drawings and other supporting data, the Town Manager may exempt from requirements for a Certificate of Appropriateness projects involving the ordinary maintenance or repair of any exterior architectural feature that does not involve a change in design, material, or outer appearance thereof. The Town Manager shall notify the Commission of all such exemptions.

#### **6.5 Procedures for Approval of Certificates of Appropriateness**

##### **6.5.1 Application Submittal Requirements**

Applications for Certificates of Appropriateness shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) on which applications are made, as well as any other material which may reasonably be required to determine the nature of the application.

The Commission may specify criteria for situations in which the Town Manager may waive any of the application material requirements.

No application shall be accepted by the Town Manager unless it complies with such requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

**6.5.2 Notification of Affected Property Owners**

Prior to approval or denial of an application for a Certificate of Appropriateness by the Historic District Commission, the Commission shall take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.

**6.5.3 Public Hearing**

In cases where the Commission deems it necessary, it may hold a public hearing concerning the application.

**6.5.4 Action on the Application**

Within sixty (60) days of the acceptance of an application, or within such further time consented to by written notice from the applicant, the Town Manager, or the Commission shall take action on the application. Such action shall be based upon the review criteria established in Section 6.6 of this article, and shall be one of the following:

- a) Approval
- b) Approval subject to conditions
- c) Denial

Failure to take final action on an application within the prescribed time limit, or extensions thereof, shall result in approval of the application as submitted.

The Town Manager or the Commission may impose such reasonable conditions on the approval of an application as will ensure that the spirit and intent of this article are achieved.

An application for a Certificate of Appropriateness authorizing the demolition of a building or structure within the Historic District may not be denied. However, the effective date of such a certificate may be delayed for up to three hundred and sixty-five (365) days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the Commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period the Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the building. If the Commission finds that the building has no particular significance or value toward maintaining the character of the Historic District, it shall waive all or part of such period and authorize earlier demolition or removal.

In every case, the record of the Commission's action shall include the reasons for its action.

**6.5.5 Actions Subsequent to Decision**

The Town Manager shall notify the applicant of a decision in writing, and shall file a copy of it with the Town's Planning Department. If the application is denied, the notice shall include the reasons for such action.

**6.5.6 Appeal of Decision**

A decision by the Commission on an application for a Certificate of Appropriateness may be appealed to the Board of Adjustment in accord with the provisions of Article 24.

### **6.5.7 Submission of New Application**

If the Commission denies an application for a Certificate of Appropriateness, a new application affecting the same property may be submitted only if substantive change is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

### **6.6 Review Criteria**

In considering an application for a Certificate of Appropriateness, the review shall take into account the historical and/or architectural significance of the structure under consideration and the exterior form and appearance of any proposed additions or modifications to that structure.

The review shall not consider interior arrangement or use. The Commission, using the criteria below, shall make findings of fact indicating the extent to which the application is or is not congruous with the historic aspects of the Historic District.

The following criteria shall be considered, when relevant, by the Commission in reviewing applications for a Certificate of Appropriateness:

- a) The height of the building in relation to the average height of the nearest adjacent and opposite buildings.
- b) The setback and placement on lot of the building in relation to the average setback and placement of the nearest adjacent and opposite buildings.
- c) Exterior construction materials, including texture and pattern.
- d) Architectural detailing, such as lintels, cornices, brick bond, and foundation materials.
- e) Roof shapes, forms, and materials.
- f) Proportion, shape, positioning and location, pattern, and size of any elements of fenestration.
- g) General form and proportions of buildings and structures.
- h) Appurtenant fixtures and other features such as lighting.
- i) Structural conditions and soundness.
- j) Architectural scale.

## **ARTICLE 7 - SPECIAL APPEARANCE DISTRICTS**

### **7.1 Intent**

Special Appearance Districts are intended to provide for the preservation and enhancement of the visual character of designated areas within the Town's planning jurisdiction, including individual properties therein, that are significant to the preservation and enhancement of the special visual character of the Chapel Hill community.

It is intended that these regulations ensure, insofar as possible, that building or structures in Special Appearance Districts shall be in harmony with other buildings or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings, or to prohibit the demolition or removal of such buildings, or to impose architectural styles, but rather to encourage design which is harmonious with the character of the district.

### **7.2 Establishment of Special Appearance Districts**

Special Appearance Districts are hereby established as districts which overlay zoning districts established in Article 3. The boundaries of the various Special Appearance Districts are as shown on the official Zoning Atlas.

The use and development of any land or structure within any Special Appearance District shall comply with use regulations and intensity regulations applicable to the underlying zoning district.

### **7.3 Certificate of Appropriateness Required**

No exterior portion of any building or other structure (including stone walls, fences, light fixtures, steps and pavement, or other appurtenant features), or any above ground utility structure, or any type of outdoor advertising sign shall be erected, altered, restored, or moved within designated Special Appearance Districts until after an application for a Certificate of Appropriateness as to exterior architectural features has been submitted to and approved by the Community Design Commission.

For purposes of this article, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the color, the kind and texture of the building material, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant fixtures. In the case of outdoor advertising signs, "exterior architectural features" shall be construed to mean the style, material, size, and location of all such signs.

Such a Certificate of Appropriateness shall be issued by the Commission prior to the issuance of a Zoning Compliance Permit or any other permit granted for purposes of construction or altering buildings or structures. A Certificate of Appropriateness shall be required whether or not a Zoning Compliance Permit is required. Any Zoning Compliance Permit or other permit not issued in conformity with this section shall be invalid.

The Town and all public utility companies shall be required to obtain a Certificate of Appropriateness prior to initiating any changes in the character of street paving, sidewalks, utility installations, lighting, walls, fences, structures, and buildings on property, easements, or streets owned or franchised by the Town of Chapel Hill or public utility companies.

**7.4 Certain Changes Not Prohibited**

Nothing in this article shall be construed to prevent construction, reconstruction, alteration, restoration, moving, or demolition of any such feature that the Building Inspector or similar official shall certify is required by public safety because of an unsafe or dangerous condition.

**7.5 Procedures for Approval of Certificates of Appropriateness**

**7.5.1 Application Submittal Requirements**

Applications for Certificates of Appropriateness shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) on which applications are made, as well as any other material which may reasonably be required to determine the nature of the application.

No application shall be accepted by the Town Manager unless it complies with such requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

**7.5.2 Notification of Affected Property Owners**

Prior to approval or denial of an application for a Certificate of Appropriateness, the Commission shall take such action as may be reasonably required to inform the owners of any property likely to be materially affected by the application, and shall give the applicant and such owners an opportunity to be heard.

**7.5.3 Public Hearing**

In cases where the Commission deems it necessary, it may hold a public hearing concerning the application.

**7.5.4 Commission Action**

Within sixty (60) days of the acceptance of the application, or within such further time consented to by written notice from the applicant, the Commission shall take action on the application. Such action shall be based upon the review criteria established in Section 7.6 of this article, and shall be one of the following:

- a) Approval
- b) Approval subject to conditions
- c) Denial

Failure of the Commission to take final action on an application within the prescribed time limit, or extensions thereof, shall result in approval of the application as submitted.

The Commission may impose such reasonable conditions on its approval of an application as will ensure that the spirit and intent of this article are achieved.

In every case, the record of the Commission's action shall include the reasons for its actions.

### **7.5.5 Actions Subsequent to Decision**

The Town Manager shall notify the applicant of the Commission's decision in writing and shall file a copy of it with the Town's Planning Department. If the application is denied, the notice shall include the reasons for such action.

### **7.5.6 Appeal of Decision**

A decision by the Commission on an application for a Certificate of Appropriateness may be appealed to the Board of Adjustment in accord with the provisions of Article 24.

### **7.5.7 Submission of New Application**

If the Commission denies an application for a Certificate of Appropriateness, a new application affecting the same property may be submitted only if substantive change is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

## **7.6 Review Criteria**

In considering an application for a Certificate of Appropriateness, the Commission shall take into account the architectural significance of the structure under construction and the exterior form and appearance of any proposed additions or modifications to that structure, as well as the effect of such change or additions upon other structures in the vicinity. The Commission shall not consider interior arrangement or use.

The Commission, using the criteria below, shall make findings of fact indicating the extent to which the application is or is not congruous with the visual aspects of the Special Appearance District, and, more particularly, with a) existing or planned development in the area, b) the general character of the town as evidenced by patterns of existing development and by any plans officially adopted by the Planning Board, c) the setting for any public building or buildings, or d) the maintenance and enhancement of the value of neighboring properties.

In its review of plans and specifications, the Commission shall examine the proposed architectural style and general design, the exterior surface treatment (including kind and texture of building material, and color or colors), the arrangement and location of building and structures on the site in question and their relationship to other buildings and structures, proposed landscaping, and the type and style of all windows, doors, light fixtures, signs, and other appurtenant features.

In addition to the above standards, the Commission may adopt and apply specific guidelines for each separate Special Appearance District based upon special aspects of such district.

**ARTICLE 8 - AIRPORT HAZARD DISTRICT**

**8.1 Intent**

The Airport Hazard district is intended to be applied to the approaches to runways of airports or landing fields within the Town's planning jurisdiction in order to minimize danger to lives and property of users of the airport and of occupants in its vicinity.

**8.2 Establishment of Airport Hazard District**

The Airport Hazard (AH) district is hereby established as a district which overlays other zoning districts established in Article 3. The boundaries of the Airport Hazard district are as shown on the official Zoning Atlas.

The use of any land or structure within the Airport Hazard district shall comply with use regulations applicable to the underlying zoning district.

**8.3 Modified Intensity Regulations**

Irrespective of intensity regulations generally applicable to the underlying zoning district, the development of any land or structure within the Airport Hazard district shall comply with the following modified gross land area requirement and LUI ratios:

LUI Ratios						
LUI Rating	Minimum GLA	Use Group	FAR	OSR	LSR	RSR
5	500,000	A,B,C	.018	.90	.80	.010

Application of these regulations shall be as established in Section 13.4 of this chapter.

**ARTICLE 9 - WATER QUALITY DISTRICT**

**9.1 Intent**

The Water Quality District is intended to be applied in a portion of the New Hope watershed draining to Jordan Lake in order to ensure long-term water quality of the Jordan Lake Reservoir, to protect possible future sources of drinking water for the Town and surrounding localities, and to control pollution sources affecting water quality.

The District is intended to implement general guidelines endorsed by the Triangle J Council of Governments for the Falls and Jordan Lake reservoirs on April 25, 1984, in the category of "Limited Industrial Areas" used in those guidelines.

In the interpretation and application of this Article, all provisions shall be: (a) considered as minimum requirements, (b) strictly construed in favor of the public interest and community benefit, and (c) deemed neither to limit nor repeal any other powers provided by Town ordinance or State statute.

**9.2 Definitions**

Definitions of terms used in this Article, where not otherwise defined in this Article, are contained in Article 2.

**9.3 Establishment of Water Quality District**

The Water Quality District is established for certain lands within the New Hope watershed as a District that overlays other zoning districts established in Article 12. The area shall be defined as an area extending one-half mile from the Corps of Engineers property line. In addition, all development within the Water Quality District shall comply with the requirements of any additional overlay districts and the underlying zoning district.

**9.4 Development in Water Quality District**

This Article shall apply to development and land-disturbing activities within the District after the effective date (May 9, 1988) of this Article unless allowed pursuant to a variance authorized by this Article and approved by the Board of Adjustment.

This Article shall not apply to the continued use, operation or maintenance of any development existing, or for which construction had substantially begun, or for which preliminary plat approval, site plan approval, or special use permit approval has been received on or before (May 9, 1988). With respect to the requirements of this Article, such development shall not be considered as non-conforming within the meaning of Article 22 of this Chapter.

This article shall not apply to single family or two-family development constructed or to be constructed on existing lots created prior to July 1, 1993. For all other existing development within the Water Quality District, the expansion, reconstruction, rehabilitation, or renovation of a development existing on or before July 1, 1993 is prohibited unless:

- 1) the expansion, reconstruction, rehabilitation, or renovation is permitted by Section 9.5 and meets the standards of Section 9.6 and 9.7; or
- 2) the expansion, reconstruction, rehabilitation, or renovation is permitted by a variance authorized by this Article and approved by the Board of Adjustment; or

- 3) the expansion, reconstruction, rehabilitation, or renovation results in no greater than a 10% increase in the allowable impervious surface requirements of Section 9.6.

## **9.5 Permitted Uses**

In addition to the requirements or permitted uses indicated in the underlying zoning district, or any applicable overlay zone, the following restrictions shall apply to the Water Quality District.

### **9.5.1 Residential**

No additional restrictions will be placed on the type of residential land use permitted within the District.

### **9.5.2 Industries/Businesses**

No industries or businesses that produce, store, or use reportable quantities of hazardous materials, as defined by EPA's most recently promulgated Hazardous Substances or Priority Pollutants lists, are allowed in the Water Quality District.

### **9.5.3 Toxic or Hazardous Waste Disposal**

No facilities which recycle or dispose of toxic or hazardous wastes may be located within the Water Quality Critical Area District.

### **9.5.4 Underground Fuel or Chemical Tanks**

No underground fuel or chemical storage tanks shall be permitted. For the purposes of this section, underground refers to the burial of such tank below the surface of the ground or the covering of them by a berm built above grade.

Spill containment measures must be taken for any fuel or chemical tank.

## **9.6 Intensity Regulations**

### **9.6.1 Land Use Intensity Regulations**

The intensity regulations are those generally applicable to the underlying zoning district, or any applicable overlay zone.

### **9.6.2 Additional Intensity Regulations**

In order to prevent an excessive amount of stormwater runoff from damaging the water quality of the reservoirs, it is desirable to encourage as much infiltration as possible of runoff from hard surfaces onto land areas which can absorb and filter runoff. For the purpose of this section, an impervious surface is defined as surface composed of any material that impedes or prevents natural infiltration of water into the soil. Impervious surfaces may include but are not limited to: roofs, streets, parking areas, tennis courts, driveways, patios, sidewalks, and any concrete, asphalt, or compacted gravel surface.

Any development in the Water Quality District shall be subject to limitations on the amount of impervious surface as defined in Article 10.

**9.7 Sanitary Sewer Service Standards for Development in the Water Quality District**

The purpose of these standards is to prevent discharges of untreated or inadequately treated wastewater into the water supply. The following standards shall apply to any portion of a development or, as appropriate, to any land disturbance, within the District:

**9.7.1 Wastewater Treatment Facilities**

No privately owned discharging wastewater treatment facilities shall be allowed within the Water Quality District, and no expansions of existing private discharging wastewater treatment facilities shall be allowed.

**9.7.2 Pretreatment Plants**

Pretreatment facilities to prepare wastewater for discharge into the public wastewater collection or treatment system shall be allowed in the area.

**9.7.3 Private Surface Discharge Facilities**

After a three-year time period from the date public sewer becomes available to an area (extended to or adjacent to property), no person shall continue to operate or use a private surface discharge sewage treatment system or individual septic system within the Water Quality District.

**9.8 Variance from Board of Adjustment**

**9.8.1 Application**

An owner of property who alleges that the provisions of this Article leave no legally reasonable use of the property may apply to the Board of Adjustment for a variance. An application for a variance shall be filed with the Town Manager in accord with the provisions of Subsection 24.4.1. In addition to the materials required by that subsection, the application must also comply with applicable submittal requirements.

On receipt of a complete application, the Town Manager shall cause an analysis to be made by appropriate Town staff based on the findings required in Subsection 9.8.2. Within a reasonable period of time, the Town Manager shall submit the application and a report of his or her analysis to the Board of Adjustment.

**9.8.2 Required Findings**

- a) The review of the Board of Adjustment shall extend to the entire zoning lot that includes area within the District.

The Board of Adjustment shall grant a variance, subject to the provisions of this Article, if it finds:

- 1) That the provisions of this Article leave an owner no legally reasonable use of the zoning lot; and
- 2) That a failure to grant the variance would result in extreme hardship; and
  - (a) That the hardship complained of is one suffered by the applicant rather than by neighbors or the general public;

- (b) That the hardship relates to the applicant's property rather than to personal circumstances;
  - (c) That the hardship is peculiar to the applicant's property, rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity;
  - (d) That the hardship is not the result of the applicant's own actions; and
- 3) That the variance will not substantially interfere with or injure the rights of others whose property would be affected by granting of the variance; and
  - 4) That the variance will not result in a violation of the provisions of Article 22 by allowing the enlargement, expansion, extension, or the greater permanence or intensity of a nonconforming use or feature.

In making such findings, the Board of Adjustment shall consider the uses available to the owner in the underlying zoning district.

- b) The Board of Adjustment shall grant the minimum variance necessary to afford appropriate relief under this section. The Board may attach such reasonable conditions to the granting of a variance as it deems necessary to achieve the purposes of this Article.
- c) The Board of Adjustment shall not grant any variance if it finds that such a variance would:
  - 1) result in significantly increased velocity of flow or deposit of sediment; or
  - 2) result in significantly increased erosion, significant additional threats to public safety; or
  - 3) result in significant threats to water quality.

### **9.8.3 Burden of Proof**

Any owner of property applying to the Board of Adjustment for a variance from the provisions of this Article shall have the burden of establishing that such variance should be granted by the Board.

### **9.8.4 Referral**

The Board of Adjustment, before taking final action on an application for a variance, may refer such application to Town advisory boards or commissions.

### **9.8.5 Review Criteria In reviewing applications for variances pursuant to this Article, the Board of Adjustment shall consider all technical evaluations, all relevant factors, other provisions of statute or ordinance, and:**

- a) the danger to life and property due to flooding, sedimentation, and/or erosion damage at the site;
- b) the importance of the services provided by the proposed development to the community;

- c) the availability of alternative locations for the proposed use;
- d) the compatibility of the proposed use with existing and anticipated development within the vicinity;
- e) the relationship of the proposed use to the comprehensive plan and the stormwater management plan for that area;
- f) the danger that issuance of the variance will set a precedent for future development which cumulatively may increase threats to ensuring the water quality of Jordan Lake Reservoir;
- g) the effect to water quality of Jordan Lake Reservoir; and
- h) the degree to which drainage conditions in the vicinity would be improved by the proposed development.

**9.9 Correction of Violations**

The owner of any land within the Water Quality District shall be presumed responsible for any violation of this Article committed on his or her property. The owner of any land within the Water Quality District shall be responsible for correcting any activity undertaken therein in violation of this Article. In addition, any other person found in violation of this Article shall be liable as provided by law. The Town may institute any appropriate action to restrain or prevent any violation of this ordinance or to require any person who has committed any such violation to correct the violation or restore the conditions existing before the violation. The Town Manager shall enforce this article as provided for in Article 23.

**9.10 Other Approvals Required**

No permit or approval required to be issued by the Town under the provisions of this Article shall be valid until all other permits or variances for the same proposal required by any other ordinance of the Town or statute of the State of North Carolina or United States have been received from those agencies from which such permits or variances are required.

**9.11 Records and Filings**

The Town Manager shall maintain records of all development permits, approvals, or variances regarding development within the Water Quality Critical Area District. Such records shall include all actions on applications for such permits, approvals, or variances, as well as as any conditions attached thereto.

The Town Manager shall notify any applicant in writing of the decision on any application for any permit, approval, or variance with respect to property within the Water Quality District and shall file a copy of it with the Town's Planning Department.

The applicant shall record any variance with the Orange County Register of Deeds within sixty (60) days after written notice of approval of such variance by the Board of Adjustment.

**ARTICLE 10 - WATERSHED PROTECTION DISTRICT**

**10.1 Intent**

The Watershed Protection District (herein sometimes WPD) is intended to be applied to a portion of the New Hope Watershed draining to Jordan Lake in order to ensure long-term water quality of the Jordan Lake Reservoir, to protect possible future sources of drinking water for the Town and surrounding localities, and to control pollution sources affecting water quality.

Watershed protection regulations are applied by the Town of Chapel Hill pursuant to North Carolina General Statutes, Chapter 143, Article 21, Watershed Protection Rules, and implementing regulations of the North Carolina Environmental Management Commission, or its successor statutes and regulations.

In the interpretation and application of this Article, all provisions shall be: (a) considered as minimum requirements, (b) strictly construed in favor of the public interest and community benefit, and (c) deemed neither to limit nor repeal any other powers provided by Town ordinance or State statute.

**10.2 Establishment of Watershed Protection District**

The Watershed Protection District is established for certain lands within the New Hope Watershed as a District that overlays other zoning districts established in Article 12. All development within the Watershed Protection District shall comply with the requirements of this Article. In addition, all development within the Watershed Protection District shall comply with the requirements of any additional overlay districts and the underlying zoning district.

The area of the District shall be defined generally as an area extending five (5) miles from the normal pool elevation of the Jordan Lake Reservoir, or to the ridge line of the Watershed, whichever is less.

The specific location of the Watershed Protection District shall be set by ridge lines, identifiable physical features such as highways, or property lines, and shall be shown on the official Zoning Atlas.

**10.3 Development in the Watershed Protection District**

This article shall apply to development and land-disturbing activities within the WPD after the effective date (July 1, 1993) of this Article unless exempted by this Section, or permitted by Section 10.4, or allowed pursuant to a variance authorized by this Article and approved by the Board of Adjustment.

**10.3.1 Application of Watershed Protection District to Development Existing on July 1, 1993.**

This Article shall not apply to the continued use, operation or maintenance of any development existing, or for which construction had substantially begun, on or before July 1, 1993. In addition, the Article shall not apply to existing development which has established a vested right under North Carolina zoning law as of July 1, 1993, based on the following criteria:

- a) substantial expenditure of resources (time, labor, money) based on a good faith reliance upon having received a valid approval to proceed with the project;
- b) having an outstanding valid building permit; or

- c) having expended substantial resources (time, labor, money) and having an approved Site Specific Development Plan pursuant to Section 20.4 of the Development Ordinance.

With respect to the requirements of this Article, such development shall not be considered as nonconforming within the meaning of Article 22 of this Chapter.

Multiple lots under single ownership as of July 1, 1993 are not subject to the provisions of this ordinance if vested rights have been established in accordance with North Carolina law. If no vested rights are established, then owners must comply with the provisions of this ordinance. Compliance may include requiring the recombination of lots.

**10.3.2 Application to Existing Single Family and Two-Family Lots**

This Article shall not apply to single family and two-family development constructed or to be constructed on existing single-family lots created prior to July 1, 1993. This exemption is not applicable to multiple lots under single ownership. For purposes of constructing a single-family or two-family dwelling, lots of record as of July 1, 1993 which are established through a duly approved and properly recorded final plat shall be exempt from the provisions of this ordinance.

**10.3.3 Application of the Watershed Protection District to the Redevelopment or Expansion of Development**

Redevelopment is allowed under the provisions of this Article if the redevelopment activity does not have a net increase of built-upon area or provides equal or greater stormwater control than the previous development, except that there are no restrictions on lawfully established single family and two-family residential redevelopment.

Expansions to existing development as of July 1, 1993 must meet the requirements of this Article; however, the built-upon area of existing development is not required to be included in density and impervious surface area calculations, and there are no restrictions on expansion of lawfully established single family and two-family development.

**10.4 Permitted Uses Within the Watershed Protection District**

The requirements or permitted uses indicated in the underlying zoning district, or any applicable overlay zone, apply in the Watershed Protection District, provided the standards of Sections 10.5, and 10.7 are met.

**10.5 Intensity Regulations**

**10.5.1 Land Use Intensity Regulations**

The intensity regulations are those generally applicable to the underlying zoning district, or any applicable overlay zone, except as modified below.

**10.5.2 Additional Intensity Regulations**

In order to prevent an excessive amount of stormwater runoff from damaging the water quality of reservoirs, it is desirable to require as much infiltration as possible of runoff from hard surfaces onto land areas which can absorb and filter runoff.

Any development in the Watershed Protection District shall be subject to one of two options, or a combination of options, to control non-point source and stormwater pollution:

a) Low Density Option

Development activities shall not exceed two (2) dwelling units per acre (gross land area) or twenty-four percent (24%) built-upon area (impervious surface area) of gross land area.

b) High Density Option

Development activities which exceed the Low Density Option requirements must control the runoff from the first inch of rainfall. In addition, the built-upon area may not exceed fifty percent (50%) of gross land area.

All development under the High Density Option must meet the applicable performance standards of Section 10.7.

**10.6 Stream Buffer Requirements**

All development shall comply with the provisions of Article 5, Resource Conservation District. In addition, the following standards for stream buffers shall apply to all perennial streams in the Watershed Protection District, in the event the Resource Conservation District is less restrictive than the following:

- a) For developments choosing the Low-Density Option, the required stream buffer is thirty (30) feet.
- b) For developments choosing the High-Density Option, the required stream buffer is one hundred (100) feet.
- c) For all developments, no new development is allowed within the stream buffer area; water dependent structures, and public projects such as road crossings and greenways may be allowed where no practicable alternative exists; these activities shall minimize built-upon area, divert runoff away from surface waters and maximize the use of Best Management Practices.

All stream buffers shall be a natural or vegetated area through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering of pollutants. If clearing, grading, or other land-disturbing activities have occurred and have reduced the effectiveness of the buffer, the buffer shall be replanted in accordance with a Landscape Plan to be approved by the Town Manager.

A stream buffer shall be measured landward from the normal pool elevation of impounded structures and from the bank of each side of perennial streams or rivers.

**10.7 Performance Standards**

The following standards and criteria shall apply to any portion of a development or, as appropriate, to any land disturbance within the Watershed Protection District.

**10.7.1 Hazardous Materials**

Any proposed development which uses and stores hazardous materials shall prepare an Emergency Contingency Plan as part of its development application. The Emergency Contingency Plan shall be prepared in accordance with the requirements of the Superfund Amendments and Reauthorization Act (SARA), the Comprehensive Environmental

Response, Compensation and Liability Act (CERCLA), or Section 311 of the Clean Water Act, as amended. The Plan shall identify buildings and the locations of points of storage and use of hazardous materials and shall be updated annually. The Plan shall be approved by the Town Manager.

Any container or tank used to store hazardous materials shall be equipped with leak detection devices and shall be double-walled or have other secondary containment features to be approved by the Town Manager.

Points of storage or use of hazardous materials shall be protected by a corrosion-resistant dike, sized to handle the maximum amount of hazardous material to be stored or used.

All floor drains that could collect hazardous materials shall be connected to a corrosion resistant tank or catch basin sized to handle the maximum amount of hazardous material to be stored or used. These floor drains shall not be open to the site's natural drainage system.

#### **10.7.2 Solid Waste Minimization**

All development shall submit a plan to be approved by the Town Manager which minimizes solid waste and promotes the recycling of materials in accordance with Section 14.11 of the Development Ordinance.

#### **10.7.3 Ownership, Design, and Maintenance of Engineered Stormwater Controls**

Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owner's association.

Engineered stormwater controls shall be designed and constructed in accordance with standards and specifications established by the Town Manager, and designed to control the first one inch of stormwater using wet detention ponds.

The property owner shall post a performance bond or other surety instrument satisfactory to the Town Manager, in an amount approved by the Town Manager to assure maintenance, repair, or reconstruction necessary for adequate performance of the engineered stormwater controls.

The establishment of a stormwater utility by the Town of Chapel Hill shall be deemed adequate financial assurance.

#### **10.7.4 Construction Standards**

The construction of new roads, bridges, residential and non-residential development shall minimize built-upon area, divert stormwater away from surface water supply waters as much as possible, and employ Best Management Practices to minimize water quality impacts.

#### **10.7.5 Cluster Provisions**

The clustering of development in accordance with Section 17.8 of the Development Ordinance is encouraged, subject to the following additional standards:

- a) Overall density of the project meets the associated density or stormwater control requirements of Section 10.5;

- b) Built-upon areas are designed and sited to minimize stormwater runoff impact to the receiving waters and minimize concentrated stormwater flow; and
- c) The remainder of the tract shall remain in a vegetated or natural state.

## **10.8 Variances from the Board of Adjustment**

### **10.8.1 Application**

An owner of property who alleges that the provisions of this Article leave no legally reasonable use of the property may apply for a variance.

This Article is established pursuant to North Carolina General Statutes Chapter 143, Article 21, and implementing regulations of the North Carolina Environmental Management Commission (Administrative Code Section 15 NCAC 28, .0100, .0200, and .0300), hereafter referred to as "State Watershed Regulations". A request for a variance from any requirement of this Article that does not conflict with any provision in State Watershed Regulations as amended, may be considered by the Board of Adjustment of the Town of Chapel Hill.

A request for a variance from any requirement of this Article that conflicts with any provision in State Watershed Regulations, as amended, constitutes a variance of a more significant nature. A request for such a variance may only be granted in unique circumstances when necessary to accommodate important social and economic development. A request for such a variance shall be considered by the Board of Adjustment and referred to the North Carolina Environmental Management Commission, in accordance with the following procedures:

If the Board of Adjustment decides in favor of granting the variance, the Board of Adjustment shall prepare a preliminary record of the hearing with all deliberate speed and send it to the Environmental Management Commission. The preliminary record of the hearing shall include:

- a) the variance application;
- b) the hearing notices;
- c) the evidence presented;
- d) motions, offers of proof, objections to evidence, and rulings on them;
- e) proposed findings and exceptions; and
- f) the proposed decision, including all conditions proposed to be added to the permit.

If the Environmental Management Commission approves the variance as proposed, approves the variance with additional conditions, or denies the variance, the Commission shall prepare a decision and send it to the Board of Adjustment. The Board of Adjustment shall prepare a final decision in accordance with the Commission's decision.

An application for a variance from the Board of Adjustment shall be filed with the Town Manager in accord with the provisions of Subsection 24.4.1. In addition to materials required by that subsection, the application must also comply with applicable submittal requirements.

On receipt of a complete application, the Town Manager shall cause an analysis to be made by appropriate Town staff based on the findings required in Subsection 10.8.2. Within a reasonable period of time, the Town Manager shall submit the application and a report of his or her analysis to the Board of Adjustment.

## 10.8.2 Required Findings

- a) The review of the Board of Adjustment shall extend to the entire zoning lot that includes area within the District.

The Board of Adjustment shall grant a variance, subject to the provisions of this Article, if it finds:

- 1) That the provisions of this Article leave an owner no legally reasonable use of the zoning lot; and
- 2) That a failure to grant the variance would result in extreme hardship; and
  - (a) That the hardship complained of is one suffered by the applicant rather than by neighbors or the general public;
  - (b) That the hardship relates to the applicant's property rather than to personal circumstances;
  - (c) That the hardship is peculiar to the applicant's property, rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity;
  - (d) That the hardship is not the result of the applicant's own actions; and
- 3) That the variance will not substantially interfere with or injure the rights of others whose property would be affected by granting of the variance; and
- 4) That the variance will not result in a violation of the provisions of Article 22 by allowing the enlargement, expansion, extension, or the greater permanence or intensity of a nonconforming use or feature, nor will it result in a violation of Article 5.

In making such findings, the Board of Adjustment shall consider the uses available to the owner in the underlying zoning district.

- b) The Board of Adjustment shall grant the minimum variance necessary to afford appropriate relief under this section. The Board may attach such reasonable conditions to the grant of a variance as it deems necessary to achieve the purposes of this Article.
- c) The Board of Adjustment shall not grant any variance if it finds that such a variance would:
  - 1) result in significantly increased velocity of flow or deposit of sediment; or
  - 2) result in significantly increased erosion, significant additional threats to public safety; or
  - 3) result in significant threats to water quality.

**10.8.3 Burden of Proof**

Any owner of property applying to the Board of Adjustment for a variance from the provisions of this Article shall have the burden of establishing that such variance should be granted by the Board.

**10.8.4 Referral**

The Board of Adjustment, before taking final action on an application for a variance, may refer such application to Town advisory boards or commissions.

For all proposed variances, the Town Manager shall notify and allow a reasonable comment period for all other local governments having jurisdiction within the watershed area governed by the State regulations and the entity using the water supply for consumption.

**10.8.5 Review Criteria**

In reviewing applications for variances pursuant to this Article, the Board of Adjustment shall consider all technical evaluations, all relevant factors, other provisions of statute or ordinance, and:

- a) the danger to life and property due to flooding, contamination, pollution, sedimentation, and/or erosion damage at the site;
- b) the importance of the services provided by the proposed development to the community;
- c) the availability of alternative locations for the proposed use;
- d) the compatibility of the proposed use with existing and anticipated development within the vicinity;
- e) the relationship of the proposed use to the comprehensive plan and the stormwater management plan for that area;
- f) the danger that issuance of the variance will set a precedent for future development which cumulatively may increase threats to ensuring the water quality of Jordan Lake Reservoir;
- g) the effect to water quality of Jordan Lake Reservoir; and
- h) the degree to which drainage conditions in the vicinity would be improved by the proposed development.

**10.9 Correction of Violations**

The owner of any land within the Watershed Protection District shall be presumed responsible for any violation of this Article committed on his or her property. The owner of any land within the Watershed Protection District shall be responsible for correcting any activity undertaken therein in violation of this Article. In addition, any other person found in violation of this Article shall be liable as provided by law. The Town may institute any appropriate action to restrain or prevent any violation of this ordinance or to require any person who has committed any such violation to correct the violation or restore the

conditions existing before the violation. The Town Manager shall enforce this Article as proved for in Article 23.

**10.10 Other Approvals Required**

No permit or approval required to be issued by the Town under the provisions of this Article shall be valid until all other permits or variances for the same proposal required by any other ordinance of the Town or Orange or Durham Counties or statute of the State of North Carolina or United States have been received from those agencies from which such permits or variances are required.

**10.11 Records and Filings**

The Town Manager shall maintain records of all development permits, approvals, or variances regarding development within the Watershed Protection District. Such records shall include all actions on applications for such permits, approvals, or variances, as well as any conditions attached thereto.

The Town Manager shall submit annually a description of each project receiving a variance and the reasons given by the Board of Adjustment for granting the variance to the North Carolina Environmental Management Commission.

The Town Manager shall maintain records of annual inspections of engineered stormwater management controls.

The Town Manager shall notify any applicant in writing of the decision on any application for any permit, approval, or variance with respect to property within the Watershed Protection District and shall file a copy of it with the Town's Planning Department.

The applicant shall record any variance with the Orange County Register of Deeds within sixty (60) days after written notice of approval of such variance by the Board of Adjustment.

**ARTICLE 11 - TREE PROTECTION**

**11.1 General Provisions**

**11.1.1 Short Title**

This Article shall be known and may be cited as the Chapel Hill Tree Protection Ordinance.

**11.1.2 Finding**

The Council finds that:

- (a) Chapel Hill is blessed with a diversity and abundance of trees, shrubs and soils. Such elements are of economic value to the Town and make it a desirable place for both residents and visitors;
- (b) the appearance of Chapel Hill from the public ways contributes to the economic prosperity of the Town;
- (c) trees and other landscape elements help to naturally control flooding and erosion, moderate noise pollution, dust, and other airborne pollutants, moderate the Town climate and shelter and feed its wildlife;
- (d) the growth and development attracted to the Town of Chapel Hill often necessitates the removal of trees, shrubs, and soils, thereby contributing to their depletion; and
- (e) it is necessary to protect and manage these valuable assets and their habitat in order to protect the health, safety, and welfare of citizens in Chapel Hill and its extraterritorial jurisdiction.

**11.1.3 Purpose**

The Council declares the intent of this Article is to:

- (a) regulate the protection, installation, removal, and long-term management of trees, shrubs and soils in Chapel Hill and its extraterritorial jurisdiction;
- (b) encourage the proper protection and maintenance of existing trees, shrubs and soils on all public and some private lands as herein described now or hereafter in Chapel Hill and its extraterritorial jurisdiction;
- (c) charge the Town Manager to prescribe procedures for the proper protection, installation, and long-term management of landscape elements on all developing lands, all public and some private lands in Chapel Hill and its extraterritorial jurisdiction as herein described;
- (d) establish a system of permits to assure the correct planting, maintenance, protection, and removal of trees and soil on public and private property; and
- (e) establish penalties for violation of its provisions.

**11.1.4 Definitions**

Terms used in this Article are defined in Article 2 of this Development Ordinance.

**11.2 Permits Required**

**11.2.1 Activities Requiring a Permit**

Except as otherwise specifically exempted herein, it shall be unlawful to:

- (a) remove, prune, apply chemicals that are harmful to or disturb any tree or the soil within the critical root zone of any tree; or
- (b) clear vegetation from a site; or
- (c) begin any excavation, remove soil or place fill on a site within Chapel Hill and its extraterritorial jurisdiction until the Town Manager has issued a permit certifying that such activity complies with the applicable provisions of Sections 11.3, 11.4, 11.5 and 11.6 of this Article.

**11.2.2 Applicability**

The provisions of this Article shall not apply to:

- (a) trees, vegetation and land disturbing activity normally associated with the landscaping, construction or modification, or occupancy of any existing or proposed single-family or two-family dwelling on an individual lot smaller than 5 acres, unless the property owner voluntarily registers a rare or specimen tree as described in 11.6.4, provided, however, that Section 11.5 of this Article shall apply to all public and private lands within the Town and its extraterritorial jurisdiction;
- (b) land in the Town's Office/Institutional-3 or Office/Institutional-4 zoning districts, provided, however, that Section 11.5 of this Article shall apply to all public and private lands within the Town and its extraterritorial jurisdiction;
- (c) routine maintenance of existing vegetation outside the public right-of-way, such as pruning, watering and fertilizing;
- (d) the removal of dead trees and shrubs, or trees and shrubs that have been diagnosed and determined to be diseased beyond treatment, the burden of proof being placed on the remover;
- (e) the removal of soil or vegetation from undeveloped land to allow for noncommercial open space no greater than 1/4 acre, providing this activity does not take place within the critical root zone of any rare or specimen tree.

**11.2.3 Permit Display**

All permits issued hereunder shall be so displayed as to be clearly visible from a public right-of-way. In the case of annual permits, as described in Section 11.7.2, such permits shall be kept in vehicles at the work site.

**11.2.4 Emergency Waiver**

The provisions of this Article are waived if compliance would hamper the rescue of life or property from immediate danger or the repair of utilities in the event of emergencies such as wind storms, ice storms, or other disasters. Any emergency work shall follow as closely as possible the standards outline in the Town's Landscape Standards and Specifications.

**11.2.5 Enforcement**

Upon a determination that work does not conform with the provisions of this Article, the Town Manager shall issue a Stop-Work Order which shall remain in effect until all corrections are made that are necessary to conform with this Article.

**11.3 Permitted Activities and Standards Applicable to Undeveloped Land and Woodlands**

**11.3.1 Area Protected**

Except as herein exempted, all undeveloped zoning lots within the Town and its extraterritorial jurisdiction which are more than one-half acre in size are hereby protected.

**11.3.2 Permitted Uses**

A Zoning Compliance Permit shall be required from and issued by the Town Manager for the following activities on undeveloped land;

- (a) the removal of rare or specimen trees; or
- (b) the practice of forestry as defined by North Carolina General Statute 105-277.2-.7. Such forestry shall be permitted only after an applicant submits a plan for harvesting and replanting consistent with the most current Forest Practices Guidelines Related to Water Quality published by the N.C. Department of Natural Resources and Community Development.

**11.4 Permitted Activities and Standards Applicable to Developing Land**

**11.4.1 Landscape Protection Plan Required**

A Zoning Compliance Permit shall not be issued for development covered by provisions of this Section unless a Landscape Protection Plan is first approved by the Town Manager.

No person shall spray, prune, remove, cut above ground, or otherwise disturb any tree or the soil within the critical root zone of any tree on developing land without first obtaining a Zoning Compliance Permit and approval of a Landscape Protection Plan from the Town Manager.

All development activities on a site, including installation of public and private utilities, shall conform to the provisions of an approved Landscape Protection Plan.

**11.4.2 Landscape Protection Plan**

The Town Manager shall prescribe the contents of Landscape Protection Plans and information that may be reasonably required to determine compliance with this Article, with sufficient copies for necessary referrals and records.

The Landscape Protection Plan shall:

- (a) describe the existing soil types, trees, vegetation, and other landscape elements of the development site;
- (b) identify areas where trees, vegetation and soils are to be protected and preserved and areas where trees, vegetation and soils are to be removed or modified; and

- (c) address measures of tree, vegetation and soil protection and management that will be used before, during and after all construction activities to promote the survival of such elements;

If vegetation identified for survival in the Landscape Protection Plan is dead or dying as determined by the Town Manager at the time of the issuance of a certificate of occupancy and is part of a required buffer, replacement of such vegetation shall be required if the Town Manager finds the buffer to be inadequate.

Otherwise, compliance with the Landscape Protection Plan shall establish a presumption that the requirements of this Section have been met.

#### **11.4.3 Surveying**

No tree greater than six (6) inches in Diameter at Breast Height (DBH) shall be removed for the purpose of surveying without a permit issued by the Town Manager approving such action.

#### **11.4.4 Pre-Construction Conference**

Prior to the commencement of any activities requiring a permit (see Section 11.2.3), a pre-construction conference shall take place to review procedures for protection and management of all protected landscape elements identified on the Landscape Protection Plan and to designate one or more persons as Landscape Protection Supervisor(s) as described in Section 11.4.5.

#### **11.4.5 On-site Supervision**

The applicant shall designate as Landscape Protection Supervisors one or more persons who have completed instruction and examination in landscape protection procedures with the Town and have received a Landscape Protection Certificate.

It shall be the duty of the Landscape Protection Supervisor to ensure the protection of new or existing landscape elements to be preserved, as defined in the Landscape Protection Plan. At least one identified Landscape Protection Supervisory shall be present on the development site at all times when activity is taking place that could damage or disturb such landscape elements. Such activities include:

- (a) clearing and grubbing;
- (b) any excavation, grading, trenching or moving of soil;
- (c) removal, installation or maintenance of all landscape elements and landscape protection devices; or
- (d) the delivery, transporting and placement of construction materials and equipment.

The approved Landscape Protection Supervisor(s) shall supervise all site work to assure that development activity conforms to provisions of the approved Landscape Protection Plan.

#### **11.4.6 New and Required Plantings**

All new and required landscaping and preparation for landscaping shall be installed and maintained in accordance with the Town's Landscaping Standards and Specifications.

All required plantings, as shown on an approved Landscaping Plan, must be planted or an accepted letter of credit placed with the Town prior to the issuance of a Certificate of Occupancy for any part of the development covered by the Landscape Plan.

#### **11.4.7 Protective Fencing**

Vegetation that is to be protected on developing land, as indicated on a Landscape Protection Plan, shall be protected by fences or other equally effective measures during construction activity. Such fencing shall be located and erected according to Town Standards and be located as shown on the Landscape Protection and Site Grading Plans. All land disturbing activity, storage of equipment, building material, soil and other debris shall be kept within the area of development activity and outside of the protective fencing.

Vegetation that is to be retained during right-of-way clearing of single-family or two-family residential subdivisions, as indicated on a Landscape Protection Plan, shall be delineated by high visibility flagging during construction activity. Such flagging shall be located and installed according to Town Standards and be located as shown on the Landscape Protection and Site Grading Plans. The use of flagging shall be limited to those specific applications where no rare or specimen trees will be affected by development activity and the Town Manager determines it to be as effective as protective fencing.

Landscaping activities taking place after the removal of protective fencing shall be accomplished with light machinery or hand labor and in accordance with the Town's Landscaping Standards and Specifications.

#### **11.4.8 Treatment of Trees During Construction**

No nails, ropes, cables, signs or fencing shall be attached to any part of any tree that is to remain.

Trees which are damaged during construction shall be treated so as to promote their continued health.

#### **11.4.9 Public Hazard**

A Certificate of Occupancy may be denied for any lot if the Town Manager determines that a public hazard as defined in this Ordinance exists on said lot, until that public hazard is abated.

A street constructed to Town standards and dedicated to the Town may not be finally accepted for maintenance at the end of the warranty period as covered by Chapel Hill Code 17-45 until any public hazard arising out of a tree, plant or shrub thereon, is abated by the developer of that street.

#### **11.4.10 Enforcement**

The Town Manager shall have development sites inspected frequently to assure that work is conforming to the approved Landscape Protection Plan and the applicable sections of this Article.

Absence of a Landscape Protection Supervisor(s) from the site at times when development activity is taking place that has the potential to adversely affect landscape elements to be preserved or new landscape elements may result in the issuance of a Stop-Work order until a Landscape Protection Supervisor is present.

**11.5 Public Land**

**11.5.1 Permits Required**

It shall be unlawful to:

- (a) plant, prune, remove, apply chemicals that are harmful to or disturb any tree or the soil within the critical root zone of any tree; or
- (b) clear vegetation, begin any excavation, remove soil or place fill on all public land and easements owned or maintained by the Town within Chapel Hill or its extraterritorial jurisdiction without first obtaining a permit from the Town Manager.

All activities related to trees and landscaping on public land as herein defined shall conform to the Town's Landscaping Standards and Specifications.

The Town Manager shall issue the permit if the proposed work is in compliance with the Town's Landscaping Standards and Specifications.

**11.5.2 Tree Planting**

All existing plantings of trees and shrubs on all public land and easements owned or maintained by the Town and all future additions and substitutions shall be under the authority and direction of the Town Manager.

Trees may be planted on the public street right-of-way of any public street provided they comply with any plan for public landscaping that has been approved by the State of North Carolina or the Town of Chapel Hill, that they will not hinder the repair or construction of public utilities and a permit has been issued by the Town Manager.

Trees or shrubs may be planted on the public street right-of-way of any other public street of a variety and in a location desired by the abutting property owner except that no trees or shrubs shall be planted close enough to any public street intersection to interfere with the sight distance at the intersection or interfere with streets, sidewalks, street lights or above and below-ground utility lines as specified in the Town's Landscaping Standards and Specifications.

All planting of trees and shrubs on public property shall be subject to general considerations of public health, safety and convenience, and the material and aesthetic value accruing to the whole community. Planting shall be restricted to the varieties known to be suited to the local climate and environment and shall be intended to preserve and enhance the beauty and variety of the public landscape as recommended in the Town's Landscaping Standards and Specifications.

**11.5.3 Prohibited Trees**

It shall be unlawful to plant in any public right-of-way any trees which by the nature of their fruit, root system, brittleness of wood, or susceptibility to disease are deemed undesirable as specified in the Town's Landscaping Standards and Specifications.

**11.5.4 Tree Maintenance**

The Town will provide tree maintenance in the town center districts and on thoroughfares. The Town will not be responsible for the maintenance or replacement of shrubs planted on the right-of-way except those planted by the Town. Shrubs which are planted on the right-

of-way of any public street and not properly maintained in a safe, healthy and attractive condition may be removed by the Town.

#### **11.5.5 Abuse and Mutilation of Trees**

Except to abate a hazard as defined in 11.4.9, it shall be a violation of this article to damage, destroy or mutilate any tree or shrub in a public right-of-way or any public place, or attach or place any rope or wire (other than one to support a young or broken tree), sign poster, handbill or any other thing to or on any tree or cause or permit any wire charged with electricity to come into contact with any such tree.

#### **11.5.6 Public Hazards**

It shall be the duty of the owner of the property wherein or whereupon a public hazard exists, to abate the hazard by removing or trimming the growth. Trees on private property whose roots may damage sidewalks, curbs or public streets, by causing them to buckle or break or whose roots may enter into public sewers or water mains shall also be public hazards and may be trimmed or removed as deemed necessary by the Town Manager.

If the owner of property, after being notified of the existence of a public hazard on their property, fails to abate the hazard within thirty (30) days the Town Manager shall have the hazard abated and assess the exact cost to the owner as provided by law in the case of special assessments or liens.

Where the roots of a public tree or shrub constitute a hazard to private property, the affected property owner may prune or cut the offending roots at his property line, provided the tree is not a rare or specimen tree and the action will not create an unsafe condition. A permit for such cutting or pruning shall be granted only after the proposed work has been reviewed and approved by the Town Manager.

Where the growth and limbs of public trees constitute a hazard to private property, the Town, upon notice, shall correct the condition.

Where the growth of trees interferes with public utilities such conditions shall be corrected by proper pruning, removal or replacement of the tree causing the interference. Corrective measures shall be carried out in accordance with the provisions of this Article and the Town's Landscaping Standards and Specifications.

#### **11.5.7 Removal of Trees**

Trees and shrubs shall not be removed from public property or public street rights-of-way without a permit issued by the Town Manager. Trees and shrubs on all public land and easements owned or maintained by the Town may be removed only when they are dead, dangerous to life and property, seriously diseased or constitute a public hazard, or where necessary to accommodate the construction of a public facility.

The Town retains the right to remove any tree on any public street or highway right-of-way or easement owned or maintained by the Town which is necessary to permit the proper maintenance or improvement of the public street except that no rare tree shall be removed from land or easements owned by the Town or any public street or highway right-of-way unless the Town Manager determines there is no reasonable way the land or street can otherwise be developed, improved or properly maintained and the tree saved.

The Town may remove dead or diseased trees from the public street right-of-way, easement owned or maintained by the Town on any public street. A tree on the line which

is half or more than halfway on the right-of-way at its base will be considered to be on the right-of-way.

Existing public trees shall be preserved to the extent that it is possible and feasible. If removed they will be replaced where practicable.

### **11.5.8 Construction and Repair Activity on or Adjacent to Public Land**

A permit shall be required for:

- (a) any construction or repair activity;
- (b) any excavation of trenches or tunnels for the installation or repair of utilities; or
- (c) any laying of pavement taking place within the critical root zone of any rare or specimen tree on public land regardless of whether the critical root zone occupies public or private lands.

No construction or repair activities within the critical root zone of any rare or specimen tree shall take place until the Town manager has approved a Landscape Protection Plan that indicates tree protection measures and preservation strategies as defined in 11.4.2.

All trees to be saved on streets or public land near any excavation or construction of any building, structure, or new streets shall be guarded with protective fencing or other equally effective measures consistent with Town Standards at a location specified in an approved Landscape Protection Plan. All construction material, dirt, or other debris shall be kept outside the protected area.

No person shall deposit, place, store, or maintain upon any public land, easement, street, or buffer strip any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, and fertilizer to the roots of any tree growing therein, without having first obtained a Zoning Compliance Permit or Tree Work Permit from the Town Manager.

## **11.6 Rare and Specimen Trees**

### **11.6.1 Specimen Tree Defined**

A specimen tree is any healthy living tree that;

- (a) has a trunk diameter at breast height (DBH) of 24 inches or more; or
- (b) a trunk DBH of 12 inches or more in the case of the following species:

- Carpinus (Hornbeam)
- Ilex spp. (Holly)
- Magnolia spp.
- Ostrya (Hophornbeam)
- Tsuga spp. (Hemlock)

### **11.6.2 Rare Tree Defined**

A rare tree is any healthy living tree that:

- (a) has a trunk diameter at breast height (DBH) of 36 inches or more; or

(b) a trunk DBH of 18 inches or more in the case of the following species:

Carpinus (Hornbeam)  
 Ilex spp. (Holly)  
 Magnolia spp.  
 Ostrya (Hophornbeam)  
 Tsuga spp. (Hemlock)

(c) is listed as a State or National Champion by the North Carolina Forest Service or the American Forestry Association; or

(d) provides unique habitat for any endangered or threatened wildlife species protected by Federal law; or

(e) has been cited by the Town Council as being historically significant; or

(f) represents an uncommon species, such as Long Leaf Pine, Live Oak or Sequoia Redwood, that the Town Manager considers to be desirable and not to pose a threat to the local ecological balance.

**11.6.3 Rare and Specimen Trees on Developing Land**

Rare and specimen trees shall be shown on all preliminary Landscape Protection Plans if such trees are within one hundred (100) feet of areas where soil disturbance or construction activity is proposed. In addition, these trees shall be identified and located by survey on the approved Landscape Protection Plan if such trees are located on the development site or adjacent public property. The Town Manager may visit the site to determine the accuracy of identification.

Proposed development should be designed to maximize the preservation of rare and specimen trees. Where rare and specimen trees exist, flexible approaches such as adjustments to lot layout, placement of buildings and paved surfaces and location of utilities should be pursued in order to save them.

Notwithstanding any provision of the Development Ordinance to the contrary, saving of a rare or specimen tree shall constitute sufficient evidence that Section 24.3.1 a-e have been met in any variance application.

No soil disturbance from construction, trenching or grading, or paving, or storage of equipment or materials shall take place within the critical root zone of any rare or specimen tree to be preserved unless the Town Manager determines there is no reasonable way the property can be developed without such disturbance or unless the proposed work will be carried out in accordance with the specifications for such work in the Town's Landscaping Standards and Specifications.

No rare tree shall be removed from developing land unless the Town Manager determines there is no reasonable way the property can be otherwise developed, improved or properly maintained and the tree saved.

**11.6.4 Voluntary Protection of Rare and Specimen Trees on Private Land**

Rare and specimen trees which are located on individual lots with single- and two-family homes shall be protected if voluntarily registered by the property owner.

Registration of such trees shall survive transfer of ownership if language is contained in the document transferring ownership and shall extend the coverage hereof and render the owner of the lot subject to the following privileges:

- (a) The owner shall be entitled to consultation with the Town Forester concerning proper care of the tree.
- (b) If a permitted auxiliary structure or addition to a house is being planned, notwithstanding any provision of the Development Ordinance to the contrary, saving of a rare or specimen tree shall constitute sufficient evidence that Section 24.3.1 a-e of the Development Ordinance have been met in any variance application.

Once so registered, trees may be removed from the register at a later date at the request of the property owner.

## **11.7 Administrative Mechanisms**

### **11.7.1 Application Requirements**

The Town Manager shall prescribe:

- (a) the form(s) for all applications called for in this Article;
- (b) any information that may reasonably be required to determine compliance with this Article and with the Town's Landscaping Standards and Specifications.

Unless otherwise specified in this Article, for applications requiring Town Manager approval, action to approve or deny an application shall be taken by the Town Manager within fifteen (15) days of the acceptance of an application, or within such further time consented to by written notice from the applicant or by Council resolution.

### **11.7.2 Permits**

A permit shall be issued by the Town manager for all activities requiring a permit as defined in 11.2, including but not limited to utility line clearance pruning, planting on public land and tree or soil disturbing repairs around existing trees. Permits will be issued only after a finding has been made by the Town Manager that all applicable provisions of this Article and the Landscaping Standards have been met.

Permits may authorize work for up to one year for ongoing utility maintenance and installation activities and may be renewed annually subject to continued compliance with conditions of the permit. Applications for annual permits shall be accompanied by a statement of measures that will be taken to protect and preserve trees and landscaping.

Permits for all other activities shall be issued by the Town. Manager not less than two (2) working days before the work is to be done, except in the case of an emergency where action is required to protect the safety, health and welfare of the public, or the repair of utilities. Notice of completion of work shall be given within five (5) days of completion to the Town Manager for her/his inspection.

Any permit granted shall contain a date of expiration and the work shall be completed in the time allowed by the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

**11.7.3 Penalties**

Any act constituting a violation of this Article resulting in the loss or destruction of trees or topsoil shall subject the landowner to a civil penalty equivalent to 1.5 times the monetary value of the trees or topsoil removed or destroyed up to a maximum of \$20,000. For purposes of such determination the Town Manager shall apply the most current formula of the Council of Tree and Landscape Appraisers, or a similar method in common use. In addition, trees so destroyed must be replaced with new trees whose total DBH equals that of the trees destroyed.

Development activity which has taken place in compliance with conditions of the Zoning Compliance Permit issued for that activity shall establish a presumption that the property owner has met the requirements of this Section. It shall be the duty of the permit holder to demonstrate that the activity was in compliance with the issued permit.

Unless otherwise specified in this Article, the Town of Chapel Hill shall enforce the provisions of this Article in accordance with procedures, penalties, and remedies described in Article 23 of the Development Ordinance.

**11.7.4 Appeals**

Unless otherwise specified in this Article, interpretations, appeals, and variances of or from provisions of this Article shall be pursuant to the provisions of Article 24 of the Development Ordinance.

**11.7.5 Fees**

Reasonable fees sufficient to cover the costs of administration, inspection, appraisal, and publication of notice shall be charged to applicants for Zoning Compliance Permits and Tree Work Permits established by this Article. The amount of such fees shall be fixed by the Town Council.

**11.7.6 Revision Provision**

For the first five years after its passage, this Article shall be reviewed annually by the Town Manager with the advice of a Tree Committee appointed by the Town Council, who will report on such review to the Town Council. The review shall assess the effectiveness, including cost, of the Article and recommend any necessary revisions, additions or corrections to the Town Council.

**ARTICLE 12 - USE REGULATIONS**

**12.1 Intent**

It is the intent of this article to provide for patterns of land use in accord with the Comprehensive Plan, and to promote the organization of land uses so as to minimize conflicts between different types of land use activities while recognizing the community's need for such activities.

**12.2 Establishment of Use Regulations**

Except as otherwise specifically provided in this chapter, regulations governing the use of land and structures within the various zoning districts and classifications of planned developments are hereby established as shown in Section 12.3, Schedule of Use Regulations.

**[Schedule of Use Regulations begins on next page]**

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP A**  
(page 1 of 2)

**ZONING DISTRICTS**

USES*	R-SS	R-4 R-5 R-6	R-2 R-2A R-3	R-1	R-1A	R-LD1	R-LD5	RT
	Accessory Use Customarily Incidental to a Permitted Group A Principal or Special Use	A	A	A	A	A	A	A
Agriculture:								
• Non-Livestock	--	A	A	A	A	A	A	P,A
• Livestock (See Article 12.4)	--	--	--	--	--	--	A	P,A
Cemetery	--	S	S	S	S	S	S	S
<i>DWELLING UNIT(S)</i>								
Single Family	S	P	P	P	P	P	P	P
Two-Family:								
• Including Accessory Apts.	S	P	P	P	P	P	P	P
• Duplex	S	P	--	--	--	--	--	P
Multi-Family:								
• 3 to 7 dwelling units	S	P	--	--	--	--	--	--
• Over 7 dwelling units	S	--	--	--	--	--	--	--
Essential Services	--	P,A	P,A	P,A	P,A	P,A	P,A	P,A
Home Occupation	--	A	A	A	A	A	A	A
Mobile Home:								
• Class A	S	P	P	P	P	P	P	P
• Class B	--	--	--	--	--	P	P	P
• Mobile Home Park	--	--	--	--	--	--	--	--
Outdoor Skateboard Ramp (See Article 12.6)	--	A	A	A	A	A	A	A

KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

Permitted as a Principal Use on a lot created by a subdivision for which (a) an application for preliminary plat approval was submitted to the Town before September 5, 1983, and (b) substantial expenditures were made in good faith before December 5, 1983.

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP A**  
(page 2 of 2)

**ZONING DISTRICTS**

USES*	TC-1 TC-2	NC CC	OI-3	OI-1 OI-2	I	MH	Planned Development (PD-)			
							SC(C) OI SC(N)	MU	I	
Accessory Use Customarily Incidental to a Permitted Group A Principal or Special Use	A	A	A	A	A	--	A	A	A	A
Agriculture:										
• Non-Livestock	A	A	A	A	A	P,A	A	A	A	A
• Livestock (See Article 12.4)	--	--	--	--	--	P,A	--	--	--	--
Cemetery	--	--	S	--	--	--	--	--	--	--
<i>DWELLING UNIT(S)</i>										
Single Family	P	P	P	P	--	--	P	--	P	--
Two-Family:										
• Including Accessory Apts.	P	P	P	P	--	--	P	--	P	--
• Duplex	P	P	P	P	--	--	P	--	P	--
Multi-Family:										
• 3 to 7 dwelling units	P	P	P	P	--	--	P	--	P	--
• Over 7 dwelling units	P	P	P	P	--	--	P	--	P	--
Essential Services	P,A	P,A	P,A	P,A	P,A	--	P,A	P,A	P,A	P,A
Home Occupation	A	A	A	A	--	--	A	--	A	--
Mobile Home:										
• Class A	P	P	P	P	--	--	P	--	P	--
• Class B	--	--	--	--	--	--	--	--	--	--
• Mobile Home Park	--	--	--	--	--	--	P	--	P	--
Outdoor Skateboard Ramp (See Article 12.6)	A	A	A	A	A	--	A	A	A	A

\* KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

\*\* Permitted as a Principal Use on a lot created by a subdivision for which (a) an application for preliminary plat approval was submitted to the Town before September 5, 1983, and (b) substantial expenditures were made in good faith before December 5, 1983.

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP B**  
(page 1 of 2)

**ZONING DISTRICTS**

USES*	TC-1	CC	NC	OI-3	OI-1	R-5	R-3	R-1, R-1A, R-2
	TC-2				OI-2	R-6	R-4	R-2A, R-LD1, R-LD5, RT
Accessory Use Customarily Incidental to a Permitted Group B Principal or Special Use	A	A	A	A	A	A	A	A
Adult Day Care Facility	P,A	P,A	P,A	P,A	P,A	S,A	S,A	S,A
Business, Office-Type	P,A	P,A	P,A	P,A	P,A	--	--	--
Child Day Care Facility (See Article 12.6)	P,A	P,A	P,A	P,A	P,A	P,A	P,A	P,A
Clinic	P	P,A	P,A	P,A	P	--	--	--
Club	P,A	P,A	P,A	P,A	P,A	--	--	--
College or University	P	P	--	P	P	--	--	--
Fine Arts Educational Institution	P	P	P	P	P	S	--	--
Fraternity or Sorority Dwelling	S	S	--	P	S	S	--	--
Funeral Home	P	P,A	--	P,A	P	--	--	--
Group Care Facility	P	P	P	P	P	S	S	S
Hospital	--	P	--	P	--	--	--	--
Hotel or Motel	P	P	--	P	--	--	--	--
Place of Worship (See Article 12.6)	P	P	P	P	P	P	P	P
Public Cultural Facility (See Article 12.6)	P,A	P,A	P,A	P,A	P,A	P,A	P,A	P,A
Public Use Facility	P,A	P,A	P,A	P,A	P,A	P,A	P,A	P,A
Research Activities	P,A	P,A	--	P,A	P,A	--	--	--
Residence Hall	P	--	--	P	--	--	--	--
Residential Support Facility	P	P	P	P	P	--	--	--
Rooming House	P	P	P	P	P	P	P	--
School, Elementary or Secondary (See Article 12.6)	P	P	P	P	P	P	P	P
Shelter	P	P	--	P	P	--	--	--
Tourist Home	P	P	--	P	P	--	--	--

\* KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP B**  
(page 2 of 2)

**ZONING DISTRICTS**

USES*	I	R-SS MH	Planned Development (PD-)					
			H	SC(N)	SC(C)	OI	MU	I
Accessory Use Customarily Incidental to a Permitted Group B Principal or Special Use	A	--	A	A	A	A	A	A
Adult Day Care Facility	--	--	P,A	P,A	P,A	P,A	P,A	--
Business, Office-Type	P,A	--	--	P,A	P,A	P,A	P,A	--
Child Day Care Facility (See Article 12.6)	--	--	P,A	P,A	P,A	P,A	P,A	--
Clinic	--	--	--	--	P,A	P,A	P,A	--
Club	--	--	A	P,A	P,A	P,A	P,A	--
College or University	--	--	--	--	--	P	--	--
Fine Arts Educational Institution	--	--	--	--	--	--	--	--
Fraternity or Sorority Dwelling	--	--	--	--	--	--	--	--
Funeral Home	--	--	--	--	P	--	P	--
Group Care Facility	--	--	A	--	--	P	P	--
Hospital	--	--	--	--	--	P	--	--
Hotel or Motel	--	--	--	--	P	P	P	--
Place of Worship (See Article 12.6)	P	--	P	P	P	P	P	--
Public Cultural Facility (See Article 12.6)	P,A	--	P,A	P,A	P,A	P,A	P,A	P,A
Public Use Facility	P,A	--	P,A	P,A	P,A	P,A	P,A	P,A
Research Activities	P,A	--	--	--	P,A	P,A	P,A	P,A
Residence Hall	--	--	P	--	--	--	P	--
Residential Support Facility	--	--	--	--	--	--	--	--
Rooming House	--	--	P	--	--	--	P	--
School, Elementary or Secondary (See Article 12.6)	--	--	P	P	P	P	P	--
Shelter	--	--	--	--	--	--	--	--
Tourist Home	--	--	--	--	P	P	P	--

\* KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP C**  
(page 1 of 4)

**ZONING DISTRICTS**

USES*	TC-1	CC	NC	OI-3	OI-1	R-1, R-1A, R-2	RT	R-SS
	TC-2				OI-2	R-2A, R-3, R-4, R-5, R-6, R-LD1, R-LD5		
Accessory Use Customarily Incidental to a Permitted Group C Principal or Special Use	A	A	A	A	A	A	A	--
Automotive Repair (Less Collision, Service and Painting)	P,A	P,A	P,A	--	--	--	--	--
Automotive Repair	P,A	P,A	--	--	--	--	--	--
Automotive, Trailer, and Farm Implement Sales or Rental	P,A	P,A	--	--	--	--	--	--
Bank	P,A	P,A	P,A	P,A	P,A	--	--	--
Barber Shop/Beauty Salon	P	P	P	P	P	--	--	--
Business – Convenience	P,A	P,A	P,A	A	--	--	--	--
Business – General	P,A	P,A	P,A	A	--	--	--	--
Business – Wholesale	A	P,A	--	--	--	--	--	--
Car Wash	--	S	S	--	--	--	--	--
Extraction of Earth Products	--	--	--	--	--	--	S	--
Hangar, Medical Aircraft	--	--	--	--	P	--	--	--
Kennel	--	P,A	--	A	--	--	--	--
Landfill	--	--	--	--	--	--	S	--
Maintenance/Storage Facility	--	A	--	P,A	--	--	--	--
Manufacturing, Light	A	P,A	--	--	--	--	--	--
Parking, Off-Street	P,A	A	A	P,A	A	A	A	--
Park/Ride	--	P,A	P,A	P,A	P,A	S	S	--
Personal Services	P,A	P,A	P,A	A	--	--	--	--

\* KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP C**  
(page 2 of 4)

**ZONING DISTRICTS**

USES*	I	MH	Planned Development (PD-)					
			H	SC(N)	SC(C)	OI	MU	I
Accessory Use Customarily Incidental to a Permitted Group C Principal or Special Use	A	--	A	A	A	A	A	A
Automotive Repair (Less Collision, Service and Painting)	P,A	--	--	P,A	P,A	--	P,A	P,A
Automotive Repair	P,A	--	--	--	P,A	--	P,A	P,A
Automotive, Trailer, and Farm Implement Sales or Rental	--	--	--	--	P,A	--	P,A	--
Bank	--	--	--	P,A	P,A	P,A	P,A	--
Barber Shop/Beauty Salon	--	--	--	P	P	P	P	--
Business – Convenience	A	--	--	P,A	P,A	--	P,A	--
Business – General	--	--	--	P,A	P,A	--	P,A	--
Business – Wholesale	--	--	--	--	P,A	--	P,A	--
Car Wash	--	--	--	--	--	--	--	--
Extraction of Earth Products	--	--	--	--	--	--	--	--
Hangar, Medical Aircraft	--	--	--	--	--	--	--	--
Kennel	--	--	--	--	P,A	--	P,A	--
Landfill	--	--	--	--	--	--	--	--
Maintenance/Storage Facility	P,A	--	--	--	A	--	A	P,A
Manufacturing, Light	P	--	--	--	A	--	A	P
Parking, Off-Street	A	--	A	A	A	A	A	A
Park/Ride	P,A	--	A	P,A	P,A	P,A	P,A	P,A
Personal Services	--	--	A	P,A	P,A	--	P,A	--

\* KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP C**  
(page 3 of 4)

**ZONING DISTRICTS**

USES*	TC-1	CC	NC	OI-3	OI-1	R-1, R-1A, R-2	RT	R-SS
	TC-2				OI-2	R-2A, R-3, R-4, R-5, R-6, R-LD1, R-LD5		
Place of Assembly:								
• Up to 2,000 seating capacity	P,A	P,A	A	P,A	A	A	A	--
• Over 2,000 seating capacity	S	S	--	S	--	--	--	--
Public Service Facility	P,A	P,A	P,A	P,A	P,A	S	S	--
Publishing and/or Printing	P,A	P,A	--	P,A	P,A	--	--	--
Accessory Radio or Television Transmitting and/or Receiving Antenna	A	A	A	A	A	A	A	--
Radio or Television Transmitting and/or Receiving Facility	--	S	--	S	S	--	--	--
Recreation Facility:								
• Non-Profit	P	P	P	P,A	P	P	P	--
• Commercial	P,A	P,A	P,A	P,A	--	--	--	--
• Outdoor Commercial	S	S	S	--	--	--	--	--
Service Station	S	S	S	A	--	--	--	--
Solid Waste Management Facility	--	--	--	--	--	--	--	--
Supply Yard	--	P,A	--	--	--	--	--	--
Temporary Portable Building:								
• Construction-Related	A	A	A	A	A	A	A	--
• Not Construction-Related	S	S	S	S	S	--	--	--
Veterinary Hospital or Clinic	--	P,A	--	A	--	--	--	--
Vocational School	P,A	P,A	--	P,A	--	--	--	--
Water & Wastewater Treatment Plan	--	--	--	--	--	--	--	--
Window, Drive-in	S	S	S	S	S	--	--	--

\* KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

**12.3 Schedule of Use Regulations**

Planned Development (See Article 18) – PD Use Regulations supersede underlying zoning district use regulations.

**USE GROUP C**  
(page 4 of 4)

**ZONING DISTRICTS**

USES*	I	MH	Planned Development (PD-)					
			H	SC(N)	SC(C)	OI	MU	I
Place of Assembly:								
• Up to 2,000 seating capacity	A	--	A	A	P,A	P,A	P,A	A
• Over 2,000 seating capacity	--	--	--	--	P	P	--	--
Public Service Facility	P,A	--	A	P,A	P,A	P,A	P,A	P,A
Publishing and/or Printing	P,A	--	--	--	P,A	P,A	P,A	P,A
Accessory Radio or Television Transmitting and/or Receiving Antenna	A	--	A	A	A	A	A	A
Radio or Television Transmitting and/or Receiving Facility	S	--	--	--	P,A	P,A	P,A	P,A
Recreation Facility:								
• Non-Profit	P	--	A	P	P	P	P,A	P
• Commercial	A	--	A	P,A	P,A	P,A	P,A	A
• Outdoor Commercial	--	--	--	P,A	P,A	--	P,A	--
Service Station	A	--	--	P	P	--	P	A
Solid Waste Management Facility	--	P,A	--	--	--	--	--	--
Supply Yard	P,A	--	--	--	P,A	--	P,A	P,A
Temporary Portable Building:								
• Construction-Related	A	--	A	A	A	A	A	A
• Not Construction-Related	S	--	--	--	--	--	--	P
Veterinary Hospital or Clinic	--	--	--	--	P,A	--	P,A	--
Vocational School	--	--	--	--	P,A	P,A	P,A	--
Water & Wastewater Treatment Plan	P,A	--	--	--	--	--	--	P,A
Window, Drive-in	--	--	--	A	A	A	A	A

\* KEY: "--" Not Permitted; "A" Permitted as an Accessory Use; "P" Permitted as a Principal Use if floor area of proposed development is less than 20,000 square feet and area of disturbed land is less than 40,000 square feet; otherwise, permitted as a Special Use in all districts, except OI-3 and MH, and for all uses except existing Elementary and Secondary Schools. In OI-3 and MH districts: "P" Permitted as Principal Use, "S" Permitted as a Special Use. For existing Elementary and Secondary Schools: "P" Permitted as a Principal Use.

**12.4 Applicability of Use Regulations**

Uses of land or structures which are not expressly listed in Section 12.3 as permitted principal uses, permitted accessory uses, or permitted special uses in a zoning district or planned development are prohibited uses and shall not be established in that district or planned development. Bona fide farms are not subject to these use regulations, as provided by N.C. General Statutes.

Uses listed as permitted special uses in a zoning district may be established in that district only after issuance and recordation of a Special Use Permit in accord with the procedures and conditions specified in Article 18. Planned developments may be established in any zoning district only after the issuance and recordation of a Special Use Permit in accord with the procedures and conditions specified in Article 18.

**12.5 Use Groups**

The division of permitted uses into use groups as shown in Section 12.3 is intended to differentiate such uses by their intrinsic intensity relative to other uses. This intensity is related to the general character and the traffic generation characteristics of the particular principal use. It is further intended that the division of uses into use groups forms a basis for the differential application of the intensity regulations established in Article 13.

**12.6 Modified Use Regulations for Certain Uses**

**12.6.1 Uses Requiring Special Frontage**

Each of the principal uses identified below shall be permitted in R-LD5, R-LD1, R-1A, R-1, R-2A, and R-2 zoning districts only if the zoning lot on which such use is located meets the specific requirements identified herewithin. The zoning lot on which the following principal uses are located shall front on either an arterial or collector street for a width equal to or exceeding the minimum lot width established in Section 13.11, for that particular zoning district:

- a) Place of Worship
- b) School, Elementary or Second
- c) Public Cultural Facility
- d) Child Day Care Center

**12.6.2 Outdoor Skateboard Ramps**

Outdoor skateboard ramps shall be permitted as an Accessory Use ("A") in the R-6, R-5, R-4, R-3, R-2, R-2A, R-1, R-1A, R-LD1, and R-LD5 zoning districts only if:

- 1) The minimum gross land area for the zoning lot is at least five (5) acres.

Outdoor skateboard ramps shall be permitted only if:

- 1) The outdoor skateboard ramp structure, or any part thereof, is located at least 100 feet from any property boundary where the property's use or zoning is residential and 30 feet from any non-residential property boundary. This setback is to be measured perpendicular to the lot line or street right-of-way; and
- 2) The outdoor skateboard ramp structure is adequately screened such that it is not visible from all adjacent streets and properties by means of an effective screening device of a height appropriate to its screening function. Appropriate screening devices may include solid decorative brick walls, wood fences,

berms, tight evergreen hedges which shall reach the necessary height within two (2) years of planting, or combination of the above.

### **12.6.3 Fine Arts Educational Institutions**

Fine Arts Educational Institutions shall be allowed as a Special Use in the R-5 and R-6 zoning districts only if:

- a) The zoning lot on which such use is located fronts on either an arterial or collector street.
- b) Special consideration is given to the design of driveway areas to adequately permit on-site drop-off and pick-up of students.

**ARTICLE 13 - INTENSITY REGULATIONS**

**13.1 General Intent**

It is the intent of this article to provide for performance standards which serve to define the development character of an area, and to ensure the compatibility of development both with the environmental characteristics, accessibility levels, and special amenities offered by the development site and with surrounding land uses and development intensities. It is further intended that the establishment of intensity regulations reflect the protection of critical environmental areas and the suitability of land for a particular level of development intensity, in accord with the goals and objectives of the Comprehensive Plan.

**13.2 Establishment of Intensity Regulations**

Except as otherwise specifically provided in this chapter, regulations governing the intensity of development are hereby established as shown in Section 13.11, Schedule of Intensity Regulations.

**13.3 General Applicability of Intensity Regulations**

No land or structure shall be used or occupied, and no structure, or part thereof, shall be constructed, erected, altered, or moved except in compliance with the intensity regulations herein specified for (a) the general use group to which the principal use of the land or structure belongs (as shown in Section 12.3), (b) the zoning district in which the land or structure is located, and (c) the bonus level, if any, for which such development is eligible.

No portion of land used in connection with an existing or proposed structure or use of land and necessary for compliance with the intensity regulations of this article shall also be used, through sale or otherwise, as part of the land required in connection with any other development.

Except as otherwise provided in this chapter, intensity regulations applicable to 01-3 zoning districts and planned development zoning lots shall be applied to the district or lot as a whole and not to individual parts thereof.

**13.4 Bonus Intensities**

**13.4.1 Intent**

It is the intent of this section to provide for increased levels of allowable development intensities as incentive for the provision of certain public benefits beyond those normally required by this chapter or provided by private developers.

**13.4.2 Applicability**

The intensity regulations established in Section 13.11 for Bonus Level 1 and Bonus Level 2 may be applied, at the option of the developer, to any development which ensures the provision of one or more of the public benefits enumerated below such that the sum of the points assigned to each benefit provided equals or exceeds the threshold of eligibility for the applicable bonus level, as established below.

A minimum of ten (10) benefit-points shall be required in order to be eligible for application of the intensity regulations established for Bonus Level 1.

A minimum of fifteen (15) benefit-points shall be required in order to be eligible for application of the intensity regulations established for Bonus Level 2.

### **13.4.3 Benefits**

1. Economically Mixed Housing (10 Benefit-Points) - the provision of new or substantially rehabilitated housing in which at least ten percent (10%) but not more than twenty percent (20%) of the total residential floor area is contained in dwelling units for which an agreement for rental assistance has been made between the developer and the U.S. Department of Housing and Urban Development (DHUD) in accord with DHUD's lower-income housing assistance programs. The distribution of assisted dwelling units within the development shall avoid undue concentration of assisted persons. The range of size and type of dwelling units available as assisted housing shall be representative of that generally available in the development. The developer must supply such documentation as will assure commitment to the provision of the requisite amount of lower-income housing.
2. Scattered Small-Site Low-Income Housing (10 Benefit-Points) - the provision of new or substantially rehabilitated housing in which greater than twenty percent (20%) of the total residential floor area, up to a maximum of thirty thousand (30,000) square feet, is contained in dwelling units for which an agreement for rental assistance has been made between the developer and the federal Department of Housing and Urban Development (DHUD) in accord with DHUD's lower-income housing assistance programs. The location of such housing shall avoid undue concentration of assisted persons in areas already containing a high proportion of lower-income families and individuals. The developer must supply such documentation as will assure commitment to the provision of the requisite amount of lower-income housing.
3. Mixed Use Development in Town Center (10 Benefit-Points) - the provision of development in the Town Center districts in which at least fifty percent (50%) but not more than seventy-five percent (75%) of the total floor area is contained in dwelling or lodging units and the remaining floor area is devoted to nonresidential principal uses.

## **13.5 Gross Land Area**

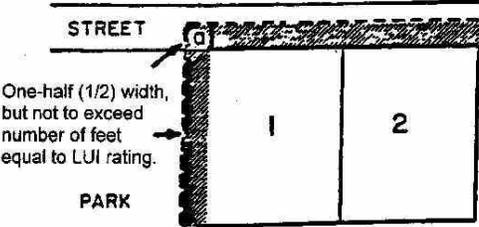
### **13.5.1 Gross Land Area Defined**

The gross land area of a zoning lot shall be construed as all area within its boundaries (net land area) plus half of the adjoining 1) publicly-owned or otherwise permanently dedicated open space, such as parks, recreation areas, water bodies, cemeteries, and the like, and 2) public streets, provided: a) the width of such credited open space and streets shall be limited to a number of feet equal to the Land Use Intensity (LUI) rating applying to the lot; and b) the total amount of credited open space and public streets shall not exceed ten percent (10%) of the net land area of the zoning lot, except that such limit shall not apply to open space dedicated to the Town between May 12, 1981 and December 5, 1983 and open space in the Town Center-1 or Town Center-2 districts.

Permanent open space means open space which is legally dedicated as such but does not include easements. Where a zoning lot contains principal uses belonging to more than one use group, the applicable LUI rating shall be the greatest of those LUI ratings applicable to the represented use groups. where such open space adjoins the lot on two (2) adjacent sides, the open space thus credited shall include the area required to complete the gap otherwise left at the intersection of the adjacent sides (See Figure 13-1).

(FIGURE 13-1)

**GROSS LAND AREA**



The gross land area of Lot 1 is the area within its boundaries plus the hatched areas across its front and side, including the small rectangle marked a. The gross land area of Lot 2 is its net land area plus the hatched area across its front.

**13.5.2 Minimum Gross Land Area**

Except as otherwise provided in this subsection, the minimum gross land area (GLA) of a zoning lot shall be as established in Section 13.11 for the zoning district in which such zoning lot is located.

The minimum gross land area required for a two-family dwelling shall be one and one-half (1.5) times the minimum gross land area established in Section 13.11.

The minimum gross land area required for a multifamily dwelling shall be two (2) times the minimum gross land area established in Section 13.11.

Where a zoning lot is located in more than one zoning district, the minimum gross land area required of such zoning lot shall be the sum of the areas derived by multiplying the minimum gross land area required for each represented district by the proportion of the zoning lot located within that district.

For zoning lots that are part of a subdivision approved as a cluster development (see Section 17.8), the above minimum gross land area requirements may be reduced by fifty percent (50%).

The minimum gross land area required for a zoning lot containing a planned development shall be as established in Article 18.

**13.6 Lot Width and Street Frontage Width**

**13.6.1 Lot Width Defined**

The width of a zoning lot is the horizontal distance measured along a straight line connecting the points at which a line demarcating the minimum street setback required from a street lot line intersects with interior lot lines and/or other street lot lines (See Figure 13-2), except as provided in Section 13.6.2.

**13.6.2 Minimum Lot Width**

Except as otherwise provided in this subsection, the minimum width of a zoning lot shall be as established in Section 13.11 for the zoning district in which such zoning lot is located. The width of a zoning lot shall equal or exceed the required minimum lot width for a depth of at least twenty-five (25) feet from the minimum street setback.

Where a zoning lot fronts on two (2) or more streets, minimum lot width requirements shall be considered met if the lot width at the street setback from any one of such streets meets the minimum lot width requirement. Where a zoning lot fronts on a turning circle of a cul-de-sac or at a point of a street where the radius of the curvature of the right-of-way is less than ninety (90) feet, the minimum lot width shall be reached at a distance derived by the following formula:

$$D = 50 (W)/(35) - 50$$

where W = minimum required lot width  
D = maximum distance from street right-of-way to where the lot width equals the minimum required width for that district.

Flag lots shall reach the minimum lot width at a point not to exceed 200 feet from the street right-of-way.

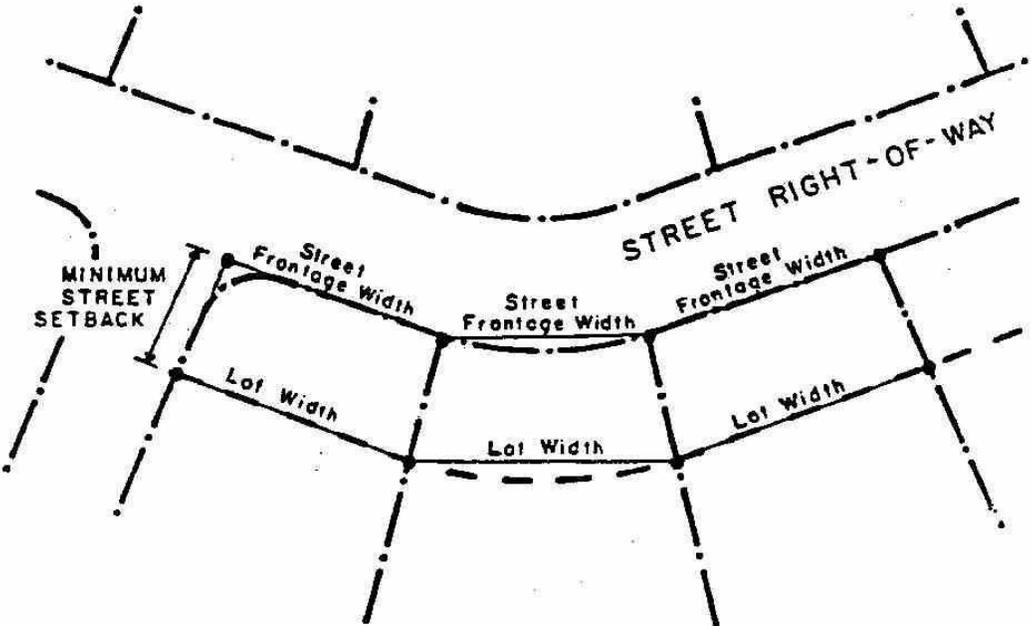
Where a zoning lot is in a R-LD5, R-LD1, R-1A, R-1, R-2A, or R-2 zoning district and is part of a subdivision approved as a cluster development (see Section 17.8), the minimum lot width requirement specified in Section 13.11 may be reduced to 50 feet.

**13.6.3 Street Frontage Width Defined**

The width of the frontage of a zoning lot on a street is the horizontal distance measured along a straight line connecting the points at which the street lot line abutting such street intersects with interior lot lines and/or street lot lines (See Figure 13-2).

(FIGURE 13-2)

**LOT WIDTH AND STREET FRONTAGE WIDTH**



### **13.6.4 Minimum Street Frontage Width**

The minimum width of the frontage of a zoning lot on a street shall be eighty percent (80%) of the minimum lot width required for the zoning lot with the exception of flag lots which shall be 35 feet or as otherwise provided in Section 17.7.5.2.

Where a zoning lot fronts on two (2) or more streets, minimum street frontage width requirements shall be considered met if the frontage along any one of such streets meets the minimum street frontage width requirements.

Where a zoning lot fronts on a turning circle of a cul-de-sac or at a point of a street where the radius of the curvature of the right-of-way is less than ninety (90) feet, the minimum street frontage width requirement shall be 35 feet.

## **13.7 Land Use Intensity (LUI) Ratios**

### **13.7.1 Applicability**

The Land Use Intensity (LUI) ratios applicable to development on any zoning lot shall be those ratios established in Section 13.11 for the zoning district in which such zoning lot is located and for the use group to which the principal use of the zoning lot belongs, with the exception of elementary and secondary schools. For elementary and secondary schools, a LUI rating of 38 shall apply with the related LUI ratios, minimum setbacks and maximum height established in Section 13.11, unless a higher LUI rating is established. LUI ratios shall be applied to the gross land area of the zoning lot.

Where a zoning lot does not contain a planned development and is located in more than one zoning district, the appropriate LUI ratios shall be applied individually to each portion of the gross land area located within the different districts, except that the floor area permitted in that portion of the gross land area located within one zoning district may be transferred to any other portion of the zoning lot's gross land area located within a zoning district with a higher LUI rating. Where a zoning lot containing a planned development is located in more than one zoning district, the appropriate LUI ratios shall apply to each portion of the gross land area located within the different zoning districts, and the sum of permitted intensities so derived shall apply to the zoning lot as a whole.

Where a zoning lot contains principal uses belonging to more than one use group, the appropriate LUI ratios shall apply to that portion of the number of square feet of gross land area allocated to each use group.

### **13.7.2 Floor Area Defined**

Floor area is the sum of enclosed areas on all floors of a building or buildings measured from the outside faces of the exterior walls, including halls, lobbies, arcades, stairways, elevator shafts, enclosed porches and balconies, and any below-grade floor areas used for access and storage. Not countable as floor area are:

- a) Open terraces, patios, atriums, or balconies
- b) Carports, garages
- c) Breezeways
- d) Screened porches

**13.7.3 Maximum Floor Area**

Maximum floor area allowed shall be the number of square feet derived by multiplying gross land area by the applicable floor area ratio (FAR), as shown in Section 13.11. Maximum floor area requirements shall not apply to single- or two-family dwellings or public cultural facilities located outside of a planned development.

Where a lot is partially within the Resource Conservation District, the maximum allowable floor area of the portion of the lot outside of the Resource Conservation District shall be calculated as the sum of:

- a) the product of (1) the floor area ratio of the portion of the zoning lot outside the Resource Conservation District, and (2) the area, in square feet, of the portion of the zoning lot outside the Resource Conservation District; and
- b) the product of (1) the floor area ratio applicable to a permitted use in the Resource Conservation District, and (2) the area, in square feet, of the portion of the zoning lot within the Resource Conservation District.

**13.7.4 Outdoor Space Defined**

Outdoor space is the total horizontal area of uncovered open space plus one-half (1/2) the total horizontal area of covered open space, subject to the limitations set forth below:

- a) Uncovered outdoor space is the total gross land area not covered by buildings, plus open exterior balconies, and roof areas improved as livability space.
- b) Covered outdoor space is usable outdoor space closed to the sky but having at least two (2) clear unobstructed open or partially open sides. Partially open is construed as fifty percent (50%) open or more. The horizontal area countable as covered open space shall not exceed the number of square feet equal to the sum of the vertical areas of the open sides. Examples of covered outdoor space are covered balconies, covered portions of improved roof areas, or spaces under buildings supported on columns or posts, or cantilevered.

**13.7.5 Minimum Outdoor Space**

Minimum outdoor space required shall be the number of square feet derived by multiplying gross land area by the applicable outdoor space ratio (OSR), as shown in Section 13.11.

**13.7.6 Livability Space Defined**

Livability space is that part of total outdoor space appropriately located and, if necessary, improved as outdoor living space and for aesthetic appeal, including existing natural areas, lawns and other landscaped areas, walkways, paved terraces and sitting areas, outdoor recreational areas, and landscaped portions of street rights-of-way. Such space does not include outdoor space used for motorized vehicles, except for incidental service, maintenance, or emergency actions.

**13.7.7 Minimum Livability Space**

Minimum livability space required shall be the number of square feet derived by multiplying gross land area by the applicable livability space ratio (LSR), as shown in Section 13.11.

### **13.7.8 Recreation Space Defined**

Recreation space is that part of total outdoor space and livability space, plus enclosed floor area, which is appropriately improved for the common active recreational use of residents of multifamily developments and planned developments.

For sites that abut or include areas designated as future greenways in the Town's Comprehensive Plan, land dedicated for a public pedestrian and non-motorized vehicle easement along the greenway may be substituted for required improved recreation space.

### **13.7.9 Minimum Recreation Space**

Minimum recreation space required shall be the number of square feet derived by multiplying gross land area by the applicable recreation space ratio (RSR), as shown in Section 13.11. Recreation space is only required for multifamily dwellings, PD-H developments, and the residential portion of PD-MU developments.

In general, required recreation space shall have a least dimension of fifty (50) feet an average dimension of at least one hundred (100) feet, and a minimum area of ten thousand (10,000) square feet.

Smaller dimensions are acceptable if:

- a) less than ten thousand (10,000) square feet of recreation space is required, or
- b) the recreation space is suitably improved roof area or enclosed floor area, or
- c) anticipated needs of residents require smaller facilities, such as tot lots or shuffleboard courts.

Outdoor recreation space for common use shall be located at least twenty (20) feet from residential windows at the same general level.

### **13.7.10 Payments in Lieu of Improved Recreation Space**

In lieu of providing recreation space required pursuant to this section, a developer of a multifamily dwelling or planned development may, with the approval of Council, make a payment to the Town whereby the Town may acquire or develop recreation land to serve the development. A developer may make a partial payment in combination with the partial provision of recreation space if Council determines that the combination is in the best interests of the citizens of the area to be served.

The Town shall use such payment only for the acquisition or development of recreation, park, or open space sites to serve residents of the development or residents of more than one subdivision or development within the immediate area. The amount of the payment shall be the product of the minimum amount of recreational space required multiplied by the fair market value of the land being developed. The fair market value of the land being developed (including streets, utilities, and other related improvements) shall be the expected fair market value of the land after it is developed in the manner proposed by the developer and approved by the Town. The cost associated with appraisal of the fair market value of the land shall be borne by the developer.

If the Town disagrees with the developer's appraisal of the land's fair market value, fair market value shall be determined by a special appraisal committee made up of one

professional appraiser appointed by the developer, one professional appraiser appointed by the Town, and one professional appraiser appointed by the initial two committee members. The committee shall view the land and hear the contentions of both the Town and the developer. The committee shall determine its findings by majority vote and shall certify them to Council within thirty (30) days of the time of the third member's appointment. The costs of the committee shall be borne by the developer.

The Town's Community Facilities Report of the Comprehensive Plan, as adopted by Council, establishes park standards, classifications, and service areas for recreational facilities and shall serve as the basis for Town use of a payment to meet the recreation, park, and open space needs of the residents of the development for which the payment is made.

The developer shall make the payment before issuance of a Zoning Compliance Permit for the development, provided, however, that the Town Manager may allow phasing of payments consistent with the approved phasing of the development.

**13.8 Maximum Number of Dwelling Units**

In addition to the maximum floor area requirement established in Section 13.7, a limitation on the number of dwelling units shall also apply to residential developments. These limitations shall not apply to single-family dwellings outside a planned development.

Zoning District	Maximum Number of Dwelling Units per acre of Gross Land Area
R-LD5	0.2
R-LD1	1
R-1A	2
R-1	3
R-2A	3.5
R-2	4
R-3	7
R-4, 0I-1, and NC	10
R-SS-C	12
R-5, R-6, 0I-2, CC	15

**13.9 Setback and Height Regulations**

**13.9.1 Intent**

The setback and height regulations established in Section 13.11 are intended to ensure adequate solar access, privacy, and ventilation; access to and around buildings, off-street parking areas, loading space, and service areas; space for landscaping; and spacing between buildings and portions of buildings to reduce potential adverse effects of noise, odor, glare, or fire. Adequate solar access is deemed to consist of varying levels of access ranging from rooftop solar access in high-intensity zoning districts to south wall solar access in low-intensity zoning districts to south wall solar access in low-intensity zoning districts.

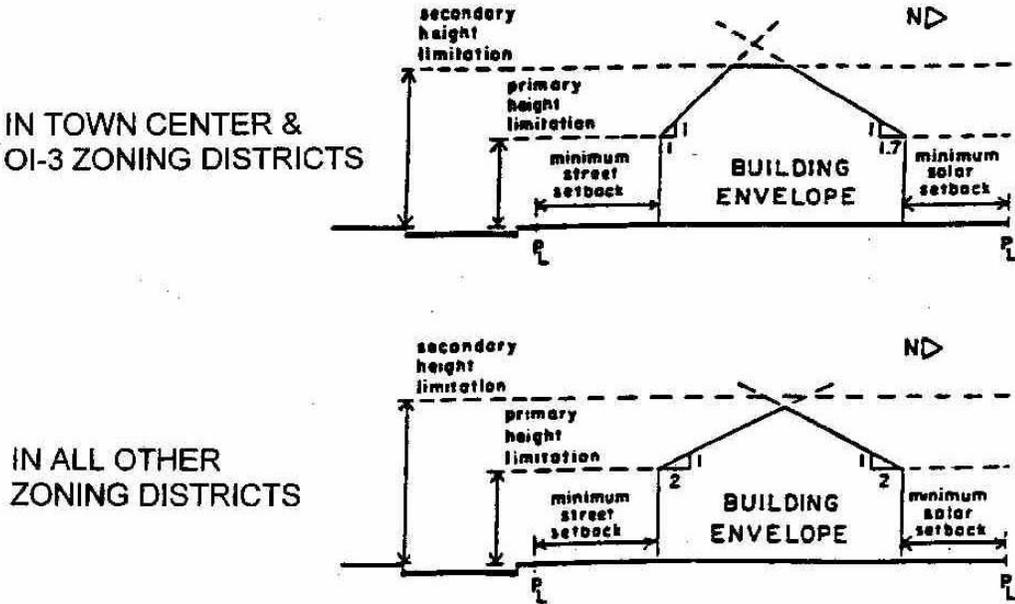
**13.9.2 Applicability**

Except where provided by Subsection 13.9.11, or where otherwise specifically provided by this chapter, no structure, or part thereof, shall project beyond the building envelope defined by the minimum street, interior, and solar setbacks and the maximum heights established in Section 13.11 for the zoning district in which such structure is located (See Figure 13-3).

(FIGURE 13-3)

**BUILDING ENVELOPE**

(AS DEFINED BY SETBACK & HEIGHT REQUIREMENTS)



For purposes of applying the following setback and height regulations to development within a 01-3 zoning district or within a townhouse development or a planned development, all contiguous land within the district, townhouse development, or planned development shall be considered as a single zoning lot.

**13.9.3 Street Setback Defined**

Street setback is the horizontal distance between the street lot line of a zoning lot and any structure on such zoning lot. Street setback shall be measured perpendicular to the street lot line (See Figure 13-4).

**13.9.4 Minimum Street Setback**

Except as otherwise provided in this chapter, the minimum street setback required for any structure, or part thereof, shall be the distance established in Section 13.11 for the zoning district in which such structure is located.

Where a zoning lot is part of a subdivision approved as a cluster development (see Section 17.8), the minimum street setback specified in Section 13.11 for the zoning district may be reduced to 10 feet. Such reduction shall not be permitted where the street lot line forms an exterior boundary of the subdivision.

Where a zoning lot fronts on a street with a right-of-way width not meeting the standards of this chapter, street setback shall be measured from a line running parallel to the centerline

of the street at a distance from such centerline equal to one-half (1/2) the standard right-of-way width for the street. The Manager or Council may exempt lots from this requirement upon making one of the following findings:

A building line has already been established by existing structures along the block which are situated on lots comprising at least 25% of the street frontage. In this case, the building may be constructed at the established building line; or

The existing right-of-way is adequate to encompass any anticipated need for widening of the street or other improvements, and widening of the right-of-way to Town standards would create nonconforming street setbacks for other structures on the street.

#### **13.9.5 Interior Setback Defined**

Interior setback is the horizontal distance between the interior lot line of a zoning lot and any structure on such zoning lot. Interior setback shall be measured perpendicular to the interior lot line (See Figure 13-4).

#### **13.9.6 Minimum Interior Setback**

Except as otherwise provided in this chapter, the minimum interior setback required for any structure, or part thereof, shall be the distance established in Section 13.11 for the zoning district in which such structure is located.

Where a zoning lot is in a R-LD5, R-LD1, R-1A, R-1, R-2A, or R-2 zoning district and is part of a subdivision approved as a cluster development (see Section 17.8), the minimum interior setback specified in Section 13.11 for the zoning district may be reduced to eight (8) feet. Such reduction shall not be permitted where the interior lot line forms a boundary of the subdivision.

#### **13.9.7 Solar Setback Defined**

Solar setback is the horizontal distance between the north lot line of a zoning lot and any structure on such zoning lot. Solar setback shall be measured along the North/South axis and in a southerly direction from the north lot line (See Figure 13-4).

A north lot line shall be construed to include any portion of a lot's lot line which has an alignment within forty-five degrees of an East/West axis.

#### **13.9.8 Minimum Solar Setback**

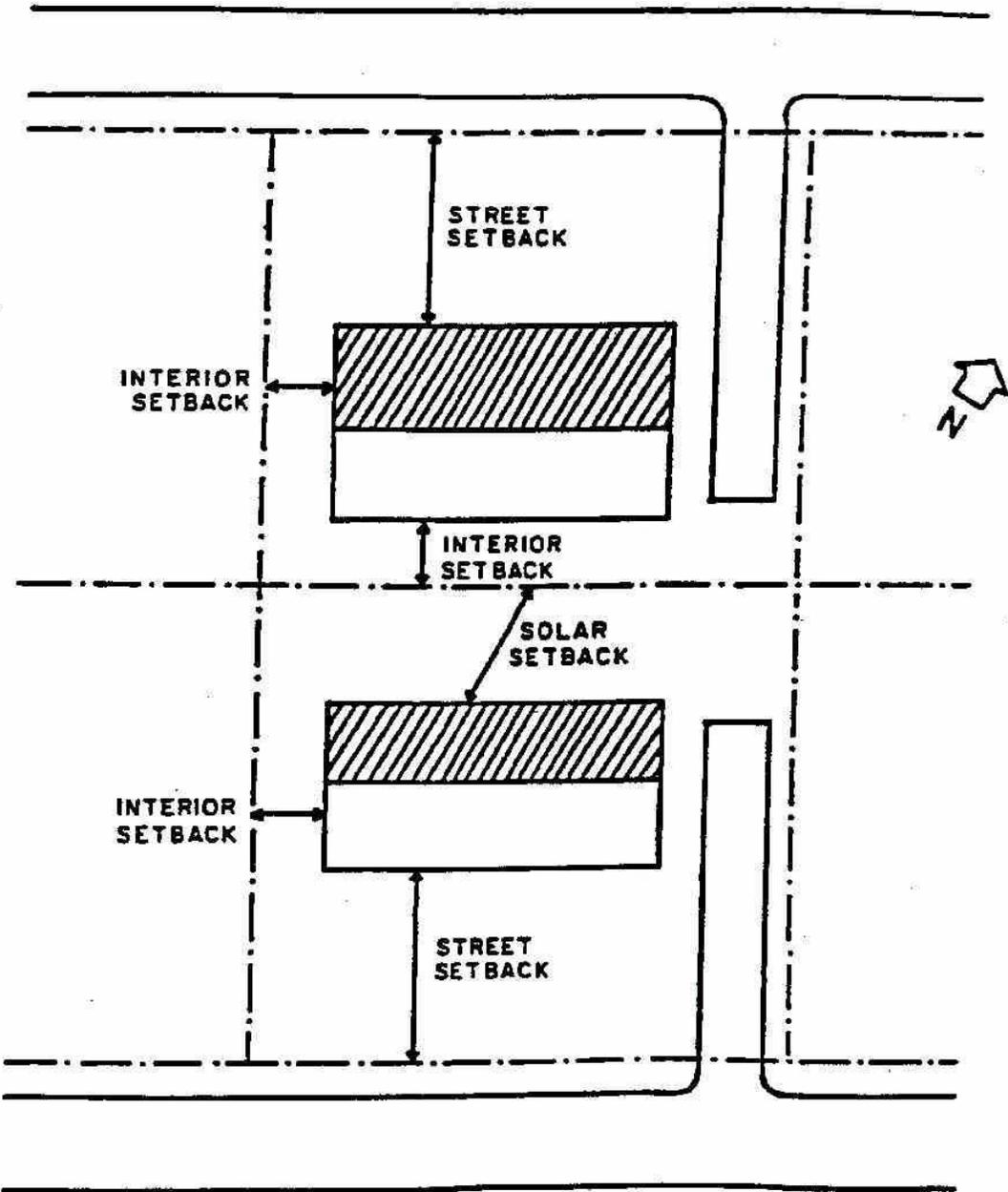
Except as otherwise provided in this subsection, the minimum solar setback required for any structure, or part thereof, shall be the distance established in Section 13.11 for the zoning district in which such structure is located.

Minimum solar setback requirements shall not apply to any structure, or part thereof, where it is demonstrated to the Town Manager that the extent of the shadows projected for such structure at noon on the winter solstice does not exceed the maximum horizontal shadow pattern permitted by application of the minimum solar setback and maximum height limitations.

Where a solar setback and either a street or interior setback both apply to the same portion of a lot line, the required minimum setback shall be the greater of the two (2).

Where a zoning lot is in a R-LD5, R-LD1, R-1A, R-1, R-2A, or R-2, zoning district and is part of a subdivision approved as a cluster development (see Section 17.8), the minimum solar setback specified in Section 13.11 for the zoning district may be reduced to ten (10) feet. Such reduction shall not be permitted where the north lot line forms a boundary of the subdivision.

(FIGURE 13-4)  
SETBACKS



**13.9.9 Zero Lot Line Setback Modifications**

The interior and solar setbacks for a structure on a zoning lot may be reduced to zero provided the following requirements are met:

- a) The interior or north lot line designated for a zero setback (the zero plot line) shall not be used for a zero setback on the other property abutting the lot line.
- b) The setback between the lot line opposite the zero lot line and any structure on the lot shall equal or exceed two (2) times the minimum interior setback required in Section 13.9.6.
- c) The exterior wall facing the zero lot line shall be sited no more than six (6) inches from the zero lot line.
- d) The wall sited against the zero lot line shall be at least six (6) feet high and shall not contain windows, doors, air conditioning units, or other openings. Any wall facing the zero lot line but not sited against it shall conform to the minimum interior or solar setback, as appropriate, required in Section 13.9.6 or 13.9.7.
- e) A wall maintenance easement shall be provided on the other property abutting the zero lot line. The width of such easement shall be at least four (4) feet.
- f) The zero setback shall be approved as part of a subdivision approval or the owners of the other property abutting the zero lot line shall consent, by recorded agreement or deed restriction, to the zero setback.

**13.9.10 Height Defined**

Height of a structure, or part thereof, is the vertical distance from the mean natural grade at the foundation to the highest portion of the structure, or part thereof (See Figure 13-5).

**(FIGURE 13-5)  
HEIGHT**



### 13.9.11 Maximum Height

Maximum height allowed for any structure, or part thereof, shall be the primary height limitation established in Section 13.11 for the zoning district in which such structure is located and for the use group to which the principal use of the structure belongs.

Except for in the Town Center, Mixed Use OI-1, and Office/Institutional-3 zoning districts, the height of a structure may exceed the primary height limitation established in Section 13.11, provided that for each foot the height of such structure exceeds the primary height limitation, the minimum street, solar, and interior setbacks applicable to that portion of the structure exceeding the primary height limitation shall be increased by two (2) feet (see Figure 13-3).

In the Town Center, Mixed Use OI-1, and Office/Institutional-3 zoning districts, the height of a structure may exceed the primary height limitation established in Section 13.11 provided that for each foot the height of such structure exceeds the primary height limitation,

- a) the minimum street and interior setbacks applicable to that portion of the structure exceeding the primary height limitation shall be increased by one foot, and
- b) the minimum solar setback applicable to that portion of the structure exceeding the primary height limitation shall be increased by one and seven-tenths (1.7) feet (See Figure 13-3).

In no case shall the height of a structure exceed the secondary height limitation established in Section 13.11 for the zoning district in which such structure is located, the use group to which the principal use of the structure belongs, and the bonus level for which such structure is eligible.

Where a structure contains principal uses belonging to use groups with different secondary height limitations, the secondary height limitation applicable to such structure shall be the sum of the heights derived by multiplying the secondary height limitation applicable to each represented use group by the proportion of floor area within the structure devoted to principal uses belonging to that use group.

If a structure is located in the vicinity of an airport, the height limitations set forth in Federal Aviation Regulations, Part 77, shall apply where such limitations are stricter than those established in this chapter.

### 13.9.12 Exceptions to Setback and Height Regulations

The following features shall not be subject to the required minimum setbacks provided the Town Manager shall determine that such features do not significantly impair the degree of solar access provided adjacent properties through application of the appropriate solar setback requirements:

- a) roof overhangs which do not exceed 36 inches in length;
- b) free-standing signs and projecting signs, provided such signs comply with the sign standards established in Article 14;
- c) fences and walls not exceeding nine (9) feet in height;
- d) flagpoles, bridges, and transmission poles, towers, and cables; and

- e) patios, decks and swimming pools not exceeding three (3) feet in height, provided they may not be constructed closer than five feet from the property line of the zoning lot.

The following features may project above the building envelope defined by the maximum height limitations and additional setback requirements contained in Subsection 13.9.11 provided the Town Manager shall determine that such features do not significantly impair the degree of solar access provided adjacent properties through application of the appropriate solar setback requirements:

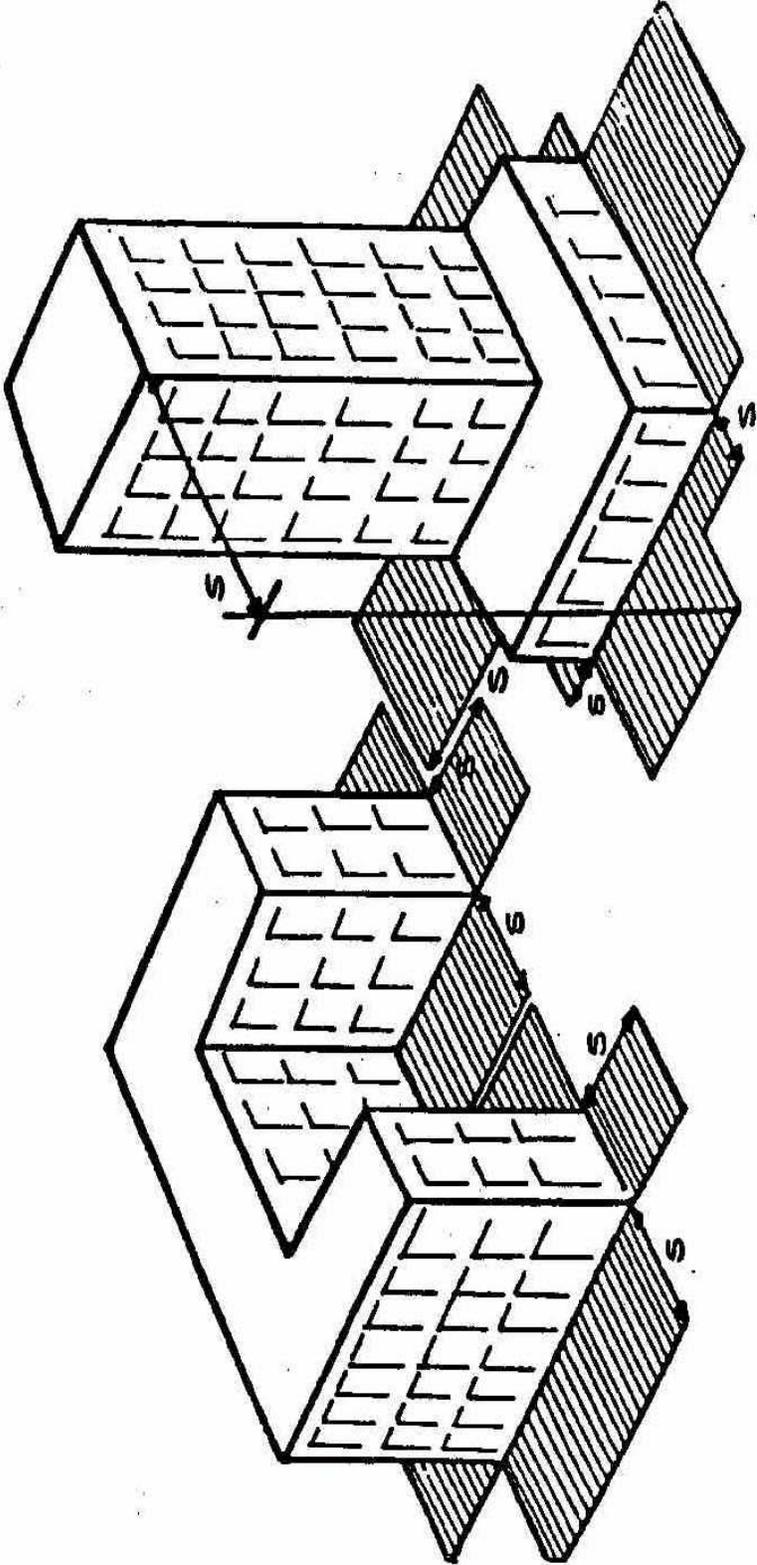
- a) chimneys, accessory radio or television antennas, flagpoles, monuments, or solar collectors, provided the projection of such structures above the building envelope does not exceed fifteen percent (15%) of the maximum height limitation that defines the portion of the building envelope penetrated by such structures;
- b) spires, smokestacks, water tanks, windmills, radio and television transmitting towers, or relay towers, provided such structures do not exceed in height the horizontal distance therefrom to the nearest lot line; and
- c) transmission poles, towers, and cables

### **13.9.13 Minimum Building Spacing**

Minimum spacing between any two (2) buildings located within a single zoning lot or 01-3 district and containing dwelling or lodging units, or between noncontiguous portions of a building containing dwelling or lodging units, shall be the sum of the spacing distances required for the walls of each such building or portion or a building (See Figure 13-6). The required spacing distance for any wall containing windows shall be the horizontal distance equal to the minimum interior setback applicable to the lot or district (See Section 13.11) plus one additional foot for each foot the height of the wall exceeds thirty-five (35) feet, and shall be measured perpendicular to the wall. The required spacing distance for a windowless wall shall be only that required for fire protection by applicable building codes.

Unless otherwise regulated by this chapter, spacing between structures or portions of structures not containing dwelling or lodging units shall be appropriate to the use of such structures or portions of structures, as related to anticipated amounts and timing of vehicular and pedestrian traffic and exposure of nearby living quarters to such use, and shall be determined with regard for the location of windows, the separation of spaces by walls, fences, or vegetative screening, the location of parking and service areas, fire protection requirements, and similar considerations.

(FIGURE 13-6)  
**BUILDING SPACING**



S = Minimum Interior Setback + (Height of Building - 35 Feet)

**13.10 Transitional Control Intensity Modifications**

In Office/Institutional - 3 districts, all development located within one hundred (100) feet of a Residential district shall observe LUI ratios equal to those required for Office/Institutional - 1 districts, as shown in Section 13.11.

In all nonresidential zoning districts and planned developments (TC-2, TC-1, CC, NC, OI-3, OI-2, OI-1, I PD-SC, PD-OI and PD-I), the following setback and height regulation modifications shall apply:

- a) Minimum street setback across a street from residentially zoned land shall be equal to the street setback applicable in the Residential district across the street.
- b) Minimum interior setback adjacent to residentially zoned land shall be equal to the interior setback applicable in the adjacent Residential district.
- c) Minimum solar setback adjacent to residentially zoned land shall be equal to the solar setback applicable in the adjacent Residential district.
- d) The primary height limitation applicable at any of the modified setbacks identified in a) - c) above shall not exceed thirty-five (35) feet.

**13.11 Major Subdivision and Planned Development-Housing Floor Area Restrictions**

Major Subdivisions and Planned Development-Housing proposals which create residential building lots shall restrict the floor area of single- and two-family dwelling units in the following manner:

- For a major subdivision or a Planned Development-Housing proposal with a 13-20 single-family or two-family residential lots, at least 15% of the dwelling units shall contain no more than 1,350 square feet of floor area and an additional 10% of the dwelling units shall contain no more than 1,100 square feet of floor area at the time that the units are initially conveyed.
- For a major subdivision or a Planned Development-Housing proposal with 21 single-family or two-family residential lots or more, at least 15% of the dwelling units shall contain no more than 1,100 square feet of floor area and an additional 10% of the dwelling units shall contain no more than 1,350 square feet of floor area at the time that the units are initially conveyed.

Each lot that is large enough for only single-family dwelling unit or that is limited by restrictive covenants to development only with a single-family dwelling unit shall be deemed to house one single-family dwelling unit. Each lot that is large enough for a two-family dwelling unit or that is allowed by restrictive covenants to develop with a two-family dwelling shall be deemed to house two dwelling units. The minimum number of size-limited units shall then be determined by multiplying the maximum number of dwelling units permissible within the development proposal as determined herein by the percentage specified above (resulting fractions shall be dropped).

The subdivision preliminary and final plats and the Planned Development-Housing proposals minor subdivision plats shall indicate clearly each lot on which a size-limited unit must be constructed, and the builder, developer and purchaser shall be bound by limitation.

No Zoning Compliance Permit or Building Permit shall be issued for the construction or any dwelling unit on any lot that has been designated as a lot on which a size-limited unit must be constructed unless the proposed dwelling conforms to the limitation of this section. Notwithstanding the foregoing, this section shall not prevent the purchaser of any size-limited

unit, or any successor to such purchaser, from enlarging the dwelling unit at any time following one year after the issuance of the initial Certificate of Occupancy for the Unit.

This section shall not apply to any major subdivision or Planned Development proposal that has been approved by the Town Council prior to the effective date of this ordinance.

### **13.11.1 Substitution of Affordable Housing for Floor Area Restrictions**

With the approval of the Council, for a major subdivision or a Planned Development-Housing proposal with 13 or more single-family or two-family lots, an affordable housing component, as defined below, or an affordable housing payment, as defined in Section 13.11.2, may be substituted for the floor area restrictions described in Section 13.11.

The affordable housing component shall provide initial and continued affordability of at least 15% of the dwelling units. The dwelling units shall be affordable to individuals and families who have incomes at or below 80% of the area median income. Restrictive covenants shall be recorded with the dwelling unit(s) to ensure the continued and ongoing affordability of the dwelling unit(s).

The minimum number of affordable units shall be determined as described in Section 13.11 with the number of units based on the permissible units on each lot and with resulting fractions dropped.

The subdivision preliminary and final plats and the Planned Development-Housing proposals minor subdivision plats shall indicate clearly each lot on which an affordable unit must be constructed, and the builder, developer and purchaser shall be bound by the restriction. The recorded plat shall cross-reference the restrictive covenants.

**[Schedule of Intensity Regulations begins on next page]**

**13.11 Schedule of Intensity Regulations**

**13.11.2 USE GROUP A** (Page 1 of 2)

District	Min. Gross Land Area (sq. feet)	Min. Lot Width (feet)	Land Use Intensity (LUI) Ratios					Setbacks (ft.)			Height (ft.)		
			Bonus Level	(LUI) LUI Rating	(FAR) Floor Area	(OSR) Outdoor Space	(LSR) Livability Space	(RSR) Recreation Space	Minimum			Primary	Secondary
									Street	Interior	Solar		
TC-2	2,000	15	0	73	1.97	.70	.47	.120	0	0	0	44	90
			1	75	2.26	.70	.47	.120	0	0	0	44	90
			2	76	2.42	.70	.47	.120	0	0	0	44	90
TC-1	2,000	15	0	73	1.97	.70	.47	.120	0	0	0	44	44
			1	75	2.26	.70	.47	.120	0	0	0	44	44
			2	76	2.42	.70	.47	.120	0	0	0	44	44
CC	5,500	50	0	47	.328	.74	.46	.046	22	8	9	34	60
			1	49	.357	.73	.44	.049	22	8	9	34	60
			2	50	.373	.73	.43	.050	22	8	9	34	60
NC	5,500	50	0	42	.230	.75	.51	.039	24	8	11	29	60
			1	44	.264	.74	.48	.042	24	8	11	29	60
			2	45	.283	.74	.48	.042	24	8	11	29	60
OI-3	2,000	15	0	51	.429	.76	.45	.060	0	0	0	n/a	n/a
			1	53	.492	.76	.45	.060	0	0	0	n/a	n/a
			2	54	.528	.76	.45	.060	0	0	0	n/a	n/a
OI-2	5,500	50	0	47	.328	.74	.46	.046	22	8	9	34	60
			1	49	.357	.73	.44	.049	22	8	9	34	60
			2	50	.373	.43	.43	.050	22	8	9	34	60
OI-1	5,500	50	0	42	.230	.75	.51	.039	24	8	11	29	60
			1	44	.264	.74	.48	.042	24	8	11	29	60
			2	45	.283	.74	.48	.042	24	8	11	29	60
I	17,000	80	0	37	.162	.77	.53	.032	26	11	13	26	50
			1	39	.187	.77	.52	.036	26	11	13	26	50
			2	40	.200	.76	.52	.036	26	11	13	26	50
R-SS-C	0	0	0	50.5	.400	.50	.25	.050	10	0	0	39	60
			1	50.5	.400	.50	.25	.050	10	0	0	39	60
			2	50.5	.400	.50	.25	.050	10	0	0	39	60
R-6	5,500	50	0	46	.303	.78	.50	.050	20	6	8	39	50
			1	48	.348	.78	.50	.050	20	6	8	39	50
			2	49	.373	.78	.50	.050	20	6	8	39	50
R-5	5,500	50	0	46	.303	.78	.50	.050	20	6	8	39	60
			1	48	.348	.78	.50	.050	20	6	8	39	60
			2	49	.373	.78	.50	.050	20	6	8	39	60
R-4	5,500	50	0	42	.230	.75	.51	.039	22	8	9	34	60
			1	44	.264	.74	.48	.042	22	8	9	34	60
			2	45	.283	.74	.48	.042	22	8	9	34	60

**13.11 Schedule of Intensity Regulations**

**13.11.2 USE GROUP A** (Page 2 of 2)

District	Min. Gross Land Area (sq. feet)	Min. Lot Width (feet)	Land Use Intensity (LUI) Ratios					Setbacks (ft.) Minimum			Height (ft.) Maximum		
			(LUI)	(FAR)	(OSR)	(LSR)	(RSR)	Street	Interior	Solar	Primary	Secondary	
			Bonus Level	LUI Rating	Floor Area	Outdoor Space	Livability Space						Recreation Space
R-3	5,500	50	0	37	.162	.77	.52	.032	24	8	11	29	60
			1	39	.187	.77	.52	.036	24	8	11	29	60
			2	40	.200	.76	.52	.036	24	8	11	29	60
R-2*	10,000	65	0	29	.093	.81	.66	.025	26	11	13	29	50
			1	31	.107	.80	.62	.026	26	11	13	29	50
			2	32	.115	.79	.60	.026	26	11	13	29	50
R-2A*	14,500	70	0	28	.087	.89	.75	.025	27	10	12	29	50
			1	30	.100	.85	.68	.026	27	10	12	29	50
			2	31	.107	.80	.62	.026	27	10	12	29	50
R-1*	17,000	80	0	26	.076	.89	.75	.025	28	14	17	29	40
			1	28	.087	.89	.75	.025	28	14	17	29	40
			2	29	.093	.81	.66	.025	28	14	17	29	40
R-1A*	25,000	100	0	23	.062	.86	.73	.022	29	15	18	29	38
			1	25	.071	.89	.75	.024	29	15	18	29	38
			2	26	.076	.89	.75	.025	29	15	18	29	38
R-LD1	43,560	125	0	19	.047	.90	.78	.020	30	16	19	29	35
			1	22	.058	.87	.74	.021	30	16	19	29	35
			2	23	.062	.86	.73	.022	30	16	19	29	35
RT & MH	100,000	200	0	13	.031	.90	.80	.015	30	16	20	29	35
			1	15	.035	.90	.80	.015	30	16	20	29	35
			2	16	.038	.90	.80	.015	30	16	20	29	35
R-LD5**	217,800	250	0	10	.025	.91	.82	.015	30	16	20	29	35
			1	12	.028	.90	.81	.015	30	16	20	29	35
			2	13	.031	.90	.80	.015	30	16	20	29	35

\* Maximum primary height in cluster developments in RT, R-1, R-1A, R-2A, & R-2 districts is 34 feet.

\*\* Existing lots of record as of December 7, 1992, which are subsequently rezoned to R-LD5 can be subdivided to create up to three (3) lots of not less than two (2) acres gross land area in size each; provided, however, the remaining land shall be developed with a minimum lot size of at least five (5) acres gross land area for each lot, and provided that no lot created under this exemption shall have a new direct access onto an arterial street.

**13.11 Schedule of Intensity Regulations**

**13.11.2 USE GROUP B** (Page 1 of 2)

District	Min. Gross Land Area (sq. feet)	Min. Lot Width (feet)	Land Use Intensity (LUI) Ratios						Setbacks (ft.)			Height (ft.)	
			Bonus Level	(LUI) LUI Rating	(FAR) Floor Area	(OSR) Outdoor Space	(LSR) Livability Space	(RSR) Recreation Space	Minimum			Primary	Secondary
									Street	Interior	Solar		
TC-2	2,000	15	0	72	1.84	.28	.12	n/a	0	0	0	44	67
			1	74	2.11	.28	.12	n/a	0	0	0	44	90
			2	75	2.26	.28	.12	n/a	0	0	0	44	90
TC-1	2,000	15	0	72	1.84	.28	.12	n/a	0	0	0	44	44
			1	74	2.11	.28	.12	n/a	0	0	0	44	44
			2	75	2.26	.28	.12	n/a	0	0	0	44	44
CC	5,500	50	0	51	.429	.76	.27	n/a	22	8	9	34	60
			1	53	.492	.76	.27	n/a	22	8	9	34	60
			2	54	.528	.76	.27	n/a	22	8	9	34	60
NC	5,500	50	0	44	.264	.74	.27	n/a	24	8	11	29	60
			1	46	.303	.73	.27	n/a	24	8	11	29	60
			2	47	.325	.73	.27	n/a	24	8	11	29	60
OI-3	2,000	15	0	55	.566	.73	.27	n/a	0	0	0	n/a	n/a
			1	57	.650	.72	.27	n/a	0	0	0	n/a	n/a
			2	58	.696	.72	.27	n/a	0	0	0	n/a	n/a
OI-2	5,500	50	0	44	.264	.74	.27	n/a	22	8	9	34	60
			1	46	.303	.73	.27	n/a	22	8	9	34	60
			2	47	.335	.43	.27	n/a	22	8	9	34	60
OI-1	5,500	50	0	44	.264	.74	.40	n/a	24	8	11	29	60
			1	46	.303	.73	.40	n/a	24	8	11	29	60
			2	47	.325	.73	.40	n/a	24	8	11	29	60
I	17,000	80	0	31	.107	.80	.50	n/a	26	11	13	26	50
			1	33	.123	.79	.50	n/a	26	11	13	26	50
			2	34	.132	.78	.50	n/a	26	11	13	26	50
R-SS-C	0	0	0	50.5	.400	.50	.25	.050	10	0	0	39	60
			1	50.5	.400	.50	.25	.050	10	0	0	39	60
			2	50.5	.400	.50	.25	.050	10	0	0	39	60
R-6	5,500	50	0	44	.264	.74	.40	n/a	20	6	8	39	50
			1	46	.303	.73	.40	n/a	20	6	8	39	50
			2	47	.325	.73	.40	n/a	20	6	8	39	50
R-5	5,500	50	0	44	.264	.74	.40	n/a	20	6	8	39	60
			1	46	.303	.73	.40	n/a	20	6	8	39	60
			2	47	.325	.73	.40	n/a	20	6	8	39	60
R-4	5,500	50	0	38	.174	.77	.52	n/a	22	8	9	34	60
			1	40	.200	.76	.52	n/a	22	8	9	34	60
			2	41	.214	.76	.51	n/a	22	8	9	34	60

**13.11 Schedule of Intensity Regulations**

**13.11.2 USE GROUP B** (Page 2 of 2)

District	Min. Gross Land Area (sq. feet)	Min. Lot Width (feet)	Land Use Intensity (LUI) Ratios						Setbacks (ft.) Minimum			Height (ft.) Maximum	
			(LUI)	(FAR)	(OSR)	(LSR)	(RSR)	Street	Interior	Solar	Primary	Secondary	
			Bonus Level	LUI Rating	Floor Area	Outdoor Space	Livability Space						Recreation Space
R-3	5,500	50	0	31	.107	.80	.62	n/a	24	8	11	29	60
			1	33	.123	.79	.58	n/a	24	8	11	29	60
			2	34	.132	.78	.55	n/a	24	8	11	29	60
R-2	10,000	65	0	23	.062	.89	.76	n/a	26	11	13	29	50
			1	25	.071	.89	.75	n/a	26	11	13	29	50
			2	26	.076	.89	.75	n/a	26	11	13	29	50
R-2A	14,500	70	0	22	.058	.87	.75	n/a	27	10	12	29	50
			1	24	.059	.89	.75	n/a	27	10	12	29	50
			2	25	.071	.89	.75	n/a	27	10	12	29	50
R-1	17,000	80	0	20	.050	.87	.75	n/a	28	14	17	29	40
			1	22	.058	.87	.74	n/a	28	14	17	29	40
			2	23	.062	.86	.73	n/a	28	14	17	29	40
R-1A	25,000	100	0	17	.041	.90	.79	n/a	29	15	18	29	38
			1	19	.047	.90	.78	n/a	29	15	18	29	38
			2	20	.050	.90	.77	n/a	29	15	18	29	38
R-LD1	43,560	125	0	6	.019	.93	.85	n/a	30	16	19	29	35
			1	8	.022	.92	.83	n/a	30	16	19	29	35
			2	9	.023	.92	.82	n/a	30	16	19	29	35
RT & MH	100,000	200	0	6	.019	.93	.85	n/a	30	16	20	29	35
			1	8	.022	.92	.83	n/a	30	16	20	29	35
			2	9	.023	.92	.82	n/a	30	16	20	29	35
R-LD5 **	217,800	250	0	6	.019	.93	.85	n/a	30	16	20	29	35
			1	8	.022	.92	.83	n/a	30	16	20	29	35
			2	9	.023	.92	.82	n/a	30	16	20	29	35

\*\* Existing lots of record as of December 7, 1992, which are subsequently rezoned to R-LD5 can be subdivided to create up to three (3) lots of not less than two (2) acres gross land area in size each; provided, however, the remaining land shall be developed with a minimum lot size of at least five (5) acres gross land area for each lot, and provided that no lot created under this exemption shall have a new direct access onto an arterial street.

**13.11 Schedule of Intensity Regulations**

**13.11.2 USE GROUP C** (Page 1 of 2)

District	Min. Gross Land Area (sq. feet)	Min. Lot Width (feet)	Land Use Intensity (LUI) Ratios							Setbacks (ft.)			Height (ft.)	
			Bonus Level	(LUI) LUI Rating	(FAR) Floor Area	(OSR) Outdoor Space	(LSR) Livability Space	(RSR) Recreation Space	Minimum			Primary	Secondary	
									Street	Interior	Solar			
TC-2	2,000	15	0	72	1.84	.28	.12	n/a	0	0	0	44	67	
			1	74	2.11	.28	.12	n/a	0	0	0	44	90	
			2	75	2.26	.28	.12	n/a	0	0	0	44	90	
TC-1	2,000	15	0	72	1.84	.28	.12	n/a	0	0	0	44	44	
			1	74	2.11	.28	.12	n/a	0	0	0	44	44	
			2	75	2.26	.28	.12	n/a	0	0	0	44	44	
CC	5,500	50	0	44	.264	.74	.27	n/a	22	8	9	34	60	
			1	46	.303	.73	.27	n/a	22	8	9	34	60	
			2	47	.325	.73	.27	n/a	22	8	9	34	60	
NC	5,500	50	0	38	.174	.77	.27	n/a	24	8	11	29	60	
			1	40	.200	.76	.27	n/a	24	8	11	29	60	
			2	41	.214	.76	.27	n/a	24	8	11	29	60	
OI-3	2,000	15	0	48	.348	.76	.27	n/a	0	0	0	n/a	n/a	
			1	50	.400	.75	.27	n/a	0	0	0	n/a	n/a	
			2	51	.429	.74	.27	n/a	0	0	0	n/a	n/a	
OI-2	5,500	50	0	38	.174	.77	.27	n/a	22	8	9	34	60	
			1	40	.200	.76	.27	n/a	22	8	9	34	60	
			2	41	.214	.76	.27	n/a	22	8	9	34	60	
OI-1	5,500	50	0	38	.174	.77	.40	n/a	24	8	11	29	60	
			1	40	.200	.76	.40	n/a	24	8	11	29	60	
			2	41	.214	.76	.40	n/a	24	8	11	29	60	
I	17,000	80	0	25	.071	.89	.50	n/a	26	11	13	26	50	
			1	27	.081	.83	.50	n/a	26	11	13	26	50	
			2	28	.087	.82	.50	n/a	26	11	13	26	50	
R-SS-C	0	0	0	50.5	.400	.50	.25	.050	10	0	0	39	60	
			1	50.5	.400	.50	.25	.050	10	0	0	39	60	
			2	50.5	.400	.50	.25	.050	10	0	0	39	60	
R-6	5,500	50	0	37	.162	.77	.53	n/a	20	6	8	39	50	
			1	39	.187	.77	.52	n/a	20	6	8	39	50	
			2	40	.200	.76	.52	n/a	20	6	8	39	50	
R-5	5,500	50	0	37	.162	.77	.53	n/a	20	6	8	39	60	
			1	39	.187	.77	.53	n/a	20	6	8	39	60	
			2	40	.200	.76	.52	n/a	20	6	8	39	60	
R-4	5,500	50	0	31	.107	.80	.62	n/a	22	8	9	34	60	
			1	33	.123	.79	.58	n/a	22	8	9	34	60	
			2	34	.132	.78	.55	n/a	22	8	9	34	60	

**13.11 Schedule of Intensity Regulations**

**13.11.2 USE GROUP C** (Page 2 of 2)

District	Min. Gross Land Area (sq. feet)	Min. Lot Width (feet)	Land Use Intensity (LUI) Ratios						Setbacks (ft.) Minimum			Height (ft.) Maximum	
			(LUI)	(FAR)	(OSR)	(LSR)	(RSR)	Street	Interior	Solar	Primary	Secondary	
			Bonus Level	LUI Rating	Floor Area	Outdoor Space	Livability Space						Recreation Space
R-3	5,500	50	0	25	.071	.89	.75	n/a	24	8	11	29	60
			1	27	.081	.83	.68	n/a	24	8	11	29	60
			2	28	.087	.82	.67	n/a	24	8	11	29	60
R-2	10,000	65	0	17	.041	.90	.80	n/a	26	11	13	29	50
			1	19	.047	.90	.78	n/a	26	11	13	29	50
			2	20	.050	.90	.77	n/a	26	11	13	29	50
R-2A	14,500	70	0	15	.035	.90	.80	n/a	27	10	12	29	50
			1	17	.041	.90	.80	n/a	27	10	12	29	50
			2	18	.044	.90	.80	n/a	27	10	12	29	50
R-1	17,000	80	0	13	.031	.90	.80	n/a	28	14	17	29	40
			1	15	.035	.89	.78	n/a	28	14	17	29	40
			2	16	.038	.88	.78	n/a	28	14	17	29	40
R-1A	25,000	100	0	10	.025	.91	.82	n/a	29	15	18	29	38
			1	12	.028	.90	.81	n/a	29	15	18	29	38
			2	13	.031	.90	.80	n/a	29	15	18	29	38
R-LD1	43,560	125	0	6	.019	.93	.85	n/a	30	16	20	29	35
			1	8	.022	.92	.83	n/a	30	16	20	29	35
			2	9	.023	.92	.82	n/a	30	16	20	29	35
RT & MH	100,000	200	0	6	.019	.93	.85	n/a	30	16	20	29	35
			1	8	.022	.92	.83	n/a	30	16	20	29	35
			2	9	.023	.92	.82	n/a	30	16	20	29	35
R-LD5 **	217,800	250	0	6	.019	.93	.85	n/a	30	16	20	29	35
			1	8	.022	.92	.83	n/a	30	16	20	29	35
			2	9	.023	.92	.82	n/a	30	16	20	29	35

\*\* Existing lots of record as of December 7, 1992, which are subsequently rezoned to R-LD5 can be subdivided to create up to three (3) lots of not less than two (2) acres gross land area in size each; provided, however, the remaining land shall be developed with a minimum lot size of at least five (5) acres gross land area for each lot, and provided that no lot created under this exemption shall have a new direct access onto an arterial street.

**ARTICLE 14 - DESIGN STANDARDS**

**14.1 Intent**

It is the intent of this article to provide general performance standards to ensure that development within the Chapel Hill planning jurisdiction will be designed, arranged, and constructed in a safe, orderly, energy-efficient, and visually harmonious manner, and will reflect the basic character of the development site and its immediate surroundings as well as the nature of the proposed uses of the site.

**14.2 Applicability**

Except as otherwise specifically provided in this chapter, no land or structure shall be used or occupied, and no excavation, removal of soil, clearing of a site, or placing of fill shall take place on land contemplated for development, and no structure, or part thereof, shall be constructed, erected, altered, renovated, or moved except in compliance with the general performance standards specified herein and the specific standards contained in the design manual required below.

**14.3 Design Manual**

Within one hundred eighty (180) days of the enactment of this chapter, the Town Manager shall develop and make available a design manual which shall contain specific design and construction standards. Such standards shall be in accord with the general performance standards contained herein, and shall reflect, where applicable, generally accepted design and construction practices and techniques. The design manual shall contain sufficient flexibility in the application of specific standards so as to permit modifications of the standards where such modifications have been determined by the Town Manager to be equally or more appropriate to safe, orderly, energy-efficient, and visually harmonious development due to particular conditions of a development site, and that such modifications continue to be in conformance with the general performance standards contained herein.

**14.4 General Site Arrangement**

Structures shall be placed and arranged so as not to adversely affect adjacent property. Adverse effects shall include, but are not limited to, the removal of lateral support, the creation of hazard, nuisance, danger, or inconvenience, unreasonable loss of light and air or solar access, or unreasonable loss of privacy or views.

Insofar as is practicable, developments shall be arranged so as to maximize energy efficiency and conservation.

Developments shall be arranged so as to be visually harmonious both within the development site and in relation to adjacent developments. Site design elements of the development shall be integrated to the degree of their compatibility with each other and shall be separated to the degree of their incompatibility. Insofar as is practicable, developments shall be arranged so as to preserve or enhance vistas.

**14.4.1 Site Plan Criteria**

All site plans shall demonstrate a high quality of overall site design and in the design and construction of site elements, including appropriate consideration of the relationship and balance among site elements, the relationship of the development to natural features, neighboring developments, and access and circulation systems, retention of natural vegetation, minimal alteration of natural topography, mitigation of erosion and sedimentation,

mitigation of stormwater drainage and flooding, arrangement and orientation of buildings and amenities in relation to each other and to neighboring streets, landscaping, preservation or enhancement of vistas, and mitigation of traffic impacts.

#### **14.4.2 Site Design**

The buildability or potential for development of a site shall be defined as follows:

- a) Land with little or no building restrictions which occur as a consequence of slope conditions. These areas are defined as land slopes of less than 10 percent.
- b) In areas with land slopes of 10 to 15 percent, site preparation techniques shall be utilized which minimize grading and site disturbance.
- c) In areas with land slopes of 15 to 25 percent, building and site preparation may occur upon demonstration of specialized site design techniques and approaches.
- d) Areas with land slopes greater than 25 percent are generally unsuitable for development. In areas with land slopes greater than 25 percent, development may occur only after a detailed site analysis of soil conditions, hydrology, bedrock conditions and other engineering and environmental considerations have been completed and the proposal determined by the Town Manager to demonstrate sound building and site engineering techniques with minimal disturbance of the area.

Those areas of land which contain physical site conditions which make them unsuitable for development shall be reserved as livability space.

### **14.5 Access and Circulation**

#### **14.5.1 External Circulation**

The type and arrangement of streets and driveways within the development shall be in compliance with and coordinate to Chapel Hill's Transportation Plan.

Principal vehicular access points to the development shall be designed to encourage smooth traffic flow with minimum hazards to pedestrian, bicycle, and other vehicle traffic. Accommodations for controlled turning movements into and out of the development and improvement of the approach street shall be provided where existing or anticipated heavy traffic flows indicate need.

Whenever appropriate to the type, size, and location of development, the site shall be so arranged as to facilitate the future utilization or accommodation of public transportation.

Bicycle and pedestrian access to the site shall be in compliance with and coordinate to existing and future Town bicycle and pedestrian systems and the systems of adjacent developments.

Access for cyclists and pedestrians shall be by safe and convenient routes which need not be limited to the vicinity of vehicular access points. Accommodations for safe intersections of bicycle and/or pedestrian routes with adjacent vehicular routes shall be provided where existing or anticipated heavy traffic flows indicate need.

## **14.5.2 Internal Circulation**

Internal circulation systems shall provide the types, amounts, and locations of accessibility appropriate to the type and size of the development, and shall be designed so as to facilitate the movement of persons, goods, services, and waste products in a safe and efficient manner, with maximum pedestrian orientation and a minimum of impermeable surface.

Safe and convenient vehicular access shall be provided for emergency and service vehicles.

Whenever appropriate to the type and size of the development, the provision of safe, efficient, and convenient bicycle and/or pedestrian circulation systems shall be required.

The integration or separation of circulation systems and patterns shall be provided as appropriate to the type and size of the development and to the existing or anticipated traffic flows.

## **14.5.3 Reserved**

## **14.5.4 Sight Line Triangle Easements**

Where necessary to ensure proper visibility for the safe flow of vehicular traffic at street intersections and major driveway intersections with streets, sight line triangle easements shall be provided at the corners of such intersections in accord with the standards set forth in the Design Manual. Major driveways are considered to be those serving multifamily or non-residential developments.

No structure or planting that would interfere with safe sight lines shall be permitted within the sight line triangle easement.

## **14.6 Off-Street Parking and Loading**

### **14.6.1 Off-Street Parking and Loading Required**

Off-street parking shall be provided for all uses of land, structures, and buildings as well as for any expansion of such uses or increase in the intensity of use (e.g., from use group A to B or C or from use group B to C) in accord with the requirements of this section.

Except within the Town Center Districts, off-street loading space shall be provided for all retail business, wholesale, and industrial uses as well as for any expansion of such uses or change in use requiring the regular delivery or shipping of goods, merchandise or equipment to site by semi-trailer trucks, in accord with the requirements of this section. Loading required by development within the Town Center districts shall be provided through access to approved on-street loading spaces and/or public alleys provided in conformance with Chapel Hill's adopted plan for Town Center loading access.

In the case of mixed uses, the total requirements for off-street parking or loading space shall be the sum of the requirements for the various uses computed separately.

### **14.6.2 Methods of Providing Required Parking and Loading**

All required parking or loading space shall be located on the same zoning lot as the principal use(s) it serves, except as provided for below. Except for parking spaces reserved for the parking of delivery or courier vehicles, all parking spaces accessory to

nonresidential uses located in the Town Center Districts shall be provided within a parking facility containing at least twenty (20) parking spaces or shall be provided in accord with the provisions of b) below.

In lieu of actual construction of required on-site parking spaces, all or any portion of the off-street parking required in this section may be provided by the following means.

- a) Required parking for a use on a zoning lot may be located on another zoning lot, either by itself or combined with parking for other uses, subject to certification by the Town Manager that the following requirements have been met:
  - i) The use being served by the off-site parking shall be a permitted principal use, as established in Article 12, in the zoning districts within which the zoning lot containing such parking is located;
  - ii) The off-site parking spaces shall be located within twelve hundred (1,200) feet walking distance of a public entrance to the structure or land area containing the use for which such spaces are required. A safe, direct, attractive, lighted and convenient pedestrian route shall exist or be provided between the off-site parking and the use being served;
  - iii) The continued availability of off-site parking spaces necessary to meet the requirements of this section shall be ensured by an appropriate restriction on the title to the land providing the off-site parking spaces, in the form of a declaration, covenant, or contract; and
  - iv) For purposes of determining applicable minimum and maximum land use intensities, the land area devoted to off-site parking shall be added to the gross land area of the zoning lot containing the use being served by such parking and shall be subtracted from the gross land area of the zoning lot containing the off-site parking.
  - v) Upon appropriate findings by the Town Council, churches may use off-site parking to provide required parking without obtaining a restriction on the title to the land providing the off-site parking spaces. Appropriate findings shall include reasonable assurance of the continued availability of off-site parking and that sufficient excess livability space exists on the church's zoning lot to provide the required off-street parking should the off-site parking become no longer available.
- b) For uses located within either Town Center zoning district, compliance with parking requirements may be achieved by making payments to the Town of Chapel Hill Parking Fund in accord with Chapter 11A of the Chapel Hill Code of Ordinances.
- c) For uses located within either Town Center zoning district, compliance with parking requirements may be achieved by providing a Transportation Management Plan subject to approval by the Town Manager or subject to the approval by the Town Council if the proposed use requires Town Council approval. The Transportation Management Plan shall identify efforts to promote the use of alternate modes of transportation and may include required parking and/or payment to the Town of Chapel Hill Parking Fund in accord with Chapter 11A of the Chapel Hill Code of Ordinances for a portion of the required spaces.

### 14.6.3 Combined Parking

Up to one-half (1/2) of the parking spaces required for one use may be used to satisfy the parking requirements for either a second use on the same zoning lot or a use for which the provisions of subsection 14.6.2 a) above are utilized, subject to certification by the Town Manager that such joint usage of parking complies with the following provisions:

- a) The peak usage of the parking facility by one use will be at night or on Sundays (such as with theaters, assembly halls, or places of worship), and the peak usage of the parking facility by the second use will be at other times; or
- b) The second use is an ancillary use to the first use, such as restaurants and meeting rooms to hotels and motels.

### 14.6.4 Use of Required Parking and Loading Space

Required parking areas shall be available for the parking of operable vehicles of residents, customers, and employees, and shall not be used for the storage of vehicles or materials, or for the parking of vehicles used for loading or unloading, or in conducting the use.

Required loading space shall be available for the loading and unloading of vehicles, and shall not be used for the storage of vehicles or materials, or to meet off-street parking requirements, or in conducting the use.

### 14.6.5 Parking Design Standards

All parking areas shall meet the following minimum design requirement:

- a) Ingress to and egress from parking areas shall conform to Town design standards.
- b) Reserved
- c) In the Town Center districts, if a setback is provided between a principal structure and a street such setback shall not be used for off-street parking.
- d) Except for single- or two-family dwellings, all parking spaces and maneuvering space shall be surfaced with an all-weather material, which shall be maintained in a safe, sanitary, and neat condition.
- e) No parking area or maneuvering space shall be located within a public street right-of-way. Parked vehicles in off-street parking spaces shall be prevented from intruding on travel lanes, walkways, public streets, or adjacent properties by means of walls, curbs, wheel stops, or other appropriate means.
- f) Except for single- or two-family dwellings or for attendant parking, each parking space shall be arranged so that any vehicle may be parked and unparked without moving another vehicle.
- g) The size of parking spaces shall be adequate for the safe parking of vehicles and maneuvering space shall be provided so that parking and unparking can be accomplished in one continuous maneuver. Parking facilities designed to accommodate five (5) or more vehicles shall be designed in accord with the standards for stalls and aisles as set forth in the Standard Details and Specifications.

- h) Curbed islands shall be required at the ends of or between parking aisles where necessary for traffic control or drainage control.
- i) Except for single- or two-family dwellings, parking spaces shall be provided with adequate aisles or turnaround areas so that all vehicles may enter adjacent streets in a forward manner.
- j) Parking facilities shall be designed to connect with parking facilities on adjacent zoning lots where appropriate to eliminate the need to use the abutting street(s) for cross movements.
- k) All off-street parking facilities shall be provided with a drainage system meeting the design standards contained in Section 14.7.
- l) All lighting of and within parking facilities shall conform to the lighting design standards contained in Section 14.14.
- m) Adequate provision shall be made for the ventilation of an dispersion and removal of smoke and gases from above-ground and below-ground parking structures.
- n) Parking facilities designed to accommodate five (5) or more vehicles shall provide areas as necessary for the parking of motorcycles, mopeds, and bicycles. Such areas shall be clearly defined and reserved for the exclusive use by motorcycles, mopeds, and bicycles.
- o) Parking facilities designed to accommodate twenty-five (25) or more vehicles shall provide, as part of the required number of parking spaces, one handicapped parking space at least twelve (12) feet in width for every fifty (50) standard parking spaces, or major fraction thereof. Such spaces shall be clearly defined and reserved for the exclusive use by handicapped persons.
- p) Within designated Historic Districts the following restrictions shall apply: Parking and drive areas located in front yards (between the street and a line drawn parallel to the street from the point of the house that is closest to the street) shall be maintained in a safe, sanitary and neat condition, shall not contribute to soil erosion or to tree damage, shall be clearly designated and covered with an all weather surface or gravel, and shall be limited in area to up to 40 percent of the front yard area. Access to front yard parking shall be limited to properly approved curb cuts. If the Town Manager finds all of the following conditions to exist on the property:
  - (1) The parking area is clearly defined and or marked; and
  - (2) The parking area is maintained in a safe, sanitary, and neat condition; and
  - (3) The parking area does not contribute to soil erosion or tree damage; and
  - (4) Access to front yard parking shall be limited to properly approved curb cuts; and
  - (5) The location and dimension of such parking area is traditionally and customarily associated with the subject structure; and
  - (6) The Historic District Commission grants a Certificate of Appropriateness for the parking area,

then the Town Manager shall grant an exception to allow the specific parking area to exceed the 40 percent limit in accordance with the approved Certificate of Appropriateness.

### 14.6.6 Parking Landscaping Standards

It is the intent of this subsection to protect and promote the public health, safety, and general welfare by requiring the landscaping of parking areas which will serve to reduce radiant heat from surfaces, to reduce wind and air turbulence, to reduce noise, to reduce the glare of automobile lights, to ameliorate stormwater drainage problems, and to protect and preserve the appearance, character, and value of adjacent properties.

Except for one- or two-family dwellings, all parking facilities, unless located entirely underground, shall meet the following minimum landscaping requirements:

- a) Parking facilities, unless located on or within a structure, shall be separated from the exterior wall of a structure, exclusive of paved pedestrian entrance ways or loading areas, by a buffer strip at least five (5) feet in width, which shall be landscaped in accord with Town landscaping standards.
- b) Entryways into parking facilities shall be bordered by a buffer strip a minimum of eight (8) feet in width, which shall be landscaped in accord with Town landscaping standards.
- c) Ground-level parking facilities and the ground level of parking structures shall be screened from adjacent streets by means of an effective screening device which is at least three (3) feet in height above the grade of the edge of the parking area. Ground-level parking facilities and the ground level of parking structures shall be screened from adjacent properties zoned Residential by means of an effective screening device which is at least six (6) feet in height above the grade of the edge of the parking area. Appropriate screening devices may include solid decorative brick walls, wood fences, berms, tight evergreen hedges which shall reach the required height within two (2) years of planting, or any combination of the above.
- d) Vegetation shall be provided within and adjacent to ground-level parking areas which will, in the opinion of the Town Manager, be sufficient to achieve shading of at least thirty-five percent (35%) of the parking area surface on noon on August 21 when the vegetation matures.
- e) In providing the vegetation required above, the retention of existing significant vegetation shall be encouraged.

### 14.6.7 Minimum Off-Street Parking Space Requirements

The following minimum parking space requirements shall apply for the appropriate use and zoning district. Parking space requirements shall not apply for uses located within the Office/Institutional-3 District.

A reduction of up to twenty percent (20%) of the minimum number of required parking spaces may be permitted through the granting of a minor variance by the Board of Adjustment if, based on substantial evidence in the record of its proceedings, the Board finds that compliance with the full minimum off-street parking space requirements of this section would necessitate the removal of or would seriously endanger significant specimen trees on or adjacent to the zoning lot on which such parking is required.

**Minimum Number of Parking Spaces**

<b>Use</b>	<b>TC-1 and TC-2 Districts</b>	<b>Districts other than TC and OI-3</b>
Automotive, trailer, and farm implement sales or rental	1 per 500 sq. ft. of enclosed exhibit area	1 per 500 sq. ft. of enclosed exhibit area
Bank	1 per 400 sq. ft. of floor area	1 per 350 sq. ft. of floor area
Business, convenience Restaurant	1 per 400 sq. ft. of floor area	1 per 4 seats
Other convenience business	1 per 400 sq. ft. of floor area	1 per 250 sq. ft. of floor area
Business, general	1 per 400 sq. ft. of floor area	1 per 250 sq. ft. of floor area
Business, office-type	1 per 400 sq. ft. of floor area	1 per 350 sq. ft. of floor area
Clinic	1 per 400 sq. ft. of floor area	1 per 250 sq. ft. of floor area
Dwelling, single-family	1 per dwelling unit	2 per dwelling unit
Dwelling, two-family or multi-family:		
Efficiency	1 per dwelling unit	1 per dwelling unit
1 or 2 bedrooms	1 per dwelling unit	1.5 per dwelling unit
3 or more bedrooms	1 per dwelling unit	2 per dwelling unit
<p><b>Note: The minimum number of parking spaces required for elderly or handicapped dwellings may be reduced to 1 per 2 dwelling units upon findings made by the Town Council that (1) reasonable assurances exist that the dwelling units served by the parking spaces will be maintained for occupancy by the elderly or handicapped and/or (2) that sufficient livability space exists on the property to ensure that should the units be converted to another form of occupancy or use, that sufficient parking can be provided on the site to satisfy the parking requirements of the new use, without violating the land use intensities of Section 13.11.</b></p>		
Fraternity or sorority house	1 per resident	1 per resident
Group care facility	1 per 2 beds	1 per 2 beds
Hospital	1.5 per bed	1.5 per bed
Hotel or motel	1 per lodging unit	1 per lodging unit

**Minimum Number of Parking Spaces**

<b>Use</b>	TC-1 and TC-2	Districts other than
	<b>Districts</b>	<b>TC and OI-3</b>
Maintenance and/or storage facility	N/A	1 per 2 employees if 2 largest shifts combined
Manufacturing, light	N/A	
Mobile home	N/A	
Mobile home park	N/A	1 per unit
Personal services	1 per 400 sq. ft. of floor area	1 per 250 sq. ft. of floor area
Place of assembly	1 per 4 persons the use is designed to accommodate	1 per 4 persons the use is designed to accommodate
Place of worship	N/A	1 per 4 seats in the sanctuary, except for places of worship within 1,500 feet of a Town Center District, which are exempted from parking requirements
Public cultural facility	1 per 500 sq. ft. of floor area	1 per 500 sq. ft. of floor area
Public use facility	1 per 400 sq. ft. of floor area	1 per 350 sq. ft. of floor area
Research activities	1 per 400 sq. ft. of floor area	1 per 350 sq. ft. of floor area
Residence hall	1 per 2 residents	1 per 2 residents
Residential support facility	1 per 500 sq. ft. of floor area	1 per 500 sq. ft. of floor area
Rooming house	1 per lodging unit	1 per lodging unit
School, elementary	1 per staff member	1 per staff member
School, secondary	1 per 4 students	1 per 4 students
Shelter	1 per 1,000 sq. ft. of floor area	1 per 1,000 sq. ft. of floor area
Tourist home	1 per lodging unit	1 per lodging unit

In the case of a use not listed above, the minimum parking space requirement shall be determined by the Town Manager. In making such determinations, the Town Manager shall be guided by the requirements for similar uses, the number and kind of vehicles likely

to be attracted to the use, and studies of minimum parking space requirements for such use in other jurisdictions.

**14.6.8 Loading Space Design Standards**

All loading spaces shall meet the following minimum design requirements:

- a) Off-street loading spaces shall be located and arranged so that a semi-trailer truck (WB 43 class) shall be able to gain access to and use such spaces by means of one continuous parking maneuver.
- b) Loading space shall observe the minimum street and interior setbacks established for structures in Article 13 of this chapter.
- c) All loading space and maneuvering space shall be surfaced with an all-weather material which shall be maintained in a safe, sanitary, and neat condition.
- d) No loading space shall be located so that a vehicle using such space intrudes on travel lanes, walkways, public or private streets, or adjacent properties.
- e) Each required off-street loading space shall have a minimum width of twelve (12) feet, a minimum depth of fifty-five (55) feet, and a vertical clearance of fourteen (14) feet above finished grade of the space.
- f) Loading areas shall be screened from adjacent streets and adjacent properties by means of an effective screening device which is at least six (6) feet in height above the grade of the loading area. Appropriate screening devices may include solid decorative brick walls, wood fences, berms, tight evergreen hedges which shall reach the required height within two (2) years of planting, or any combination of the above.

**14.6.9 Minimum Off-Street Loading Space Requirements**

The following minimum loading space requirements shall apply for the appropriate use.

<u>Use</u>	<u>Minimum Number of Loading Spaces</u>
Business, convenience or general	1 for floor area of 10,000 - 29,999 square feet; 2 for floor area of 30,000 square feet or more.
Maintenance and/or storage facility, light manufacturing, or supply yard	1 per 10,000 square feet of floor area not to exceed 3 spaces

**14.7 Drainage and Storm Water Management**

Natural drainage systems and storm water management installations shall be designed, constructed, and maintained so as to 1) provide for natural infiltration of storm water; 2) control velocity of run-off flows; 3) extend the time of concentration of storm water run-off; and 4) to collect and transmit excess storm water flows into either the Town drainage system or into a natural drainage system.

**14.8 Erosion and Sedimentation Control**

All developments shall comply with the provisions of applicable soil erosion and sedimentation control regulations. Certification of compliance with or exemption from the plan

requirements of such regulations shall be submitted to the Town Manager prior to issuance of any Zoning Compliance Permit for the development. No Engineering Construction Permit or Building Permit for a structure shall be issued until certification of the completion of control measures and facilities required for all land-disturbing activity associated with such structure and its ancillary construction has been submitted to the Town Manager.

## **14.9 Water and Sewerage**

### **14.9.1 Service by Public Systems**

All developments shall be served by a public water supply and a public sanitary sewer system wherever reasonably practicable.

Fire hydrants of sufficient water pressure to provide adequate fire protection shall be provided where necessary.

All proposed public water and sanitary sewer installations shall be approved by the Orange Water and Sewer Authority (OWASA). Certification of such approval shall be submitted to the Town Manager prior to issuance of any Zoning Compliance Permit for the development being served.

No Certificate of Occupancy for a structure shall be issued until the following documents have been submitted to the Town Manager:

- a) Certification from OWASA that all water and/or sewer facilities necessary to serve such structure have been completed to OWASA standards; and
- b) As-built construction drawings of those completed water and/or sewer facilities located within a public right-of-way or easement.

### **14.9.2 Service by Individual Systems**

Individual water supply systems intended to provide potable water may be permitted for a single- or two-family dwelling on a zoning lot, subject to approval by the appropriate County Health Department. Certification of such approval shall be submitted to the Town Manager prior to issuance of any Zoning Compliance Permit for the development being served.

Individual subsurface sewage disposal systems may be permitted for a single- or two-family dwelling on a zoning lot, subject to approval by the appropriate County Health Department. Certification of such approval shall be submitted to the Town Manager prior to issuance of any Zoning Compliance Permit for the development being served.

## **14.10 Other Utilities**

All utility lines other than lines used only to transmit electricity between generating stations or substations and three-phase electric power distribution lines shall be placed underground, and all surface disruptions required for installation shall be rehabilitated to the original or an improved condition.

A letter or letters certifying the availability of immediate service from each of the other utilities (electric, gas, telephone, cable television) serving a structure shall be submitted to the Town Manager prior to issuance of a Zoning Compliance Permit for such structure.

No Certificate of Occupancy for a structure shall be issued until the following documents have been submitted to the Town Manager:

- a) Certification or certifications from the appropriate utilities that all facilities necessary to provide electric, gas, telephone, and/or CATV service to such structure have been completed to the standards of the appropriate utilities; and
- b) As-built construction drawings of those completed electric, gas, telephone, and CATV facilities located within a public right-of-way or easement.

#### **14.11 Collection of Solid Waste and Recyclables**

All developments shall provide a detailed solid waste management plan, including a recycling plan and a plan for management of construction debris subject to approval by the Town Manager.

All developments shall provide secure, safe, and sanitary facilities for the storage and pickup of solid waste and recyclables. Such facilities shall be convenient to collection and shall be appropriate to the type and size of the development being served.

Except for single- and two-family dwellings, all solid waste and recyclables storage facilities shall be screened by a solid wall, fence, tight evergreen hedge, or combination of the above. Such screening shall be of sufficient height and design to effectively screen the facility from the view from adjacent residential uses and streets, and from adjacent properties.

#### **14.12 Buffer and Screening**

##### **14.12.1 Purpose of Bufferyards**

Buffers shall be required to separate a proposed development from adjacent major streets and different adjacent land uses or zoning designations in order to minimize potential nuisances such as the transmission of noise, dust, odor, litter, and glare of lights; to reduce the visual impact of unsightly aspects of adjacent development; to provide for the separation of spaces; and to establish a sense of privacy.

##### **14.12.2 Buffers Required**

A buffer is a strip of land together with the screening required thereon. Except as otherwise specifically provided in this chapter, the type of buffer required between a proposed development and adjacent streets, land uses or zoning designations shall be as specified in Subsection 14.12.6, Schedule of Required Buffers. Where the proposed development site and the adjacent land are both located within either Town Center District, no buffer shall be required. Where the proposed development site is located in the Residential-Special Standards-Conditional zoning district, no buffer shall be required. Where the proposed development site is located in the Materials Handling (MH) zoning district, a 200 foot Type "E" landscape bufferyard shall be required.

Width and screening specifications for each buffer type shall be detailed and illustrated in the Design Manual. Screening required within buffers is intended to provide separation of spaces without necessarily eliminating visual contact between the spaces, and may consist of existing vegetation, planted vegetation, a landscaped earth berm, a decorative wall, a wood fence, or a combination of the above. Any of the options specified in the Design Manual for the required buffer type shall satisfy the buffer requirements of this section.

**14.12.3 Location of Buffers**

Required buffers shall be located along the interior or street lot lines nearest the adjacent streets, land uses, or zoning designations except where such lot lines are intersected by crossing accessways or utility easements, or by a joint parking area. Buffers shall not be located on any portion of an existing or proposed street right-of-way or easement.

**14.12.4 Use of Buffer**

Provided the required buffer width and screening is maintained, a buffer may contain utilities, pedestrian and bicycle paths, and other minor or passive uses compatible with the general separation of land uses.

**14.12.5 Responsibility for Buffer**

Where vacant zoning lots are adjacent, the first zoning lot to be developed shall provide the buffer required next to vacant land. At the time it is developed, the second zoning lot shall provide all additional screening and/or land necessary to provide the total buffer required between the developed land uses.

Where a buffer meeting the requirements of this section is provided on an adjacent zoning lot, the screening and/or land within that buffer may be counted as contributing to the total buffer required between the adjacent existing land use and the proposed land use.

**[Schedule of Required Buffers begins on next page]**

**14.12.6 Schedule of Required Buffers**

(Specifications for each buffer type are contained in Section 5.A of the Design Manual.)

<i>Adjacent* Existing Principal Use#</i>	<b>Proposed Principal Use</b>				
	Major Subdivision creating lots for single or two-family dwellings or Class A mobile home	Any other principal use in Use Group A, except essential services	Any principal use in Use Group B	Automotive repair, maintenance and/or storage facility, light manufacturing, supply yard	Any principal use in Use Group C other than the above
Dwellings, single-family or two-family, Class A Mobile Home	--	B	C	D	C
Any other principal use in Use Group A, except Essential Services	B	B	C	D	C
Interstate Highway	E	E	E	E	E
Railroad, non-Interstate, Principal Arterial Street	D	D	D	D	D
Minor Arterial Street, Collector Street	C	C	A	B	A
Any use in Use Group B	C	C	B	C	B
Automotive Repair, Maintenance and/or Storage Facility, Light Manufacturing, Supply Yard	D	D	C	B	B
Any other use in Use Group C	C	C	B	B	B
<i>Adjacent* Vacant Land Zoning</i>					
R-LD5, RT, R-LD1 R-1, R-2, R-3	--	B	C	D	C
R-4, R-5, R-6	B	B	C	D	C
O/I-1, O/I-2	C	C	B	C	B
I	D	D	C	B	B
NC, CC, O/I-3, TC-1, TC-2	C	C	B	B	B

-- No buffer required.

\* Adjacent land uses and vacant land uses and lands across a street (other than arterial or collector) from the proposed use.

# Existing uses includes uses approved as part of development for which Special Use Permit or Zoning Compliance Permit has been issued.

**14.12.7 Other Required Screening**

In addition to the bufferyard screening required above, and the screening required for off-street parking (Section 14.6.6) and for refuse storage facilities (Section 14.11), all business, service, repair, processing, storage, or merchandise display conducted outside of an enclosed building shall be screened from adjacent streets and properties by means of an effective screening device of a height appropriate to its screening function. Appropriate screening devices may include solid decorative brick walls, wood fences, berms, tight evergreen hedges which shall reach the necessary height within two (2) years of planting, or combination of the above.

**14.12.8 Alternative Buffers and Screening**

In lieu of compliance with the above bufferyard and screening requirements, a developer may submit to the Community Design Commission for its approval a detailed plan and specifications for landscaping and screening which will afford a degree of buffering and screening equivalent to or exceeding that provided by the above requirements.

**14.12.9 Existing Vegetation**

Existing vegetation shall be retained and maintained whenever possible so as to permit such vegetation to contribute to buffer and screening requirements.

**14.12.10 Maintenance of Landscaping**

All landscaping and screening providing required buffering and screening shall be maintained so as to continue their effectiveness.

**14.13 Signs****14.13.1 Intent**

It is the intent of this section to authorize the use of signs with size, layout, style, typography, legibility, and arrangements compatible with their surroundings; appropriate to the identity of individual properties or occupants or of the community; and appropriate to traffic safety.

**14.13.2 Sign Defined**

A sign is any device designed to inform or attract attention of persons not on the premises on which the device is located.

**14.13.3 Signs Subject to Control**

Unless specifically exempted, no sign visible from public right-of-way, whether exterior to or interior to a structure, shall be erected, displayed, or substantially altered except in accord with the provisions of this chapter and until a Zoning Compliance Permit has been issued therefor.

**14.13.4 Signs Exempt from Regulation**

The following signs are exempt from regulation and permit requirements under this section provided such signs comply with the provision of Subsection 14.13.5. and provided that neon tube and like illumination shall be prohibited except as permitted in Subsection 14.13.8(3).

- a) Signs bearing only property identification numbers and names, post office box numbers, names of occupants of the premises on which the signs are located, or other identification of premises not of a commercial nature, provided such signs are not illuminated and do not exceed two (2) signs per zoning lot nor two (2) square feet in area per display surface.
- b) Flags and insignia of a government, when not displayed in connection with a commercial promotion.
- c) Legal notices, identification and informational signs, and traffic directional or regulatory signs erected by or on behalf of a governmental body.
- d) Memorial signs or tablets, and names and construction dates of buildings when cut into any masonry surface.
- e) Signs directing and guiding traffic and parking on private property on which the signs are located, provided such signs are not illuminated, or are indirectly illuminated, bear no advertising matter, and do not exceed four (4) square feet in area per display surface.
- f) Real estate signs advertising the sale, rental, or lease of the premises on which said signs are located, provided such signs do not exceed one sign per street frontage and four (4) square feet in area per display surface for property zoned residential; sixteen (16) square feet per display surface for property zoned non-residential or located within an approved planned development other than a PD-H; and are removed immediately after sale, rental, or lease of the premises.
- g) Construction site identification signs whose message is limited to project name, identification of architects, engineers, contractors, and other individuals or firms involved with the construction, the name of the building, the intended purpose of the building, and the expected completion date, provided such signs do not exceed one sign per construction site and four (4) square feet in area per display surface for single family or duplex construction; and thirty-two (32) square feet in area per display surface for multifamily or non-residential construction, are not erected prior to issuance of a Building Permit, and are removed within seven (7) days of issuance of a Certificate of Occupancy.
- h) Temporary political signs advertising candidates or issues, provided such signs do not exceed four (4) square feet in area per display surface, and provided that any such signs, on private property are removed within seven (7) days after the election; and provided further that any such signs in the public right-of-way are not erected prior to forty five (45) days before the date of the appropriate election and are moved within twelve (12) days after the election.
- i) Yard or garage sale signs announcing yard or garage sales, provided such signs do not exceed one sign per site of such sale nor four (4) square feet in area per display surface, and are removed within seven (7) days of erection.
- j) Public event announcements by public or non-profit organizations of special events or activities of interest to the general public, provided such signs do not exceed one sign per site of such events or activities nor twelve (12) square feet in area per display surface, and are removed within fourteen (14) days of erection.

- k) Temporary signs announcing grand openings of new businesses only, provided such signs are attached to the building in which the business is located, do not exceed thirty-two (32) square feet of display area per business site, and are displayed for a period not to exceed twenty-one (21) days.
- l) Signs in the Town Center 1 and 2 districts which are no more than six (6) square feet in area per display surface. This provision applies only to changeable or moveable signs which are limited to one (1) per business. Changeable or moveable signs are those non-illuminated signs that change or are moved on a daily basis.
- m) Information kiosks or bulletin boards erected by or on behalf of a governmental body on public property or rights-of-way in the Town Center districts for the display of handbills or posters of community interest, provided such kiosks or bulletin boards contain no more than six (6) square feet in area per sign display surface, and a maximum of 72 square feet per kiosk or bulletin board.
- n) Signs stating that a business other than a home occupation is open, provided that there is no more than one such sign per business establishment, and provided that such sign does not exceed two (2) square feet in display area.
- o) Non-commercial signs not covered by other exemptions listed in Subsection 14.13.4, provided such signs are located on private property and are non-illuminated.

#### **14.13.5 Traffic Safety Precautions**

Notwithstanding any other provision in this chapter, the following restrictions shall apply to signs in order to preserve the safety of pedestrian, bicycle, and vehicular movement:

- a) No sign, or part thereof, shall be located within a clear-vision area established by Subsection 14.5.4.
- b) No sign shall make use of the words "STOP", "SLOW", "CAUTION", "DANGER", or any other word, phrase, symbol, or character in such manner as is reasonably likely to be confused with traffic directional and regulatory signs.
- c) No sign shall be erected so that by its location, color, nature, or message is likely to be confused with or obstruct the view of traffic signals or signs, or is likely to be confused with the warning lights of an emergency or public safety vehicle.
- d) Except as used to display time and temperature, no sign shall contain flashing lights.

#### **14.13.6 General Limitations**

Except where specifically exempted by this chapter, the subject matter of any sign shall be related to the premises on which the sign is located. When the use or establishment to which a sign is related ceases or is vacated, such sign, including all of its attendant supports, frames, and hardware, shall be removed within four (4) months of the cessation or vacating of the use or establishment unless such sign is used by a new use or establishment on the premises in conformance with all current regulations of this chapter.

Except where specifically exempted by this chapter, all signs, including the supports, frames, and embellishments thereto, shall not be located within any public right-of-way, nor shall any sign be attached, affixed, or painted on any utility pole, light standard, telephone or telegraph pole, any tree, rock, or other natural object.

No display surface shall contain more than ten (10) items of information except where the name of the occupant of the premises contains more than ten (10) items of information and the display surface contains only the name of the occupant. An item of information means any of the following: a word; an abbreviation; a number; a symbol; a geometric shape. In computing items of information, letters less than three (3) inches in height, if contained in a wall sign, shall not be counted.

No source of illumination of a sign, such as floodlights or spotlights, shall be directly visible from any public right-of-way, from any Residential district, or from adjacent properties. Internally illuminated signs, other than window signs, shall consist of a dark background and light letters or message. The letters or message of internally illuminated signs shall consist of non-reflective material.

Animated, rotating, or other moving or apparently moving signs shall be prohibited.

Devices consisting of banners, streamers, pennants, wind-blown propellers, strung light bulbs, and similar installations shall be prohibited unless approved by the Town Manager for non-commercial enterprises.

#### **14.13.7 Signs in Residential, Materials Handling, and Rural Transition Districts and in PD-H Developments**

No sign shall be erected or displayed in any Residential, Materials Handling, or rural Transition district or in any Planned Development-Housing except as allowed under subsection 14.13.4 or as provided below:

- a) Development identification signs containing the name and/or logo of a subdivision, multifamily development, or planned development, provided such signs are limited to one free-standing sign at each principal point of access to the development, sixteen (16) square feet in area per display surface, and a maximum height of six (6) feet above finished grade; or two (2) signs mounted on wooden, brick, or stone entry walls, eight (8) square feet per display surface, and a maximum height of six (6) feet above finished grade.
- b) Nonresidential signs identifying nonresidential uses permitted as a principal or special use in Residential, Materials Handling, or Rural Transition districts or as an accessory use in PD-H developments provided such signs are limited to one ground or wall sign per zoning lot and sixteen (16) square feet in area per display surface.
- c) Lighting of signs in Residential, Materials Handling, and Rural Transition Districts and in PD-H Developments is permitted if illumination levels are low, all fixtures are concealed, and spill-over of light is minimal.

#### **14.13.8 Signs in TC-2, TC-1, CC, NC, OI-3, OI-2, OI-1 and I Districts**

No sign shall be erected or displayed in the Town Center districts or in any Community Commercial, Neighborhood Commercial, Office/Institutional-3, Office/Institutional-2, Office/Institutional-1 or Industrial district except as allowed under Subsection 14.13.4 or as provided below for the type of sign and the zoning district in which it is located.

Where a zoning lot contains more than one principal use or establishment, the provisions below shall apply to the zoning lot as a whole, and the owner(s) of the zoning lot shall be responsible for allocating permitted signs and display surface areas among the individual uses or establishments. The sign plan submitted for such zoning lot shall show all signs located or proposed thereon and shall be designed so that all signs are in harmony and

consistent with each other. Such a sign plan shall be referred to as a Unified Sign Plan for the zoning lot.

A unified sign plan is an overall plan for placement and design of multiple signs for a building or group of buildings.

## 1. Ground Signs

A ground sign is a free-standing sign attached to a contiguous structural base or planter box, which base or box shall be of the same width as or greater width than the message portion of the sign, and is permanently affixed to the ground. Ground signs do not include free-standing signs supported by poles.

Ground signs may be erected and displayed on a zoning lot in compliance with the maximum area per display surface and the maximum height limitations contained in Subsection 14.13.9, provided:

- a) The zoning lot on which a ground sign is located shall be accessible by automobile and contain off-street parking for the principal use(s);
- b) The buildings or structures housing the principal use(s) on a zoning lot on which a ground sign is located shall be set back at least twenty (20) feet from the abutting street right-of-way;
- c) Ground signs shall be limited to one sign per street frontage, provided that the zoning lot on which the sign is located has at least one hundred (100) feet of street frontage;
- d) No ground sign shall be permitted on the same street frontage of the same zoning lot along which there is a projecting sign;
- e) The message of ground signs shall be limited to the name(s), trademarks and servicemark(s) of the establishment(s) located on the zoning lot and/or of a multi-use development located thereon, except that ground signs identifying theaters or service stations may also identify the current presentation(s) or fuel prices, as appropriate, and that ground signs identifying places of worship may also provide information related to the place of worship and its activities on the zoning lot.
- f) The maximum area per display surface for ground signs as contained in Subsection 14.13.9 may be doubled by reducing the allowable wall sign area for the zoning lot by an equivalent amount.
- g) Ground signs shall be of a shape such that the ratio between the maximum and minimum dimensions shall not exceed 2 to 1.

### 1.1 Cantilevered Ground Signs

A cantilevered ground sign is a sign supported in a cantilevered fashion by an upright post.

Cantilevered ground signs may be erected and displayed on a zoning lot provided:

- a) Cantilevered ground signs shall be limited to one sign per street frontage.
- b) The display area of a cantilevered ground sign shall not exceed three (3) square feet in area and eight (8) feet in height. No portion of the sign and its support shall exceed ten (10) feet in height.

- c) The buildings or structures housing the principal use(s) on a zoning lot on which a cantilevered ground sign is located shall be set back at least twenty (20) feet from the abutting street right-of-way.
- d) No cantilevered ground sign shall be permitted on the same street frontage of the same zoning lot along which there is a projecting sign.
- e) The message of cantilevered ground signs shall be limited to the name(s), trademark(s) and servicemark(s) of the establishment(s) located on the zoning lot and/or of a multi-use development located thereon.

## 2. Projecting Signs

A projecting sign is a sign attached to and supported by a building and extending beyond the building to which it is attached at an angle.

Projecting signs may be erected and displayed on a zoning lot or over a public right-of-way in TC-1 and TC-2 Districts in compliance with the maximum area per display surface limitations contained in Subsection 14.13.9, provided:

- a) The building to which a projecting sign is attached shall be twenty (20) feet or more in width, except in TC-1 and TC-2 Districts where no minimum width shall apply.
- b) Projecting signs shall be limited to one sign per business establishment.
- c) No projecting sign shall be permitted on the same zoning lot street frontage along which there is a free-standing sign.
- d) Projecting signs shall clear sidewalks and pedestrian paths by a height of at least eight (8) feet above finished grade and shall project no more than four (4) feet from the building to which they are attached.
- e) No projecting sign shall extend above the soffit, parapet, or eave line of the building to which it is attached.
- f) Projecting signs shall not be located at the intersection of building corners except at right angles to a building facade.
- g) The message of projecting signs shall be limited to the name(s), trademark(s) and servicemark(s) of the establishment(s) located on the zoning lot and/or the name, trademark and servicemark of a multi-use development located thereon.

## 3. Wall Signs

A wall sign is a sign attached to or painted on a wall or building, with the exposed display surface of the sign in a plane parallel to the plane of the wall to which it is attached or painted, and including signs affixed to or otherwise displayed on or through a facade window.

Wall signs may be erected and displayed on a zoning lot in compliance with the maximum percentage of facade coverage limitations contained in Subsection 14.13.9, provided:

- a) Wall signs placed in the space between windows located one above the other shall not exceed in height two-thirds (2/3) of the height of the taller of the adjacent windows.
- b) Wall signs placed in the space between windows located beside each other shall not exceed in height two-thirds (2/3) of the height of the taller of the adjacent windows.
- c) No wall sign shall protrude more than twelve (12) inches from the wall to which it is attached.
- d) No wall sign shall extend above the parapet or eave line, as appropriate, of the building to which it is attached. If the building consists of more than two (2) stories, wall signs shall not extend above the second story.
- e) The display area of wall signs painted on, affixed to, or otherwise displayed on or through a facade window shall not exceed fifteen percent (15%) of the area of the window.
- f) Wall signs shall not cover up or interrupt major architectural features.
- g) The message of wall signs shall be limited to the name(s), trademark(s) and servicemark(s) of the establishment(s) located on the zoning lot and/or or a multi-use development located thereon. Additionally, the message of wall signs may include information necessary to direct patrons to the business where the business may not have a direct entrance from the street or pedestrian way.

#### 4. Marquees

Marquees may be erected and displayed on a zoning lot in compliance with the maximum percentage of facade coverage limitations for wall signs contained in subsection 14.13.9, provided:

- a) A marquee shall not extend more than ten (10) feet from the building nor be less than nine (9) feet above the ground or sidewalk at the lowest point.

#### 5. Drop Awnings

Drop awnings may be erected and displayed on a zoning lot in compliance with the maximum percentage of facade coverage limitations for wall signs contained in Subsection 14.13.9, provided:

- a) that when such drop awning is let down to its fullest extent, no metal bar or other solid or hollow framing shall be less than eight (8) feet above the ground or sidewalk; and
- b) that a flexible cloth, canvas or similar skirt may hang twelve (12) inches below the horizontal bar supporting the awning, but in no case shall the skirt be less than seven (7) feet above the ground or sidewalk at the lowest point.

**14.13.9 Sign Area and Height Limitations**

District	Ground Sign	Projecting Sign		Wall Sign
	Maximum Area Per Display Surface (sq.ft.)	Maximum Height (feet)	Maximum Area Per Display Surface (sq. ft.)	Maximum Percentage of Façade Coverage (%)
TC-2	8	8	8	5
TC-1	8	8	8	5
CC	15	8	8	5
NC	15	8	8	5
OI-3	15	8	8	5
OI-2	15	8	8	5
OI-1	15	8	8	5
I	15	8	8	5

The maximum area per display surface of any internally illuminated sign shall be one-half (1/2) the maximum area per display surface listed above.

**14.13.10 Location Requirements**

Wall signs shall be located above the principal doorway to the building, or on either side of doorway such that the principal message is at eye level and that no portion of the sign extends higher than eight (8) feet above ground level.

Projecting signs shall be centered over or located near the principal doorway to the building.

**14.13.11 Signs in PD-SC, PD-OI, PD-MU and PD-I Developments**

No sign intended to be read from outside a Planned Development - Shopping Center, Planned Development - Office Institutional, Planned Development - Mixed Use or Planned Development - Industrial, or from public streets within the development, shall be permitted within such development except as allowed under Subsection 14.13.4 or as provided below:

- a) Development identification signs containing the name and trademark of a planned development, provided such signs are limited to one ground sign at each principal point of access to the development, twenty (20) square feet in display area and a maximum height of six (6) feet;
- b) Building identification signs containing only the name of a building or building complex and the nature of the establishments therein, provided such signs are limited to one wall sign per building with a display area not exceeding five percent (5%) of the area of the building facade to which it is attached, up to a maximum area of forty (40) square feet;
- c) Identification signs for individual establishments containing the name(s) and trademark(s) of the establishments, provided such signs are limited to wall signs with a maximum display area of fifteen (15) square feet.

**14.13.12 Signs in the Mixed Use OI-1 or Mixed Use R-1 Zoning Districts for approved developments complying with the mixed use thresholds**

The owner(s) of the mixed use development shall establish a unified sign plan.

No sign that can be read from outside a Mixed Use Zoning District development or from public streets within the development shall be permitted within such development except as allowed under Subsection 14.13.4 or as provided below:

- a) Development identification signs shall be limited to one (1) ground sign (with no more than two (2) display areas) at each principal point of access to the development, forty (40) square feet in display area and a maximum height of eight (8) feet. In addition, the ground signs shall comply with the following requirements:
- The development identification signs shall contain the name and trademark of the Mixed Use Zoning District development, and may also include the name and trademark for one (1) anchor tenant.
  - The letters and/or registered logo for the anchor tenant shall not exceed 50% of the size of the letters or logo for the name of the Mixed Use Zoning District development.

A single development identification sign at one principal point of vehicular access per perimeter roadway frontage of a development may be increased in size to 80 square feet with a maximum height of eight (8) feet if the development contains a cinema. This development identification sign may include the name and trademark of the cinema and may include a changeable listing of movie titles in addition to the name and trademark of the Mixed Use Zoning District development. If internally illuminated the sign shall have light letters on a dark background. The maximum size for such an internally illuminated sign shall be one-half (1/2) of 80 square feet.

- b) Building identification signs containing only the name of a building or building complex and the nature of the establishments therein, provided such signs are limited to one wall sign per building with a display area not exceeding five percent (5%) of the area of the building facade to which it is attached.
- c) Identification signs for individual establishments containing the name(s) and trademark(s) of the establishments, provided such signs are limited to wall signs with a maximum display area limitation of five percent (5%) of facade coverage. Wall signs overall (combination of building identification and individual establishment identification) are limited to a maximum display area not to exceed five percent (5%) of the area of the building facade.

For a cinema, a marquee, as a permanent canopy projecting over an entrance to a building, may be erected and displayed with the following limitations:

- 1) A marquee may identify the name and trademark of the cinema and may include a changeable listing of movie titles;
  - 2) A marquee shall not extend more than ten (10) feet from the building nor be less than nine (9) feet above the ground or sidewalk at the lowest point;
  - 3) The maximum display surface for the marquee shall be 100 square feet; and
  - 4) The marquee shall front on interior drives and streets, not on streets external to the development.
- d) Seasonal non-illuminated parking lot identification banners that will be hung from private street lights, and will not be displayed for more than 90 days, are permitted with the approval of the Town Manager and the Community Design Commission. Each parking lot identification banner shall not exceed four (4) square feet in display area, and shall be limited to the name and/or trademark of the Mixed Use Zoning District development. One (1) or two (2) banners may be approved for display from

each street light. The color(s), shape, materials, appearance and duration of display for such banners shall be approved by the Town Manager and the Community Design Commission prior to display.

If internally illuminated, these signs shall have light letters on a dark background. The maximum size for such an internally illuminated sign shall be one-half (1/2) the maximum area per display surface listed above.

#### **14.13.13 Sign Area and Number**

The area of a display surface of a sign shall be computed as including the entire area visible from any one point, within a regular geometric form or combination of forms, comprising all of the display area of the surface and including all of the elements within the display area and the sign frame. Structural members not bearing advertisement shall not be included in the computation of sign area.

For the purpose of determining number of signs, a sign shall be considered to be a single display device containing elements organized, related, and composed to form a unit. Where elements are displayed in a random manner without organized relationship, each element shall be considered a single sign.

#### **14.14 Outdoor Lighting**

Except for single- and two-family dwellings, all streets, driveways, bikeways, sidewalks, pedestrian paths, parking areas, and other common areas and facilities shall be lighted where necessary to ensure the security of property and the safety of persons using such streets, driveways, bikeways, sidewalks, pedestrian paths, parking areas, and other common areas and facilities.

All principal entrances and exits to principal buildings used for nonresidential purposes or containing more than five (5) dwelling or lodging units shall be sufficiently lighted to ensure the safety of residents and the security of the building.

Lighting sources shall be shielded or arranged so as not to produce within any public right-of-way glare that interferes with the safe use of such right-of-way or constitutes a nuisance to the occupants of adjacent properties.

#### **14.15 Accessibility for the Handicapped**

Except for single- and two-family dwellings, all buildings and facilities shall be accessible to and usable by the physically handicapped in accord with the building code provisions contained in Chapter 5 of the Town Code of Ordinances.

## **ARTICLE 15 - SITE ANALYSIS DATA AND CONCEPTUAL DEVELOPMENT PLANS**

### **15.1 Intent**

It is the intent of the Site Analysis Data and Conceptual Development Plan process to provide an opportunity for the Town Manager, the Community Design Commission and citizens to review and evaluate the impact of a major development proposal on the character of the area in which it is proposed to be located. This process is intended to take into consideration the general form of the land before and after development as well as the spatial relationships of the proposed structures, open spaces, landscaped areas, and general access and circulation patterns as they relate to the proposed development and the surrounding area.

### **15.2 Site Analysis Data Defined**

Site Analysis Data shall include a description and analysis of what surrounds a site in terms of roads, utilities, and other land uses; analysis of slopes, drainage patterns, environmental constraints, existing vegetation and vistas (both on the site and immediately surrounding the site); and a review of access and circulation issues in the vicinity of the site.

### **15.3 Conceptual Development Plan Defined**

The Conceptual Development Plan shall include a drawing(s) that illustrates the applicant's land development proposal and relates this information to the accompanying site plan data. The Plan shall indicate the general location of proposed structures, vehicular and pedestrian access and circulation, parking area, landscaped areas, as well as open, livability and recreation areas. The Plan shall convey the general intent and spatial form of the development proposal. The Plan shall be reviewed from the perspectives of livability within the site and the site's impact on surrounding properties.

### **15.4 Site Analysis Data and Conceptual Development Plan Required**

Site Analysis Data and a Conceptual Development Plan shall be required for all major development proposals. A major development proposal is a development proposal which requires or requests a Special Use Permit or a Special Use Permit Modification, a Master Land Use Plan or a Master Land Use Plan Modification, or a proposal for a major subdivision which creates four (4) or more lots.

### **15.5 Procedures for Review of Site Analysis Data and Conceptual Development Plans**

#### **15.5.1 Application Submittal Requirements**

Applications for Site Analysis Data and Conceptual Development Plan review shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) on which information shall be submitted. Forms shall include the name and address of the applicant, the name and address of the owner of each zoning lot involved, and the relationship of the applicant and property owner in connection with the plan. If the applicant or property owner is an entity other than an individual, the plans shall also include detailed information regarding the principals of the entity. Forms shall include the name of the project principals and indicate the project principals development experience. The Town Manager shall prescribe any other material that may reasonably be required to determine compliance with this chapter and relationship to the Town's Comprehensive Plan with sufficient copies for necessary referrals and records.

No application shall be accepted by the Town Manager unless it complies with such submittal requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the applications.

**15.5.2 Action on Site Analysis Data and Conceptual Development Plans**

Upon receipt of complete Site Analysis Data and Conceptual Development Plans, the Town Manager shall forward all information submitted by the applicant for review by the Community Design Commission within thirty (30) days.

**15.5.3 Aspects of Review**

The Community Design Commission, in examining development applications, is to consider the various aspects of design, with special emphasis on how the proposed development provides consistency with the Town's Design Guidelines and the Goals and Objectives of Chapel Hill's Comprehensive Plan.

**15.5.4 Community Design Commission Review of Site Analysis Data and Conceptual Development Plan**

The Community Design Commission shall review the application and shall submit a written recommendation to the applicant.

The Community Design Commission shall consider public comments and should base its recommendation on its determination of whether or not the application conforms to applicable provisions of this chapter.

All Conceptual Development Plans should demonstrate a high quality of overall site design. The design and construction of site elements should include appropriate descriptions and explanations of the relationship and balance among site elements, the relationship of the development to natural features, neighboring developments and undeveloped land, access and circulation systems, retention of natural vegetation, minimal alteration of natural topography, mitigation of erosion and sedimentation, mitigation of stormwater drainage and flooding, arrangement and orientation of buildings and amenities in relation to each other and to neighboring developments and streets, landscaping, preservation or enhancement of vistas, and mitigation of traffic impacts.

The Community Design Commission must provide its recommendation to the applicant within thirty-five (35) days of the meeting at which a complete application to it or within such further time consented to in writing by the applicant or by Council resolution.

If the Community Design Commission fails to prepare its recommendation to the applicant within this time limit, or extensions thereof, the Community Design Commission shall be deemed to recommend the application without conditions.

## ARTICLE 16 - OFFICE/INSTITUTIONAL-4 ZONING DISTRICT

### 16.1 Purpose and Intent

The purpose and intent of the Office/Institutional-4 District (OI-4) is to establish procedural and substantive standards for the Town Council's review and approval of development on large tracts of land where the predominant use is to be college, university, hospital, clinics, public cultural facilities, and related functions.

The objective of this Article and the OI-4 district is to allow for growth and development while protecting the larger community, nearby neighborhoods, and the environment from impacts accompanying major new development. A key feature of this district is the preparation of a Development Plan that would allow the property owner, immediate neighbors, and the larger community to understand specifically what levels of development are being proposed, and what impacts would likely accompany the development, so that mitigation measures can be designed and implemented.

### 16.2 Overview of Development Review Procedure

Procedures in this zoning district are designed to facilitate:

- Articulation of development plans that involve multiple buildings in multiple locations over an extended time period on a given tract of land, as defined in a Development Plan;
- Identification of total infrastructure needs for such proposed development as specified in a Development Plan and cumulative impacts resulting from full development as specified in a Development Plan; and
- Provision of measures to mitigate the negative impacts, including off-site construction of parking decks as described in Section 16.3.2, phased in a manner appropriate with the pace of construction.

To this end, owners of property zoned OI-4 are encouraged to prepare detailed Development Plans, as described below, for review and approval by the Town Council. For buildings that are included in an approved Development Plan, Site Development Permits for individual buildings are to be issued by the Town Manager, following a determination by the Manager that such individual building plans are generally consistent with the Council-approved Development Plan.

For development proposed within an OI-4 zoning district that is not included in a Council-approved Development Plan, but is a minor change according to the provisions of Section 16.9, the Town Manager may approve a change to the Development Plan and issue a Site Development Permit. For development proposed within an OI-4 zoning district that is not included in a Council-approved Development Plan and that cannot be considered a minor change to the Plan according to Section 16.9, such development shall be considered to be a Special Use, and subject to the Special Use Permit procedural requirements of Article 18. In the alternative, the applicant may apply to the Town Council for an amendment to the Development Plan.

Once a property is zoned Office/Institutional-4, all regulations, standards, and procedures prescribed for the previously-applicable zoning district shall apply until (1) a Development Plan is approved; or (2) six months has elapsed, whichever comes first.

### **16.3 Development Plan**

A Development Plan shall address issues such as general location and size of new facilities, parking, utilities, stormwater management, impervious surface, and access/circulation. A Development Plan shall identify the general location, size, and proposed uses of buildings. A Development Plan shall project anticipated impacts on streets, water and sewer facilities, stormwater runoff, air quality, noise, and lighting.

#### **16.3.1 Submittal Requirements**

Application submittal requirements shall include the following:

- (a) Specific descriptions of proposed development with building locations, building sizes, parking arrangements, and description of building heights with consideration of impact on adjacent areas.
- (b) Analysis of impacts resulting from proposed development, along with options to mitigate impacts relating to:
  - (i) Transportation Management (traffic, transit, parking, bikes, pedestrians, air quality);
  - (ii) Stormwater Management Analysis (quantity and quality); and
  - (iii) Noise and Lighting Analysis.

Individual effects must be evaluated in the context of the whole development plan and not in isolation. Impacts shall be evaluated in accordance with guidelines endorsed for use by the Town Council.

- (c) Preliminary timetable and sequencing schedule for building construction and for related mitigation measures.

#### **16.3.2 Off-site Components**

Mitigation measures involving construction of parking decks may need to be developed outside the boundaries of the Development Plan. Notwithstanding any other provision of this Development Ordinance, a parking deck proposed to mitigate impacts of a Development Plan, and approved by the Town Council as part of a Development Plan, may be located on a site not within the boundaries of an OI-4 zoning district. Any such facility shall be reviewed as a Site Development Permit according to the provisions of Section 16.8.2.

### **16.4 Permitted Uses and Development Intensities**

Permitted uses shall be identical with uses listed in the “Schedule of Use Regulations” (Section 12.3) as being permitted in OI-3, except that Place of Assembly shall be considered to be a permitted use and not a special use. The maximum floor area allowed shall be as provided in a Development Plan that is approved by the Town Council. Special restrictions apply in Perimeter Transition Areas (see Section 16.6).

For purposes of calculating compliance with a specified maximum floor area, the following land uses shall not be counted as floor area: new residential development (including Dwellings and Residence Halls), and new Public Cultural Facilities.

### **16.5 Standards**

Development in the OI-4 zoning district shall be designed in a manner that provides a mix of uses, which are integrated, interrelated and linked by pedestrian ways, bikeways, and

other transportation systems. Development Plans shall, as practical and consistent with applicable laws and regulations, include measures to encourage reduction of automobile use and promote alternative modes of transportation; to mitigate adverse environmental impacts; to promote conservation of non-renewable energy resources; and to achieve visual continuity in the siting and scale of buildings. Specifically, a Development Plan shall address the following:

- (a) Noise: Noise levels from development proposed in the Development Plan shall not exceed those allowed by the Town of Chapel Hill Noise Ordinance.
- (b) Environment: Development proposed in the Development Plan shall minimize impacts on natural site features, and be accompanied by measures to mitigate those impacts.
- (c) Transportation: Development proposed in the Development Plan shall be accompanied by measures to mitigate transportation impacts that are caused by the development.
- (d) Stormwater Management: Development proposed in the Development Plan shall be accompanied by measures to mitigate stormwater impacts (quantity and quality) that are caused by the development.
- (e) Public Utilities: There shall be a general demonstration that water, sewer, and other needed utilities can be made available to accommodate development proposed in the Development Plan.
- (f) Historic Districts: Provisions of Article 6 of this Chapter shall apply to any development proposed within one of Chapel Hill's Historic Districts.

## **16.6 Perimeter Transition Areas**

A Development Plan shall designate a Perimeter Transition Area establishing appropriate standards at borders of the Development Plan, necessary to minimize impacts of development proposed in the Development Plan on adjacent property, to be approved by the Town Council as part of the Development Plan. Standards shall address:

- (i) Screening mechanical equipment
- (ii) Exterior lighting
- (iii) Height limits
- (iv) Landscaping

## **16.7 Procedures for Approval of Development Plans**

Applications for a Development Plan, Special Use Permit, or Site Development Permit shall be filed with the Town Manager.

### **16.7.1 Application Submittal Requirements**

The Town Manager shall prescribe the form(s) of applications as well as any other material he may reasonably require to determine compliance with this article. Applications shall include information described in Section 16.3.1.

### **16.7.2 Process for Review**

Applications for Development Plan approval shall be reviewed by the Planning Board and forwarded to the Town Council for consideration at a public hearing.

Notice of the date, time, and place of the public hearing shall be published in a newspaper of general circulation in the planning jurisdiction once a week for two (2) successive weeks, with the first notice to be published not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing.

The Public Hearing shall be open to the public and all interested persons shall be given the opportunity to present evidence and arguments and to ask questions of persons who testify. The Council may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses to avoid undue delay. All persons who intend to present evidence at the public hearing shall be sworn.

The applicant shall bear the burden of presenting evidence sufficient to establish persuasively that the proposed development will comply with the determinations required in Section 16.7.3.

A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the hearing.

Town Council action on an application for Development Plan approval shall occur within 90 days of the date of submittal of a complete application.

### **16.7.3 Council Action**

The Town Council shall approve a Development Plan unless it finds that the proposed development would not:

- (i) Maintain the public health, safety, and general welfare; or
- (ii) Maintain the value of adjacent property.

Town Council action shall be to:

- (a) Approve;
- (b) Approve with conditions; or
- (c) Deny.

## **16.8 Actions After Decision on Development Plan**

### **16.8.1 Recording Approval**

If the application for approval of a Development Plan is approved or approved with conditions, the Town Manager shall issue the approval in accord with the action of the Council. The applicant shall record such approval in the office of the County Register of Deeds. The Development Plan, including all conditions attached thereto, shall run with the land and shall be binding on the original applicant as well as all successors, assigns, and heirs.

### **16.8.2 Individual Site Development Permits**

If the Development Plan is approved, or approved with conditions, the Town Manager may then accept applications for individual Site Development Permits for specific buildings that are described in the Development Plan. No work on a building identified on the Development Plan may begin until a Site Development Permit has been issued. The Town Manager shall prescribe the form(s) of applications as well as any other material he may reasonably require to determine compliance with the Development Plan. If the Manager finds that the application is consistent with the Development Plan, he shall approve the application and issue the Site Development Permit within 15 working days of the submittal

of a complete application. If the Manager finds that the application is not consistent with the Development Plan he shall deny the application within 15 working days of the acceptance of the application and refer the applicant to the Special Use Permit process described in Article 18. Alternatively, the applicant may apply for an amendment to the Development Plan.

### **16.8.3 Expiration, Abandonment, Revocation of Development Plan**

If an application for a Site Development Permit pursuant to an approved Development Plan has not been submitted to the Town Manager within two (2) years of the date of approval of the Development Plan, the approval shall automatically expire. On request by the holder of an approved Development Plan, the Council shall approve the abandonment of the Plan if it determines that no subsequent development approvals have been granted and no construction activity has taken place pursuant to the Development Plan. If material conditions of a Development Plan are violated, and remain in violation after giving the property owner a reasonable amount of time to correct such violation, the Council may revoke the Plan after notification to the property owner and opportunity for property owner response at a public meeting of the Town Council.

### **16.9 Process for Amending Development Plan**

The Town Manager is authorized to approve minor changes and changes in the ordering of phases in an approved Development Plan, as long as such changes continue to be in compliance with the approving action of the Council and all other applicable requirements, and result in a configuration of buildings that is generally consistent with the approved Development Plan. The Town Manager shall not have the authority to approve changes that constitute a modification of the Development Plan.

Before making a determination as to whether a proposed action is a minor change or a modification, the Town Manager shall review the record of the proceedings on the original application for the Development Plan and any subsequent applications for modifications of the Development Plan, and shall use the following criteria in making a determination:

- (a) A change in the boundaries of the Development Plan approved by the Council shall constitute a modification;
- (b) A substantial change in the floor area or number of parking spaces approved by the Council shall constitute a modification. (General rule: more than a 5% increase in overall net new floor area or parking in a Development Plan approved by the Council would be considered substantial.);
- (c) Substantial changes in pedestrian or vehicular access or circulation approved by the Council shall constitute a modification. (General rule: changes that would affect access or circulation beyond the boundaries of a Development Plan would be considered substantial.); and
- (d) Substantial change in the amount or location of open areas approved by the Council shall constitute a modification.

If the proposed action is determined to be a modification, the Town Manager shall require the filing of an application for approval of the modification, following procedures outlined in this Article for initial approval of a Development Plan.

**ARTICLE 17 - SUBDIVISION OF LAND**

**17.1 Intent**

It is the intent of this article to provide an orderly process for the division of land into lots or parcels for the purpose of sale to and/or building development by property owners. It is also this article's intent to ensure that subdivided lots or parcels can be used safely to build on without danger to the health, safety, and general welfare of both their prospective (or "future") owners and of the Chapel Hill community, and that subdivisions are provided with and provide for adequate and efficient access and transportation, water, sewerage and other utilities, schools, parks, playgrounds, recreation, and other public requirements and facilities.

**17.2 Subdivision Defined**

A subdivision is any division of a tract or parcel of land into two (2) or more lots, building sites, or other divisions for the purpose of sale or building development (whether immediate or future). It includes any division of land involving the dedication of a new street or a change in existing streets. The following divisions of land are not included in this definition and are not subject to this article:

- a) The combination or recombination of portions of previously subdivided and recorded lots, where the total number of lots is not increased and the resultant lots are equal to or exceed the standards set forth in this article, and the Minimum Gross Land Area, Minimum Lot Width and Minimum Street Frontage Width standards of Article 13; or
- b) The division of land into parcels greater than ten (10) acres in area, where no widening or opening of streets is involved; or
- c) The public acquisition, by purchase, of strips of land for purpose of widening or opening streets; or
- d) The division of a tract in single ownership whose entire net land area is no greater than two (2) acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards set forth in this article, and the Minimum Gross Land Area, Minimum Lot Width and Minimum Street Frontage Width standards of Article 13.

In a) above, the phrase, "previously subdivided and recorded" means under a recorded plat or other instrument of transfer containing a metes and bounds description if lots were created prior to the existence of applicable subdivision regulations, or under a validly approved and recorded plat if such lots were created after the existence of applicable subdivision regulations.

In b) and d) above, the phrase "where no street right-of-way dedication is involved" means that adequate access to such lots is provided by an approved existing street (public or private) that meets the standards of the Design Manual without the need for additions or improvements to existing street rights-of-way or easements.

The word "subdivide" in relation to land refers to a subdivision subject to this article.

**17.3 Applicability**

No land shall be subdivided, platted, or recorded, nor shall subdivided lots or parcels be sold, offered for sale, used, or occupied unless and until a final plat of the subdivision has been approved under this article and has been recorded by the appropriate County Register of

Deeds. The subdivision of land by use of metes and bounds descriptions in instruments of transfer is prohibited.

No lot or parcel resulting from a division of land excluded from Section 17.2's definition of subdivision shall be sold, offered for sale, used, or occupied until the Town Manager certifies that such division of land falls within one of the exclusions listed in Section 17.2.

No plat of any division of land within Chapel Hill's planning jurisdiction shall be filed or recorded by the County Register of Deeds unless it contains the Town Manager's certification that the division of land has been approved under this article or is not subject to this article.

Except where specifically exempted by this article, no Zoning Compliance Permit shall be issued to develop any subdivided lot or parcel until a final plat of such subdivision has been approved and recorded under this article.

#### **17.4 Classification of Subdivision**

Minor and major subdivisions are subject to separate approval procedures.

- a) Minor Subdivision -- a subdivision pursuant to an approved Zoning Compliance Permit for a two-family or multi-family townhouse development, an approved Special Use Permit for a planned development, or an approved commercial subdivision, or a subdivision that does not:
  - i) create more than four (4) lots from any one tract of land, whether such lots are created at one time or over an extended period of time; and
  - ii) dedicate or improve any new street other than widening approved existing streets; and
  - iii) extend a public water or sanitary sewerage system other than laterals to individual lots; and
  - iv) install drainage improvements which would require easements through one or more lots to serve other lots.

The Minor Subdivision approval process is a one-step procedure involving Town Manager approval of a final plat.

- b) Major Subdivision - any subdivision other than a minor subdivision. The Major Subdivision approval process is a two-step procedure involving Council approval of a preliminary plat and Town Manager approval of a final plat.

#### **17.5 Procedures for Approval of Minor Subdivisions**

##### **17.5.1 Application Submittal Requirements**

Applications for minor subdivision approval shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) of applications as well as any other material he may reasonably require to determine compliance with this article. Minor subdivision plats shall comply with the mapping requirements of Section 17.13. The Town Manager shall not accept an application unless it complies with such requirements. An incomplete application shall be returned to the applicant, with a notation of its deficiencies.

### **17.5.2 Town Manager Action**

When he accepts an application, the Town Manager shall determine if the plat and application conform with all applicable regulations, including any applicable conditions of an approved Zoning Compliance Permit or Special Use Permit.

He shall take action on an application based solely on his findings as to compliance with applicable regulations and conditions. He shall:

- a) Approve, or
- b) Approve subject to conditions, or
- c) Deny, or
- d) Refer to the major subdivision approval process, if he finds it to be a major subdivision proposal or if requested by the applicant.

If the Town Manager refers the request to a major subdivision review, an amended application shall be submitted to him as required in Section 17.6.

The Town Manager may impose reasonable conditions on his approval to ensure the subdivision complies with the intent and requirements of this article.

The Town Manager shall notify the applicant of his action, including any conditions within eleven (11) working days after he accepts an application, or within such further time consented to by written notice from the applicant or by Council resolution.

If the Town Manager fails to render a decision within this time limit, or extensions thereof, the application is approved as submitted.

### **17.5.3 Amended Applications**

The applicant shall submit an amended application for review as an original application if the applicant proposes to substantially amend or modify his application after its acceptance.

### **17.5.4 Actions Subsequent to Decision**

The Town Manager shall notify the applicant of his decision in writing and shall file a copy of the decision in the office of the Planning Department.

The Town Manager shall endorse approval on a reproducible mylar original of the final plat if he approves an application or approves it with conditions. The applicant shall record such plat in the office of the appropriate County Register of Deeds. Approval of any minor subdivision plat is void if it is not properly recorded within thirty (30) days after the Town Manager's endorsement of approval. The Town Manager may extend this deadline provided the applicant has demonstrated a good faith effort to comply with the deadline, but for reasons beyond his control, fails to meet the requirements of the Register of Deeds for recordation within that period. Plats shall conform to the drawing specifications and certification requirements of Sections 17.13 and 17.14.

The applicant shall submit a duplicate mylar copy of the approved final plat and a paper print of the recorded final plat to the Town's Planning Department within five (5) working days after the final plat is recorded.

### **17.5.5 Appeal of Decision**

The Town Manager's decision on a minor subdivision application may be appealed to the Board of Adjustment under Article 24.

## **17.6 Procedures for Approval of Major Subdivisions**

### **17.6.1 Preliminary Plat Approval**

#### **17.6.1.1 Application Submittal Requirements**

Applications for major subdivision preliminary plat approval shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) of applications, as well as any other material he may reasonably require to determine compliance with this article.

The Town Manager shall not accept an application unless it complies with such requirements. An incomplete application shall be returned to the applicant, with a notation of its deficiencies.

#### **17.6.1.2 Town Manager's Analysis**

When he accepts an application, the Town Manager shall cause representatives of the Town and such other agencies or officials as may be appropriate to determine if it conforms to the provisions of this chapter and the following other regulations:

- a) The minimum gross land area, minimum lot width, and minimum street frontage width requirements of Article 13; and
- b) The access and circulation requirements of Section 14.5 and the Design Manual.

#### **17.6.1.3 Preliminary Conference with Applicant**

The Town Manager shall notify the applicant, in writing, of the proposed subdivision's deficiencies. The Manager shall also notify the applicant of his willingness to discuss alternatives to correct those deficiencies.

If the applicant joins in such discussions, the application may be modified, further discussions may be held, or additional information may be requested by the Town Manager.

#### **17.6.1.4 Town Manager's Report to Planning Board**

The Town Manager shall submit to the Planning Board a written analysis of the application and his recommendation.

If the applicant does not join in preliminary conferences with the Town Manager, the report shall be prepared within twenty-five (25) working days after the application is accepted, or within such further time consented to in writing by the applicant or by Council resolution. If the Town Manager fails to prepare a report to the Planning Board within this time limit, or extensions thereof, the application is recommended without conditions.

If the applicant participates in preliminary conferences with the Town Manager, the Manager will prepare his report to the Planning Board when further conferences appear

unnecessary. No time limits shall apply to the Manager's review when the applicant joins in preliminary conferences. However, the applicant may require the Manager to submit the application and his report to the Planning Board whenever the applicant wishes to end discussions with him.

The Town Manager shall forward his report to the Planning Board at its next available regularly scheduled meeting.

#### **17.6.1.5 Planning Board Review**

The Planning Board shall review the application and the Town Manager's report and shall submit a written recommendation to the Council.

The Planning Board shall prepare its recommendations within thirty-five (35) days of the meeting at which the Town Manager's report is submitted to it or within such further time consented to in writing by the applicant or by Council resolution.

If the Planning Board fails to prepare its recommendation to the Council within this time limit, or extensions thereof, the Planning Board shall be deemed to recommend approval of the application without conditions.

If the Planning Board recommends approval of the application with conditions, the applicant may amend his application to conform to all or some of the conditions, provided the Town Manager reviews the amended application for compliance with applicable regulations and certifies that the amendments conform to the conditions of the Planned Board recommendation. In such cases, the Town Manager may amend his report to conform to any or all of the Planning Board's recommendations. The Town Manager shall then forward his report and the Planning Board's recommendation to the Council at the Council's next available regularly scheduled meeting.

#### **17.6.1.6 Council Review**

After receiving the Town Manager's report and the Planning Board's recommendation or, if applicable, the expiration of the time limit prescribed in Subsection 17.6.1.5, the Council shall consider the application at its next regularly scheduled meeting.

All interested persons shall be given the opportunity to speak and to ask questions. The Council may place reasonable and fair limitations on comments, arguments, and questions to avoid undue delay.

The applicant shall bear the burden of establishing that he is entitled to approval of his application.

#### **17.6.1.7 Council Action**

The Council shall act on the application after reviewing the application, the Town Manager's report, the Planning Board recommendation, and public comment thereon.

It shall base its action on its findings as to conformity with all applicable regulations listed in subsection 17.6.1.2. Its action shall be one of the following:

- a) Approval, or
- b) Approval subject to conditions, or
- c) Denial

The Council may impose reasonable conditions on its approval to ensure compliance with applicable regulations.

#### **17.6.1.8 Amended Applications**

Except as permitted in subsection 17.6.1.5 the applicant shall submit an amended application for review as an original application if he proposes to substantially amend or modify his application after the Town Manager's review.

#### **17.6.1.9 Actions After Decision**

The Town Manager shall notify the applicant of the Council's decision in writing and shall file a copy with the Town's Planning Department.

If the application is approved or approved with conditions, the Town Manager may issue Zoning Compliance Permits and other development permits required to construct, install, and use improvements (streets, alleys, bikeways, pedestrian ways, utilities, storm drainage facilities, and recreation areas and facilities for common use) approved as part of the preliminary plat approval, in the manner prescribed in Article 19.

Except for the above improvements, no Zoning Compliance Permit shall be issued to develop any lot or parcel shown on the approved preliminary plat until a final plat showing such lot or parcel is approved and recorded under this article.

#### **17.6.1.10 Expiration of Preliminary Plat Approval**

Preliminary plat approval for a major subdivision shall be effective for one year from the date of approval. After that time the applicant must submit a new application. The Manager may re-approve the application unless he determines that paramount considerations of health, the general welfare, or public safety require Council re-approval. In such instances the Town Manager shall require the application to be reviewed in accordance with the procedures set forth in Section 17.6.

No application for final plat approval shall be accepted or approved for any portion of a subdivision for which preliminary plat approval has expired. If final plat approval for any lot shown on an approved preliminary plat has not been obtained before the preliminary plat approval expires, a new application for approval of a preliminary plat showing the lot must be approved under then-applicable regulations before an application for final plat approval of such lot can be accepted.

#### **17.6.1.11 Appeal of Decision**

The Council's decision on an application for major subdivision preliminary plat approval may be appealed to Superior Court within thirty (30) days of Council action by an action in the nature of certiorari.

### **17.6.2 Final Plat Approval**

#### **17.6.2.1 Application Submittal Requirements**

Applications for final plat approval shall be filed with the Town Manager. The Town Manager shall prescribe the form(s) of applications, as well as any other material he may reasonably require to determine compliance with this article. Final plats shall comply with the mapping requirements of Section 17.13 and the certification and endorsement requirements of Section 17.14 of this chapter.

A preliminary plat for all of the subdivision shown on the proposed final plat must have been approved and not expired before a final plat approval application may be accepted.

As part of an application for final plat approval, the applicant shall certify one of the following:

- a) That all improvements (streets, alleys, bikeways, pedestrian ways, utilities, storm drainage facilities, street signs, and recreation areas and facilities for common use) approved as part of the preliminary plat approval and serving the lots shown on the final plat have been completed and the Town Manager has certified completion thereof; or
- b) That performance guarantees ensuring the satisfactory completion of any uncompleted improvements have been posted; or
- c) That the subdivision shown on the final plat is subject to U.S. Department of Housing and Urban Development regulations that ensure satisfactory completion of any uncompleted improvements.

If a neighborhood or homeowners' association, or similar legal entity, is to be responsible for the maintenance and control of any improvements, the application for final plat approval shall also contain proposed articles of incorporation and by-laws of the association or similar legal entity. Articles of incorporation shall be submitted in the form in which they will be filed with the North Carolina Secretary of State.

#### **17.6.2.2 Town Manager Action**

When he accepts an application, the Town Manager shall determine if the final plat and application conform to all applicable regulations and to an approved and valid preliminary plat, including all conditions of such approval.

The Town Manager shall base his action on an application solely on findings as to compliance with applicable regulations and the preliminary plat approval. The Town Manager shall:

- a) Approve, or
- b) Approve subject to conditions, or
- c) Deny.

The Town Manager may impose reasonable conditions on his approval to ensure compliance with applicable regulations and conditions. Such action shall be taken within twenty-five (25) working days of the acceptance of an application, or within such further time consented to by written notice from the applicant or by Council resolution.

If the Town Manager fails to render a decision within this time limit, or extensions thereof, the application is approved as submitted.

#### **17.6.2.3 Amended Applications**

The applicant shall submit any amended application for review as an original application if he proposes to substantially amend or modify his application after its acceptance.

#### **17.6.2.4 Actions Subsequent to Decision**

The Town Manager shall notify the applicant of his decision in writing and shall file a copy of it with the Town's Planning Department.

If the application is approved or approved with conditions, the Town Manager shall endorse his approval on a reproducible mylar original of the final plat. The applicant shall record the final plat in the office of the appropriate County Register of Deeds. Approval of any final plat is void if it is not properly recorded within thirty (30) calendar days after the Town Manager's endorsement of approval. The Town Manager may extend this deadline provided the applicant has demonstrated a good faith effort to comply with the deadline, but for reasons beyond his control, fails to meet the requirements of the Register of Deeds for recordation within that period. Such plat shall conform to the drawing specifications, certification and endorsement requirements of Sections 17.13 and 17.14.

The applicant shall submit a duplicate mylar copy of the approved plat and a paper print of the recorded final plat filed with the Register of Deeds to the Town's Planning Department within five (5) working days after the plat is recorded.

Upon recordation of a final plat, the applicant or applicant's successors in interest of the subdivided land shall be responsible for maintaining in a safe and usable condition all approved improvements until they are accepted for maintenance and control by an appropriate public body or an incorporated neighborhood or homeowners' association or similar legal entity.

#### **17.6.2.5 Appeal of Decision**

The Town Manager's decision on a final plat approval application may be appealed to the Board of Adjustment under Article 24.

### **17.7 Design of Subdivision**

#### **17.7.1 Intent**

The subdivision should be designed with a street network which provides safe, adequate access to all lots within the subdivision, and to properties adjoining the subdivision where such access is deemed desirable for the orderly future development of these properties. However, the design of the street network in a subdivision should not encourage through traffic (the origins and destination of which are external to the subdivision) to use local roads in the subdivision. Further, the various streets, utilities, recreation areas and other community facilities serving a subdivision should be sized and located in conformity with the Comprehensive Plan.

Whenever a subdivision application is submitted for approval which includes part or all of a school site designated to be reserved on the Town's Land Use Plan, the Town Manager shall immediately notify the Chapel Hill/Carrboro Board of Education, and the Board shall promptly decide whether it wishes the site to be reserved. If the Board does not wish to reserve the site, it shall so notify the Town Manager and no site shall be reserved. If the Board does wish to reserve the site, the subdivision shall not be approved without such reservation. A note indicating such reservation shall be recorded on a final plat. The Board shall then have 18 months beginning on the date of final approval of the subdivision within which to acquire the site by purchase or by initiating condemnation proceedings. If the Board has not purchased or begun proceedings to condemn the site within 18 months, the owner may treat the land as freed of the reservation.

#### **17.7.2 Applicability of Lot Design Standards**

Each lot in a subdivision shall comply with the lot design standards contained in this chapter. Newly created or revised lots shall be designed so that any existing structures

continue to meet the requirements of this chapter or so that any existing nonconformity is not increased, extended, or enlarged.

The standards of this section, however, do not apply to recreation areas, lots within approved planned developments and townhouse lots created as part of a minor subdivision provided:

- a) The Town Manager has approved provisions for the unified control of and responsibility for the development and for the maintenance of common areas; and
- b) The Town Manager has approved provisions for ensuring access to and use of recreation areas or areas otherwise designated for the residents' common use and benefit.

**17.7.3 Lot Arrangement**

The arrangement of lots in a subdivision shall comply with the provisions of this article and the regulations of the County Health Department and shall provide vehicular access to buildings on them from an approved street.

**17.7.4 Access to Streets**

Every subdivided lot shall front on a street meeting the standards of Section 14.5 and of the Design Manual, including all required improvements such as sidewalks, curbs, and gutters.

Double frontage lots are prohibited except where necessary to separate residential development from arterials or to overcome specific disadvantages of topography and orientation. Where double frontage lots are permitted, a bufferyard shall be provided adjacent to the higher classified street to prohibit access by motorized vehicles.

**17.7.5 Lot Dimensions**

Every subdivided lot shall comply with the minimum gross land area, lot width, and street frontage standards contained in this chapter, as well as other standards of the County Health Department for lots not served by a public water supply and/or a public sanitary sewer system.

Where the gross land area of a lot(s) in the subdivision is greater than or equal to twice the minimum gross land area required in Article 13 for the zoning district, the Town Manager or Council, as appropriate, may require that the subdivision be arranged to allow future orderly subdivision of such lots and the opening of future streets where needed to serve such potential lots.

**17.7.6 Flag Lots**

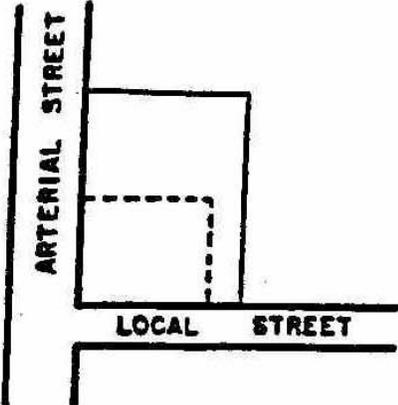
**17.7.6.1 Intent**

The Town of Chapel Hill discourages and restricts forming flag lots (as defined in Article 2) in subdivisions. A flag lot shall be permitted if necessary to allow a property owner reasonable use and benefit from his land or to alleviate situations which would otherwise cause extreme hardship for him.

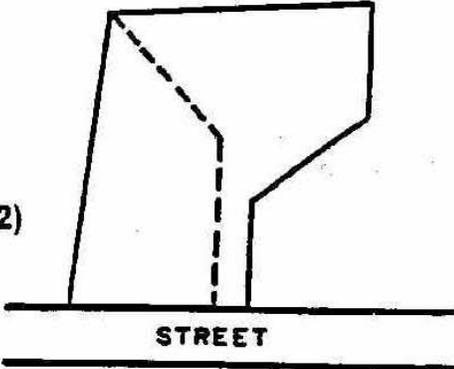
17.7.6.2 Lot Standards

Flag lots are prohibited except when allowed upon findings that (1) the flag lot is necessary to eliminate access onto arterials (See Figure 17-1); (2) the flag lot is necessary to reasonably utilize irregularly shaped land (See Figure 17-2); or (3) the flag lot is necessary to reasonably utilize land with difficult topography (See Figure 17-3). No flag lot will be allowed if it increases the number of access points onto an arterial or collector street.

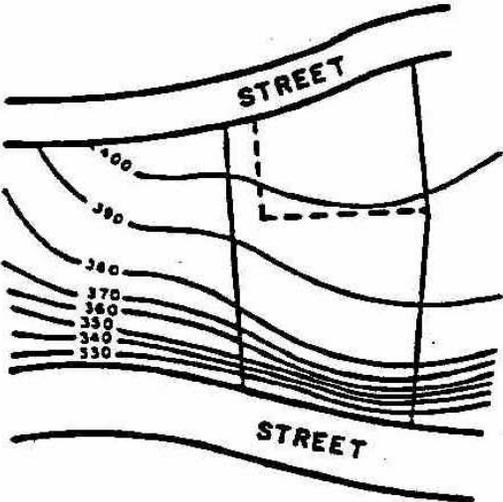
(FIGURE 17-1)



(FIGURE 17-2)



(FIGURE 17-3)



That portion of a flag lot between the street onto which it has access and the point where a lot dimension parallel to the street first equals or exceeds the minimum lot width specified in Section 13.11 shall not be longer than two hundred feet. The lot width and street frontage of a flag lot may be reduced to 35 feet. The Manager may approve further reductions to a minimum of 20 feet where topographical conditions permit the construction of an adequate driveway within that width. The Manager may also require greater widths where necessary to ensure adequate access.

### **17.7.6.3 Location of Lot Lines**

Interior lot lines extending from a street should be approximately perpendicular or radial to the street right-of-way line.

Lot lines shall be located to permit efficient installation and maintenance of utility lines on utility easements and to maximize buildable area.

### **17.7.7 Zero Lot Line Setback Modifications**

Interior and solar setbacks for structures on lot within a subdivision may be reduced to zero provided such reductions are shown on the approved final plat and the following requirements are met:

- a) The interior or north lot line designated for a zero setback (the zero lot line) shall not be used for a zero setback on the other property abutting the lot line.
- b) The setback between the lot line opposite the zero lot line and any structure on the lot shall equal or exceed two (2) times the minimum interior setback specified in Section 13.9.6.
- c) The wall constructed against the zero lot line shall be at least six (6) feet high and shall not contain windows, doors, air conditioning units, or other openings. Any wall facing the zero lot line but not constructed against it shall conform to the minimum interior or solar setback, as appropriate, specified in Section 13.9.6 or 13.9.7.
- d) A wall maintenance easement shall be provided on the other property abutting the zero lot line. The width of such easement shall be at least four (4) feet.
- e) If the other property abutting the zero lot line is not part of the subdivision, the owners of such property shall consent, by recorded agreement or deed restriction, to the zero setback.

## **17.8 Cluster Developments**

### **17.8.1 Intent**

The Town encourages cluster developments as defined in Article 2. Cluster developments, as defined in Article 2, require modification of lot size standards; individual lots may be somewhat smaller but the sum of reductions in lot area becomes common recreation area for the benefit of all residents of the cluster development. The recreation area is increased and the intensity of development is controlled. Cluster developments also allow the developer greater design flexibility and will permit reasonable use of land with difficult topography.

### **17.8.2 General Approval Requirements**

The Council, on recommendation of the Planning Board, may approve a cluster subdivision in any residential district if it finds that:

- a) The tract proposed for cluster development is at least two (2) acres in size.
- b) Public, separate, water supply and sewerage connections are available for every subdivided lot.
- c) The total number of lots proposed for the tract, excluding parcels of reserved recreation area, is not greater than the number determined by dividing the total gross land area by the minimum gross land area established in Section 13.11 for that zoning district.
- d) The recreation area reserved within the tract shall conform to the recreation area standards of subsection 17.9 of this article.
- e) The minimum amount of land reserved as recreation area shall be the sum of all reductions in minimum gross land area as a result of the cluster form of development, combined with the minimum recreation area reservation required in subsection 17.9.2.

Only the minimum recreation area reservation required in subsection 17.9.2 may be dedicated outside the boundaries of the land being subdivided as specified in subsection 17.9.7.

### **17.8.3 Reductions in Lot and Setback Requirements**

For lots created as part of a cluster development, minimum gross land area, minimum lot width, and minimum setback requirements may be reduced as follows:

- a) Minimum gross land area requirements specified in Section 13.5.2 may be reduced to 5,500 square feet gross land area.
- b) Minimum lot width requirements specified in Section 13.11 for R-LD5, R-LD1, R-1A, R-1, R-2A, and R-2 zoning districts may be reduced to 50 feet.
- c) Minimum street setback requirements specified in Section 13.11 may be reduced to 10 feet except where the street lot line forms an exterior boundary of the cluster development.
- d) Minimum interior setback requirements specified in Section 13.11 for R-LD5, R-LD1, R-1A, R-1, R-2A, and R-2 zoning districts may be reduced to eight (8) feet except where the interior lot line forms a boundary of the cluster development.
- e) Minimum solar setback requirements specified in Section 13.11 for R-LD5, R-LD1, R-1A, R-1, R-2A, and R-2 zoning districts may be reduced to ten (10) feet except where the north lot line forms a boundary of the cluster development.

**17.9 Dedication of Recreation Areas**

**17.9.1 Applicability**

A major subdivision that creates lots reasonably expected to be used for single- or two-family dwellings must provide or dedicate recreation areas suitable for the residents' common active recreational use. In all cases the Chapel Hill Parks and Recreation Commission shall review and make recommendations to the Planning Board on the provision or dedication of recreation areas except when the Council may otherwise provide.

Provision or dedication of recreation areas shall not be required for a minor subdivision, or in a subdivision to the extent that it creates lots for uses other than single- or two-family dwellings.

Phases of development within a subdivided tract that occur after the initial subdivision must provide the required recreation space appropriate for the subsequent development of those tracts. For instance, if multifamily dwellings are built within an already subdivided tract, those dwellings must comply with recreation and outdoor space ratios required for multifamily dwellings under Article 13.

**17.9.2 Minimum Recreation Area**

When recreation area must be provided or dedicated as part of a subdivision, its total land area shall be at least the number of square feet derived by multiplying the subdivision's total gross land area by the recreation area ratio found in the following table applicable in the zoning district:

Zoning District	Recreation Area Ratio
R-LD5	.040
R-LD1	.050
R-1A	.061
R-1	.071
R-2A	.095
R-2	.120
R-3	.170
R-4, 5, 6 and non-residential districts	.218

**17.9.3 Suitability of Land**

Land provided or dedicated as recreation area shall be of a character, shape and location suitable for use as a playground, playfield, or for other active recreation purposes including greenway pedestrian and non-motorized vehicle easements. Recreation areas shall be located on land that is relatively flat and dry and is otherwise capable of accommodating active recreation uses, except as exempted under the provisions of Section 17.9.6 b and c.

For sites that abut or include areas designated as future greenways on the Town's Comprehensive Plan, the Council may require that a dedicated thirty (30)-foot-wide public pedestrian and non-motorized vehicle easement along all such areas be the recreation space provided under this ordinance.

Active recreation areas shall be conveniently accessible to all residents of the subdivision and, other than greenway pedestrian and non-motorized vehicle easements, shall have at least fifty (50) feet of frontage on at least one public street within the subdivision. Land provided or reserved for active recreation shall form a single parcel except where the Town

Council determines that two (2) or more parcels are more suitable to the needs of a particular subdivision. The Council may require that such parcels be connected.

#### **17.9.4 Method of Provision or Dedication**

Land provided or dedicated for recreation purposes shall be designated on the subdivision's final plat(s). The Council may require that such land be dedicated to the Town or other appropriate public body. If the land is not dedicated or deeded to an appropriate public body, the Town's policy is that a neighborhood or homeowners' association should be established for the continuing maintenance and control of common recreation area and facilities.

#### **17.9.5 Payments in Lieu of Provision or Dedication**

In lieu of providing or dedicating recreation area required pursuant to this section, a developer of a subdivision may, with the approval of the Council, make a payment to the Town whereby the Town may acquire or develop recreation land to serve the subdivision. A developer may make a partial payment in combination with the partial provision of recreation area if the Council determines that the combination is in the best interests of the citizens of the area to be served.

The Council may require a payment to the Town in lieu of providing or dedicating recreation area required pursuant to this section where the minimum recreation area required by this section equals two (2) acres or less.

The Town shall use such payment only for the acquisition or development of recreation, park, or open space sites to serve residents of the subdivision or residents of more than one subdivision or development within the immediate area.

The amount of the payment shall be the product of the minimum amount of recreation area required multiplied by the fair market value of the land being subdivided. The fair market value of the land being subdivided (including streets, utilities, and other related improvements) shall be the expected fair market value of the land after it is subdivided in the manner proposed by the developer and approved by the Town. The costs associated with appraisal of the fair market value of the land shall be borne by the developer.

If the Town disagrees with the developer's appraisal of the land's fair market value, fair market value shall be determined by a special appraisal committee made up of one professional appraiser appointed by the developer, one professional appraiser appointed by the Council, and one professional appraiser appointed by the initial two committee members. The committee shall view the land and hear the contentions of both the Town and the developer. The committee shall determine its findings by majority vote and shall certify them to Council within thirty (30) days of the time of the third member's appointment. The costs of the committee shall be borne by the developer.

The Town's Community Facilities Report of the Comprehensive Plan, as adopted by Council, establishes park standards, classifications, and service areas for recreational facilities and shall serve as the basis for Town use of a payment to meet the recreation, park, and open space needs of the residents of the subdivision for which the payment is made.

The developer shall make the payment before approval of a final plat for the subdivision, provided, however, that the Town Manager may allow phasing of payments consistent with the approved phasing of the subdivision.

### **17.9.6 Exemptions**

- a) If the Town Council determines that the land required to be provided or dedicated as recreation area by this section would be less than 3,000 square feet and where that area cannot be combined with an existing or planned recreation area, then provision or dedication of that area will not be required.
- b) If the Town Council determines that assembling a piece of land to meet the requirements of subsection 17.9.3 either (a) would create undue hardships or (b) is not necessary because the active recreational needs of the subdivision are already being met by dedicated land or by existing recreation areas, it may waive any requirements of that subsection. In such cases, the required recreational area may be used for preserving woods, steep slopes, ponds, streams, glens, rock outcrops, native plant life, and wildlife cover. These areas would provide for the community's need for passive recreational areas and/or greenways.
- c) If the site abuts or includes areas designated as future greenways on the Town's Comprehensive Plan, land area dedicated as a public pedestrian non-motorized vehicle easement along the greenway may be applied to requirements for dedication of recreation area and exempted from the land suitability requirements of Subsection 17.9.3.

### **17.9.7 Substitution of Off-Site Land for Dedicated Recreation Area**

Any subdivider required to provide or dedicate recreation area pursuant to this section may, with the approval of the Council, dedicate recreation area outside the boundaries of the land being subdivided but in a nearby area of Town.

The substitute dedicated recreation area shall be in a location acceptable to the Council, shall be comparably valued, and shall meet all suitability requirements as set forth under the provisions of Section 17.9.3 of this Ordinance.

### **17.10 Neighborhood or Homeowners' Associations**

Where neighborhood or homeowners' associations, or similar legal entities, are to be responsible for the maintenance and control of any improvements (streets, alleys, bikeways, pedestrian ways, utilities, storm drainage facilities, street signs, and recreation areas and facilities for common use) approved as part of subdivision approval, they shall be established so that:

- a) Binding arrangements to establish the association or similar legal entity are made before any lot in the subdivision is sold or any building occupied;
- b) The association or similar legal entity has clear legal authority to maintain and exercise control over the improvements; and
- c) The association or similar legal entity has the power to compel contributions from residents of the development to cover their proportionate shares of the costs associated with the maintenance and control of the improvements.

### **17.11 Elevations and Benchmarks**

At least two benchmarks shall be established by a registered land surveyor on or adjacent to any subdivision for which elevations are shown on the submitted drawings which shall clearly show:

- a) True datum to mean sea level which shall be used unless the distance to the nearest Town benchmark is greater than 2000 feet.
- b) The location, description and elevation of the benchmarks on or adjacent to the subdivision, to be used for vertical control.
- c) Cross reference with the Town benchmark system, naming the benchmarks by number and location. The Town has established a third-order benchmark network throughout the Town. A list of such benchmarks and their locations is on file with the Town Engineer, and is available to the public.
- d) Benchmarks shall be placed on permanent reference monuments or equally stable objects that are easily recognized, easily found and not likely to move.
- e) Benchmarks shall be third-order and conform to the "Manual of Practice" of the North Carolina Board of Registration for Professional Engineers and Land Surveyors.

## **17.12 Permanent Monuments and Markers**

Reinforced concrete monuments shall be placed at the points of curvature and tangency in curved street lines (except at intersections) and at corners in exterior boundaries of the subdivision as required by the Town Manager except those inaccessible due to topography. Such monuments shall be a minimum of 30 inches long, shall have brass or copper pins marking the reference point in the top and a minimum cross sectional area of 9 square inches.

Iron pipes or pins at least 3/4" in diameter shall be placed at all lot corners not marked by such monuments. They shall be long enough to assure permanence.

Such monuments shall be set not less than 6 inches or more than 9 inches above finished grade and shall be temporarily flagged or staked for inspections.

All permanent monuments displaced or destroyed during the course of development of the subdivision shall be replaced accurately when development is completed.

## **17.13 Specifications for Drawings**

### **17.13.1 Compliance with Article**

The requirements of this section apply to the format of drawings.

### **17.13.2 Preliminary Plat**

The preliminary sketch shall be drawn to a scale of not less than one hundred (100) feet to the inch nor more than twenty (20) feet to the inch. It shall show the following:

- a) Title data. Name of subdivision, the names and addresses of the owner or owners, name of designer of the plat, scale, date, approximate north point, and in large letters the words, "PRELIMINARY PLAT."
- b) Existing data. Property lines, street lines and names, principal buildings, water mains, sanitary sewers, storm drains, water courses and bridges, parks, playgrounds, public open space, recreation areas, public easements, railroads and spurs, names of adjacent subdivisions, owners of adjacent unsubdivided tracts, town limit lines, and

planning district lines, both on the land to be subdivided and within five hundred (500) feet thereof; and an inset sketch map showing the subdivision's location in relation to the Town and to principal highways and streets in the Chapel Hill area.

- c) Data relating to subdivision. Names, locations and other dimensions of proposed streets, alleys, cross walkways, lots, easements, building lines, parks, playgrounds, and other recreational areas, including notations regarding to whom such areas are dedicated, and a copy of any proposed deed restrictions or restrictive covenants. Contours at intervals five (5) feet or less, referred to sea level datum will be provided, except that in the case of a small subdivision on relatively level land, the Town Manager may waive this provision. Profiles of proposed streets, showing natural and finished grades, drawn to a horizontal scale of not less than one hundred (100) feet to the inch and a vertical scale of not less than ten (10) feet to the inch may be required by the Town Manager. A statement describing the water supply and sewage disposal facilities proposed to be installed in the subdivision shall be submitted. If installation of septic tanks is proposed, an analysis of the county health department tests required shall accompany the subdivision sketch. The size and location of all proposed water mains shall be shown on the sketch if water will be furnished by Orange Water and Sewer Authority (OWASA).
- d) Drainage plan data. Size of off-site drainage areas in acres; existing gullies or waterways proposed to be used, indicating adequacy to handle the design flows; all proposed drainage easements; location size, and slopes of all pipes; location, size, and proposed design of all new ditches; and erosion control measures where needed.
- e) Floodway data. The boundaries of both the floodway and the floodway fringe zone, as shown on maps entitled Flood Boundary and Floodway Map, U.S. Dept. of Housing and Urban Development dated February 9, 1980 and as subsequently revised, shall be shown clearly.

### **17.13.3 Final Plat**

The final plat shall be drawn in black ink upon mylar or tracing cloth to a scale of not less than one hundred (100) feet to the inch nor more than twenty (20) feet to the inch. It shall show the following:

- a) Title and documentation data. Name of subdivision, the Town, the name of the licensed engineer or surveyor under whose supervision the plat was prepared; the date of the plat; the scale and north point, and all endorsements and certifications provided for in section 17.14.
- b) Data relating to subdivision. Lines and names of all streets; lines of all alleys, cross-walkways, lots, easements, recreational areas, and other areas to be devoted to common use, with notes stating clearly their proposed use, any limitations and the person(s) or entity responsible for continued maintenance, Town boundaries; building lines, block and lot numbers; metes and bounds survey information sufficient to determine readily on the ground the location of every street, alley, and cross-walkway, lot line, boundary line, block line, easement line, and building line; the radius central angle, and tangent distance for both street lines of curved streets, the locations and types of all permanent monuments; the names of subdivisions and streets adjoining the platted subdivision; and designation of all streets within the subdivision as either "public" or "private."

- c) Easements. Pedestrian and non-motorized vehicle easements shall be laid out on the ground and marked at regular intervals of not less than 50 feet apart.
- d) Floodway data. The boundaries of both the floodway and the floodway fringe zone, as shown on the maps entitled Flood Boundary and Floodway Map, U.S. Dept. of Housing and Urban Development, dated February 9, 1980, and as subsequently revised, shall be shown clearly.
- e) All streets intended for future extension either within or beyond the boundaries of the subdivision shall clearly be indicated on the plat, by the words "subject to future extension".

**17.13.4 Detailed Engineering Plans - Final Plat**

General. All final engineering plans for public improvements, including but not limited to bridges, culverts, headwalls, endwalls, earthwork (cut or fill), grading, paving (including subgrade preparation, base and surface), sidewalks, curbs and gutters, median crossings, guardrails, street signs, storm drainage, water distribution and sewage collection systems, shall be submitted to the Town Manager for review and approval with or prior to the submittal of the final plat.

The Town Manager shall prescribe the form(s) for the plans and for other materials he may reasonably require to make his decision.

**17.14 Certificates and Endorsements on Final Plat**

**17.14.1 Certificate of Survey and Accuracy**

The final plat shall be made under the supervision of a surveyor or engineer licensed to practice in the State of North Carolina. The plat shall contain a certificate of survey and accuracy which meets the requirements for registration of Section 47-30 of the General Statutes.

**17.14.2 Certificate of Dedication and Maintenance**

The following shall be printed on the final plat over the signature of the owner(s):

"The undersigned owner hereby freely dedicates all rights-of-way, easements, streets, recreation area, open space, common area, utilities, and other improvements to public or private common use as noted on this plat, and further assumes full responsibility for the maintenance and control of said improvements until they are accepted for maintenance and control by an appropriate public body or, by an incorporated neighborhood or homeowners' association or similar legal entity."

\_\_\_\_\_ Date: \_\_\_\_\_

**17.14.3 Certificate of Improvements**

If the required improvements are completed prior to the submission of the final plat, the following certificate shall appear on the plat over the signature of the Town Manager:

"The Town Manager hereby certifies that all improvements required by the Chapel Hill Development Ordinance have been installed as specified by the approved preliminary plat for \_\_\_\_\_ Subdivision and that said improvements comply with Town specifications."

\_\_\_\_\_ Date: \_\_\_\_\_

If the required improvements are not completed prior to the submission of the final plat and their completion is not ensured by regulations applicable to developments financed by the U.S. Department of Housing and Urban Development. The following certificate shall appear on the plat over the signature of the Town Manager:

"The Town Manager hereby certifies that a surety bond of a satisfactory amount has been posted with the Town of Chapel Hill which surety guarantees that all public improvements will be completed as specified by the approved Preliminary Plat for \_\_\_\_\_ Subdivision within \_\_\_\_\_ days unless affirmatively extended by the Town Manager. Notice will be duly recorded with the Register of Deeds if and when said surety is amended or extended prior to completion of all public improvements for which it was posted."

\_\_\_\_\_ Town Manager \_\_\_\_\_ Date

**17.14.4 Town Manager Endorsement**

The plat shall show the following form for Town Manager endorsement:

Provided that this plat be recorded within 30 days of final approval; Approved by Town Manager, \_\_\_\_\_ (date)

**17.14.5 Notary Public Required**

All certification and endorsement signatures on the final plat except that of the Town Manager shall be notarized by the statement of a Notary Public entered on the final plat.

**17.15 As-Built Drawings of Improvements**

A set of reproducible construction drawings showing the as-built elevation and location of all improvements of the subdivision including all underground utilities shall be certified by a registered engineer or surveyor and submitted to the Town Manager.

When improvements are completed prior to final plat approval, the as-built drawings shall be submitted with the application for final plat approval. Where a surety bond is posted in lieu of completion of improvements, as-built drawings shall be submitted prior to release of the bond. The bond shall not be released until these plans are approved by the Town Manager.

**ARTICLE 18 - SPECIAL USE PERMITS**

**18.1 Intent**

It is the intent of this article to recognize and permit certain uses and developments that require special review, and to provide standards by which applications for permits for such uses and developments shall be evaluated.

It is further intended that Special Use Permits be required for the following types of developments:

- a) Special uses that, because of their inherent nature, extent, and external effects, require special care in the control of their location, design, and methods of operation in order to ensure protection of the public health, safety, and welfare; and
- b) Planned developments that require special review in order to provide the regulatory flexibility and performance criteria necessary to permit a creative approach to the development of land that will (i) accomplish a more desirable environment than would be possible through the strict application of the generally applicable requirements of this chapter; (ii) provide for an efficient use of land and arrangement of land uses, buildings, circulation systems, and utilities; (iii) promote an improved level of amenities; and (iv) provide an environment of stable character compatible with surrounding areas; and
- c) All uses established in conditional use districts.

**18.2 Special Use Permit Required**

A Special Use Permit may be requested for any development authorized by this Ordinance. If a Special Use Permit is requested but not required, that particular permitted use may be established only after issuance and recordation of a Special Use Permit.

Those uses described in Section 18.7 and listed in Section 12.3 as permitted special uses in a zoning district may be established in that district only after issuance and recordation of a Special Use Permit.

Those planned developments described in Section 18.8 may be established in any zoning district and only after issuance and recordation of a Special Use Permit.

Any uses in conditional use districts, as described in Section 3.1.11, shall be established only after issuance and recordation of a Special Use Permit.

**18.3 Findings of Fact**

No Special Use Permit shall be recommended by the Town Manager or Planning Board for approval and no Special Use Permit shall be approved by the Council unless each of the following findings is made concerning the proposed special use or planned development:

- a) That the use or development is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
- b) That the use or development complies with all required regulations and standards of this chapter, including all applicable provisions of Articles 12, 13, and 14 and the applicable specific standards contained in Sections 18.7 and 18.8 and with all other applicable regulations;

- c) That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity; and
- d) That the use or development conforms with the general plans for the physical development of the Town as embodied in this chapter and in the Comprehensive Plan.

In the case where a Special Use Permit is requested for a parcel of land covered by an approved and valid Master Land Use Plan (as defined in Section 19.7.1), and the proposed development is consistent with the Master Land Use Plan, then a rebuttable presumption shall be established that the Council can make findings a), c) and d) above.

## **18.4 Procedures for Approval of Special Use Permits**

### **18.4.1 Application Submittal Requirements**

Applications for Special Use Permits shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) on which applications are made. Applications shall include the name and address of the applicant, the name and address of the owner of each zoning lot involved, and the relationship of the applicant and property owner in connection with the application. If the applicant or property owner is an entity other than an individual, the application shall also include detailed information regarding the principals of the entity. The Town Manager shall prescribe any other material that may reasonably be required to determine compliance with this chapter, with sufficient copies for necessary referrals and records.

No application shall be accepted by the Town Manager unless it complies with such requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

### **18.4.2 Town Manager's Analysis**

When he accepts an application, the Town Manager shall cause representatives of the Town and such other agencies or officials as may be appropriate to determine if it conforms to the Comprehensive Plan, the provisions of this chapter, and other regulations applicable in the case, and, in the case of planned developments to define specifically the modifications of regulations which seem justified in view of the standards set out in Section 18.8.4.

### **18.4.3 Preliminary Conferences with Applicant**

The Town Manager shall notify the applicant, in writing, of the proposal's deficiencies. The Manager shall also notify the applicant of his willingness to discuss alternatives to correct those deficiencies.

If the applicant joins in such discussions, the application may be modified, further discussions may be held, or additional information may be requested by the Town Manager.

### **18.4.4 Town Manager's Report to Planning Board**

The Town Manager shall submit to the Planning Board a written analysis of the application and his recommendation based on the findings required in Section 18.3.

If the applicant does not join in preliminary conferences with the Town Manager, the Manager shall complete his report within twenty-five (25) working days after he accepts the application or within such further time consented to in writing or by the applicant or by Council resolution. If the Town Manager fails to prepare his report to the Planning Board within this time limit, or extensions thereof, the application is recommended without conditions.

If the applicant participates in preliminary conferences with the Town Manager, the Manager will prepare his report to the Planning Board when further conferences appear unnecessary. No time limits shall apply to the Manager's review when the applicant joins in preliminary conferences. However, the applicant may require the Manager to submit the application and his report to the Planning Board whenever the applicant wishes to end discussions with him.

The Town Manager shall forward his report to the Planning Board at its next available regularly scheduled meeting.

#### **18.4.5 Planning Board Review**

The Planning Board shall review the application and the Town Manager's report and shall submit to the Council a written recommendation based on the findings required in Section 18.3.

The Planning Board shall prepare its recommendations within thirty-five (35) days of the meeting at which the Town Manager's report is submitted to it or within such further time consented to in writing by the applicant or by Council resolution.

If the Planning Board fails to prepare its recommendation to the Council within this time limit, or extensions thereof, the Planning Board shall be deemed to recommend approval of the application without conditions.

The Town Manager shall then forward his report and the Planning Board's recommendation to the Council at the next available public hearing scheduled for Special Use Permit applications.

#### **18.4.6 Public Hearing**

After receiving the Town Manager's report and the Planning Board's recommendation or, if applicable, the expiration of the time limit prescribed in Subsection 18.4.5, the Council shall hold a hearing on the application at the next available regularly scheduled public hearing. The Council shall adopt a schedule of public hearings by resolution. Once the schedule is adopted, any amendment which reduces the number of hearings shall not become effective for at least 6 months after adoption of the amendment.

Notice of the date, time, and place of the public hearing shall be published in a newspaper of general circulation in the planning jurisdiction once a week for two (2) successive weeks, with the first notice to be published not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing.

The Public Hearing shall be open to the public and all interested persons shall be given the opportunity to present evidence and arguments and to ask questions of persons who testify. The Council may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses to avoid undue delay. All persons who intend to present evidence at the public hearing shall be sworn.

The applicant shall bear the burden of presenting evidence sufficient to establish persuasively that the proposed development will comply with the determinations required in Section 18.3.

A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the hearing.

**18.4.7 Town Manager's Report to Council**

After completion of the public hearing, the Town Manager and Town Attorney shall review the record of the public hearing and the Town Manager shall submit to the Council a written analysis and his recommendation for action.

The Manager shall submit his report to the Council within thirty (30) days after completion of the public hearing, or within such further time consented to by written notice from the applicant or by Council resolution.

If the Town Manager fails to submit a recommendation to the Council within this time limit, or extensions thereof, his recommendation shall be the same as his preliminary recommendation.

**18.4.8 Council Action**

The Council shall review the record of the public hearing, the Planning Board's recommendation, and the Town Manager's report and shall act on the application based on the findings required in Section 18.3. All findings shall be based on competent material and substantial evidence presented at the public hearing.

Action on the application shall be one of the following:

- a) Approval;
- b) Approval subject to conditions; or
- c) Denial.

**18.4.9 Effect of Denial or Withdrawal on Subsequent Applications**

When the Council has denied an application or the applicant has withdrawn his application by written notice after publication of the first public hearing notice required in Subsection 18.4.6, the Town Manager shall not accept another application for approval of the same or similar special use or planned development, affecting the same property or a portion thereof, until twelve (12) months have elapsed from the date of denial or withdrawal, as appropriate.

**18.4.10 Amended Applications**

The applicant shall submit an amended application for review as an original application if he proposes in the Town Manager's opinion, to substantially amend or modify his application after the Town Manager's review, but no modification(s) agreed to by the applicant as a result of requests or suggestions by the Town Manager, the Planning Board, or the Council shall require an amended or original application.

**18.4.11 Notice of Decision and Issuance of Special Use Permit**

The Town Manager shall notify the applicant of the Council's decision in writing and shall file a copy of it with the Town's Planning Department.

If the application is approved or approved with conditions, the Town Manager shall issue the necessary Special Use Permit in accord with the action of the Council. The applicant shall record such permit in the office of the appropriate County Register of Deeds.

The Special Use Permit, including all conditions attached thereto, shall run with the land and shall be binding on the original applicant as well as all successors, assigns, and heirs.

#### **18.4.12 Appeal of Decision**

The Council's decision on an application for a special use permit may be appealed to Superior Court within thirty (30) days of the decision by an action in the nature of certiorari.

#### **18.4.13 Final Plan Approval**

The Town Manager shall not issue a Zoning Compliance Permit for development approved in a Special Use Permit unless and until such Special Use Permit has been recorded and the Town Manager has approved final plans for the development as a whole, or for phases thereof deemed satisfactory in relation to total development. The Town Manager shall prescribe the form and content of such final plans.

Approval of final plans shall be based on compliance with all applicable regulations and requirements, including all conditions attached to the Special Use Permit.

#### **18.4.14 Issuance of Development Permits**

After final plan approval, the Town Manager may issue Zoning Compliance Permits, Engineering Construction Permits, Building Permits, Sign Permits, and Certificates of Occupancy for development approved in a Special Use Permit, or an approved phase thereof, in the manner prescribed in Article 19, subject to compliance with the approved final plans and following additional requirements:

- a) Prior to issuance of a Building Permit for any new structures, additions, and exterior renovations or alterations, detailed architectural elevations of such structures, additions, and renovations or alterations shall be submitted to and approved by the Community Design Commission; and
- b) Prior to issuance of any Certificate of Occupancy for development approved in a Special Use Permit, a detailed landscape plan for such development, or an approved phase thereof, shall be submitted to and approved by the Town Manager.

#### **18.5 Modifications of Special Use Permits**

The Town Manager is authorized to approve minor changes in the approved final plans as long as such changes continue to be in compliance with the approving action of the Council and all other applicable requirements, but shall not have the authority to approve changes that constitute a modification of the Special Use Permit.

Any change requiring evidentiary support in addition to that presented at a public hearing on applications for the original Special Use Permit or subsequent Modifications of Special Use Permit shall constitute a modification of the Special Use Permit. Before making a determination as to whether a proposed action is a minor change or a modification, the Town Manager shall review the record of the proceedings on the original application for the Special Use Permit and subsequent applications for modifications of Special Use Permit and shall use the following criteria in making the determination:

- a) A change in the boundaries of the site approved by the Council shall constitute a modification;
- b) A change from the use approved by the Council shall constitute a modification;
- c) An increase of five (5) percent or more in the floor area approved by the Council, unless proposed addition is 2,500 square feet of floor area or less, shall constitute a modification, whether such addition is proposed at one time or over an extended period of time.

An increase of five (5) percent or more in the number of parking spaces approved by the Council, unless the proposed addition is 10 or fewer spaces, shall constitute a modification, whether such addition is proposed at one time or over an extended period of time.

- d) Substantial changes in the location of principal and/or accessory structures approved by the Council shall constitute a modification;
- e) Structural alterations significantly affecting the basic size, form, style, ornamentation, and appearance of principal and/or accessory structures as shown on the plans approved by the Council shall constitute a modification;
- f) Substantial changes in pedestrian or vehicular access or circulation approved by the Council shall constitute a modification; and
- g) Substantial change in the amount or location of landscape screens approved by the Council shall constitute a modification.

If the proposed action is determined to be a modification, the Town Manager shall require the filing of an application for approval of the modification.

The Town Manager shall prescribe the form(s) of applications as well as any other material he may reasonably require to determine compliance with this article.

An application for Modification of a Special Use Permit shall be reviewed in accord with the procedures established in Section 18.4.

No modification shall be allowed to a special use permit issued in a conditional use zoning district unless the applicant accepts all of the requirements and conditions the Council proposes to impose on the modification. Acceptance of conditions by the applicant may be indicated at the Council hearing on the Special Use Permit Modification or by affidavit submitted prior to the Council taking action on the modification application.

## **18.6 Expiration and Revocation of Special Use Permit Approvals**

### **18.6.1 Special Use Permit Binding on Land**

A Special Use Permit or Modification of Special Use Permit shall run with the land covered by the Permit or Modification. Once construction authorized by a Special Use Permit or Modification of Special Use Permit is started, no development other than that authorized by the Permit or Modification shall be approved on that land unless the Permit or Modification is first modified in accord with Section 18.5, or voided or revoked in accord with the provisions of this section.

No Special Use Permit authorizing development of property within a conditional use district may be abandoned or revoked unless the property is first rezoned to a general use zoning district.

### **18.6.2 Starting Time Limit**

If the use, construction, or activity authorized by Council approval of an application for a Special Use Permit or Modification of Special Use Permit is not started within twenty-four (24) months of the date of approval or within such further time stipulated in the approval, the approval shall expire and any Town permit issued pursuant to the approval shall be void. The Town Manager may grant a single extension of the starting time limit for up to twelve (12) months, unless he determines that paramount considerations of health, the general welfare, or public safety require Council re-approval. In such instances the Town Manager shall require the application to be reviewed in accordance with the procedures set forth in Section 18.4. The Town Manager shall determine whether the use, construction, or activity has started.

### **18.6.3 Completion Time Limit**

If all construction and actions authorized or required by a Special Use Permit or Modification of Special Use Permit are not completed by the completion date stipulated in the Permit or Modification, the permit holder may request an extension of the completion time limit from the Town Manager. The Town Manager may grant a single extension of the time limit for up to twelve (12) months if he determines that: a) the permit holder submitted the request within sixty (60) days of the completion date; b) the permit holder has proceeded with due diligence and good faith; and c) conditions have not changed so substantially as to warrant Council reconsideration of the approved development.

If all of the construction and actions authorized or required by a Special Use Permit or Modification of Special Use Permit are still not completed by the extended completion date granted by the Town Manager, the permit holder may, within 60 days of the revised completion date, request additional extensions of the completion time limit from the Council. The Council may grant extensions of the time limit for periods of up to twelve (12) months if it makes determinations a) - c) above.

### **18.6.4 Abandonment of Special Use Permit**

On request by the holder of a Special Use Permit or Modification of Special Use Permit, Council shall approve the abandonment of the Permit or Modification if it determines that:

- a) no construction or activity authorized by the Permit has been started and the starting time limit has not yet expired; or
- b) the development or use authorized by the Permit or Modification no longer requires a Special Use Permit, and all conditions of the Special Use Permit have been satisfied.

In addition, the Council must determine that the permit holder has submitted a signed affidavit clearly stating the holder's intent to abandon the Permit or Modification.

If Council approves the abandonment, it shall not be effective until the affidavit of abandonment is recorded in the office of the appropriate County Register of Deeds.

**18.6.5 Cessation of Use**

If the use(s) authorized by a Special Use Permit or Modification of Special Use Permit ceases for a continuous period of twelve (12) months, the Permit or Modification shall automatically become void.

**18.6.6 Revocation of Special Use Permit**

If any conditions of a Special Use Permit or Modification of Special Use Permit, including completion time limits, or requirements of this chapter applicable to the Permit or Modification are violated, the Council may revoke the Permit or Modification.

The Council may reinstate a revoked Special Use Permit or Modification of Special Use Permit if it determines that: a) the holder of the revoked Permit or Modification submitted a request for reinstatement to the Town Manager within ninety (90) days of the revocation; b) the violations that were the cause of the revocation have been corrected; and c) the development fully complies with all conditions of the Permit or Modification and all applicable requirements of this chapter.

On request by the holder of a Special Use Permit or Modification of Special Use Permit, the Council may revoke the Permit or Modification if it determines that:

- a) construction authorized by the Permit or Modification has been started and the completion time limit has not yet expired; and
- b) the request is made in conjunction with an application for approval of a development other than that authorized by the Permit or Modification; and
- c) the proposed development as approved by Council incorporates adequate consideration of the site's already disturbed land area in its design and previous commitments made under the Special Use process.

**18.7 Special Uses**

Special uses may be established in accord with the procedures and general requirements set forth in Sections 18.1-18.6 above.

Except where more restrictive specific standards are required below, special uses shall comply with the intensity regulations established in Article 13 for the zoning district in which such use is located and the use group to which such use belongs, and with the design standards established in Article 14.

In addition to the general determinations required in Section 18.3 and the above requirements, the following specific supplemental standards shall be applicable for the designated special use.

**18.7.1 Permitted Modifications of Regulations**

Where actions, designs, or solutions proposed by the applicant are not literally in accord with applicable special use regulations, general regulations, or other regulations in this Ordinance, but the Council makes a finding in the particular case that public purposes are satisfied to an equivalent or greater degree, the Council may make specific modification of the regulations in the particular case for Modification of Special Use Permit applications, or in approving a new Special Use Permit for existing development that requires a Special Use Permit. Any

modification of regulations shall be explicitly indicated in the Modification of the Special Use Permit.

**18.7.2 Adult Day Care Facility**

1. The zoning lot on which an Adult Day Care Facility is located shall have access onto an arterial or collector street in R-1 and R-2 zoning districts.

**18.7.3 Cemetery**

1. A minimum gross land area of one hundred thousand (100,000) square feet shall be provided.
2. The zoning lot shall front on an arterial or collector street and have direct access thereto.
3. Adequate space for the parking and maneuvering of funeral entourages shall be provided within the site.
4. No interment shall be permitted within twenty (20) feet of any lot line.

**18.7.4 Fraternity or Sorority House**

1. A minimum of two hundred fifty (250) square feet of floor area shall be provided for each resident.
2. Reserved.

**18.7.5 Group Care Facility**

1. The zoning lot on which a group care facility is proposed shall not be located within five hundred (500) feet of a zoning lot containing another existing or approved group care facility.
2. Reserved

**18.7.6 Extraction of Earth Products**

1. An Operations Plan and a Rehabilitation Plan, containing information as required by the Town Manager, shall be submitted as part of the application for a Special Use Permit.
2. All operations associated with the extraction shall conform to the following performance standards:
  - a) Direct illumination resulting from the operation shall not fall upon any land not covered by the application;
  - b) Equivalent sound levels at the boundaries of the extraction site shall not exceed the noise standards contained in Chapter 11, Article 3 of the Town Code of Ordinances; and
  - c) Reserved.

3. The permanent roads, defined as those to be used in excess of one year, within the excavation site shall be surfaced with a dust-free material, such as soil cement, bituminous concrete, or Portland Cement concrete.
4. Roads other than permanent roads shall be treated with dust inhibitors which will reduce to a minimum the generation of dust from the road surfaces as a result of wind or vehicular action.
5. Where the proposed extraction shall take place within three hundred (300) feet of a dwelling, school, church, hospital, commercial or industrial building, public building, or public land, a security fence at least six (6) feet high shall be installed.
6. Spoil piles and other accumulations of by-products shall not be created to a height more than thirty-five (35) feet above the original contour and shall be so graded that the vertical slope shall not exceed the material's natural angle of repose.
7. The Operations Plans and the Rehabilitation Plan shall be coordinated so that the amount of disturbed land is kept to the absolute minimum consonant with good practices and so that rehabilitation proceeds in concert with extraction.

**18.7.7 Landfill**

1. An Operations Plan and a Rehabilitation Plan, containing information as required by the Town Manager, shall be submitted as part of the application for a Special Use Permit.
2. All operations associated with the landfill shall conform to the following performance standards:
  - a) Direct illumination resulting from the operation shall not fall upon any land not covered by the application;
  - b) Equivalent sound levels at the boundaries of the landfill site shall not exceed the noise standard contained in Chapter 11, Article 3 of the Town Code of Ordinances; and
  - c) Reserved.
3. The permanent roads, defined as those to be used in excess of one year, within the landfill site shall be surfaced with a dust free material, such as soil cement, bituminous concrete or Portland Cement concrete.
4. Roads other than permanent roads shall be treated with dust inhibitors which will reduce to a minimum the generation of dust from the road surfaces as a result of wind or vehicular action.
5. Where the proposed fill shall take place within three hundred (300) feet of a dwelling, school, church, hospital, commercial or industrial building, public building, or public land, a security fence at least six (6) feet high shall be installed.
6. The Operations Plan and the Rehabilitation Plan shall be coordinated so that the amount of disturbed land is kept to the absolute minimum consonant with good practices and so that rehabilitation proceeds in concert with fill.

**18.7.8 Reserved**

**18.7.9 Park/Ride Terminal**

1. The proposed facility shall be accessible by public bus transportation and bus passenger shelters shall be provided.
2. The zoning lot on which a park/ride terminal is located shall front on an arterial or collector street and have direct access thereto.

**18.7.10 Place of Assembly - Over 2,000 Seating Capacity**

1. Equivalent sound levels at the boundaries of the zoning lot shall not exceed the noise standards contained in Chapter 11, Article 3 of the Town Code of Ordinances.
2. Reserved.

**18.7.11 Reserved**

**18.7.12 Public Service Facility**

1. Adequate security of the site, by means of fencing or otherwise, shall be provided.

**18.7.13 Radio or Television Transmitting and/or Receiving Facility**

1. The zoning lot on which a radio or television transmitting and/or receiving facility is located shall have a minimum gross land area of one hundred fifty thousand (150,000) square feet.
2. Adequate security of the site, by means of fencing or otherwise, shall be provided.

**18.7.14 Reserved**

**18.7.15 Service Station**

1. The zoning lot on which a service station is located shall have a minimum gross land area of twenty thousand (20,000) square feet. If rental of trucks, trailers, etc. is proposed as an accessory use, the minimum gross land area required shall be increased by ten thousand (10,000) square feet.
2. The zoning lot shall front on an arterial or collector street and have direct access thereto.
3. Adequate provision shall be made for ventilation and the dispersion and removal of fumes, and for the removal of hazardous chemicals and fluids.
4. Driveways for a service station shall not be located within three hundred (300) feet of any intersecting street or within seven hundred fifty (750) feet of driveways intersecting the same street and serving another existing or approved service station. These distances shall be measured centerline to centerline.

**18.7.16 Reserved**

**18.7.17 Temporary Portable Building, Other Than Related to Construction**

1. Residential use of temporary buildings shall be prohibited.

2. Temporary buildings shall not be used as part of a drive-in business.
3. Temporary buildings shall be removed within a time period designated on approval, such time period not to exceed three (3) years.

**18.7.18 Window, Drive-In, as Accessory Use to Permitted Principal Use**

1. Pedestrian walkups shall be clearly separated and well-defined from service areas by curbs.
2. Reserved.

**18.7.19 Car Wash**

1. That no outdoor lighting, other than ground level lighting otherwise permitted by the Development Ordinance, be allowed to be used after 10:00 p.m. Sunday through Thursday, and after 11:00 p.m. Friday and Saturday. A lighting plan shall be approved by the Community Design Commission;
2. That the application for the Special Use Permit shall include a plan for staffing of the facility in a manner that will assure that the facility shall be well-maintained, with provisions for the regular collection of litter and debris during each day of operation, for regular care of the landscaping, for adequate protection of the equipment and structures from vandalism and for the protection of the safety of the customers.
3. That the zoning lot on which a car wash is located shall have a minimum gross land area of twenty thousand (20,000) square feet.
4. That the zoning lot shall front on an arterial or collector street and have direct access thereto.
5. That driveways for a car wash shall not be located so as to impede the safe operation of any intersection.
6. That all car washing apparatus shall be enclosed or screened from adjacent streets and properties by means of an effective screening device of a height appropriate to its screening function. Screening may be accomplished through arrangement of structures on the lot combined with appropriate screening devices which may include solid decorative brick walls, wood fences, berms, tight evergreen hedges which shall reach the necessary height within two (2) years of planting, or combination of the above.
7. That all proposals for car wash facilities shall demonstrate the provision of adequate drainage systems.
8. That no car wash shall be permitted in a Water Quality Critical Area (WQCA) District as established in Article 9 of the Ordinance.

**18.8 Planned Developments**

**18.8.1 Establishment of Planned Developments**

Planned developments may be established in any zoning district in accord with the procedures and general requirements set forth in Sections 18.1-18.6 and with the requirements contained in this section.

Planned developments shall be appropriately located with respect to intended functions, to the pattern and timing of development indicated in the Comprehensive Plan, and to public and private facilities existing or clearly to be available by the time the development reaches the stage where they will be needed.

#### **18.8.1.1 Relation to Major Transportation Facilities**

Planned developments shall be so located with respect to major street, bicycle, and pedestrian networks, or public transportation facilities, and shall be so designed, as to provide direct access to the development without creating traffic in residential neighborhoods outside the development.

#### **18.8.1.2 Relation to Public Utilities, Facilities, and Services**

Planned developments shall be so located in relation to sanitary sewers, water lines, storm and surface drainage systems, and other utilities and installations that neither extension nor enlargement of such systems will be required in manner, form, character, location, degree, scale, or timing resulting in higher net public cost or earlier incursion of public cost than would development generally permitted under existing zoning and development policies.

Such developments shall be so located with respect to necessary public facilities (as for example, schools, parks, and playgrounds in the case of Planned Development-Housing) as to have access to such facilities in the same degree as would development permitted under general regulation, and shall be located, designed, and scaled so that access for public services is equivalent to, and net cost for such services is not greater than, access and net costs for public services for development permitted under general development controls.

However, planned developments failing to meet these criteria may be approved if applicants (a) provide private facilities, utilities, and services approved by appropriate public agencies as substituting on an equivalent basis, and assure their satisfactory continuing operation, permanently or until similar public utilities, facilities, or services are available and used; or (b) make provision acceptable to the Town for offsetting any added net public cost of early commitment of public funds made necessary by such development.

In determining net public costs, the difference in anticipated public installation, operation, and maintenance costs and the difference in anticipated public revenue shall be considered. Expenses involved in making such determinations shall be paid by the applicant. Determinations shall be made by the Town or by experts acceptable to the Town.

#### **18.8.1.3 Relation to Physical Character of the Site**

The site of a planned development shall be suitable for development in the manner proposed without hazards to persons or property, on or off the tract, and shall be free from the probability of flooding, excessive erosion, subsidence or slipping of the soil, or other dangers. Condition of soil, ground water level, drainage, and topography shall all be appropriate to both the kind and pattern of use intended.

If appropriate to the form of planned development, lands to be included in planned developments may be divided by streets, alleys, rights-of-way, or easements, which shall be located, dimensioned, and arranged so as to permit unified planning and provide necessary protection against adverse relationships between uses in the development and uses in surrounding areas.

**18.8.1.4 Relation to Energy Use**

Planned developments shall be so located with respect to climatic elements, including solar access, and shall be so designed, as to provide for and promote energy conservation and efficient use of energy.

**18.8.2 Reduction or Increase in Required Land Areas**

The minimum and maximum land areas required for zoning lots containing the various classification of planned development as specified in this section, may be reduced or increased by the Council in accord with the following provisions:

1. Reductions in the minimum land area required may be approved upon findings in the particular case that special circumstances required such reduction, that other requirements can be met in such reduced area, and that such reduction shall not exceed ten percent (10%) of the area generally required.
2. Increases in the maximum land area allowed may be approved upon findings in the particular case that the proposed plan of development or the character of the property involved require such increase to meet the requirements and intent of this article or to provide necessary special protection.

In reaching decisions on requests for reduction or increase in required land areas, the Council shall be guided by the provisions of the Comprehensive Plan and the protection of the public health, safety, and general welfare of present and future occupants of the proposed planned development and the surrounding area.

**18.8.3 Reserved****18.8.4 Permitted Modifications of Regulations**

Where actions, designs, or solutions proposed by the applicant are not literally in accord with applicable planned development regulations, general regulations, or other regulations in this Ordinance, but the Council makes a finding in the particular case that public purposes are satisfied to an equivalent or greater degree, the Council may make specific modification of the regulations in the particular case, for Modification of Special Use Permit applications, or in approving a new Special Use Permit for existing development that requires a Special Use Permit. Any modifications of regulations shall be explicitly indicated in the Modification of the Special Use Permit.

**18.8.5 Relation to Subdivision Review**

It is the intent of this Section that applicable subdivision review under the subdivision regulations be carried out as an integral part of the review of a planned development. It is the further intent of this Section to permit the submittal of subdivision applications for the whole planned development or for approved phases thereof. The form and content of applications and plans submitted for such integrated review shall be sufficient to satisfy requirements of the subdivision regulations as well as those of this article.

**18.8.6 Planned Development-Housing (PD-H)**

The following regulations and requirements apply to a Planned Development-Housing (PD-H), defined for purposes of these regulations as a planned development primarily for dwellings and related uses and facilities.

**18.8.6.1 Intent**

With respect to timing of development of particular PD-H, it is intended that in addition to other policies and limitations set forth in this ordinance, consideration shall be given to general housing needs in the Town as a whole and in the sub-community in which development is proposed, and the need for particular types of housing. In such consideration, due weight shall be given to availability of existing supply of housing types for which there is evident need in view of the age characteristics and economic characteristics of the population, and to the amount and types of potential housing being developed under issued Special Use Permits and building permits.

**18.8.6.2 Minimum Land Area**

Except as provided for Subsection 18.8.2, the minimum gross land area required for a zoning lot containing a PD-H shall be five (5) acres.

**18.8.6.3 Permitted Uses**

Permitted principal and accessory uses of land or structures within a PD-H shall be as established in Section 12.3 of this chapter.

**18.8.6.4 Intensity Regulations**

Except as otherwise provided in this chapter, the intensity regulations applicable within a PD-H shall be as established in Article 13 for the zoning district in which such PD-H is located and the use group to which the principal use belongs.

The minimum street setback required for any structure, or part thereof, shall be fifty (50) feet. The minimum interior setback required for any structure, or part thereof, shall be twenty-five (25) feet.

**18.8.6.5 Design Standards**

Except as otherwise provided in this chapter, the design standards applicable within a PD-H shall be as established in Article 14, with the following additions;

- a) Where a PD-H zoning lot adjoins land that is zoned residential and developed with lots of a size which limits their use to single-family detached residences, an appropriate transition between the PD-H and the adjoining single family lots shall be provided. An appropriate transition shall consist of at least bufferyards and screening as required in Section 14.12. In a PD-H with a gross land area of twenty-five acres or more, only those land uses permitted by right in the zoning district of the PD-H zoning lot shall be permitted within one hundred (100) feet from the adjoining single-family dwelling lots.
- b) Vehicular access to streets shall be limited and controlled as follows:
  - i) if the street or portion thereof serves fifty (50) or fewer dwelling units, vehicular access from off-street parking and service areas may be directly to the street from the sites of individual dwelling units. Determination of number of dwelling units served shall be based on normal routes of traffic anticipated in the development; and

- ii) vehicular access to other streets or portions of streets from off-street parking and service areas shall be so combined, limited, located, designed, and controlled as to channel traffic from and to such areas conveniently, safely, and in a manner which minimizes marginal traffic friction and promotes free flow of traffic on streets without excessive interruption.

### **18.8.7 Planned Development-Shopping Center (PD-SC)**

The following regulations and requirements apply to a Planned Development-Shopping Center (PD-SC), defined for purposes of these regulations as a planned development for neighborhood, PD-SC(N), or community, PD-SC(C) commercial activity centers.

#### **18.8.7.1 Intent**

It is the intent of these regulations to provide for development of such commercial centers in scale with surrounding market areas, at locations in conformance with the Comprehensive Plan and Major Street Plan, and in close proximity to public transportation facilities, in accord with standards set forth herein, and to serve areas not already conveniently and adequately provided with commercial and service facilities of the kind proposed.

It is further the intent to permit the establishment of such planned developments only where planned centers with carefully related buildings, parking and service areas, and landscaped open space will serve clearly demonstrated public need, reduce marginal traffic friction below that which would result from strip commercial development, and protect property values in surrounding neighborhoods. It is further intended that a PD-SC shall provide a broad range of facilities and services appropriate to the general need of the area served to these ends:

- a) PD-SC(N): A Planned Development-Shopping Center (Neighborhood) is intended to be built around a supermarket as the major use, and to provide for the sale of convenience goods, for provision of personal services, and for other frequent needs of a trade area with a population of two thousand (2,000) to ten thousand (10,000), within approximately five (5) to ten (10) minutes driving time; and
- b) PD-SC(C): A Planned Development-Shopping Center (Community) is intended to be built around a department store or substantial variety store as the major tenant, in addition to a supermarket. Such centers normally serve a trade area population of ten thousand (10,000) to twenty-five thousand (25,000), within fifteen (15) to twenty (20) minutes' driving time.

#### **18.8.7.2 Land Area Requirements**

Except as provided for in Subsections 18.8.2, the land area requirements for a zoning lot containing a PD-SC shall be as follows:

- a) The minimum gross land area required for a zoning lot containing a PD-SC(N) shall be five (5) acres. The maximum gross land area permitted for a zoning lot containing a PD-SC(N) shall be fifteen (15) acres; and
- b) The minimum gross land area required for a zoning lot containing a PD-SC(C) shall be fifteen (15) acres. There is no maximum limitation on the gross land area permitted within a zoning lot containing a PD-SC(C).

#### **18.8.7.3 Permitted Uses**

Permitted principal and accessory uses of land or structures within a PD-SC(N) or PD-SC(C) shall be established in Section 12.3 of this chapter, provided that a PD-SC(C) contains a

sufficient range of establishments to provide for the general needs of the trade area proposed to be served.

#### **18.8.7.4 Intensity Regulations**

Except as otherwise provided in this chapter, the intensity regulations applicable within a PD-SC shall be as established in Article 13 for the zoning district in which such PD-SC is located and the use group to which the principal use belongs.

The minimum street setback required for any structure, or part thereof, shall be fifty (50) feet. The minimum interior setback required for any structure, or part thereof, shall be twenty-five (25) feet.

#### **18.8.7.5 Design Standards**

Except as otherwise provided in this chapter, the design standards applicable within a PD-SC shall be as established in Article 14 with the following additions:

- a) No PD-SC shall be created except where public transportation or direct access to an arterial street is available, or is made available, at convenient locations at the edges of or within the planned development. Such public transportation shall be at a scale and of a character suited to the needs of occupants and visitors; and
- c) Where a PD-SC adjoins any residential neighborhood, with or without an intervening street or alley, to the maximum extent reasonably practicable, nonresidential uses and signs shall be located or oriented away from the residential neighborhood.

#### **18.8.8 Planned Development-Office and Institutional (PD-01)**

The following regulations and requirements apply to a Planned Development-Office and Institutional (PD-01), defined for purposes of these regulations as a planned development for complementary groupings of office and institutional uses.

##### **18.8.8.1 Intent**

It is the intent of these regulations to provide for development of such office and institutional centers at locations in conformance with the Comprehensive Plan and the Major Street Plan, and in close proximity to public transportation facilities, in accord with standards set forth herein.

It is further intended that PD-01 development shall be scaled, balanced, and located to reduce general traffic congestion and the need for private automobiles by providing employment close to principal places of residence, convenient pedestrian and bicycle circulation systems, and public transportation facilities.

Within such developments, it is intended that uses shall be arranged horizontally or vertically so that:

- a) Major vehicular flows and other disquieting influences are so separated from residential areas as to protect privacy and tranquillity;
- b) General service uses are concentrated for maximum pedestrian convenience and located for easy accessibility by workers and visitors arriving by public transportation; and

- c) Major office and institutional uses are so located as to be convenient to public transportation.

Where such developments adjoin residential neighborhoods, it is intended that arrangements to buildings, uses, open space, and vehicular access be such as to provide appropriate transition and reduce potential adverse effects.

#### **18.8.8.2 Land Area Requirements**

Except as provided for in Subsections 18.8.2, the minimum gross land area required for a zoning lot containing a PD-0I shall be five (5) acres. There is no maximum limitation on the gross land area permitted within a zoning lot containing a PD-0I.

#### **18.8.8.3 Permitted Uses**

Permitted principal and accessory uses of land or structures within a PD-0I shall be as established in Section 12.3 of this chapter.

#### **18.8.8.4 Intensity Regulations**

Except as otherwise provided in this chapter, the intensity regulations applicable within a PD-0I shall be as established in Article 13 for the zoning district in which such PD-0I is located and the use groups to which the principal use belongs.

The minimum street setback required for any structure, or part thereof, shall be fifty (50) feet. The minimum interior setback required for any structure, or part thereof, shall be twenty-five (25) feet.

#### **18.8.8.5 Design Standards**

Except as otherwise provided in this chapter, the design standards applicable within a PD-0I shall be as established in Article 14, with the following additions:

- a) No PD-0I shall be created except where public transportation or direct access to an arterial street is available, or is made available, at convenient locations at the edges of or within the planned development. Such public transportation shall be at a scale and of a character suited to the needs of occupants and visitors; and
- b) Where a PD-0I adjoins any residential neighborhood, with or without an intervening street or alley, to the maximum extent reasonably practicable, nonresidential uses and signs shall be located or oriented away from the residential neighborhood.

#### **18.8.9 Planned Development-Mixed Use (PD-MU)**

The following regulations and requirements apply to a Planned Development-Mixed Use (PD-MU), defined for purposes of these regulations as a planned development for complementary groupings of residential, commercial, and office uses.

##### **18.8.9.1 Intent**

It is the intent of these regulations to provide for development of such mixed uses at locations appropriate in terms of the Comprehensive Plan and the Major Street Plan, and in close proximity to public transportation facilities, in accord with standards set forth herein.

It is further intended that PD-MU development shall be in complexes within which mutually supporting residential, commercial, and office uses are scaled, balanced, and located to reduce general traffic congestion and the need for private automobiles by providing housing close to principal destinations, convenient pedestrian circulation systems, and public transportation devices.

Within such developments, it is intended that uses shall be arranged horizontally or vertically so that:

- a) Residential uses are so separated from major vehicular traffic flows and other disquieting influences as to protect privacy and tranquillity:
- b) General commercial and service uses are concentrated for maximum pedestrian convenience, and located for easy accessibility by residents of the development, workers within the development, and visitors arriving public transportation, and that commercial frontage is uninterrupted by residential or office uses; and
- c) Major office uses are so located as to be convenient to public transportation.

Where such developments adjoin residential neighborhoods, it is intended that arrangement of buildings, uses, open space, and vehicular access be such as to provide appropriate transition and reduce potential adverse effects.

#### **18.8.9.2 Land Area Requirements**

Except as provided in Subsections 18.8.2, the minimum gross land area required for a zoning lot containing a PD-MU shall be five (5) acres. There is no maximum limitation on the gross land area permitted within a zoning lot containing a PD-MU.

#### **18.8.9.3 Permitted Uses**

Permitted principal and accessory uses of land or structures within a PD-MU shall be as established in Section 12.3 of this chapter.

#### **18.8.9.4 Intensity Regulations**

Except as otherwise provided in this chapter, the intensity regulations applicable within a PD-MU shall be as established in Article 13 for the zoning district in which such PD-MU is located and the use groups to which the principal uses belong.

The minimum street setback required for any structure, or part thereof, shall be fifty (50) feet. The minimum interior setback required for any structure, or part thereof, shall be twenty-five (25) feet.

#### **18.8.9.5 Design Standards**

Except as otherwise provided in this chapter, the design standards applicable within a PD-MU shall be established in Article 14, with the following additions:

- a) No PD-MU shall be created except where public transportation or direct access to an arterial street is available, or is made available, at convenient locations at the edges of or within the planned development. Such public transportation shall be at a scale and of a character suited to the needs of occupants and visitors;

- b) Where a PD-MU adjoins any residential neighborhood, with or without an intervening street or alley, to the maximum extent reasonably practicable, residential uses within the PD-MU district shall be located adjacent to the residential neighborhood, and nonresidential uses and signs shall be located or oriented away from the residential neighborhood; and
- c) Relationship of uses shall be such that major commercial and service establishments are grouped for maximum pedestrian convenience along frontages uninterrupted by residential or general office occupancies. Residential or general office uses may either be in separate areas within the development, or may be separated vertically from commercial and service concourses.

### **18.8.10 Planned Development-Industrial (PD-I)**

The following regulations and requirements apply to a Planned Development-Industrial (PD-I), defined for purposes of these regulations as a planned development for complementary groupings of industrial uses.

#### **18.8.10.1 Intent**

It is the intent of these regulations to provide development of such industrial centers at locations in conformance with the Comprehensive Plan and the Major Street Plan, and in close proximity to public transportation facilities, in accord with standards set forth herein.

It is further intended that PD-I development shall be scaled, balanced, and located to reduce general traffic congestion and the need for private automobiles by providing employment close to principal places of residence, convenient pedestrian and bicycle circulation systems, and public transportation facilities.

Within such development, it is intended that uses shall be arranged horizontally or vertically so that:

- a) Major vehicular flows and other disquieting influences are so separated from residential areas to protect privacy and tranquillity; and
- b) General industrial uses are concentrated for maximum pedestrian convenience and located for easy accessibility by workers arriving by public transportation.

Where such developments adjoin residential neighborhoods, it is intended that arrangement of buildings, uses, open space, and vehicular access be such as to provide appropriate transition and reduce potentially adverse effects.

#### **18.8.10.2 Land Area Requirements**

Except as provided for in Subsections 18.8.2, the minimum gross land area required for a zoning lot containing a PD-I shall be five (5) acres. There is no maximum limitation on the gross land area permitted within a zoning lot containing a PD-I.

#### **18.8.10.3 Permitted Uses**

Permitted principal and accessory uses of land or structures within a PD-1 shall be as established in Section 12.3 of this chapter.

#### **18.8.10.4 Intensity Regulations**

Except as otherwise provided in this chapter, the intensity regulations applicable with a PD-I shall be as established in Article 13 for the zoning district in which such PD-I is located and the use group to which the principal use belongs.

The minimum street setback required for any structure, or part thereof, shall be fifty (50) feet. The minimum interior setback required for any structure, or part thereof, shall be twenty-five (25) feet.

#### **18.8.10.5 Design Standards**

Except as otherwise provided in this chapter, the design standards applicable within a PD-I shall be established in Article 14, with the following additions:

- a) No PD-I shall be created except where public transportation or direct access to an arterial street is available, or is made available, at convenient locations at the edges of or within the planned development. Such public transportation shall be at a scale and of a character suited to the needs of workers within the development;
- b) Where a PD-I adjoins any residential neighborhood, with or without an intervening street or alley, to the maximum extent reasonably practicable, nonresidential uses and signs shall be located or oriented away from the residential neighborhood.

#### **18.9 Uses in Conditional Use Districts**

Uses may be established within conditional use districts in accord with the procedures and general requirements set forth in Sections 18.1 - 18.6 above. If the use is designated a special use in the parallel general use zoning district, the specific supplemental standards set forth in Section 18.7 for the designated special use shall be applicable.

Uses established in conditional use districts shall comply with the intensity regulations established in Article 13 for the general zoning district parallel to the conditional use district and the use group to which such use belongs, with the design standards established in Article 14, and with all other required regulations and standards of this chapter.

## ARTICLE 19- -SITE PLAN AND MASTER PLAN APPROVALS AND PERMITS

### 19.1 Zoning Compliance Permit Required

Except as otherwise specifically provided in this chapter, it shall be unlawful to begin any excavation, removal of soil, clearing of a site, or placing of any fill on lands contemplated for development, or to begin any construction, moving, alteration, or renovation, except for ordinary repairs, of any building or other structure, including accessory structures and signs, until the Town Manager has issued for such action a Zoning Compliance Permit, certifying that such development complies with the applicable provisions of this chapter.

It shall also be unlawful to change the type of use or type of occupancy of any land or structure, or to extend any use on any lot on which exists a nonconforming use, until the Town Manager has issued for such action a Zoning Compliance Permit, certifying that such intended uses comply with the applicable provisions of this chapter.

### 19.2 Site Plan Review Required

Site plan review and approval by the Council or Planning Board as appropriate, shall be required prior to issuance of a Zoning Compliance Permit for any development or change in use described in Section 19.1, with the following exceptions:

- a) Any development of a single or two-family dwelling on a zoning lot, or any uses accessory thereto;
- b) Expansion of development previously existing within a zoning lot may be reviewed and approved by the Town Manager if it would result in:
  - i) Addition of not more than fifteen (15) percent of previously existing floor area, or 2,500 square feet of floor area, whichever is greater;
  - ii) Addition of not more than fifteen (15) percent of previously existing parking spaces, or 10 parking spaces, whichever is greater; and
  - iii) An increase of not more than fifteen (15) percent in the amount of land cleared for non-agricultural development, or 10,000 square feet of new land clearing, whichever is greater.
- c) Any sign;
- d) Any development pursuant to an approved Certificate of Appropriateness or Special Use Permit including Special Use Permits which are no longer necessary and have therefore been abandoned, provided the Manager finds that no modifications are proposed to the plans and conditions in the area have not changed significantly.
- e) Any development that, in the opinion of the Town Manager, does not affect existing circulation, drainage, relationship of buildings to each other, landscaping, buffering, or lighting, provided such existing site elements comply with the applicable provisions of this chapter; or
- f) Any of the following changes in use:
  - 1) to another use in the same use group;
  - 2) from use group C to use group B and/or use group A; or

3) from use group B to use group A; provided such change does not involve development other than that exempted above.

g) Any development of a Solid Waste Management Facility on a zoning lot.”

In cases where a proposed development requiring site plan review consists of a modification, other than a change in principal use, of an existing development that was established in accord with a site plan and special use permit approved under the provisions of the previously adopted zoning ordinance but that is currently permitted under the provisions of this chapter as a principal use in the zoning district where it is located, site plan review of such development shall be conducted by the Council. The Planning Board shall conduct site plan review in all other cases requiring site plan review.

**19.3 Sign Plan Review Required**

Sign plan review and approval by the Town Manager shall be required prior to issuance of a Zoning Compliance Permit for any sign requiring such permit.

**19.4 Procedures**

**19.4.1 Application Submittal Requirements**

Applications for a Zoning Compliance Permit shall be submitted to the Town Manager.

The Town Manager shall prescribe the form(s) on which applications are made. In the case of applications involving site plan review, applications shall include the name and address of the applicant, the name and address of the owner of each zoning lot involved, and the relationship of the applicant and property owner in connection with the application. If the applicant or property owner listed on an application involving site plan review is an entity other than an individual, the application shall also include detailed information regarding the principals of the entity. The Town Manager shall prescribe any other material that may reasonably be required to determine compliance with this chapter, with sufficient copies for necessary referrals and records.

No application shall be accepted by the Town Manager unless it complies with such submittal requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

Where an Engineering Construction Permit, Building Permit, or Sign Permit is required, applications for such permits may be made coincidentally with the application for a Zoning Compliance Permit.

**19.4.2 Action on the Application**

On receipt of a complete application, the Town Manager shall cause an analysis to be made by qualified representatives of the Town and such other agencies or officials as appear appropriate in the circumstances of the case, to determine compliance with applicable provisions of this chapter and any applicable conditions of an approved Special Use Permit or Certificate of Appropriateness.

In the cases of developments exempted from site plan review or signs not requiring sign plan review, the Town Manager shall take final action on the application.

In the case of developments requiring site plan review, the Town Manager shall submit to the Council or Planning Board, as appropriate, a report of his or her analysis of the application.

The Council or Planning Board, as appropriate, shall review the application and the Town Manager's report and shall take final action on the application.

In the case of signs requiring sign plan review, the Town Manager shall take final action on the application.

Final action on an application shall be based solely on findings as to compliance with all applicable provisions of this chapter, including all applicable conditions of an approved Special Use Permit or Certificate of Appropriateness, and shall be one of the following:

- a) Approval
- b) Approval subject to conditions
- c) Denial

The Town Manager, Council, or Planning Board, as appropriate, may impose such reasonable conditions on an approval as will ensure compliance with applicable regulations.

In the case of final action by the Town Manager, such action shall be taken within fifteen (15) days of the acceptance of an application, or within such further time consented to by written notice from the applicant or by Council resolution.

In the case of final action by the Planning Board, the Town Manager shall submit to the Planning Board a written analysis of the application and his recommendation.

If the applicant does not join in preliminary conferences with the Town Manager, the report shall be prepared within twenty-five (25) working days after the application is accepted, or within such further time consented to in writing by the applicant or by Council resolution. If the Town Manager fails to prepare a report to the Planning Board within this time limit, or extensions thereof, the application is recommended without conditions.

If the applicant participates in preliminary conferences with the Town Manager, the Manager will prepare his report to the Planning Board when further conferences appear unnecessary. No time limits shall apply to the Manager's review when the applicant joins in preliminary conferences. However, the applicant may require the Manager to submit the application and his report to the Planning Board whenever the applicant wishes to end discussions with him. In such case, the Town Manager shall forward his report to the Planning Board at the next available regularly scheduled meeting.

The Planning Board shall take action within thirty-five (35) days of the meeting at which a complete application is accepted and Town Manager's report thereon is submitted to it or within such further time consented to in writing by the applicant or by Council resolution.

Failure of the Town Manager, Planning Board, as appropriate, to reach a decision within the prescribed time limit, or extensions thereof, shall result in the approval of the application as submitted.

#### **19.4.3 Performance and Maintenance Guarantees**

Conditions attached to an approval of a Zoning Compliance Permit may include the following:

- a) A condition requiring the applicant to provide performance guarantees and/or maintenance guarantees deemed necessary to ensure compliance with the requirements of this chapter and the conditions of permit approval.

- b) A condition permitting the applicant to provide performance guarantees in lieu of actual completion of required improvements prior to use or occupancy of the development authorized by the Zoning Compliance Permit, provided the delayed completion of such improvements is determined to be compatible with the public health, safety and welfare.

Such performance guarantees and maintenance guarantees shall be satisfactory as to their form and manner of execution, and as to the sufficiency of their amount in securing the satisfactory construction, installation, or maintenance of the required improvements.

The condition requiring or permitting a performance guarantee shall specify a reasonable time period within which required improvements must be completed. Such time period shall be incorporated in the performance guarantee. The length of such time period shall not exceed two (2) years from the date the Zoning Compliance Permit is issued.

No performance guarantee shall be released until certification of the satisfactory completion of all required improvements covered by such performance guarantee has been submitted to and approved by the Town Manager.

If the required improvements covered by a performance guarantee are not completed in accord with the terms of the performance guarantee, the obligor shall be liable thereon to the Town for the reasonable cost of the improvements not completed and the Town may, either prior to or after the receipt of the proceeds thereof, complete such improvements.

#### **19.4.4 Actions Subsequent to Decision**

In the case of approval or approval with conditions, the Town Manager shall issue the Zoning Compliance Permit.

In the case of denial or an application, the applicant shall be notified, in writing, of the reasons for such denial.

Where a Development Improvements Construction Permit is required by Chapter 17 of the Town Code of Ordinances, such permit shall not be issued prior to issuance of the Zoning Compliance Permit required for the development and shall comply with the approved Zoning Compliance Permit, including all conditions or approval attached thereto.

Where a Building Permit or Sign Permit is required by Chapter 5 of the Town Code of Ordinances, such permits shall not be issued prior to issuance of the Zoning Compliance Permit and Development Improvements Construction Permit required for the development and shall comply with the approved Zoning Compliance Permit and Development Improvements Construction Permit, including all conditions of approval attached thereto.

No building or structure for which a Zoning Compliance Permit has been issued shall be used or occupied until, after final inspection, a Certificate of Occupancy has been issued indicating compliance with the provisions of this chapter and all other state and local laws, including conditions of the Zoning Compliance Permit and all other required permits.

#### **19.4.5 Appeal of Decision**

A decision by the Planning Board in granting or denying site plan approval or by the Town Manager in granting or denying sign plan approval or by the Town Manager in issuing a Zoning Compliance Permit may be appealed to the Board of Adjustment in accord with the

provisions of Article 24. A decision by the Council in granting or denying site plan approval may be appealed to Superior Court within thirty (30) days of the decision.

## **19.5 Modification of Zoning Compliance Permits**

The Town Manager may approve a Modification of Zoning Compliance Permit for changes to plans approved under site plan review as long as such changes continue to comply with the approving action of the Planning Board and all other applicable requirements. The Town Manager shall not have the authority to approve a Modification for any substantial changes to plans approved under site plan review unless such changes are specifically required by a condition of approval.

If a substantial change is proposed, the Town Manager shall require the filing of an application for approval of the modification. An application for Modification of a Zoning Compliance Permit shall be reviewed in accord with the procedures established in Section 19.4.

## **19.6 Expiration and Revocation of Zoning Compliance Permit Approvals**

### **19.6.1 Starting Time Limit**

If the use, construction, or activity authorized by approval of an application for a Zoning Compliance Permit or Modification of Zoning Compliance Permit is not started within twelve (12) months of the date of approval, or within such further time stipulated in the approval, the approval shall expire and any Town permit issued pursuant to the approval shall be void. The Town Manager may grant a single extension of the starting time limit for up to twelve (12) months, unless he determines that paramount considerations of health, the general welfare, or public safety require Planning Board re-approval. The Town Manager shall determine whether the use, construction, or activity has started.

### **19.6.2 Completion Time Limit**

If all construction and actions authorized or required by a Zoning Compliance Permit or Modification of Zoning Compliance Permit are not completed by the completion date stipulated in the Permit or Modification, the permit holder may request an extension of the completion time limit from the Town Manager. The Town Manager may grant extensions of the time limit for periods of up to twelve (12) months if he determines that: a) the permit holder submitted the request within sixty (60) days of the completion date; b) the permit has proceeded with due diligence and good faith; and c) conditions have not changed so substantially as to warrant reconsideration of the approved development. The Town Manager shall determine whether or not all construction and actions authorized or required have been completed.

### **19.6.3 Revocation of Zoning Compliance Permit**

If any conditions of a Zoning Compliance Permit or Modification of Zoning Compliance Permit, including completion time limits, or requirements of this chapter applicable to the Permit or Modification are violated, the Town Manager may revoke the Permit or Modification.

The Town Manager may reinstate a revoked Zoning Compliance Permit or Modification of Zoning Compliance Permit if he determines that: a) the holder of the revoked Permit or Modification submitted a request for reinstatement within ninety (90) days of the revocation; b) the violations that were the cause of the revocation have been corrected;

and c) the development fully complies with all conditions of the Permit or Modification and all applicable requirements of this chapter.

## **19.7 Master Land Use Plan**

It is the intent that the development and approval of a Master Land Use Plan would permit greater flexibility in the design and development of tracts of land twenty (20) acres or greater in size; and therefore promote and encourage more creative and imaginative design while conserving the value of land. This process is intended to provide a procedure which can relate to type, design and layout of residential, commercial and office development to a particular site in a general way, providing the basis for subsequent, more detailed development plans and applications through the Town's Special Use Permit Process.

### **19.7.1 Master Land Use Plan Defined**

The Master Land Use Plan conveys the general intent and system of development. It is a conceptual plan that illustrates and defines land use areas for residential, office, commercial, open space and special facilities or other land uses. General circulation patterns, both vehicular and pedestrian, are identified and indicated on the conceptual plan. Master Land Use Plans may be prepared for development tracts of 20 acres or more.

### **19.7.2 Master Land Use Plan Design Criteria**

All Master Land Use Plans shall demonstrate a high quality of overall site design. The design and construction of site elements shall include appropriate consideration of the relationship and balance among site elements, the relationship of the development to natural features, neighboring developments, and access and circulation systems, retention of natural vegetation, minimal alteration of natural topography, mitigation of erosion and sedimentation, mitigation of stormwater drainage and flooding, arrangement and orientation of buildings and amenities in relation to each other and to neighboring developments and streets, landscaping, preservation or enhancement of vistas, and mitigation of traffic impacts. No Master Land Use Plan shall be approved that does not demonstrate appropriate consideration of these criteria.

Further, a plan shall not be approved unless it has demonstrated that the proposed development would:

- a) Maintain the public health, safety, and general welfare;
- b) Maintain or enhance the value of contiguous property, or be a public necessity; and
- c) Conform to the Comprehensive Plan.

### **19.7.3 Procedures for Approval of Master Land Use Plan**

#### **19.7.3.1 Application Submittal Requirements**

Applications for Master Land Use Plan approval shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) of applications as well as any other material he may reasonably require to determine compliance with this article. The applicant will be required to demonstrate that the proposed development conforms to all provisions of this chapter, and is consistent with the Town's Comprehensive Plan.

No application shall be accepted by the Town Manager unless it complies with such submittal requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

### **19.7.3.2 Action on the Application**

On receipt of a complete application, the Town Manager shall cause an analysis to be made by qualified representatives of the Town and such other agencies or officials as appear appropriate in the circumstances of the case, to determine compliance with applicable provisions of this chapter and any applicable conditions of any approved Special Use Permit or Certificate of Appropriateness.

### **19.7.3.3 Preliminary Conference with the Applicant**

The Town Manager shall notify the applicant, in writing, of any proposed Master Land Use Plan's deficiencies. The Manager shall also notify the applicant of his willingness to discuss alternatives to correct those deficiencies.

If the applicant joins in such discussions, the application may be modified, further discussions may be held, or additional information may be requested by the Town Manager.

If the applicant participates in preliminary conferences with the Town Manager, the Manager will prepare his report to the Planning Board when further conferences appear unnecessary. No time limits shall apply to the Manager's review when the applicant joins in preliminary conferences. However, the applicant may require the Manager to submit the application and his report to the Planning Board whenever the applicant wishes to end discussions with him.

If the applicant does not join in preliminary conferences with the Town Manager, the report shall be prepared within thirty-five (35) working days after the application is accepted, or within such further time extensions consented to in writing by the applicant or by Council resolution. If the Town Manager fails to prepare a report to the Planning Board within this time limit, or extensions thereof, the Manager's recommendation to the Planning Board shall be deemed to be one of approval without conditions.

### **19.7.3.4 Town Manager's Report to Planning Board and the Council**

The Town Manager shall submit to the Planning Board a written analysis of the application and his recommendation.

### **19.7.3.5 Planning Board Review**

The Planning Board shall review the application and the Town Manager's report and shall submit a written recommendation to the Council.

The Planning Board shall base its recommendation on its determination of whether or not the application conforms to all applicable provisions of this chapter, and whether or not the application is consistent with the Comprehensive Plan.

The Planning Board shall prepare its recommendations within thirty-five (35) days of the meeting at which the Town Manager's report is submitted to it or within such further time consented to in writing by the applicant or by Council resolution.

If the Planning Board fails to prepare its recommendation to the Council within this time limit, or extensions thereof, the Planning Board shall be deemed to recommend approval of the application without conditions.

If the Planning Board recommends approval of the application with conditions, the applicant may amend his application to conform to all or some of the conditions, provided the Town Manager reviews the amended application for compliance with applicable regulations and certifies that the amendments conform to the conditions of the Planning Board recommendation. In such cases, the Town Manager may amend his report to conform to any or all of the Planning Board's recommendations.

The Town Manager shall then forward his report and the Planning Board's recommendation to the Council at the next available Public Hearing scheduled for Master Land Use Plan applications.

#### **19.7.3.6 Public Hearing**

After receiving the Town Manager's report and Planning Board's recommendation or, if applicable, the expiration of the time limit prescribed in Subsection 19.7.3.5, the Council shall hold a hearing on the application at the next available regularly scheduled Public Hearing.

Notice of the date, time, and place of the Public Hearing shall be published in a newspaper of general circulation in the planning jurisdiction once a week for two (2) successive weeks, with the first notice to be published not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing.

The Public Hearing shall be open to the public and all interested persons shall be given the opportunity to present evidence and arguments and to ask questions of persons who testify. The Council may place reasonable and equitable limitations on the presentation of evidence and arguments and the cross-examination of witnesses to avoid undue delay. All persons who intend to present evidence at the Public Hearing shall be sworn.

The applicant shall bear the burden of presenting evidence sufficient to establish persuasively that the proposed development will comply with the criteria established in Subsection 19.7.2 and this Chapter.

A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the hearing.

#### **19.7.3.7 Council Action**

The Council shall act on the application after reviewing the application, the Town Manager's report, the Planning Board recommendation, and public comment thereon.

It shall base its action on its findings as to conformity with all applicable regulations of the Development Ordinance. Its action shall be one of the following:

- a) Approval, or
- b) Approval subject to conditions, or
- c) Denial.

The Council may impose reasonable conditions on its approval to ensure compliance with applicable regulations.

### **19.7.3.8 Amended Applications**

Except as permitted in subsection 19.7.3.3, the applicant shall submit an amended application for review as an original application if he proposes to substantially amend or modify his application after the Town Manager's review.

### **19.7.4 Actions After Decision**

The Town Manager shall notify the applicant of the Council's decision in writing and shall file a copy with the Town's Planning Department. If the application is approved or approved with conditions, the Town Manager shall issue the necessary Master Plan Approval in accord with the action of the Council. The applicant shall record such approval in the office of the appropriate County Register of Deeds.

The Master Land Use Plan, including all conditions attached thereto, shall run with the land and shall be binding on the original applicant as well as all successors, assigns, and heirs.

If the Master Land Use Plan is approved, or approved with conditions, the Town Manager may then accept applications for development under a Special Use Permit.

### **19.7.5 Expiration of Master Land Use Plan Approval**

If an application for development of at least one phase has not been accepted by the Town Manager within two (2) years of the date of approval of the Master Land Use Plan, the approval shall automatically expire.

After that time the applicant may resubmit the original application. The Manager may re-approve that application unless he determines that paramount considerations of health, the general welfare, or public safety require the application to be reviewed in accordance with the procedures set forth in Section 19.7.3. The Manager may re-approve the application only once, for a period of 12 months.

### **19.7.6 Minor Changes and Modifications of Master Land Use Plan**

The Town Manager is authorized to approve minor changes and changes in the ordering of phases in the approved Master Plan as long as such changes continue to be in compliance with the approving action of the Council and all other applicable requirements, but shall not have the authority to approve changes that constitute a modification of the Master Plan.

Before making a determination as to whether a proposed action is a minor change or a modification, the Town Manager shall review the record of the proceedings on the original application for the Master Land Use Plan and subsequent applications for modifications of Master Land Use Plan and shall use the following criteria in making the determination:

- a) A change in the boundaries of the site approved by the Council shall constitute a modification;
- b) A change from the use(s) approved by the Council shall constitute a modification;
- c) A substantial change in the floor area or number of parking spaces approved by the Council shall constitute a modification;
- d) Substantial changes in pedestrian or vehicular access or circulation approved by the Council shall constitute a modification; and

- e) Substantial change in the amount or location of landscaped and open areas approved by the Council shall constitute a modification.

If the proposed action is determined to be a modification, the Town Manager shall require the filing of an application for approval of the modification.

The Town Manager shall prescribe the form(s) of applications as well as any other material he may reasonably require to determine compliance with this article.

An application for Modification of a Master Land Use Plan shall be reviewed in accord with the procedures established in Section 19.7.3.

**19.7.7 Relation to Special Use Permit**

Once a Master Land Use Plan or a Modification of a Master Land Use Plan has been approved for a tract of land, no further development approval shall be granted unless it is consistent with the Master Plan.

If a Master Land Use Plan is approved for a tract of land, and an application for a Special Use Permit is subsequently received, then the Special Use Permit application must be consistent with the Master Plan. If it is consistent with the Master Plan, a rebuttable presumption shall thereby be established that the proposed development would:

- a) Maintain or promote the public health, safety, and general welfare;
- b) Maintain or enhance the value of contiguous property, or be a public necessity; and
- c) Conform to the Comprehensive Plan.

**19.7.8 Abandonment or Revocation of an Approved Master Land Use Plan**

On request by the holder of an approved Master Land Use Plan, the Council shall approve the abandonment of the Plan if it determines that no subsequent development approvals have been granted and no construction activity has taken place pursuant to the Master Plan.

On request by the holder of an approved Master Land Use Plan, the Council may revoke the Plan and any Special Use Permits approved pursuant to the Master Land Use Plan if it determines that:

- a) Construction pursuant to the Plan has started; and
- b) The request is made in conjunction with an application for approval of a development other than that authorized by the Plan; and
- c) The proposed development as approved by the Council would incorporate adequate consideration of the site's already disturbed land area in its design; and
- d) The proposed use or development conforms with the general plans for the physical development of the Town as embodied in this chapter and in the Comprehensive Plan; and
- e) Public purposes are satisfied to an equivalent or greater degree by the proposed change.

**19.7.9 Relation to Preliminary Plat Application**

An application for approval of a Master Land Use Plan may be considered simultaneously with an application for Preliminary Plat approval on the same site. If both applications are approved, any development on resulting subdivided lots must be consistent with the Master Land Use Plan.

The individual lots so created within the context of a Master Land Use Plan shall not be required to meet the lot design standards of Article 17 or the intensity ratios of Article 13, provided the zoning lot containing the Master Land Use Plan meets such standards.

**19.7.10 Additions to Master Plans**

Master Plans can be reviewed and approved for development tracts of between ten (10) and twenty (20) acres under the following conditions:

- a) Development is proposed on tracts of size between ten (10) and twenty (20) contiguous acres (may include parcels on both sides of a public street if at least five acres of the total are located on either side of the street).
- b) The proposed development tract is adjacent to, or across a public street from, a Mixed Use Development that has been approved by the Town Council in accordance with the provisions of this Article and Section 19.7.
- c) The proposed uses, circulation patterns and buffers are demonstrated to be compatible with the adjacent approved Mixed Use Development. In addition, landscape treatments and architecture shall be demonstrated to be compatible with the adjacent approved Mixed Use Development to the extent such landscape treatments and architecture have been specified in the adjacent Special Use Permit approved by the Town Council.

In such cases, application for approval of a Master Land Use Plan shall be treated as a new application, and follow the procedures outlined in this Article.

**ARTICLE 20- AMENDMENTS**

**20.1 Intent**

In order to establish and maintain sound, stable, and desirable development within the planning jurisdiction of the Town it is intended that, this chapter shall not be amended except a) to correct a manifest error in the chapter, or b) because of changed or changing conditions in a particular area or in the jurisdiction generally, or c) to achieve the purposes of the Comprehensive Plan.

It is further intended that, if amended, this chapter be amended only as reasonably necessary to the promotion of the public health safety, or general welfare, and in conformance with the Comprehensive Plan.

**20.2 Amendment Initiation**

A request to amend this chapter may be initiated by:

- a) the Council, on its own motion;
- b) the Planning Board, Board of Adjustment, Historic District Commission, or Community Design Commission, on submittal of a request to the Council;
- c) the Town Manager, on submittal of a request to the Council; or
- d) any property owner or citizen, or agent thereof, on submittal of an application to the Town Manager.

All requests and applications for amendments to this chapter shall be acted on as provided in this article.

A request for rezoning to a conditional use district may be made only by application from the owner(s) of all the property included in the area proposed to be rezoned. An application for rezoning to a conditional use district may include a request, by the property owner(s), to limit the uses allowed with approval of a Special Use Permit. An application for rezoning to a conditional use district may be accompanied by an application for a Special Use Permit, as provided in Article 18, and may be reviewed concurrently with the Special Use Permit application.

**20.3 Procedures**

**20.3.1 Council Acceptance of Requests**

On receipt of an amendment request as provided in Subsections 20.2 a) - c) above, the Council may set a date for a public hearing on the request. If the Council sets a date for a public hearing on a proposed amendment, it shall also refer the proposed amendment to the Town Manager, the Planning Board, and any other appropriate board or commission for their consideration.

**20.3.2 Application Submittal Requirements**

Applications for amendments to this chapter, as provided in Subsection 20.2 d), shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) on which applications are made. Applications shall include the name and address of the applicant, the name and address of the owner of each zoning lot involved, and the relationship of the applicant and property owner in connection with the application. If the applicant or property owner is an entity other than an individual, the application shall also include detailed information regarding the principals of the entity. The Town Manager shall prescribe any other material that may reasonably be required to determine compliance with this chapter, with sufficient copies for necessary referrals and records.

No application shall be accepted by the Town Manager unless it complies with such requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

### **20.3.3 Town Manager's Report to Planning Board**

When an amendment request is referred to the Manager or when he accepts an application for amendment, the Town Manager shall cause appropriate officials to determine if it conforms with the intent of this article and shall complete his report within fifteen (15) working days of Council's referral of an amendment request or the acceptance of an application, and shall submit his report at the next regularly scheduled meeting of the Planning Board or within such further time consented to by written notice from the applicant or by Council resolution.

If the Town Manager fails to submit a report to the Planning Board within this time limit, or extensions thereof, his recommendation shall be for approval as submitted.

The above time limits for the Town Manager's review shall not apply to applications for rezoning to a conditional use district.

### **20.3.4 Planning Board Review**

The Planning Board shall review the request or application and the Town Manager's report and recommendations, and shall submit a written recommendation to the Council.

The Planning Board shall prepare its recommendations within thirty-five (35) days of the meeting at which the Town Manager's report is submitted to the Planning Board and shall forward its recommendations to the Council at the Council's next available public hearing scheduled for amendment applications or within such further time consented to in writing by the applicant or by Council resolution.

If the Planning Board fails to complete its recommendation to the Council within this time limit, or extensions thereof, the Planning Board's recommendation shall be for approval.

### **20.3.5 Public Hearing**

After it receives the Town Manager's report and the Planning Board's recommendation or, if applicable, the expiration of the time limit prescribed in Subsection 20.3.4, the Council shall hold a hearing on the application of the next available regularly scheduled public hearing in order to receive comments, testimony, and exhibits pertaining to the application. The Council shall adopt a schedule of public hearings by resolution. After the schedule is adopted, any amendment which reduces the number of hearings shall not become effective for at least 6 months after adoption of the amendment.

Notice of the date, time, and place of the public hearing shall be published in a newspaper of general circulation in the planning jurisdiction once a week for two (2) consecutive

weeks, with the first notice to be published not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing.

### **20.3.6 Town Manager's Report to Council**

After completion of the public hearing, the Town Manager and Town Attorney shall review the record of the public hearing and the Town Manager shall prepare and submit to the Council a written report containing findings as to conformity with the intent of this article and a recommendation for action.

Such report shall be submitted to the Council within thirty (30) days after completion of the public hearing, or within such further time as may be consented to by written notice from the applicant or by Council resolution.

Failure of the Town Manager to submit a recommendation to the Council within the prescribed time limit, or extensions thereof, shall be construed as a favorable recommendation.

### **20.3.7 Council Action**

The Council shall review the application or request for amendment, the record of the public hearing, the Planning Board's recommendation and the Town Manager's report, and shall approve or deny the application or request based on its findings as to conformity with the intent of this article.

### **20.3.8 Relationship of Conditional Use District Zoning and Special Use Permit**

If the Council approves an application for rezoning to a conditional use district, but denies the accompanying application for a Special Use Permit, or if an application for a special use permit is not considered by Council, the rezoning application shall be deemed to be conditionally approved, subject to submittal and Council approval of an application for a Special Use Permit in accord with Article 18.

Failure to submit a Special Use Permit application within one year of the conditional approval of rezoning to a conditional use district or, if submitted, the withdrawal of such application without prior Council approval, shall void the conditional approval.

No use other than a use permitted by the previously-existing zoning may be made under the conditional approval of rezoning to a conditional use district.

The owner(s) of a property subject to conditional approval of rezoning to a conditional use district may, upon notice to the Council, abandon the conditional approval of the rezoning before expiration of the one-year period.

### **20.3.9 Protest Petition**

If a petition protesting a proposed amendment to the Zoning Atlas is filed, such amendment shall not become effective except by favorable vote of not less than seven (7) members of the Council. In order to be valid for the above purpose, a protest petition must:

- a) be signed by the owners of twenty percent (20%) or more of the land area contained in either i) the lots included in the area proposed for rezoning, or ii) the lots within one hundred (100) feet of either side or the rear of the area proposed for rezoning, or iii) the lots directly opposite the area proposed for rezoning and the lots within one hundred (100) feet from the street frontage of such opposite lots;

- b) be in the form of a written petition actually bearing the signatures of the requisite number of property owners and stating that the signers do protest the proposed amendment;
- c) be received by the Town Clerk at least two (2) normal work days prior to the date established for the public hearing on the proposed amendment; and
- d) be on a form prescribed and provided by the Town Clerk and contain all the information requested on the form.

**20.3.10 Effect of Denial or Withdrawal on Subsequent Applications**

When the Council shall have denied an application for amendment or the application shall have been withdrawn, by written notice, after publication of the first public hearing notice required in Subsection 20.3.5, the Town Manager shall not accept another application for the same or similar amendment affecting the same property or a portion thereof, until the expiration of a twelve (12) month period extending from the date of denial or withdrawal, as appropriate.

**20.3.11 Amended Applications**

If the applicant proposes any substantial changes to the application subsequent to acceptance of the application, an amended application shall be submitted and reviewed as an original application.

**20.3.12 Actions Subsequent to Decision**

The Town Manager shall cause notice of the disposition of the application to be sent to the applicant and shall cause a copy of the decision to be filed in the office of the Planning Department.

In the case of approval, any necessary changes to the official Zoning Atlas shall be entered in accord with the provisions of Article 3.

**20.4 Site Specific Development Plan**

In accordance with North Carolina General Statutes, approval of a Special Use Permit shall constitute approval of a Site Specific Development Plan. Such approval shall establish a vested property right within the meaning of North Carolina General Statute 160a.385.1 that expires two years after the date of the Council approval if no building permit application has been filed. Such vested right shall only preclude subsequent Ordinance changes affecting the type and intensity of development on the property for which the right has vested.

**ARTICLE 21 – RESERVED**

**ARTICLE 22 - NONCONFORMITIES**

**22.1 Intent**

It is the intent of this Article to minimize the impact of changed regulations on structures that existed (or for which a vested right had been established) as of the effective date of the changed regulations.

**22.2 Nonconforming Lots**

**22.2.1 Definition**

A nonconforming lot is a lot that was lawfully created prior to the effective date of this chapter or a subsequent amendment thereto, but does not conform to the minimum gross land area or minimum lot width requirements established in Article 13 for the zoning district in which it is located.

**22.2.2 Required Combination or Recombination of Nonconforming Lots**

Where a nonconforming lot abuts another lot of record (whether conforming or nonconforming) held in the same ownership at or subsequent to enactment of this chapter, such lots shall be combined or recombined as necessary to form a conforming lot or lots and shall not thereafter be subdivided except in compliance with all of the requirements of this chapter.

Where a nonconforming lot was created by public taking action or as a result of a court order, the above combination or recombination of lots shall not be required.

**22.2.3 Use of Nonconforming Lots**

Where a nonconforming lot cannot be combined or recombined with other lots to form a conforming lot or lots, such nonconforming lot may be used subject to the compliance of the intended use and structure(s) with applicable use regulations and with applicable LUI ratios and setback and height regulations. However, any use (e.g. two-family or multi-family dwelling) that requires a greater gross land area than the minimum gross land area listed in Section 13.3 for the appropriate zoning district shall not be permitted on a lot which does not conform to such minimum gross land area requirement.

If compliance of the structure(s) intended on the nonconforming lot with applicable setback regulations is not reasonably possible, the nonconforming lot may be used as a building site subject to the granting of variance from such setback regulations by the Board of Adjustment in accord with the provisions of Article 24.

**22.3 Nonconforming Uses**

**22.3.1 Definition**

A nonconforming use is a use of land, buildings, or structures that was lawfully established (or for which a vested right had been established) on a property prior to the effective date of current use regulations, but does not conform to the Use Regulations of Article 12 for the zoning district in which it is located.

**22.3.2 Regulations**

Two-family duplex dwelling units existing or for which a vested right had been established as of October 21, 2002 may be continued as a use without limitation and shall not be considered as a nonconforming use as defined herein. Nonconforming uses, other than two-family duplex dwelling units, may be continued subject to the following limitations:

- a) No nonconforming use shall be extended, expanded, enlarged, or moved to occupy a different or greater area of land, buildings, or structures than was occupied by such use at the time it became nonconforming, provided that a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming.
- b) No building or structure devoted to a nonconforming use shall be enlarged, extended, or moved unless such building or structure is thereafter devoted to a conforming use.
- c) If a nonconforming use ceases for more than ninety (90) consecutive days or a total of one hundred and eighty (180) days in any twelve (12) month period, subsequent use of the land, or structures previously devoted to such use shall thereafter be devoted to conforming uses.

**22.4 Nonconforming Features**

**22.4.1 Definition**

A nonconforming feature is a physical feature or characteristic of a use, building, structure or other development of land that was lawfully established (or for which a vested right had been established) prior to the effective date of this chapter or a subsequent amendment thereto, but does not conform to the Intensity Regulations of Article 13 or the Design Standards of Article 14 applicable to such use, building, structure, or development of land. Nonconforming features include, but are not limited to, physical features and characteristics of development that exceed allowable maximum standards (floor area, height), and those that lack or fall short of required minimum standards (outdoor space, livability space, recreation space, setback, building spacing, access and circulation arrangement and design, sight line triangle, off-street parking and loading spaces and design, water supply and sewage disposal arrangement and design, utility design, refuse storage and collection facilities and design, buffer width and landscaping design, screening height and design, landscaping maintenance, outdoor lighting design).

**22.4.2 Regulations**

Nonconforming features may be continued subject to the following limitations:

- a) No action shall be taken which increases the degree or extent of the nonconforming feature. Any enlargement, extension or structural alteration shall conform to all current requirements of this article.
- b) For development existing (or for which a vested right had been established) prior to the effective date of current regulations, nonconforming features created by a change in regulations may continue to exist, and structures with such nonconforming features may be reconstructed if demolished or destroyed.

**22.4.3 Discontinuance**

Any sign having a nonconforming feature shall be either eliminated or made to conform with the provisions of this chapter when any substantial alteration to the sign is proposed.

**22.5 Nonconforming Signs****22.5.1 Definition**

A nonconforming sign is a sign that was lawfully established prior to the effective date of this chapter or a subsequent amendment thereto, but does not conform to the Design Standards of Article 14 applicable to such sign.

**22.5.2 Regulations**

Nonconforming signs may be continued subject to the following limitations:

- a. No nonconforming sign, including its permanent message or its structure, shall be extended, enlarged, moved, or otherwise altered unless such sign is made to conform to the current regulations of this chapter.
- b. When a nonconforming sign is demolished or damaged to the extent where more than fifty percent (50%) of its display area requires replacement, such sign shall be eliminated or made to conform to the current regulations of this chapter.
- c. When the repair, maintenance, or replacement cost of a nonconforming sign exceeds five hundred dollars (\$500), such sign shall be eliminated or made to conform to the current regulations of this chapter.

**22.5.3 Amortization of Nonconforming Signs**

Any nonconforming sign shall be either eliminated or made to conform to current regulations of this chapter in accord with the following schedule:

- a. Any nonconforming sign that does not conform to the requirements of Subsection 14.13.5, Traffic Safety Precautions, shall be either eliminated or made to conform to the current regulations of this chapter within ninety (90) days after the date of the notice of nonconformity required in Section 22.8.
- b. Any nonconforming sign that is exempt from regulation under Subsection 14.3.4, but that does not conform to the temporary sign limitations in Subsection 14.13.4(f) - (k), shall be either eliminated or made to conform to the current regulations of this chapter within ninety (90) days after the date of the notice of nonconformity required in Section 22.8.
- c. Any nonconforming sign other than those to which a. or b. above applies shall be either eliminated or made to conform to the current regulations of this chapter within three (3) years after the date of the notice of nonconformity required in Section 22.8.

**22.6 Nonconforming Parking areas in Front Yards**

Within designated Historic Districts any nonconforming parking area in a front yard shall either be eliminated or made to conform to current regulations of this chapter within six (6) months after the date of notice of nonconformity.

ARTICLE 23 - ENFORCEMENT

**23.1 Violations**

Whenever, by the provisions of this ordinance, the performance of any act is required, or the performance of any act is prohibited, or whenever any regulation or limitation is imposed on the use of any land, or on the erection, alteration, or the use or change of use of a structure, a failure to comply with such provisions shall constitute a violation of this chapter.

**23.2 Liability**

The owner, tenant, or occupant of any land or structure, or part thereof, and any architect, engineer, builder, contractor, agent, or other person who participates in, assists, directs, creates, or maintains any situation that is contrary to the requirements of this chapter may be held responsible for the violation and be subject to the penalties and remedies provided herein.

**23.3 Procedures Upon Discovery of Violations**

Upon the determination that any provision of this chapter is being violated, the Town Manager shall deliver a written notice by personal service or by registered or certified mail, return receipt requested, to the person(s) responsible for such violation, indicating the nature of the violation and ordering the action necessary to correct it. Additional written notices may be sent at the Town Manager's discretion.

The final written notice, which may also be the initial notice, shall state the action the Town Manager intends to take if the violation is not corrected, and shall advise that the Town Manager's order may be appealed to the Board of Adjustment as provided in Article 24.

In cases when delay would seriously threaten the effective enforcement of this chapter, or pose a danger to the public health, safety, or general welfare, the Town Manager may seek enforcement without prior written notice by invoking any of the penalties or remedies contained in Section 23.4.

**23.4 Penalties and Remedies**

Any violation of any provision of any Article of the Chapel Hill Development Ordinance shall constitute a misdemeanor and shall subject the violator to a penalty of five hundred dollars (\$500.00) or imprisonment for not more than 30 days.

Any act constituting a violation of this chapter shall also subject the offender to a civil penalty of twenty-five dollars (\$25.00). If the offender fails to pay the penalty within ten (10) days of receiving final written notice of a violation, the penalty may be recovered by the Town in a civil action in the nature of a debt. A civil penalty may not be appealed to the Board of Adjustment if the offender received a final written notice of violation and did not appeal to the Board of Adjustment within the time limit prescribed in Article 24.

Each day that any violation continues after receipt of the final written notice of such violation shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.

In addition to the penalties and remedies above, the Town Manager may institute any appropriate action or proceedings to prevent, restrain, correct, or abate a violation of this chapter.

## ARTICLE 24 - INTERPRETATIONS, APPEALS, AND VARIANCES

### 24.1 Interpretations

Where there is any uncertainty as to the intent or actual meaning of any provision of this chapter, or as to the intended location of any zoning district boundary shown on the Zoning Atlas, the Town Manager shall make an interpretation of said provision or boundary on request of any person. Any person aggrieved by such interpretation may appeal the interpretation to the Board of Adjustment in accord with the provisions of Section 24.2.

In making an interpretation of any zoning district boundary, or in deciding any appeal thereof, the Town Manager or Board of Adjustment shall apply the following standards:

- a) Boundaries indicated as approximately following the centerlines of streets, highways, or alleys shall be construed as following such centerlines;
- b) Boundaries indicated as approximately following lot lines shall be construed as following such lot lines;
- c) Boundaries indicated as approximately following corporate limits shall be construed as following such limits;
- d) Boundaries indicated as approximately following railroad lines shall be construed to be midway between the main tracks;
- e) Boundaries indicated as approximately following the shorelines or centerlines of streams, rivers, lakes, or other bodies of water shall be construed as following such shorelines or centerlines; in the event of change in the shoreline or centerline, the boundary shall be construed as moving with the actual shoreline or centerline;
- f) Boundaries indicated as approximately following designated limits of areas of special flood hazard shall be construed as following such limits, as shown on the official Base Floodway and Floodplain Boundary Maps and Base Flood Profiles;
- g) Boundaries indicated as approximately parallel to, or as extensions of, features described in a) through f) above shall be so construed; distances not specifically indicated on the Zoning Atlas shall be determined by reference to the scale of the Atlas;
- h) Where features described in a) through f) above, as existing on the ground, are at variance with those indicated on the Zoning Atlas, or in other circumstances not covered by a) through g) above, the Board of Adjustment shall interpret the district boundaries.

### 24.2 Appeals

#### 24.2.1 Applicability

Any decision of the Town Manager made in the administration of the provisions of this chapter may be appealed to the Board of Adjustment by any person aggrieved by such decision. Any decision of the Planning Board in granting or denying site plan approval may be appealed to the Board of Adjustment de novo. Any decision of the Historic District Commission in granting or denying a Certificate of Appropriateness may be appealed to the Board of Adjustment in the nature of certiorari. Any decision of the Community Design

Commission in granting or denying a Certificate of Appropriateness may be appealed to the Board of Adjustment de novo.

An application for appeal shall be filed within thirty (30) days of the filing of the decision being appealed or the delivery of any required written notice of the decision, whichever is later.

#### **24.2.2 Stay of Further Action**

An appeal to the Board of Adjustment stays all actions seeking enforcement of, or compliance with, the decision being appealed, except where the Town Manager certifies to the Board of Adjustment that, based on findings stated in the certificate, a stay would cause imminent peril to life or property, or that because the situation appealed from is transitory in nature, an appeal would seriously interfere with enforcement of this chapter.

### **24.3 Variances**

#### **24.3.1 Variances From Dimensional Regulations**

A variance from the dimensional regulations of this chapter may be granted by the Board of Adjustment if it finds that strict enforcement of the regulations would result in practical difficulties or unnecessary hardships to the applicant for the variance, and that, by granting the variance, the intent of this chapter and the Comprehensive Plan will be observed, public safety and welfare secured, and substantial justice done. Such findings shall be based on the following determinations:

- a) That strict compliance with the regulations allows no reasonable use of the applicant's property;
- b) That the hardship complained of is one suffered by the applicant rather than by neighbors or the general public;
- c) That the hardship relates to the applicant's property rather than to personal circumstances;
- d) That the hardship is peculiar to the applicant's property, rather than a hardship shared by the neighborhood or resulting from the existence of nonconforming situations in the vicinity;
- e) That the hardship is not the result of the applicant's own actions;
- f) That the variance will not substantially interfere with or injure the rights of others whose property would be affected by granting of the variance; and
- g) That the variance will not result in a violation of the provisions of Article 22 by allowing the enlargement, expansion, extension, or the greater permanence or intensity of a nonconforming use or feature.

#### **24.3.2 Reserved**

### **24.4 Procedures for Appeals and Variances**

#### **24.4.1 Application Submittal Requirements**

Applications for appeal or for a variance shall be filed with the Town Manager.

The Town Manager shall prescribe the form(s) on which applications are made, as well as any other material which may reasonably be required to make the determinations called for in the particular case, with sufficient copies for necessary referrals and records.

No applications shall be accepted by the Town Manager unless it complies with such requirements. Applications which are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

On receipt of a complete application, the Town Manager shall transmit the application to the Board of Adjustment. In the case of applications for appeal, the Town Manager shall also transmit to the Board all documents constituting the record on which the decision being appealed was based.

#### **24.4.2 Public Hearing**

After its receipt of an application for appeal or for a variance, the Board of Adjustment shall hold a public hearing on the application at its next available regularly scheduled meeting.

Notice of the date, time, and place of the public hearing shall be published in a newspaper of general circulation in the planning jurisdiction once a week for two (2) successive weeks, with the first notice to be published not less than ten (10) nor more than twenty-five (25) days prior to the date of the hearing.

The public hearing shall be open to the public and all interested persons shall be given the opportunity to present evidence and arguments and to ask questions of persons who testify. The Board may place reasonable and equitable time limitations on the presentation of evidence and arguments and the cross examination of witnesses so that the application may be heard without undue delay. All persons who intend to present evidence at the public hearing shall be sworn.

In the case of applications for a variance, the applicant shall bear the burden of presenting evidence sufficient to establish conclusively that the requested variance will comply with each of the determinations required in Section 24.3.1.

A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the hearing.

#### **24.4.3 Action on the Application**

After completion of the public hearing, the Board of Adjustment shall take action on the application.

In the case of applications for appeal, such action shall be to reverse, or affirm (wholly or partly), or modify the decision being appealed.

In the case of applications for a variance, such action shall be based on findings as to each of the determinations required in Section 24.3, and shall be approval, or approval subject to conditions, or denial. The Board may impose reasonable conditions on the granting of any variance to ensure that the public health, safety, and general welfare shall be protected and substantial justice done. In its consideration of applications for a variance, the Board shall not use the existence of nonconformities in the vicinity as justification for the granting of variances.

In every case, the record of the action of the Board shall include a summary of its findings and the evidence supporting them.

**24.4.4 Actions Subsequent to Decision**

The Town Manager shall notify the applicant of the Board's decision in writing and shall file a copy of it with the Town's Planning Department.

If a variance is granted, the Town Manager shall issue a variance permit stating the nature of the variance and any conditions attached thereto. The applicant shall record the permit in the office of the appropriate County Register of Deeds.

**24.4.5 Appeal of Decision**

A decision on the Board of Adjustment on an application for appeal or for a variance may be appealed to the Superior Court by an aggrieved party. Such appeal shall be in the nature of certiorari and must be filed within thirty (30) days of the filing of the decision in the office of the Planning Department or the delivery of the notice required in Subsection 24.4.4, whichever is later.

**ARTICLE 25 - ADMINISTRATIVE MECHANISMS**

**25.1 Council**

In considering proposed amendments to the text of this chapter or to the Zoning Atlas, the Council acts in its legislative capacity and shall observe the procedural requirements set forth in Article 20 of this chapter.

In considering Special Use Permit applications, the Council acts in a quasi-judicial capacity and, accordingly, shall observe the procedural requirements set forth in Article 18 of this chapter.

In considering site plan review applications, the Council acts in an administrative capacity and, accordingly, shall observe the procedural requirements set forth in Article 19 of this chapter.

Unless otherwise specifically provided in this chapter, the Council, in acting upon Special Use Permit and site plan review applications or in considering amendments to this chapter or the Zoning Atlas, shall observe the quorum, voting, and other requirements set forth in Chapter 2 of the Town Code of Ordinances.

**25.2 Planning Board**

**25.2.1 Establishment of the Board; Qualifications**

A Planning Board, consisting of ten (10) members, is hereby established. Seven (7) members, appointed by the Council, shall reside within the corporate limits of Chapel Hill. Two (2) members shall reside within the Town's extraterritorial planning jurisdiction, and shall be appointed by the Orange County Board of Commissioners. One (1) member shall reside within the Town's Joint Planning Transition Area, and shall be appointed by the Orange County Board of Commissioners. Members shall serve without compensation, but may be reimbursed for actual expenses incidental to the performance of their duties within the limit of funds available to the Board.

**25.2.2 Tenure**

Members of the Board shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.

**25.2.3 Officers**

The Board shall elect one member to serve as Chairman and preside over its meetings, and shall create and fill such offices and committees as it may deem necessary. The term of the Chairman and other offices shall be one year, with eligibility for reelection to a second term.

**25.2.4 Powers of the Board**

The Planning Board shall have the following powers and duties:

1. To develop a Comprehensive Plan for the orderly growth and development of Chapel Hill and its environs. Such plan shall set forth goals, objectives, and policies

designed to manage the quantity, type, cost, location, timing, and quality of development and redevelopment in the Chapel Hill community.

2. To seek to coordinate the activities of individuals and public or private agencies and organizations whose plans, activities, and programs bear on the general development of the community.
3. To undertake, on its own or in collaboration with any other board, commission, agency, society, or organization, any programs of information, research, or analysis relating to any matters under its purview;
4. To cooperate with other commissions, boards, or agencies of the Town or other governmental unit in offering or requesting assistance, guidance, or advice concerning matters under the Board's purview or of mutual interest;
5. To make studies of the general development characteristics and problems of the community, including surveys and inventories of an appropriate nature, and to recommend standards and policies of development for the entire community or any portion or neighborhood thereof, or any project to be undertaken therein;
6. To request from the proper officials of any public agency or body its plans for public buildings, facilities, or projects to be located within the Town's jurisdiction, and to review such plans as to conformity with the Comprehensive Plan to make recommendations regarding such plans to the appropriate agency or body, or to the Council. The Board shall review all such plans in a prompt and expeditious manner, and shall make all recommendations with regard to any public project in writing, and shall promptly transmit copies of the recommendation to the appropriate agency or body, and to the Council;
7. To formulate and recommend to the Council the adoption or amendment of ordinances that, in the opinion of the Board will serve to promote the orderly development of the community in accord with the Comprehensive Plan;
8. To direct the attention of appropriate Town officials to needed enforcement of any ordinance that may affect the general development of the community;
9. To enter, at reasonable times, upon private lands and make examinations or surveys as necessary for the performance of its official duties;
10. To promote public interest in an understanding of its recommendations, studies, and plans, and to prepare, publish, and distribute to the public such studies and reports that, in the opinion of the Board, will promote the orderly development of the community in accord with the Comprehensive Plan;
11. To request the Council to hold public hearings on matters within the purview of the Board;
12. To conduct public meetings and hearings, giving reasonable notice to the public thereof;
13. To review and make recommendations to the Council on proposed plats of land subdivision, applications for Special Use Permits, and proposed amendments to development ordinances.

14. To review site plans for conformity with land development regulations, in accord with Article 19 of this chapter;
15. To recommend to the Council suitable arrangement for the procurement or provision of staff or technical services for the Board;
16. To establish an advisory council or other committees within its membership as it may deem necessary; and
17. To accept funds from private agencies, foundations, organizations, individuals, the State or federal government, or any other source, and to disburse such funds for any purpose within the scope of its authority.
18. To exercise such other powers and to perform such other duties as are authorized or required elsewhere in this chapter, the N.C. General Statutes, or by the Council.

#### **25.2.5 Meetings**

The Board shall establish a regular meeting schedule, and shall meet at least monthly and more often as it shall determine and require.

All meetings of the Board shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public, in accord with Chapter 143, Article 33C of the N.C. General Statutes.

The Board shall keep a record of its meetings, including attendance of its members, its resolutions, findings, recommendations, and actions. In the case of a divided vote on any question on which the Board is required to act, the record shall include the vote of each member.

#### **25.2.6 Attendance at Meetings**

Any member of the Board who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the Board, and shall be replaced or re-appointed by the Council or Orange County Commissioners, as appropriate. Absence due to a sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

#### **25.2.7 Quorum and Voting**

A quorum of the Board, necessary to take any official action, shall consist of five (5) members.

The concurring vote of a simple majority of those members present shall be necessary to take any official action.

#### **25.2.8 Annual Report and Meeting with the Council**

The Board shall jointly meet with the Council by January 31 of each year. An annual report shall be prepared and submitted to the Council at this annual meeting. Such report shall include a report of the Board's activities and a statement of its expenditures.

**25.2.9 Comprehensive Review of Chapter**

The Planning Board shall from time to time, at intervals of not more than three (3) years, examine the provisions of this chapter and the location of zoning district boundary lines, and shall submit a report to the Council recommending amendments, if any, which are desirable in the interest of public health, safety, and general welfare, mindful of the intent expressed in Section 20.1 of this chapter.

**25.3 Board of Adjustment**

**25.3.1 Establishment of the Board; Qualifications**

A Board of Adjustment, consisting of ten (10) members, is hereby established. Eight (8) members, appointed by the Council, shall reside within the corporate limits of Chapel Hill. One (1) member, appointed by the Orange County Board of Commissioners, shall reside with the Town's extraterritorial zoning jurisdiction. One (1) member, appointed by the Orange County Board of Commissioners, shall reside within the Joint Planning Transition Area. There shall be three (3) alternate members. Two (2) alternate members, appointed by the Council, shall reside within the corporate limits of Chapel Hill. One (1) alternate member, appointed by the Orange County Board of Commissioners, shall reside within the Town's extraterritorial zoning jurisdiction or the Joint Planning Transition Area. Each alternate member shall sit as regular members on any matter arising from their respective extraterritorial or transition areas, and may sit as regular members on any matter in the absence of a regular member. The Council may provide for the appointment of such additional number of alternate members as it may in its discretion deem appropriate. Members shall serve without compensation.

The Council or County Board of Commissioners, as appropriate, may appoint alternate members to serve on the Board in the absence of any appointed members. Alternate members shall be appointed for the same term, at the same time, and in the same manner as regular members. Each alternate member, while attending any regular or special meeting of the Board and serving in the absence of any regular member, shall have and may exercise all the powers and duties of a regular member.

**25.3.2 Tenure**

Members of the Board shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.

**25.3.3 Officers**

The Board shall elect one member to serve as Chairman and preside over its meetings, and shall create and fill such offices and committees as it may deem necessary. The term of the Chairman and other offices shall be one year, with eligibility for reelection to a second term. The Chairman or any member temporarily acting as Chairman is authorized to administer oaths to any witnesses in any matter coming before the Board.

**25.3.4 Powers of the Board**

The Board of Adjustment shall have the following powers:

- 1. To hear and decide appeals from any decision or determination made by the Town Manager in the performance of his or her duties in the enforcement of this chapter:

2. To hear and decide appeals from any decision of the Council or Planning Board in granting or denying site plan approval or of the Historic District Commission or Community Design Commission in granting or denying a Certificate of Appropriateness;
3. To hear and decide requests for variances from the dimensional regulations of this chapter, in accord with Article 24 of this chapter;
4. To make interpretations of the Zoning Atlas, including disputed questions zoning district boundary lines or lot lines, and similar questions as they arise in the administration of this chapter;
5. To enter, at reasonable times, upon private lands and make examinations or surveys as necessary for the performance of its official duties;
6. To request the Council to hold public hearings on matters within the purview of the Board; and
7. To hear and decide any other matter as required by the provisions of this chapter and Article IV, Chapter 5 of the Town Code of Ordinances.

### **25.3.5 Meetings**

The Board shall establish a regular meeting schedule and shall meet frequently enough so that it may take action as expeditiously as reasonably possible.

All meetings of the Board shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public in accord with Chapter 143, Article 33C of the N.C. General Statutes.

The Board shall adopt rules of procedure and regulations for the conduct of its affairs.

In considering appeals, variance requests, and interpretations, the Board shall observe the quasi-judicial procedural requirements set forth in Article 24 of this chapter.

The Board shall keep a record of its meetings, including attendance of its members, the vote of each member on every question, a complete summary of the evidence submitted to it, documents submitted to it, and all official actions.

### **25.3.6 Attendance at Meetings**

Any member of the Board who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the Board, and shall be replaced or reappointed by the Council or County Board of Commissioners, as appropriate. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Board, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

### **25.3.7 Quorum and Voting**

A quorum of the Board, necessary to take any official action, shall consist of six (6) members.

The concurring vote of four-fifths (4/5) of the membership of the Board shall be necessary in order to:

- a) approve an application for a variance;
- b) reverse or modify a decision of the Town Manager, Planning Board, Historic District Commission, or Community Design Commission in the case of applications for appeal; or
- c) decide in favor of the applicant in any other matter on which the Board is required to act by this chapter.

The concurring vote of a majority of those members present shall be necessary to conduct routine business of the Board, to deny applications for variances, and, in the case of appeals, to affirm the decision of the Town Manager, Planning Board, Historic District Commission, or Community Design Commission.

**25.3.8 Appeals of Board of Adjustment Actions**

Every decision of the Board of Adjustment may be appealed to the Superior Court by any aggrieved party. Such appeal shall be in the nature of certiorari and must be filed within thirty (30) days of the filing of the decision in the office of the Planning Department or the delivery of the notice required in Subsection 24.4.4, whichever is later.

**25.4 Historic District Commission**

**25.4.1 Establishment of the Commission**

A Historic District Commission, consisting of ten (10) members appointed by the Council, is hereby established.

**25.4.2 Qualifications**

All members of the Commission shall reside within the planning jurisdiction of Chapel Hill, and a majority of the members shall have demonstrated special interest, experience, or education in history or architecture. Members shall serve without compensation.

**25.4.3 Tenure**

Members of the Commission shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.

**25.4.4.1 Officers**

The Commission shall elect one member to serve as Chairman and preside over its meetings, and shall create and fill such offices and committees as it may deem necessary. The term of the Chairman and other officers shall be one year, with eligibility for re-election to a second term.

**25.4.5 General Responsibilities of the Commission**

The Commission shall seek to promote, enhance, and preserve the character of the Chapel Hill Historic District, provided the Commission shall not require the reconstruction

or restoration of individual or original buildings, structures, or portions thereof. In considering new construction, the Commission shall encourage design which is harmonious with the character of the Historic District, but shall not discourage either contemporary or traditional design.

#### **25.4.6 Powers of the Commission**

The Commission is authorized and empowered to undertake actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this chapter and in Chapter 160A, Article 19, Part 3A of the N.C. General Statutes, including but not limited to the following:

1. To recommend to the Planning Board and Council areas for designation by ordinance as Historic Districts;
2. To recommend to the Planning Board and Council that designation of any areas as a Historic District be revoked or removed;
3. To recommend to the Planning Board, Council, and the State of North Carolina structures, sites, objects, or districts worthy of local, state, or national historical recognition;
4. To propose to the Council amendments to this chapter or to any other ordinance relating to the Historic District, and to propose new ordinances or laws relating to the Historic District or to a program for the development of the historical resources of the Chapel Hill community;
5. To request the Council to hold public hearings on matters within the purview of the Commission;
6. To hear and decide applications for Certificates of Appropriateness in accord with Article 6 of this chapter;
7. To establish guidelines under which the Town Manager or the Manager's designees shall approve applications for Certificates of Appropriateness covering minor modifications on behalf of the Commission;
8. To undertake, on its own or in collaboration with any other commission, board, agency, society, or organization, any programs of information, research, or analysis relating to any matters under its purview;
9. To cooperate with other commissions, boards, or agencies of the Town or other governmental unit in offering or requesting assistance, guidance, or advice concerning matters under the Commission's purview or of mutual interest;
10. To participate in negotiations with owners and other parties in an effort to find means of preserving historic buildings scheduled for demolition;
11. To provide advice to owners of property located within the Historic District concerning the treatment of the historical and visual characteristics of their properties, such as color schemes, gardens and landscape features, and minor decorative elements;
12. To publish information or otherwise inform owners of property located within the Historic District about any matters pertinent to the Commission's duties, organization, procedures, responsibilities, functions, or requirements;

13. To contract, in accord with established Town policies and procedures, for services or funds from agencies or departments of the State of North Carolina and the United States government;
14. To accept funds granted to the Commission from private or non-profit organizations;
15. To organize itself and conduct its business by whatever legal means it deems proper;
16. To report violations of this chapter or related ordinances to the local official responsible for the enforcement thereof;
17. To exercise, within the Historic District, all the powers and duties of the Chapel Hill Community Design Commission;
18. To exercise such other powers and to perform such other duties as are authorized or required elsewhere by this chapter, the N.C. General Statutes, or by the Council.

#### **25.4.7 Meetings**

The Commission shall establish a regular meeting schedule, and shall meet at least quarterly and more often as it shall determine and require.

All meetings of the Commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public, in accord with Chapter 143, Article 33C of the N.C. General Statutes.

The Commission shall adopt rules of procedure and regulations for the conduct of its affairs.

The Commission shall keep a record of its meetings, including attendance of its members, and its resolutions, findings, recommendations, and actions.

#### **25.4.8 Attendance at Meetings**

Any member of the Commission who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the Commission, and shall be replaced or reappointed by the Council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Commission except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

#### **25.4.9 Quorum and Voting**

A quorum of the Commission, necessary to take any official action, shall consist of five (5) members.

The concurring vote of a simple majority of those members present shall be necessary to take any official action.

#### **25.4.10 Annual Report and Meeting with the Council**

The Commission shall meet jointly with the Council by July 31 of each year. An annual report shall be prepared and submitted to the Council at this annual meeting. Such report

shall include a comprehensive and detailed review of the activities, expenditures, problems, and actions of the Commission.

#### **25.4.11 Historical and Architectural Significance Maps**

The Commission shall prepare, maintain, and consult maps showing the historic and architectural significance of structures within the Historic District. Such maps shall be updated at least every five (5) years.

A structure is deemed to have historic and/or architectural significance if it possesses integrity of location, design, setting, materials, workmanship, feeling, and association, and if it:

- a) is associated with events that have made a significant contribution to the broad patterns of local, state, or national history; or
- b) is associated with the lives of persons significant in the past; or
- c) embodies the distinctive characteristics of a type, period, or method of construction, or represents the work of a master, or possesses high artistic values, or represents a significant and distinguishable entity whose components may lack individual distinction; or
- d) has yielded, or may be likely to yield, information important in prehistory or local, state, and national history.

### **25.5 Community Design Commission**

#### **25.5.1 Establishment of the Commission**

A Community Design Commission, consisting of ten (10) members appointed by the Council, is hereby established. In addition to Council-appointed members, the Planning Board, Parks and Recreation Commission, Transportation Board, Greenways Commission, Bicycle and Pedestrian Advisory Board and Historic District Commission shall designate one representative from their respective boards to be members of the Community Design Commission, each with full voting privileges.

#### **25.5.2 Qualifications**

All members of the Commission which have been appointed by the Council shall reside within the planning jurisdiction of Chapel Hill, and a majority of the members shall have demonstrated special training, experience, or interest in a design field, such as architecture, landscape design, horticulture, city planning, or a closely related field. Members shall serve without compensation, but may be reimbursed for actual expenses incidental to the performance of their duties within the limit of funds available to the Commission.

#### **25.5.3 Tenure**

Members of the Commission shall be appointed to serve terms of three (3) years, and until their respective successors have been appointed and qualified. The terms of the original members may be staggered so that all terms do not expire simultaneously. Vacancies shall be filled for the unexpired term only.

#### **25.5.4 Officers**

The Commission shall elect one member to serve as Chairman and preside over its meetings, and shall create and fill such offices and committees as it may deem necessary. The term of the Chairman and other officers shall be one year, with eligibility for re-election to a second term.

#### **25.5.5 Powers of the Commission**

The Commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this chapter, in Chapter 160A, Article 19, Part 7 of the N.C. General Statutes, and in Chapter 278 of the N.C. Session Laws of 1965, including but not limited to the following:

1. To review Site Analysis Data and Conceptual Development Plans, and offer recommendations to the applicant.
2. To initiate, promote, and assist in the implementation of programs of general community beautification in the Chapel Hill community;
3. To seek to coordinate the activities of individuals and public or private agencies and organizations whose plans, activities, and programs bear on the appearance of the community;
4. To provide leadership and guidance in matters of community design and appearance to individuals and public or private agencies and organizations;
5. To make studies of the visual characteristics and problems of the community, including surveys and inventories of an appropriate nature, and to recommend standards and policies of design for the entire community or any portion or neighborhood thereof, or any project to be undertaken therein;
6. To prepare both general and specific plans for the improved appearance of the entire community or any portion thereof, including private as well as public property. Such plans shall set forth desirable standards and goals for the aesthetic enhancement of the community or any portion thereof, including public ways and areas, open spaces, and public and private buildings and projects;
7. To request from the proper officials of any public agency or body its plans for public buildings, facilities, or projects to be located within the Town's jurisdiction, and to review such plans and to make recommendations regarding their aesthetic suitability to the appropriate agency or body, or to the Council. The Commission shall review all such plans in a prompt and expeditious manner, and shall make all recommendations with regard to any public project in writing, and shall promptly transmit copies of the recommendation to the appropriate agency or body, and to the Council;
8. To formulate and recommend to the Planning Board and Council the adoption or amendment of ordinances that, in the opinion of the Commission, will serve to enhance the appearance of the community and/or strengthen design standards for development within the Town's jurisdiction;
9. To direct the attention of appropriate Town officials to needed enforcement of any ordinance that may affect the appearance of the community;
10. To seek voluntary adherence to the standards and policies of its plans;

11. To hear and decide applications for Certificates of Appropriateness in accord with Article 7 of this chapter;
12. To enter, at reasonable times, upon private lands and make examinations or surveys as necessary in the performance of its official duties;
13. To promote public interest in and understanding of its recommendations, studies, and plans, and to prepare, publish, and distribute to the public such studies and reports that, in the opinion of the Commission, will advance the cause of improved community appearance;
14. To conduct public meetings and hearings, giving reasonable notice to the public thereof;
15. To conduct an annual meeting at which the programs, problems, and policies of the Commission shall be presented, and at which the public at large shall be invited to express itself on matters relating to the appearance and adopted design standards of the community;
16. To recommend to the Council suitable arrangement for the procurement or provision of staff or technical services for the Commission;
17. To establish an advisory council or other committees within its membership as it may deem necessary;
18. To accept funds from private agencies, foundations, organizations, individuals, the State or federal government, or any other source, and to disburse such funds for any purpose within the scope of its authority; and
19. To review all schematic building designs for Special Use Permits or Special Use Permit Modifications, and forward comments and recommendations for consideration at Council public hearings.

#### **25.5.6 Meetings**

The Commission shall establish a regular meeting schedule, and shall meet at least quarterly and more often as it shall determine and require.

All meetings of the Commission shall be open to the public, and reasonable notice of the time and place thereof shall be given to the public, in accord with Chapter 143, Article 33C of the N.C. General Statutes.

The Commission shall keep a record of its meetings, including attendance of its members, and its resolutions, findings, recommendations, and actions.

#### **25.5.7 Attendance at Meetings**

Any member of the Commission who misses more than three (3) consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the Commission, and shall be replaced or reappointed by the Council. Absence due to sickness, death, or other emergencies of like nature shall be recognized as excused absences, and shall not affect the member's status on the Commission, except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

**25.5.8 Quorum and Voting**

A quorum of the Commission, necessary to take any official action, shall consist of five (5) members.

The concurring vote of a simple majority of those members present shall be necessary to take any official action.

**25.5.9 Annual Report and Meeting with the Council**

The Commission shall jointly meet with the Council by April 15 of each year. An annual report shall be prepared and submitted to the Council at this annual meeting. Such report shall include a report of the Commission's activities and a statement of its expenditures.

**25.6 Town Manager**

The provisions of this chapter shall be administered by the Town Manager or his designee. All references in this chapter to "Town Manager" shall be construed to mean "Town Manager or his designee."

The Town Manager shall have the following powers and duties in the administration of the provisions of this chapter:

1. To grant Zoning Compliance Permits;
2. To make inspections of buildings or premises as necessary in the performance of his or her duties in the enforcement of this chapter;
3. To make all necessary determinations and interpretations as required by this chapter; and
4. To propose and promulgate administrative regulations necessary to implement the provisions of this chapter.

Under no circumstance is the Town Manager permitted to make changes in this chapter or to grant exceptions to the actual meaning of any clause, standard, or regulation contained in this chapter.

**ARTICLE 26 - LEGAL STATUS**

**26.1 Severability**

It is the legislative intent of the Council in adopting this ordinance that all provisions thereof shall be liberally construed to protect and preserve the peace, health, safety, and general welfare of the inhabitants of the Town and its extraterritorial planning jurisdiction. It is the further intent of the Council that this ordinance shall stand, notwithstanding the invalidity of any part thereof, and that should any provision of this ordinance be held to be unconstitutional or invalid, such holding shall not be construed as affecting the validity of any of the remaining provisions.

**26.2 Conflict With Other Laws**

When provisions of this ordinance impose higher standards than are required in any other statute or local ordinance or regulation, provisions of this ordinance shall govern. When the provisions of any other statute or local ordinance or regulation impose higher standards than are required by the provisions of this ordinance, the provisions of that statute or local ordinance or regulation shall govern.

**26.3 Repeal of Existing Zoning Regulations**

The existing zoning regulations entitled, "Ordinance Providing for the Zoning of Chapel Hill and Surrounding Areas," as passed on March 14, 1955 and as subsequently amended, are hereby repealed. The subdivision regulations contained in Chapter 18 of the Code of Ordinances, as passed on October 8, 1956 and as subsequently amended, are hereby repealed. The adoption of this ordinance, however, shall not affect nor prevent any pending or future prosecution of, or action to abate, an existing violation of said regulations.