1. Chapter 9 of the Code of Ordinances, Town of Cary, North Carolina, is hereby deleted in its entirety.

2. Chapters 10, 20, 28, and 36 of the Code of Ordinances, Town of Cary, North Carolina, and Chapters 3, 4, 5, 7, 8, 10, and 11 of Appendix A, Land Development Ordinance, of the Code of Ordinances, Town of Cary, North Carolina, are hereby amended to read as follows:

**TOWN CODE**

**Sec. 10-37. Procedure for purchase of burial easements.**

(a) *Intent.* The town intends to make cemetery lots available to all persons on an equal basis. In order to accomplish this, restrictions must be placed on the re-sale of burial easements to discourage the purchasing of burial easements with the primary intent of reselling them for a profit.

(b) *Number of lots.* No person shall be allowed to purchase from the town more than six burial easements in the new section. Any person denied the right to purchase a burial easement or easements pursuant to this subsection may appeal the decision of the town clerk to the town council for a final decision on the matter.

(c) Owners of burial easements in the cemetery are granted an easement for burial purposes. This easement is subject to the rules and regulations of the town.

(d) *Sale by town.* Upon payment by the purchaser of the full purchase price and registration fee, the town clerk shall cause the easement deed to be executed by the town, registered in the office of the county register of deeds, provide a copy to the purchaser, and maintain the record copy.

(e) *Reconveyance by purchaser.* In order to properly manage the new sections of the cemetery, the town must know, at all times, the identity of the legal owner of each burial easement. The public records of the county registry shall be used for that purpose. If the legal owner of a burial easement wishes to sell the easement, after conveyance from the town, both the owner and the purchaser must work with the town clerk to register the conveying instrument in the office of the county register of deeds.

**Sec. 20-110. Suspension or revocation.** *(taxi permits)*

(a) *Grounds.* In addition to any other penalty provided for, the chief shall have the right to suspend or revoke any permit if the applicant or permittee:…

(b) *Procedure.* When grounds for suspension or revocation exist, the chief shall, by registered or certified letter, give notice to the permittee that the permit is suspended or revoked and must be immediately surrendered. It shall be unlawful for the person to whom the permit was issued to fail to return same to the chief. The permittee shall have ten days from the receipt of such notice to appeal the determination to the chief, if the initial determination was made by a designee of the chief, and to the town manager if the initial determination was made by the chief himself, by filing a written notice of appeal with the person who made the initial determination and the chief or the town manager, as the case may be.
Such notice of appeal shall specify with particularity all the grounds for the appeal. The permit shall remain suspended or revoked pending such appeal. If no notice of appeal is filed within the allotted time, any right to an appeal is considered waived at the expiration of the ten-day period. If an appeal is filed and a hearing held and the suspension or revocation is confirmed by the chief, the permittee shall have ten days from receipt of the determination to appeal to the town manager by filing a written notice of appeal with the chief and the town manager. If an appeal was filed and a hearing held and the suspension or revocation was confirmed by the town manager, then such appeal shall be to the town council, by filing a written notice of appeal with the town manager and the town clerk. The permit shall remain suspended or revoked pending such hearing. The town manager or council hearing of any appeal shall be in the form of certiorari. If the council finds that a denial or revocation is justified, the holder may not reapply for a taxicab permit for a minimum of 12 months.

Sec. 28-165. Rights of appeal. [Reserved]

(a) In cases where the town manager or designee denies a person's application to encroach upon a public street or street right-of-way, or is willing to grant that request but subject to conditions or terms the applicant deems to be unsatisfactory, resulting in an inability to finalize the requisite encroachment or franchise agreement, the applicant may seek review of the town manager's (or designee's) decision before the town council.

(b) Any person subject to any enforcement action pursuant to section 28-164 above may appeal the enforcement action to the town council.

(c) In any case where a person seeks review by the town council of any decision made by the town manager or designee pursuant to this section, the applicant must request a hearing before the town council in writing to the town engineering department, within ten days of the applicant's notice of the town manager's (or designee's) decision at issue. In such submission, the applicant must identify the issues or disagreements he has with the town manager's (or designee's) relevant decision. In such cases, the town council shall make the final municipal decision, through adoption of an appropriate resolution.

Sec. 28-195. Appeal.

(a) Any person aggrieved by action taken pursuant to this article may file a written "notice of appeal of the action of the police chief" with the town manager within 5 business days of the Police Chief's action. Such written notice shall identify the person filing the appeal and shall specify with particularity the facts and basis for the appeal. The town manager shall act on the appeal as expeditiously as possible.

(b) The action or decision of the town manager may be appealed to the town council by the filing of a written "notice of appeal of the action of the town manager" with the town clerk within 5 business days of the date of the Manager's decision. Such written notice shall identify the person filing the appeal and shall specify with particularity the facts and basis for the appeal. The town council shall hear an appeal at the first regularly scheduled town council meeting at which the law allows the matter to be considered following receipt of the notice of appeal.

Sec. 36-118. Appeal to council. (water shortage)

Appeal may be taken to the town council by any aggrieved water consumer residing outside the corporate limits of the town from the decision and action of the town manager under this article.
LAND DEVELOPMENT ORDINANCE

3.8 Special Uses

3.8.1 General Provisions

(A) Purpose and Applicability
Special uses are generally compatible with other land uses permitted in a zoning district yet, because of their unique characteristics or potential impacts on the surrounding neighborhood and the Town as a whole, require individual consideration of their location, design, configuration, and/or operation at the particular location proposed. Such individual consideration may require the imposition of individualized conditions in order to ensure that the use is appropriate at a particular location. Any use designated in Chapter 5 of this Ordinance as a “special use” shall not be established without the approval of the Town Council or the Zoning Board of Adjustment, as appropriate, in accordance with the procedures and requirements set forth in this section. The Town Council shall have final decision-making authority on special use requests, except for properties owned by the Town, which shall be reviewed by the Zoning Board of Adjustment, and for any other category of uses for which this Ordinance designates the Zoning Board of Adjustment as the decision-making body.

(B) Relationship to Site Development Plan Requirements

(1) Coordination with Review of Site Development Plans
If a site development plan is necessary for the proposed special use pursuant to Section 3.9, then the review and approval of both the site development plan and the special use shall be coordinated. The two (2) applications shall be filed together and review of each application shall proceed simultaneously. However, the decision-making body Zoning Board of Adjustment shall render separate decisions on each application, recognizing that the applications are distinct and subject to different standards for approval.

(2) Lapse and Expiration of Special Use Approval
Approvals of special uses shall be automatically conditioned on the subsequent approval of a site development plan required under Section 3.9. Accordingly, the approval of any special use shall lapse, and become null and void, upon the expiration of the approved site development plan (see Section 3.9), unless otherwise restricted by the Town. If a special use does not require a site development plan, or is not tied to a site development plan, then the special use does not lapse unless it is subject to a specified time limit as a condition of approval.

(C) Special Uses in Nonconforming Structures or Lots
If a proposed special use involves one (1) or more non-conforming structures or lots that do not conform to the regulations of the district in which the special use is to be located, then, unless the applicant has previously obtained the necessary variances from the Zoning Board of Adjustment, the application for special use approval shall be accompanied by any applications necessary for enlargement, expansion, alteration, or major repair of a nonconforming structure or lot in accordance with (See Chapter 10). This application shall be processed concurrently with the special use application by the Town Council and in accordance with Chapter 10 of this Ordinance. However, approval of the alteration of a nonconforming structure and/or lot request shall be a prerequisite to approval of the special use. The notices required for the variance application shall be combined with the notices required for the special use application.
3.8.2 Procedures

(D) Planning Director Review and Report
The Planning Director shall review the proposed special use based on the approval criteria of Section 3.8.3 and distribute the application to the Development Review Committee and, as deemed necessary, to other reviewers. Based on the results of those reviews, the Director shall provide a report to the decision-making body Zoning Board of Adjustment at a public hearing on the special use. This report shall include a discussion of all plans and policies that have been adopted by the Town that are relevant to the proposed application.

(E) Review and Decision
(1) The decision-making body Zoning Board of Adjustment shall hold at least one (1) quasi-judicial hearing on the proposed special use and, based on the staff report, the evidence presented at the hearing, the approval criteria of Section 3.8.3, and any applicable use-specific standards of Section 5.2 or 5.3, approve, approve with modifications, or deny the proposed special use. The decision-making body Zoning Board of Adjustment may approve, or approve with modifications, any special use by a majority vote.

(2) If the special use also requires a site development plan, then the decision-making body Zoning Board of Adjustment shall also review the site development plan in accordance with Section 3.9. Final action to approve the site development plan shall not occur until after approval of the special use.

(3) The decision-making body Zoning Board of Adjustment shall determine contested facts and make its decision within a reasonable time. The decision shall be based upon competent, material, and substantial evidence in the record. The decision shall be reduced to writing and shall be signed by the Mayor, or his designee, on behalf of the Town Council, or by the Chair of the Zoning Board of Adjustment, or his designee, on behalf of the Zoning Board of Adjustment. The decision of either decision-making body is effective upon filing with the Planning Department.

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

3.8.3 Approval Criteria
The decision-making body Zoning Board of Adjustment shall not approve a proposed special use and any accompanying site development plan unless and until it determines that the proposed use meets all the criteria set forth below, based on the evidence and testimony received at the quasi-judicial public hearing or otherwise appearing in the record of the case:

(A) The proposed use or development of the land will generally conform with the Comprehensive Plan, other official plans and manuals or documents adopted by the Town;

(B) The proposed use or development of the land will not materially endanger the public health or safety;

(C) The proposed use is reasonably necessary for the public health or general welfare, such as by enhancing the successful operation of the surrounding area in its basic community functions or by providing an essential service to the community or region;

(D) The proposed use or development of the land will not substantially injure the value of adjoining or abutting property;

(E) The proposed use or development of the land will be in harmony with the scale, bulk, coverage, density, and character of the area or neighborhood in which it is located;
The proposed use is appropriately located with respect to transportation facilities, water supply, fire and police protection, waste disposal, and similar facilities; and

The proposed use will not cause undue traffic congestion or create a traffic hazard or unsafe pedestrian pathway.

3.8.4 Effect of Approval or Denial

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

(B) Subsequent Permits and Approvals
Approval of an application to establish a special use authorizes the applicant to obtain building permits, certificates of occupancy, site development plan approval, and other permits or approvals that the Town may require for the proposed development. If the special use included a site development plan that must be approved by Council or the Zoning Board of Adjustment, then approval of the special use is contingent on approval of the site development plan. The Planning Department shall review applications for these permits for compliance with the terms of the special use approval. A permit, certificate, or other approval shall be issued or valid only for work that complies with the terms of the special use approval.

(C) Transferability of Approval...

(D) Resubmission of Denied Applications
No application for approval of a special use shall be filed with or accepted by the Planning Department that is identical or substantially similar to an application that has been denied by the Town Council or Zoning Board of Adjustment within the previous year. This waiting period requirement may be waived in an individual case, for good cause shown, by the affirmative vote of three-fourths (3/4) of the members of the Town Council or four-fifths (4/5) of the members of the Zoning Board of Adjustment, as appropriate.

(E) Recording of Approved Special Uses...

3.8.5 Changes to Terms and Conditions of Approval
Any changes to the terms or conditions of approval of the special use shall require separate review and approval by the decision-making body Zoning Board of Adjustment. Any application for approval of such a change shall be filed, processed, reviewed, and approved or denied in the manner set forth in this section for an original application for special use approval. This section shall not apply, however, to modifications to the approved site development plan for the special use, which are governed by Section 3.9 of this Ordinance.

3.8.6 Appeal...

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

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

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

(a) [Reserved]

(b) Plans for uses that require approval of a Special Use (see Section 3.8), except for properties owned by the Town, for which the Zoning Board of Adjustment shall have final decision-making authority; and

(c) Plans that seek reductions or deviations from the minimum required setbacks for telecommunications facilities, except for plans for certain telecommunications facilities for which the Zoning Board of Adjustment shall have final decision-making authority (see Section 5.2.4(D)); and

(d) Plans that propose one hundred (100) residential units or more, or that would construct one hundred thousand (100,000) square feet of nonresidential floor area or more, or that would construct a new drive-through facility or expand an existing drive-through facility; excepting plans meeting all of the following criteria, which plans shall be reviewed by the Planning Director:

1. A rezoning for the property was approved within the two (2) calendar years prior to the date of application for the site or subdivision plan and a traffic impact analysis (TIA) was prepared for the rezoning in accordance with Section 3.4.1(D)(3); and,

2. The plan is not otherwise subject to review by Council or the Zoning Board of Adjustment pursuant to Section 3.9.2(F)(1)(a), (b), or (c).

(2) **Approval by Town Council**

The Town Council shall have final decision-making authority on the following types of development plans, which shall be reviewed using the procedure set forth in this Section.

(a) Plans for property within an approved Mixed Use District where conditions of the associated preliminary development plan require action by Town Council.

(2) **Approval by Planning Director**

The Planning Director shall have final decision-making authority on all site and/or subdivision plans not subject to review by the Town Council or Zoning Board of Adjustment. Such plans shall be reviewed for compliance with all requirements of this Ordinance and applicable Town specifications.

(G) **Site/Subdivision Plans Approved By Planning Director**

(1) Within ninety (90) days from the submittal or any re-submittal of the application, the Planning Director shall review the site and/or subdivision plan, and the comments and recommendations of the Development Review Committee. The Director shall either approve or deny the plan within this time period unless the applicant has caused additional delay or failed to provide necessary or accurate information.

(2) Alternatively, within ninety (90) days from the submittal or any re-submittal of the application, the Planning Director may defer the decision on the plan to the Town Council.

(3) If the Planning Director denies the plan, then the reasons for the denial shall be stated in the record of action on the plan.

(4) In the event the Planning Director denies a plan, an appeal may be filed with the Town Council Zoning Board of Adjustment pursuant to Section 3.21 of this Ordinance within ten (10) days of denial. If an appeal is filed, the Town Council, after conducting
3.12.4 DEVELOPMENT IN FLOOD HAZARD AREA: Appeals

(A) All questions on the enforcement of this section shall first be addressed to the Stormwater Services Manager. The decisions of the Stormwater Services Manager may be appealed by following the procedure set forth in Section 3.21, but the appeal shall be to the Town Council, not the Zoning Board of Adjustment.

(B) The Town Council Zoning Board of Adjustment may grant relief from a decision of the Stormwater Services Manager only if the Town Council Board finds that the Stormwater Services Manager acted incorrectly in interpreting or administering any of the duties or functions listed under Section 3.12.1; other provisions of this Section 3.12; or Section 7.5, Flood Damage Prevention. The Zoning Board of Adjustment has no authority or power to hear a decision based on this Section 3.12.

3.13.3 GRADING PERMITS: Review and Approval

(A) The Town Water Resources Department shall review each application and shall act to approve, approve with modifications, approve with performance reservations, or deny the application, based on the criteria set forth in Section 3.13.4. The review shall be conducted in conjunction with any site and/or subdivision plan approval that may be required for the proposed development.

(B) Where the application must be revised in accordance with any modifications or performance reservations required by the Town Water Resources Department, the applicant shall submit a revised application to the Town Water Resources Department. The Stormwater Engineering Manager shall approve or deny the revised application.

(C) Upon approval of the application, the Town Water Resources Department shall issue a grading permit for the proposed land-disturbing activity. The applicant shall keep a copy of the grading permit and the approved erosion control plan on file at the job site.

(D) In the event that the Town Water Resources Department disapproves the application, the Town shall advise the applicant in writing as to the specific reasons that the plan was disapproved. The applicant may appeal the Town's decision to deny or modify the proposed application by following the appeals procedure set forth in Section 3.21, but the appeal shall be to the Town Council, not the Zoning Board of Adjustment. If the Town Council Zoning Board of Adjustment upholds the denial or modification of the application, then the applicant may appeal this decision to the North Carolina Sedimentation Control Commission as provided in G.S. 113A-61(C) and N.C. Administrative Code Title 15A, NCAC 4B.09118(b). Alternatively, the applicant may appeal the disapproval of the plan directly to the Commission, in accordance with G.S. 113A-61, without appeal to the Town Council Zoning Board of Adjustment.

3.17 VESTED RIGHTS CERTIFICATE

3.17.1 Purpose
The purpose of this Section is to provide for the establishment of certain vested rights in order to ensure reasonable certainty, stability, and fairness in the land-use planning process, secure the reasonable expectations of landowners, and foster cooperation between the public and private sectors in the area of land-use planning in recognition that Town approval of land-use
Development typically follows significant landowner investment in site evaluation, planning, development costs, consultant fees, and related expenses.

3.17.2 Establishment and Effect of Vested Right
A vested right shall be deemed established with respect to any property upon the approval of a site-specific site and/or subdivision plan, pursuant to the provisions of this Section. Such vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site-specific site and/or subdivision plan. This right to carry out the development in accordance with the approved plan shall attach to and run with the land, rather than being personal to the recipient of plan approval.

3.17.3 Vested Rights Period
(A) A vested right to develop under a site specific site and/or subdivision plan shall terminate two (2) years after the effective date of approval of the site specific site and/or subdivision plan with respect to all buildings and uses for which the developer has not, by that time, filed a valid building permit application in accordance with Section 3.14 of this Ordinance.

(B) In approving a vested rights certificate, the Town Council Zoning Board of Adjustment may extend the two (2)-year vested rights period to a period of up to five (5) years, where warranted in light of all relevant circumstances, including, but not limited to, the size and phasing of development, economic cycles, and market conditions. This determination shall be at the sound discretion of the Zoning Board of Adjustment Town Council.

3.17.4 Procedure
In order to be entitled to the vested rights period set forth in Section 3.17.3 above, the owner or developer of the property must apply for and receive a vested rights certificate from the Town, pursuant to this Section. An application for a vested rights certificate for a site-specific site and/or subdivision plan shall be filed with the Planning Department.

(A) Applicability
An applicant who wishes to obtain a vested rights certificate may apply for such at the time of the initial site or subdivision plan application. The site plan and/or subdivision plan and site specific site and/or subdivision plan shall be considered simultaneously by the Town Council Zoning Board of Adjustment following the procedure set forth below.

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

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

(B) Notice and Conduct of Public Hearings
Public hearings on vested rights certificates shall be quasi-judicial hearings and shall be published and posted in accordance with the general notice requirements of Section 3.1.6, and shall be conducted in accordance with the general provisions of Section 3.1.7.
Effect of Denial or Withdrawal of Application
No application for a vested rights certificate covering the same property will be considered until after a lapse of twelve (12) months from the date of denial or withdrawal of the application. This twelve (12)-month provision may be waived for good cause shown by a three-fourths (3/4) four-fifths (4/5) vote of the Zoning Board of Adjustment entire Council.

3.17.5 Exceptions
The provisions of Section 3.17.2 shall not apply in the following instances:

(A) Where the property owner consents, in writing, to making the development conform to the requirements of this Ordinance, or any amendment thereto, which would make the development nonconforming;

(B) Where the Town Council finds, after notice and a quasi-judicial public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed in accordance with the approved site specific site and/or subdivision plan;

(C) Where the Town Council finds, after notice and a quasi-judicial public hearing, that the landowner or his or her representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the Town's approval of the site specific site and/or subdivision plan;

(D) Where the state or federal government has enacted or promulgated a law or regulation which precludes developing the property in accordance with the approved plan, in which case the Town Council may, by ordinance, modify the affected provisions of the approved plan upon finding, after notice and a quasi-judicial public hearing, that the change in state or federal law has a fundamental effect on the approved site specific site and/or subdivision plan;

(E) Where the Town has compensated the property owner for all costs, expenses, and other losses, not including any diminution in the value of the property, which the owner has incurred after approval of the site specific site and/or subdivision plan by the Town, together with interest thereon at the legal rate until paid.

3.17.6 Effect of Changes to Approved Plan
This Ordinance provides for situations in which the property owner or developer may obtain Town approval for particular changes to a site-specific site and/or subdivision plan that the Town has already approved. The effect of such changes is as follows:

(A) Special Uses of a Temporary Nature
Where the change is a special use of a temporary nature that may be approved by the Planning Director under the terms of this Ordinance then approval of the change shall have no effect on the vested rights period and vested rights certificate. The Director's approval of the proposed change shall not be deemed to extend or renew the vested rights period.

(B) Changes Requiring Approval of the Town Council or Zoning Board of Adjustment
Where the change is one that requires the approval of the Town Council or Zoning Board of Adjustment under the terms of this Ordinance, such as a major change to a site plan, then the property owner or developer must submit an application for a new vested rights certificate along with the application for approval of the plan change in order to extend or renew the vested rights period. In no case shall the total period of vesting for any piece of property be longer than five (5) years, no matter how many major changes are made to the property. The new vested rights certificate may be issued only in accordance with the requirements of Section 3.17.5 above.

(C) Changes Requiring a Variance
Where the change is one that requires a variance from the Zoning Board of Adjustment, then the vested rights period set forth in Section 3.17.3 shall terminate immediately upon the Zoning Board of Adjustment's approval of the variance.
3.19 MINOR MODIFICATIONS:

3.19.1 Minor Modifications to Development and Zoning District Standards

(A) Applicability

PRINCIPLE OF INTERPRETATION

- The Minor Modification process is proposed as a way to address development plans or proposals in the approval process, recently approved, and/or in the construction process. These provisions are only applicable in cases where a proposal requires a reduction or deviation from a required standard.

- The Minor Modification process can also be used as a way to address minor construction errors which have occurred in the past and were not noticed prior to the issuance of a certificate of occupancy. If the error is significant, it may be necessary to rely upon other procedures in the ordinance, like the Variance process (See Section 3.20).

- The Minor Modification process is not available for use in situations when there is an existing nonconforming site or structure.

- Development proposals seeking to deviate from a standard beyond the scope of the Minor Modification process (as listed in Section 3.19.1(B) Exceptions) are required to undergo the typical rezoning and/or site development plan review process unless otherwise stated in this Ordinance.

As part of the review and approval of any procedure set forth in this Chapter 3, the Planning Director Town officials may approve a minor modification of any of the development or zoning district standards that are listed in the following table pursuant to the procedures listed in paragraph (C) below. Specifics on allowable modifications may be found in the associated text listed in the table. For properties owned by the Town, the Planning Director shall review all requests for minor modifications listed in the table.

Review of a minor modification is limited to review of that modification only. Consideration of a requested minor modification does not change the applicable approval authority for the development plan as a whole.

<table>
<thead>
<tr>
<th>Standard That May be Modified</th>
<th>Decision-Making Body</th>
<th>Modification Allowed (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Highway Corridor Buffer width [Section 7.2.15]</td>
<td>Town Council Zoning Board of Adjustment *</td>
<td>Up to 70</td>
</tr>
<tr>
<td>Impervious surface limitations within the Swift Creek portion of the Watershed Protection Overlay [Section 4.4.6(l)]</td>
<td>Town Council Zoning Board of Adjustment *</td>
<td>See Section 4.4.6(l)</td>
</tr>
<tr>
<td>Building setback requirements (Sections 6.1 and 6.2)</td>
<td>Planning Director</td>
<td>15</td>
</tr>
<tr>
<td>Building setback requirements (Sections 6.1 and 6.2)</td>
<td>Town Council Zoning Board of Adjustment *</td>
<td>More than 15</td>
</tr>
<tr>
<td>Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 and</td>
<td>Planning Director</td>
<td>15</td>
</tr>
</tbody>
</table>
modifications to parking standards are addressed in Section 7.8.2)

<table>
<thead>
<tr>
<th>Development and design standards, numerical (Chapter 7) (however, modifications to landscaping requirements are addressed in Section 7.2.10 and modifications to parking standards are addressed in Section 7.8.2)</th>
<th>Town Council Zoning Board of Adjustment *</th>
<th>30</th>
</tr>
</thead>
</table>

Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO sections: 7.2.8(A), 7.7.3(C), 7.8.2(G), 7.10.3, and 7.10.4.

Planning Director (not applicable)

Development and design standards, non-numerical (Chapter 7), limited specifically to the following LDO section: 7.2.5

Town Council Zoning Board of Adjustment* (not applicable)

Subdivision design standards, numerical, excluding Standard Specifications and Details (and Section 8.1.4(A)(10) (Chapter 8)

Planning Director 15

Subdivision design standards, numerical, excluding Standard Specifications and Details (and Section 8.1.4(A)(10) (Chapter 8)

Town Council Zoning Board of Adjustment* 30

Required right-of-way dedication, Section 8.1.4(A)(10) Transportation and Facilities Director 5% of their half of the required street standard width

Required right-of-way dedication, Section 8.1.4(A)(10) Town Council Zoning Board of Adjustment* More than 5% of their half of the required street standard width

* For properties owned by the Town, the Planning Director shall review all requests for minor modifications that would otherwise be reviewed by the Town Council.

(B) **Exceptions to Authority to Grant Minor Modifications**

In no circumstance shall any decision-making body approve a minor modification that results in:

1. An increase in overall project density;
2. A change in permitted uses or mix of uses;
3. An increase in building height;
4. A deviation from the Use-Specific Standards, set forth in Section 5.2; or
5. A change in zoning conditions.

(C) **Procedure**

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

(a) The Planning Director may approve a minor modification allowed under this section at any time prior to submittal of the staff report on an application to another decision-making body, if a report is required, or prior to final decision, if no report is required.

(b) Such modification shall be approved if:

1. it otherwise meets all requirements of this Ordinance and applicable Town specifications; and,
2. the applicant establishes that compliance with the provision sought to be modified is not practicable due to physical site constraints, such as topography, presence of stream buffers or other natural features, or lot dimensions; or due to presence of existing development or infrastructure; and,
3. the applicant establishes that the modification requested represents the least deviation required to make compliance practicable.

(c) The Planning Director's decision on a request for minor modification may be appealed to the Town Council Zoning Board of Adjustment.

(d) Alternatively, the Planning Director may defer the decision on a proposed minor modification to the Town Council.

(2) Minor Modifications Approved by Town Council Zoning Board of Adjustment

The Town Council Zoning Board of Adjustment may initiate or approve a minor modification allowed under this section at any time before the applicable approval authority takes action on a development application. The Town Council Zoning Board of Adjustment may approve the minor modification only if it finds, after conducting a quasi-judicial hearing, that the modification advances the goals and purposes of this Ordinance and either results in less visual impact or more effective environmental or open space preservation, or relieves practical difficulties in developing a site. In determining if "practical difficulty" exists, the factors set forth in Section 3.20.5, "Approval Criteria" (for Variances) shall be considered. In granting a minor modification allowed under this section, the Town Council Zoning Board of Adjustment may require conditions that will secure substantially the objectives of the standard that is modified and that will substantially mitigate any potential adverse impact on the environment or on adjacent properties, including but not limited to additional landscaping or buffering. Requests for modifications that exceed the percentages in Table 3.19-1 shall be treated as requests for a variance.

(3) Noted on Pending Application

Staff shall specify any approved minor modifications and the justifications for such modifications on the pending development application for which the modifications were sought.

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

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

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

4.4.6 OVERLAY ZONING DISTRICTS: Watershed Protection Overlay

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

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

The Environmental Management Commission shall have the sole authority to grant major variances from the provisions of this Section 4.4.6 for properties in the Jordan Lake Watershed and Jordan Lake Watershed Critical Area. For purposes of this section, a major variance is a variance from the minimum statewide watershed protection or Jordan Rules (contained in 15A NCAC Chapter 2B) that results in:

(a) the relaxation, by factor greater than five percent (5%) of any buffer, density or built upon area requirement under the high density option; 
(b) any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or
(c) relaxation by a factor greater than ten percent (10%), of any management requirement under the low density option.

(2) **Modifications Granted by the Town Council Zoning Board of Adjustment**

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

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

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

(3) **Recommendation by Town Council Zoning Board of Adjustment to the Environmental Management Commission**

If an application calls for the granting of a modification as listed in paragraph (2b) or paragraph (1) above that requires a decision by the Environmental Management Commission, the Town Council Zoning Board of Adjustment shall first reach a recommendation on the modification in accord with the requirements of Section 3.19. If the Town Council Zoning Board of Adjustment decides in favor of granting the modification, the Town Council Zoning Board of Adjustment shall prepare a preliminary record of the hearing as soon as possible and forward it to the Environmental Management Commission. The preliminary record of the hearing shall include.....

(4) **Decision by the Environmental Management Commission**

(a) **Approval**

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

(b) **Disapproval**

If the Commission denies the variance as proposed the Commission will prepare a decision and send it to the Town Council Zoning Board of
Adjustment. The Town Council Zoning Board of Adjustment shall prepare a final decision in accordance with the Commission’s decision.

5.2.4 USE-SPECIFIC STANDARDS: Industrial Uses

(D) Telecommunication Facilities

(7) Concealed (Stealth) Telecommunications Facilities

(b) Review and Decision Authority The decision authority and review type for applications for new concealed (stealth) wireless support structures shall be in accordance with the following:

<table>
<thead>
<tr>
<th>Max. Height</th>
<th>Location of Proposed Stealth Wireless Support Structure</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Residentially-Zoned Land Used for Residential Purposes or Vacant</td>
</tr>
<tr>
<td>up to 150 feet</td>
<td>A</td>
</tr>
<tr>
<td>greater than 150 feet, up to 175 feet</td>
<td>B</td>
</tr>
<tr>
<td>greater than 175 feet, up to max. height allowed</td>
<td>C-B</td>
</tr>
</tbody>
</table>

A — Planning Director * — Permitted Use with Development Plan Review;
B — Zoning Board of Adjustment — Special Use and Development Plan Review
C — Town Council — Special Use and Development Plan Review

* Review and decision by the Planning Director is only permitted when no reduction in the minimum required setback(s) is requested. If a reduction of the minimum setback(s) is requested for wireless support structures that could otherwise be reviewed and decided upon by the Planning Director, review and decision by the Zoning Board of Adjustment shall be required pursuant to LDO Section 5.2.4(D)(8)(b).

(e) Stealth Antennae

Stealth antennae shall be allowed as a permitted use in all non-residential zoning districts, and on residentially-zoned land used for non-residential purposes. A special use permit granted by the Town Council Zoning Board of Adjustment is required to erect or install any stealth antenna(e) in the RMF zoning district. Unless otherwise allowed above, stealth antennae shall be prohibited in all other residential zoning districts. If located in the right-of-way of any public road or street, stealth antennae shall be located on an existing utility pole which does not exceed a height of thirty-five (35) feet above the immediate surrounding ground. Stealth antennae located on an existing utility pole, whether inside or outside of the right-of-way, shall not be higher than ten (10) feet above the highest point of the pole. The ground-mounted components of stealth antennae, whether inside or outside of the right-of-way, shall be located flush to grade where necessary to avoid inconveniencing the public, or creating a hazard; and to the extent permitted aboveground, shall otherwise be appropriately camouflaged to blend in with the surroundings, and non-reflective paints shall be used.
(8) **Other Freestanding Non-stealth Wireless Support Structures**

(a) **Review and Decision Authority**
1. In non-residential zoning districts, a special use permit granted by the Town Council Zoning Board of Adjustment is required to erect any freestanding non-stealth wireless support structure within two hundred (200) feet of the property line of any property used, zoned, or otherwise approved (e.g., MXD, MUSP, PDD, etc.) for residential purposes.
2. In non-residential zoning districts, freestanding non-stealth wireless support structures located more than two hundred (200) feet from the property line of any property used, zoned or otherwise approved (e.g., MXD, MUSP, PDD, etc.) for residential purposes may be permitted without a special use.
3. A special use permit granted by the Town Council Zoning Board of Adjustment is required to erect a freestanding non-stealth wireless support structure in the R40 or R80 zoning districts.
4. If a request for reduction of the minimum required setbacks listed in Section 5.2.4(D) is associated with a freestanding non-stealth wireless support structure that could otherwise be reviewed and decided upon by the Planning Director, review and decision by the Zoning Board of Adjustment under a development plan and special use review as part of a quasi-judicial hearing process shall be required pursuant to LDO Section 5.2.4(D)(8)(b).

(9) **Additional Requirements/Standards for All Wireless Support Structures**

(a) **Existing Wireless Support Structures**
New antennae may be co-located upon wireless support structures that exist on the effective date of this Ordinance. A request for an increase in height for an existing wireless support structure shall require issuance of a special use permit by the Town Council or ZBOA, as appropriate, if a special use permit would be required to erect a new wireless support structure at the requested height.

(10) **Additional Requirements/Standards for All Telecommunications Facilities Requiring a Special Use Permit**

(b) **Setback Reductions**

1. In considering an application for special use and/or development plan for telecommunications facilities, the Town Council and/or ZBOA may grant a reduction of the minimum required setbacks listed in Section 5.2.4(D) upon consideration of circumstances or aspects which reduce the off-site effects of the facility on adjacent properties. Such circumstances or aspects may include, but are not limited to: topography; berms; the proximity of existing or potential uses; existing vegetation and improvements made or proposed to the site to obscure or reduce the visibility of the wireless support structure from adjacent properties; the concentration of existing and/or proposed wireless support structures in the area; and whether the height, design (including structural features), placement or other characteristics of the proposed wireless support structure could be modified to have a less intrusive impact.

2. Requests under this sub-section may be approved provided that such action is not inconsistent with the general purposes and applicable
approval criteria of this Ordinance. The Town Council and/or ZBOA, in considering any request(s) for reduction of the minimum required setbacks under this Section, shall consider any unique circumstances for such a request(s).

(c) Conditions Notwithstanding any of the standards of this Section, the ZBOA or Town Council may require any other reasonable conditions (including any modifications of the standards in this Section 5.2.4(D)) to mitigate the impact of the wireless support structure on adjacent properties and uses including, but not limited to, conditions or modifications related to the style, height, and design of the facility.

7.2.5 Tree Protection, Tree Surveys, and Replacement Trees

(A) Tree Protection and Tree Surveys
   (1) Intent and Purpose...
   (2) Requirement to Protect Champion Trees...
   (3) Tree Survey Requirements...
   (4) Incentives and Design Flexibility
       Section 7.2.10 provides incentives and design flexibility for preserving existing healthy trees and forest stands and for protecting the critical root zone of specimen trees located outside of buffers, streetscapes, and floodplains. For example, the Planning Director may permit the exchange of trees otherwise required to be preserved for the preservation of trees within certain non-residential buffers and may grant parking reductions if trees or forest stands that are not otherwise required to be preserved or are located outside of buffers, streetscapes, and floodplains, are preserved.
   (5) Definitions.

(B) Tree Protection During Construction
   (1) Owner’s Responsibility
   (2) Tree Protection Fencing
   (3) Disturbance

(C) Protection of Champion Trees
   (1) Intent/Purpose
   (2) Priority Order For Preserving Champion Trees
       When applicants are designing site and/or subdivision plans, champion trees and their critical root zone shall be preserved in the following priority order (which order shall be reviewed when the decision-making authority is making a determination as to whether a plan is in compliance with Section 7.2.5): (a) Tier 1 Champion Tree (excludes pine trees).... (b) Tier 2 Champion Tree....

(D) Administrative Approval of Removal of Champion Trees
   (1) The Planning Director shall administratively approve the removal of any champion tree if the criteria of either (a), (b), (c) or (d) below are met.
      (a) After exhausting the allowable modifications/reductions in Section 7.2.10, the tree is adversely impacted by one (1) of the following:....
      (b) All the following criteria have been met:....
The Town Council Zoning Board of Adjustment shall review and take action on any other request to remove a champion tree as a Minor Modification pursuant to Section 3.19.

7.2.10 LANDSCAPING, BUFFERING, SCREENING, AND TREE PROTECTION: Allowable Modifications and Reductions

(A) This Section 7.2.10 provides flexibility and presents alternative ways to meet the standards set forth in this Ordinance, while encouraging the preservation of existing healthy vegetation and innovation in site design.

(1) Existing healthy vegetation and the area of land used to maintain the vegetation may be counted ....

(2) Up to a twenty (20) percent reduction in the number of parking spaces required on the site shall be allowed ....

(3) Reduction of the buffer width may be approved, as provided below.

(a) The Town Council Zoning Board of Adjustment may reduce the width of required streetscapes and buffers to no less than ten (10) feet pursuant to this section. Buffer reductions between uses may be considered based on the use of innovative site/building design concepts. The Town Council Zoning Board of Adjustment may make exceptions to this minimum width for development within the Town Center District and for reuse/redevelopment sites. Reductions in the width of streetscapes and buffers should only be allowed when:

   (1) At least one (1) of the following conditions exists:

      a. meeting the required width prevents reasonable use of the property based on the zoning; or

      b. additional open space beyond that already required is provided elsewhere on the site; and

      c. the modification advances the goals and purposes of the LDO.

The Planning Director may allow reuse/redevelopment sites to maintain their existing buffer and streetscape widths even if such width is less than current ordinance requirements so long as the proposed development plan does not reduce the existing buffer or streetscape width on the site. If existing pavement, curbs, and/or buildings are being removed from the required buffer and streetscape widths, the Planning Director may require plantings to reasonably meet the intent of the landscape requirements (i.e., parking lot screening, streetscape/buffer and parking lot trees).

(4) An average buffer/streetscape width that equals the width of the required buffer/streetscape may be approved, provided that all of the following requirements are met:

   (B) In addition to subsection (A) above, and in order to provide for flexibility in site design and landscape requirements to preserve champion trees, the Planning Director shall administratively approve the below modifications in the order listed and only to the extent necessary to preserve champion trees.

7.2.14 LANDSCAPING, BUFFERING, SCREENING AND TREE PROTECTION: Urban Transition Buffer Regulations

(J) Modification of Urban Transition Buffers as part of Approving Development Plans
(1) Procedures for Requesting Modifications to Zone Three

The Town Council Zoning Board of Adjustment, after receiving comment from various Town departments which review the proposed development plan pursuant to the LDO, may reduce the total area of Zone Three after establishing the following at a quasi-judicial hearing:

(a) The reduction will have a minimal impact upon the purposes of the General UTBs stated in Section 7.2.14(A) and is consistent with general purposes of the LDO stated in Section 1.3; and

(b) The mitigation of impacts offered by the applicant as part of the proposed development plan significantly outweighs the impacts of the reduction to the General UTBs proposed by the applicant; and

(c) The impact of the reduction in the General UTB is balanced by mitigation, as required below:
   1. Mitigation on a 1:1 ratio for restoration of a degraded buffer or for protection of ephemeral streams contiguous to protected streams; or
   2. Mitigation on a 3:1 ratio for preservation of an existing buffer; or
   3. Mitigation on a 10:1 ratio for preservation of open space.

(d) The requirements of Section 7.2.14(L)(7)(c), (d), (f), (g) and (h) shall apply to any mitigation required by Section 7.2.14(J)(1)(c) above. In addition, the applicant shall submit a restoration or enhancement plan meeting the requirements of Section 7.2.14(L)(7)(e) together with its request for modification.

(e) The preferred mitigation area is off-site. However, in some cases mitigation requirements may be met by protecting land on-site which would otherwise not be protected through another avenue such as buffer, wetlands, floodplain or open space requirements.

(2) In addition to the mitigation required and the considerations provided above, the Town Council Zoning Board of Adjustment may consider other factors such as the following:

(a) Whether a substantial conflict exists between the General UTBs and other provisions and provisions of the LDO (e.g., the appropriate layout of streets in a proposed development conflicts with the location of the General UTBs);

(b) Whether approvals of other governmental agencies impede the effectiveness of the General UTBs or otherwise impact the layout or development of the proposed development; or

(c) Any other information which may be relevant to the Town Council Zoning Board of Adjustment determination that the development plan otherwise satisfies the purposes and goals of the LDO.

(3) Notwithstanding the foregoing, in the event the applicant provides written evidence that the State of North Carolina has granted the applicant a variance to the riparian buffer required by the State of North Carolina, or if the Town has granted a minor variance as described below in section 7.2.14(K), the Town Council Planning Director shall grant a modification to the UTBs applicable to such applicant sufficient to permit such applicant to utilize the State variance granted.

7.2.15 Highway Corridor Buffer

(C) Buffer Requirements

(3) Reductions
(a) Town Council
The Town Council may reduce the required width of this buffer strip as part of its approval of the site and/or subdivision plan, or as part of its approval of a concept plan or preliminary development plan as a component of a rezoning request, taking into consideration: the topography of the area; surrounding land uses, particularly residential uses; the actual location of the controlled/limited access highway; the size and shape of land parcels affected by the buffer; and whether the buffer requirement would render the entire property unusable. In reducing the width of the buffer strip, the Town Council shall ensure that the applicant and/or developer will provide appropriate landscaping meeting the requirements of Section 7.2.15(C)(4) below. In no event, however, shall the Town Council reduce the required width of the buffer strip to less than thirty (30) feet. See Section 3.19, Minor Modifications.

(b) Zoning Board of Adjustment
Pursuant to the procedure in Section 3.19.1, the Zoning Board of Adjustment may consider a reduction of the required width of this buffer strip as a component of a development plan, taking into consideration: the topography of the area; surrounding land uses, particularly residential uses; the actual location of the controlled/limited access highway; the size and shape of land parcels affected by the buffer; and whether the buffer requirement would render the entire property unusable. In reducing the width of the buffer strip, the Zoning Board of Adjustment shall ensure that the applicant and/or developer will provide appropriate landscaping meeting the requirements of Section 7.2.15(C)(4) below. In no event, however, shall the Zoning Board of Adjustment reduce the required width of the buffer strip to less than thirty (30) feet pursuant to this section.

(D) Variances
The required width of the buffer strip may be reduced to less than thirty (30) feet pursuant to Section 3.20 (Variances). No variance shall be granted that modifies the width of the buffer, or the amount or type of vegetation required under this Section, but the Town Council may grant modifications to these requirements in some circumstances (see paragraph (C)(3) above).

(E) Actions of Government or Public Utilities
The law may permit the width of this buffer strip to be reduced through the action(s) of a unit of government or Public Utility (as such term is defined by G.S. 62-3), or may permit development within the buffer by a unit of government or Public Utility, such as but not limited to construction of highways or utility transmission facilities. In such situations, the action to reduce the buffer width or engage in development within the buffer by the government or Public Utility may not be subject to requirements of the LDO, including review or approval by the Town Council Zoning Board of Adjustment. See LDO Section 1.6.

7.8.2 OFF-STREET PARKING AND LOADING: Off-street Parking Space Requirements

(C) Computation of Off-Street Parking Requirements
(4) Commercial Parking Maximums
(a) For uses classified as commercial, the number of spaces shown in Table 7.8-1 shall be considered the maximum number of surface spaces allowed for such
uses for the purpose of reducing unnecessary/rarely-used parking and
decreasing the amount of impervious surface on sites.

(b) Parking spaces provided within a parking deck or other parking structure shall
not count toward the maximum parking requirement. For the purposes of this
subsection, a parking structure includes any structure that provides parking
vertically on more than one (1) level or that provides parking underneath a
building that has occupied floor(s) above the parking level.

c) As part of the review and approval of any procedure set forth in Chapter 3, the
Planning Director may approve an increase in the maximum number of surface
parking spaces of up to thirty (30) percent only if the additional surface parking
is necessary to satisfy the parking expected for the use, based on factors
including, but not limited to, the number of employees per square foot; the
number of trips generated by the use, and the time of day when the use
generates the most trips.

d) The Town Council Zoning Board of Adjustment may approve an increase in the
maximum number of surface parking spaces above thirty (30) percent only if it
finds, after conducting a quasi-judicial hearing, that the increase advances the
goals and purposes of this Ordinance and is necessary to satisfy the demand
for parking expected for the use based on factors including, but not limited to,
the number of employees per square foot; the number of trips generated by
the use; and the time of day when the use generates the most trips.

(D) Required Off-Street Parking Spaces

(1) Schedule "A"

Unless otherwise expressly stated in this Ordinance, off-street parking spaces shall
be provided in accordance with Table 7.8-1. Off-street parking spaces for uses within
the Town Center District shall be provided according to Section 6.1.3 of this
Ordinance. For uses classified as commercial, the number of motor vehicle spaces
shown on the table shall be considered the maximum allowed for such uses.
Exceptions to the maximum parking allowed may be approved if justified in
accordance with Section 7.8.2(C)(4).

(H) Reduction in Number of Required off-street parking spaces

(1) As part of the review and approval of any procedure set forth in Chapter 3, the
Planning Director may approve a reduction of up to fifteen (15) percent in the number
of designated parking spaces only if the reduced number of parking spaces will be
sufficient to satisfy the demand for parking expected for the use, based on the nature
of the use, the number of trips generated by the use, the times of day when the use
generates the most trips, and the extent to which other establishments are located on
the same property and may reduce the number of vehicle trips required between
different establishments.

(2) As part of the review and approval of any procedure set forth in Chapter 3, the Town
Council Zoning Board of Adjustment may allow the following reductions. Review of a
parking reduction request does not change the applicable approval authority for the
development plan as a whole. Any request for parking reduction in excess of the
reductions permitted here shall be processed as a variance request (Section 3.20).

(a) The Town Council Zoning Board of Adjustment may allow a reduction of up to
thirty (30) percent in the number of designated parking spaces upon holding a
quasi-judicial hearing and finding that the such reduced number advances the
goals and purposes of the Ordinance and will be sufficient to satisfy the
demand for parking expected for the use, based on the nature of the use, the
number of trips generated, the times of day when the use generates the most
trips, and the extent to which other establishments are located on the same
property and may reduce the number of vehicle trips required between different establishments.

(b) The Town Council Zoning Board of Adjustment may allow a reduction of up to fifty (50) percent in the number of designated parking spaces for a development in the Town Center (TC) zoning district upon holding a quasi-judicial hearing and finding that such reduced number advances the goals and purposes of the Ordinance and will be sufficient to satisfy the demand for parking expected for the use, based on the following:
1. Nature of the use;
2. The number of trips generated;
3. The times of day when the use generates the most trips;
4. The extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments; and
5. The availability of nearby on-street spaces or public parking facilities.

(3) In cases where no site development plan is required, or where a site plan previously approved plan by the Town Council or the Planning Director remains in effect for the property, the Planning Director may grant a reduction of up to fifteen (15) percent of the requirements of subsection 7.8.2(D) above only if the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments.

(I) Violation Resolution
In cases where no site plan previously approved by the Town Council or the Planning Director remains in effect for the property, the Planning Director may grant reductions from the requirements of subsection 7.8.2(D) above only upon finding that the reduced number of parking spaces will be sufficient to satisfy the demand for parking expected for the use, based on the nature of the use, the number of trips generated by the use, the times of day when the use generates the most trips, and the extent to which other establishments are located on the same property and may reduce the number of vehicle trips required between different establishments. This section shall apply only when reducing the required number of parking spaces is necessary to resolve a violation of this Ordinance or of the previously approved site plan.

7.11.8 TRANSPORTATION DEVELOPMENT FEES: Individual Assessments

(A) If any person believes that his or her proposed construction is unique in the traffic impacts that it will generate, such person may request that the Town perform an individual assessment of the traffic impacts of the proposed construction. Such person shall pay to the Town, in escrow, a sufficient fee to pay the cost of obtaining such assessment from a professional engineer selected and hired by the Town. The Town shall then obtain the services of the professional engineer to perform the assessment, paying the engineer from the escrow account and remitting the balance, if any, to the person requesting the assessment. The Town Council Zoning Board of Adjustment shall, at a quasi-judicial public hearing, consider the request of the applicant to pay the transportation development fee based on the individual assessment. The Town shall assess the transportation development fee based on the individual assessment if the Town Council Board finds that:
1. The proposed construction is in fact so unique that the application of the TDF Schedule adopted by the Town would result in the collection of a fee that is not proportionate to the traffic impact of the proposed construction; and
(2) There is a difference between the fees computed under the TDF Schedule and the fees computed in accordance with the individual assessment of at least five thousand dollars ($5,000.00) or five (5) percent of the total fees, whichever amount is greater.

(B) The professional engineer to perform each individual assessment shall be selected by the Transportation and Facilities Director from a list of qualified engineers maintained by the Town. The list shall contain the names of at least three (3) engineers or engineering firms, and shall be updated regularly. The Town Council Zoning Board of Adjustment reserves the right to dispute the assumptions, methodology, or conclusions of individual assessments. An individual assessment may take into consideration such factors as internal capture of trips in mixed use projects and higher rates of pass by trips than indicated by ITE if supported by reliable local data.

(C) Transportation development fees computed under this section shall be computed in dollars per dwelling unit ……

7.11.20 TRANSPORTATION DEVELOPMENT FEES: Relief Procedures

(A) The developer or owner of property for which a transportation development fee is owed may appeal the assessment of the fee to the Town Council Zoning Board of Adjustment. After a quasi-judicial hearing, the Town Council Board shall take one of the following actions:

(1) If the Town Council Board finds that there has been an error by the Town in assessing the transportation development fee, then the Town Council Board shall correct the error;

(2) The Town Council Board may modify or waive the requirements of this Section 7.11, but only upon finding that a strict application of such requirement would result in confiscation of the property, taken as a whole;

(3) The Town Council Board may, upon recommendation of the Town Manager, authorize the Town to pay, on behalf of the developer, the transportation development fee for a project of public interest, where the Town Council Board finds that such is in the best interest of the Town.

(B) Unless the Town Council Zoning Board of Adjustment makes one of the findings set forth in subsection (A) above, the Town Council Board shall confirm the transportation development fee assessed.

(C) If the Town Council Zoning Board of Adjustment modifies or waives the amount of the transportation development fee, the Town shall cause to be appropriated from other Town funds the amount of the reduction in the transportation development fee.

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

(A) Any owner or developer who is required to dedicate or install improvements pursuant to Section 8.1.4 above may make a payment …

(1) Approval by Transportation and Facilities Director
The Transportation and Facilities Director may approve payment in lieu of required transportation improvements provided that:

(a) If constructed, the transportation improvement would not connect with a similar existing or proposed improvement …
(b) The amount of the payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements (except as provided below), …

(2) Approval by Water Resources Director of Utilities
The Water Resources Director of Utilities may approve payment in lieu of required utility improvements, including reclaimed water lines, provided that:
(a) If constructed, the utility improvement would not provide immediate benefit to utility customers....
(b) The amount of the payment shall be one hundred (100) percent of the actual installation and construction cost of such improvements (except as provided below)…

(3) Approval By Town Council Zoning Board of Adjustment
Except where the required improvements are located on or adjacent to Town-owned property, the Town Council Zoning Board of Adjustment may approve a payment in lieu of less than one hundred (100) percent of the actual installation and construction costs of such improvements in a quasi-judicial hearing, upon determining that such improvements are not necessary or desirable at the present time but will be needed in the future and upon determining that the amount of the payment advances the goals and purposes of the Ordinance. The applicant shall provide an estimate of the actual installation and construction cost of the improvements as estimated by a registered professional engineer selected by the applicant and approved by the Water Resources Utilities or Transportation and Facilities Director.

(B) Full payment shall be made prior to the issuance of any building permit …

10.1.8 NONCONFORMITIES GENERAL PROVISIONS: Enlargement, Expansion, Alteration, or Major Repair

(A) Applicability
(1) Enlargement, expansion, alteration, or major repair of a nonconforming structure or nonconforming use shall be deemed a "special use" and shall occur only if approved by the Town Council Zoning Board of Adjustment in accordance with the procedures and standards set forth in Section 3.8 of this Ordinance and also the requirements of this section.

(2) However, the re-use or redevelopment of a nonconforming structure or nonconforming site that houses a conforming use shall not be required to obtain a special use permit or undergo site and/or subdivision plan review if the requirements of Section 3.11 are met.

(B) Site and/or Subdivision Plans
Site and/or subdivision plans, which shall be reviewed concurrently with the application for a special use, shall be required for the following activities under this section:…

(C) Findings
After holding the hearing on the special use, the Town Council Zoning Board of Adjustment shall determine whether to approve the proposed enlargement, expansion, alteration, or major repair. The Town Council Zoning Board of Adjustment shall not approve the proposed activity unless and until it finds, based on the evidence and testimony received at the hearing or otherwise appearing in the record of the case, that the proposed enlargement, expansion, alteration, or major repair meets the standards of review set forth in Section 3.8.3, Approval Criteria, of this Ordinance, as well as the following:
(D) Other Considerations
In determining whether the proposed extension, alteration, or major repair will substantially injure the value, use, and enjoyment of other properties, the Town Council Zoning Board of Adjustment shall also consider and balance:

(1) The possible detriment or benefit to the owner of the nonconformity resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request;

(2) The possible detriment or benefit to the owners of nearby properties resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request; and

(3) The possible detriment or benefit to the general public resulting from denying the approval, from approving the request but requiring that the nonconformity be brought wholly or partially into compliance, or from approving the request.

(E) Conditions
The Town Council Zoning Board of Adjustment may impose any conditions on approval of the request, including appropriate time limits for meeting those conditions, as it deems necessary to mitigate any potential hazards or problems, or to bring the nonconformity into compliance to the extent necessary to protect the rights and interests of nearby property owners and the general public.

(F) Limits on Expansion
If the Town Council Zoning Board of Adjustment permits a non-conforming use to expand, then the following shall apply:

(1) The area of such expansion shall not exceed twenty-five (25) percent of the area of the existing non-conforming use, unless otherwise allowable in this Section;

(2) Radio, TV, and telecommunication towers may be expanded by more than twenty-five (25) percent to permit the co-location of a second or subsequent user or
communications sending or receiving device so that the need for an additional tower is eliminated. Only the Town Council Zoning Board of Adjustment may permit the expansion of a non-conforming communication tower in a residential or non-residential zoning district, and then only by approving a Special Use Permit (see Section 3.8);

(3) Land uses listed in Table 5.1-2 in a use category of "Vehicles and Equipment" or "Warehouse and Freight Movement" legally-established prior to July 1, 2003 located on parcels within the HMXD (High Intensity Mixed Use) and MXD (Mixed Use) subdistricts of the Town Center (TC) District (see Section 4.2) shall not be considered as nonconforming uses, and as such may be allowed to expand beyond twenty-five (25) percent without a Special Use Permit (see Section 3.8).

(G) Limits on Requirements
In acting upon applications for such special uses, the Town Council Zoning Board of Adjustment shall not order the discontinuation or termination of nonconformity. If an application is denied, then the continuation, maintenance, and minor repair of the nonconformity shall still be allowed in accordance with the terms of this chapter.

(H) Exception for Setbacks for Detached Dwellings....
(I) Nonconforming Buffers or Streetscapes....

11.5.2 ENFORCEMENT: Additional Remedies and Penalties For Certain Violations

<table>
<thead>
<tr>
<th>Type of Violation</th>
<th>Payment of Fines</th>
<th>Review of All Subsequent Site and/or Subdivision Plans by Town Council Zoning Board of Adjustment</th>
<th>Five Year Delay in Approval of a Building Permit or Site and/or Subdivision Plan*</th>
<th>Landscaping Requirements Doubled During Site and/or Subdivision Plan Review</th>
</tr>
</thead>
<tbody>
<tr>
<td>Property is exempt from Tree Clearing Certificate requirements, but all or substantially all** vegetation within required buffers and/or vegetation protection areas is removed</td>
<td></td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
<tr>
<td>Property owner obtains a Tree Clearing Certificate, but removes some of the vegetation within a required buffer and/or tree protection area</td>
<td>X</td>
<td></td>
<td></td>
<td>X</td>
</tr>
<tr>
<td>Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes some of the vegetation within a required buffer and/or tree protection area</td>
<td>X</td>
<td>X</td>
<td></td>
<td>X</td>
</tr>
</tbody>
</table>
Property is not exempt from Tree Clearing Certificate requirements; but property owner obtains no Certificate, and removes all or substantially all** of the vegetation within a required buffer and/or tree protection area

<p>| | | | |</p>
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<thead>
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<th></th>
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</thead>
<tbody>
<tr>
<td>X</td>
<td>X</td>
<td>X</td>
<td>X</td>
</tr>
</tbody>
</table>

* In determining penalties for noncompliance of tree removal, the Town Council Zoning Board of Adjustment may consider, after conducting a quasi-judicial hearing, reducing the five (5) year delay in permit/plan approval. Consideration should be given to how much vegetation was illegally removed, was the vegetation specimen size or greater, what was the proximity of the disturbed area to existing residential dwellings, was the buffer willfully disturbed, etc. The Town Council Zoning Board of Adjustment may uphold the entire five (5) year delay, reduce, or remove this enforcement measure based on the criteria mentioned above.

** "All or substantially all" shall mean 75 percent or more of the existing trees with a caliper of four inches or greater.

3. The Town Council hereby directs that a supplement to the Town Code of Ordinances, including Appendix A, Land Development Ordinance, shall be prepared and printed reflecting these amendments.

Adopted: _________________, 2019
Effective: _________________, 2019