

Ordinance A

AN ORDINANCE AMENDING ARTICLES 1, 3, 4, 5, 8 and Appendix A OF THE LAND USE MANAGEMENT ORDINANCE TO COMPLY WITH NORTH CAROLINA STATE STATUTE 160D (2021-__-__ / O-)

WHEREAS, the Council called a Public Hearing to amend provisions of the Land Use Management Ordinance (LUMO) to incorporate the provisions of the new state enabling legislation entitled, “Chapter 160D Local Planning and Development Regulation” for the Council’s April 21, 2021 meeting; and

WHEREAS, the Council of the Town of Chapel Hill has considered the proposed text amendments to the Land Use Management Ordinance (LUMO) Articles 1, 3, 4, 5, 8 and Appendix A related to incorporating the provisions of the newly enacted North Carolina General Statute 160D and finds that the amendments, if enacted, are reasonable and in the public’s interest and are warranted to achieve the purposes of the Comprehensive Plan as explained by, but not limited to, the following goals of the *Chapel Hill 2020* Comprehensive Plan:

- A development decision-making process that provides clarity and consistency with the goals of the Chapel Hill 2020 comprehensive plan (Goal: Good Places New Spaces.3)
- A community that welcomes and supports change and creativity (Goal: Good Places New Spaces.6)

NOW, THEREFORE, BE IT ORDAINED by the Council of the Town of Chapel Hill that Appendix A – Land Use Management, Articles 1, 3, 4, 5, 8 and Appendix A of the Code of Ordinances, Town of Chapel Hill, North Carolina are hereby amended as follows:

Section 1 – Table of Contents. Footnote (1) --- State Law References is hereby amended to read as follows:

“State Law reference— Municipal zoning power, ~~G.S. NCGS § 160A-381 et seq.~~ **160D-107, 160D-109, 160D-406, 160D-702, 160D-704, 160D-705, 160D-903, 160D-908**; city may regulate subdivision of land, ~~G.S. NCGS § 160A-374~~ **160D-801**”

Section 2 – Article 1 - General Provisions. Section 1.2 Authority is hereby amended to read as follows:

“This appendix is adopted pursuant to the authority contained in Chapter ~~160A~~ 160D; 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; and Chapter 473 of the Session Laws of 1975 and Chapter 278 of the Session Laws of 1965. This appendix cites specific provisions of the North Carolina General Statutes (NCGS), and while these provisions may change after the adoption of this appendix, the intent of these referenced sections shall remain.”

Section 3 – Article 1 – General Provisions. Section 1.4 Applicability is hereby amended to read as follows:

“This appendix 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~~ **160D, Article 2** of the North Carolina General Statutes.

Except as otherwise specifically provided in this appendix, 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 appendix.

Notwithstanding the foregoing, regulations established in this appendix as enacted on January 27, 2003, with the exception of occupancy restrictions for single-family and two-family structures, shall not apply to valid special use permits, development plans, and preliminary plat applications approved by the Town Council, and valid site plan review applications approved by the Planning Commission, prior to the effective date of this enacted appendix. Such developments shall be subject to regulations that were applicable immediately prior to the effective date of this appendix as enacted on January 27, 2003, with the exception of occupancy restrictions for single-family and two-family structures.

The appendix shall apply to all public land(s) and private land(s), and use(s) thereon over which the Town has jurisdiction under the constitution(s) and law(s) of the State of North Carolina and of the United States, including any areas within the jurisdiction of the Town pursuant to North Carolina General Statutes Section ~~160A-360~~ **160D, Article 2**. The Planning Department (hereinafter known as the "Department") of the Town can be contacted for further information about the use of this Chapter.

For a parcel in two jurisdictions, the owner and the jurisdictions may agree that development regulations from one jurisdiction will apply to the entire parcel as authorized in Chapter 160D-203 and in Section 4.1.5 in this appendix.

Section 4 – Article 1 – General Provisions. Section 1.6 Interpretation is hereby amended to read as follows:

“The provisions of this appendix are the basic and minimum requirements for the protection of public health, safety, and welfare. As provided by North Carolina General Statutes Section ~~160A-4~~ **160D-110**, this appendix shall be liberally interpreted in order to further its underlying purposes. In all cases, the strictest standards will be applied. Rules of interpretation and definitions, words, terms or phrases in this chapter may be found in Appendix A [Definitions] to this appendix. This appendix contains numerous graphics, pictures, illustrations, and drawings. However, text of this appendix shall control unless otherwise provided in the specific section.”

Section 5 – Article 3 – Zoning Districts, Uses, and Dimensional Standards. The Introductory second paragraph is hereby amended to read as follows:

“First, "General Use **or Conventional**" districts (section 3.3) divide the town into various residential, commercial and industrial zones. Each district establishes uses that are permitted "as of right," and uses permitted only as "special uses." Special uses require a ~~public~~ **evidentiary** hearing in order to assess whether conditions are needed in order to make the use compatible with other uses in the district. The uses permitted in each district are listed in section 3.7.”

Section 6 – Article 3 – Zoning Districts, Uses, and Dimensional Standards. The Introductory third paragraph is hereby amended to read as follows:

““Conditional **Zoning**” Districts (section 3.4) **in which site plans or individualized development conditions that are** ~~include district-specific conditions agreed upon, in writing,~~ by the town council and the property owner(s) to ensure that the use or group of uses is compatible with adjoining districts and uses. ~~There are two types of Conditional Districts, each with different application procedures and requirements for establishment by the town council: Conditional Use Districts (section 3.4.1) and Conditional Zoning Districts (sections 3.4.3-6).~~ **Such Conditional Zoning Districts are established by the town council pursuant to NCGS 160D-703.”**

Section 7 – Article 3 – Zoning Districts, Uses, and Dimensional Standards. Section 3.1.2 is hereby deleted and the following sub-sections renumbered as follows:

~~“3.1.2 Conditional use districts may be established by the town council approval of a conditional use district rezoning pursuant to the procedures established in section 4.4.2 of this appendix. Conditional use districts parallel general use districts and require an approval of an accompanying special use permit, which incorporates district-specific site plans and conditions agreed to by the owner(s) of the rezoned land. A special use permit application must be submitted within one (1) year of an approved rezoning pursuant to the procedures established in section 4.5.3 of this appendix. Such approval authorizes the development of the conditional use district-specific site plan in accordance with the standards applicable to the general use district as modified by the stipulations contained within the special use permit.~~

3.1.2 ~~3.1.3~~ The Light-Industrial Conditional Zoning District (LI-CZD), may be established by the town council approval of a conditional zoning district rezoning pursuant to the procedures established in section 4.4.3 of this Appendix. The light-industrial conditional zoning district incorporates district-specific rezoning plans and conditions agreed to by the owner(s) of the rezoned land. Such approval authorizes development of the Light-Industrial conditional zoning district-specific rezoning plan in accordance with the standards applicable to the conditional zoning district, as modified by the conditions contained with the conditional zoning district rezoning approval.

3.1.3 ~~3.1.4~~ Conditional Zoning Districts, other than the LI-CZD, may be established by the town council approval of a conditional zoning district pursuant to the procedures established in section 4.4.5 of this appendix, provided the conditional zoning district is deemed consistent with the land use plan in the comprehensive plan by locating in conformance with an adopted small area plan and/or in one of the following land use categories:”

Section 8 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.2.5 is hereby amended to read as follows:

“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. **Following each zoning atlas amendment, prior versions of the zoning atlas shall be maintained for public inspection in either paper or digital formats.** Changes to the official zoning atlas other than those authorized by duly approved amendments to this appendix shall be prohibited.”

Section 9 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.2.7 is hereby amended to read as follows:

“The town manager shall render a decision as to any dispute of the boundary or location of property within a zoning district in accordance with the procedures for ~~interpretations~~ **determinations** (section 4.11)”

Section 10 – Article 3 – Zoning Districts, Uses, and Dimensional Standards. Section 3.4.1 (a) is hereby deleted, and the subsequent subsection renumbered as follows:

~~“(a) For the TC-1, TC-2, TC-3, CC, N.C., OI-1, I, R-6, R-5, R-4, R-3, R-2, R-2A, R-1, R-1A, HR-L, HR-M, HR-X, R-LD1, and R-LD5 districts hereinabove described, there are hereby established parallel conditional use districts designated TC-1-C, TC-2-C, TC-3-C, CC-C, N.C.-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, HR-L-C, HR-M-C, HR-X-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 3.7, Table 3.7-1 (Use Matrix), for the parallel general use district are permitted only upon issuance of a special use permit by the town council pursuant to section 4.5 of this appendix.~~

~~“(b) All conditional use districts established pursuant to North Carolina General Statutes Section 160A-382 that existed as of October 2020 are hereby converted to conditional zoning districts pursuant to North Carolina General Statutes 160D. Any conditional use district established prior to October 2020 shall be henceforth shown on the zoning atlas with a CZD suffix. Any proposed modifications to such districts established prior to October 2020 shall be considered pursuant to Section 4.4.5.”~~

Section 11 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.5.2(b) third full paragraph is hereby amended to read as follows:

“For development proposed within an OI-4 zoning district that is not included in a town council-approved development plan, but is a minor ~~change~~ **modification** according to the provisions of subsection (i) of this section, 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 town council-approved development plan and that cannot be considered a minor ~~change~~ **modification** to the plan according to subsection ~~(i)~~ **(j)** of this section, such development shall be considered to be a special use, and subject to the special use permit procedural requirements of section 4.5 of this appendix. In the alternative, the applicant may apply to the town council for an amendment to the development plan.”

Section 12 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.2(h) (2) Process for review is hereby amended to read as follows:

“(2) Process for review.

- A. Applications for development plan approval ~~may~~ **shall** be reviewed by the planning commission, and ~~the planning commission may conduct a preliminary forum to review the application and the town manager’s report and to provide comments to the applicant.~~ **forwarded to the town council for consideration at a public hearing. The Planning Commission shall review the application and the Town Manager’s report and shall submit to the Town Council a written recommendation based on the findings required in**

~~subsection (h)(3). The Planning Commission shall prepare its recommendation 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 Town Council resolution. If the Planning Commission fails to prepare its recommendation to the Town Council within this time limit, or extensions thereof, the Planning Commission shall be deemed to recommend approval of the application without conditions.~~

- B. Notice of the date, time, and place of the ~~public~~ **evidentiary** 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.
- C. ~~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 town 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.~~

Presentation of Evidence. - The applicant, the town council, and any person who would have standing to appeal the decision under NCGS 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the town council. All persons who intend to present evidence at the evidentiary hearing shall be sworn.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the standing of a party, may be made to the town council. The mayor shall rule on any objections, and the mayor's rulings may be appealed to the full town council. These rulings are also subject to judicial review pursuant to NCGS 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

- D. The applicant shall bear the burden of presenting evidence sufficient to establish persuasively that the proposed development will comply with the determinations required in subsection (h)(3).
- E. A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the **evidentiary** hearing. Town council action on an application for development plan approval shall occur within one hundred twenty (120) days of the date of submittal of a complete application."

Section 13 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.2(j) Process for amending the development plan is hereby amended to read as follows:

"The town manager is authorized to approve minor ~~changes~~ **modifications** 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 town 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 **major** modification of the development plan.

Before making a determination as to whether a proposed action is a minor ~~change~~ modification or a major 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:

- (1) A change in the boundaries of the development plan approved by the town council shall constitute a major modification;
- (2) A substantial change in the floor area or number of parking spaces approved by the town council shall constitute a major modification. (General rule: more than a 5% increase in overall net new floor area or parking in a development plan approved by the town council would be considered substantial.);
- (3) Substantial changes in pedestrian or vehicular access or circulation approved by the town council shall constitute a major modification. (General rule: changes that would affect access or circulation beyond the boundaries of a development plan would be considered substantial.); and
- (4) Substantial change in the amount or location of open areas approved by the town council shall constitute a major modification.

If the proposed action is determined to be a major modification, the town manager shall require the filing of an application for approval of the major modification, following procedures outlined in this section for initial approval of a development plan.”

Section 14. Article 3. – Zoning Districts, Uses and Dimensional Standards. Section 3.5.5 University-1 District (a) Purpose and Intent, is hereby amended to read as follows:

“Purpose and intent. The purpose and intent of the University-1 district (U-1) 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 uses are to be public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility, and/or open space uses.

The objective of the U-1 district is to allow for orderly and sustainable growth and major new development while mitigating impacts to nearby neighborhoods, the community, and the environment. A key feature of this district is the concurrent review of a rezoning application and an initial proposed development agreement within such district that allows the property owner, immediate neighbors, and community to understand the type and intensity of development being proposed, the timing of that development, the potential impacts of the development, the mitigation measures that will be implemented to address those impacts, and the commitments of both the developer and the town regarding public facilities and services needed to support the proposed development. A development agreement that is approved by ordinance as a legislative decision of the town council pursuant to G.S. ~~160A-400.22~~ **160D-1003** is an integral component of the U-1 zoning district.”

Section 15 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (d) Long-range development plan is hereby amended to read as follows:

“Long-range development plan. When an application for a rezoning to this district is submitted, the developer shall submit a long-range development plan to provide an opportunity for the town council,

town manager and citizens to see the developer's current plans at a conceptual level for long-term development of all property within the proposed zoning district. This long-range plan is necessary to provide a context for individual development agreements for development within the district. The long-range plan shall represent a good faith depiction of the developer's intentions relative to overall development of the site. It is not, however, submitted for town approval and shall not be deemed to create a binding commitment on behalf of the developer or the town.

The long-range development plan shall be submitted to the town manager prior to or concurrently with the submission of an application to rezone property into this district. An updated long-range development plan shall also be submitted with all applications for approval of a development agreement within the district or for approval of major ~~amendments~~ **modifications** of a development agreement within the district.”

Section 16 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (e) (9) is hereby amended to read as follows:

“A development schedule, including commencement dates and interim completion dates at no greater than five-year intervals, provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to ~~G.S. 160A-400.27~~ **NCGS 160D-1008** but must be judged based upon the totality of the circumstances.”

Section 17 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (f)(1) Permitted uses within a development agreement is hereby amended to read as follows:

“Permitted uses within a development agreement. The predominant uses are to be public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility, and/or open space uses. Uses that may be approved within a development agreement in this district include all uses allowed within the OI-4 district as permitted uses, special uses, or accessory uses. The maximum floor area, density of development, building heights and general locations, other attributes of development intensity, and design guidelines for the development permitted shall be as provided in a town council-approved development agreement. The development agreement may provide that specified uses shall require a town council-approved special ~~or conditional~~ use permit.

A large central cogeneration/utility plant may only be approved within a development agreement in this district upon approval of a ~~conditional~~ **special** use permit by the town council. For the purposes of this section, a large central cogeneration/utility plant includes any facility designed to produce steam, heat, electric power, chilled water, or cooling for other buildings and that is designed to or has the capacity to serve more than two million square feet of building space. The process established by section 4.5.3 of this appendix shall be followed in the consideration of this ~~conditional~~ **special** use permit and sections 4.5.4 and 4.5.5 of this appendix shall apply to modification, expiration, and revocation of this ~~conditional~~ **special** use permit. The town council shall not approve that permit unless each of the following findings is made:

1. That the use is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;

2. That the use is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use is a public necessity;
3. That the use conforms with the general plans for the physical development of the town as embodied in the comprehensive plan; and
4. That the use conforms with the applicable terms of the development agreement.”

Section 18 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (i) (3) Fiscal Impact is hereby amended to read as follows:

“Proposed development shall be accompanied by reasonable measures to mitigate any adverse fiscal impacts for the town; provided that, pursuant to ~~NCGS 160A-400.20(b)~~ **160D-1001 (b)**, the town may not impose any tax or fee not authorized by otherwise applicable law.”

Section 19 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (j) Amendments and modifications to development agreements is hereby amended to read as follows:

“(j) ~~Amendments~~ **Minor** and **major** modifications to development agreements. A development agreement may be ~~amended~~ **modified** or canceled by mutual consent of the parties to the agreement or by their successors in interest.

Either party may propose a major ~~amendment~~ or minor modification to any town council-approved development agreement. Upon receipt of a proposed ~~adjustment~~ **modification**, the town manager shall consider the following criteria in making the determination as to whether a proposed adjustment is a major ~~amendment~~ or a minor modification to a development agreement:

1. A substantial change in the boundaries of the development agreement shall constitute a major ~~amendment~~ **modification**. Any single proposed increase or decrease in the area of land subject to the development agreement approved by the town council of more than five (5) percent shall be considered substantial. A cumulative increase of fifteen (15) percent or more in the land area subject to the development agreement shall be considered substantial.
2. A substantial change in the floor area or number of parking spaces shall constitute a major ~~amendment~~ **modification**. Any single proposed increase or decrease in new floor area or number of parking spaces of more than a five (5) percent in a development agreement approved by the town council shall be considered ~~substantial~~ **a major modification**. A cumulative increase of fifteen (15) percent or more in the floor area or number of parking spaces subject to the development agreement shall be considered ~~substantial~~ **a major modification**. Provided, under no circumstances shall a change in floor area of less than one thousand (1,000) square feet or fewer than ten (10) parking spaces be deemed either a major amendment or minor modification and such changes shall be reported by the applicant to the town manager.
3. Changes that would substantially affect pedestrian, bicycle, or vehicular access or circulation beyond the boundaries of the development agreement shall constitute a major ~~amendment~~ **modification**.

4. Substantial change in the amount or location of open space within the boundaries of a development agreement shall constitute a major ~~amendment~~ **modification**. Any single change that increases or decreases the amount of open space by more than five (5) percent shall be considered ~~substantial~~ **a major modification**. A cumulative increase or decrease in the amount of open space by fifteen (15) percent or more or a substantial change in the location of designated open space shall be considered ~~substantial~~ **a major modification**.

Notwithstanding the above, some proposed changes to a town-council approved development agreement that do not meet the threshold to constitute a major ~~amendment~~ **modification** may in the judgment of the town manager, because of size, perimeter location or transportation impacts, merit public review. In the event the manager makes such a determination he may submit the proposed minor modification at a town council meeting to allow an opportunity for council review and citizen comment. Unless the other party to the development agreement agrees otherwise, such a review shall not extend the time period allowed for a decision by the manager on the minor modification or convert the change from a minor modification into a major ~~amendment~~ **modification**.

All proposed adjustments to a town council-approved development agreement shall be publicly posted in such a manner that citizens of Chapel Hill will have the opportunity to express any concerns to the town council and/or the town manager. The town manager shall determine whether a proposed adjustment to a town council-approved development agreement is a major ~~amendment~~ or a minor modification within fifteen (15) working days of receipt of a proposed adjustment and shall promptly notify the town council and applicant of that determination. If the proposed action is determined to be a major ~~amendment~~ **modification**, the town manager shall require the filing of an application for approval of the amendment, following procedures outlined in subsection 3.5.5(k) of this appendix.

In the event state or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the town council may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the development agreement. In so doing, the procedures set forth for original approval of the development agreement shall be followed.

Except for grounds specified in ~~G.S. 160A-385.1(e)~~ **NCGS 160D-108(c) or 160D-108.1(f)**, the town shall not apply subsequently adopted ordinances or development policies to the development that is subject to the approved development agreement.”

Section 20 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (k) Procedure for review of development agreements, amendments, and modifications is hereby amended to read as follows:

“(k) *Procedure for review of development agreements, amendments, and modifications.*

- (1) *Application submittal requirements.* Applications for approval of a development agreement, a major ~~amendment~~ **modification** to a previously approved development agreement, and a minor modification to a previously approved development agreement within a U-1 zoning district shall be submitted to the town manager. The town manager shall prescribe the form(s) of applications as well as any other material as the town manager may reasonably require to determine compliance with this section.
- (2) *Process for review.*

- A. *Informal consultation.* Prior to submission of a proposed development agreement or a major ~~amendment~~ **modification** to a previously approved development agreement within this district, the applicant shall consult with the town manager and town council regarding the proposed development. The applicant is encouraged to engage in active discussion and collaboration with the town staff, town council, town advisory boards, neighbors, and the community in the preparation of a proposed development agreement or amendment and plans for development.
- B. *Draft agreement.* A draft development agreement and long-range development plan for the activity to be addressed in the development agreement shall be submitted to the town manager prior to the submission of a formal development agreement. The manager and applicant shall present the draft agreement to the planning commission, such other advisory boards as deemed appropriate by the town council, and the town council for review and comment. The manager and applicant shall also present the draft agreement in informal public information sessions for public review and comment. A formal application for approval of a development agreement may be submitted upon completion of the review, comment, and revision of the draft development agreement.
- C. *Initial development agreement.* Applications for approval of an initial development agreement within this zone shall be processed concurrently with the petition for rezoning to the U-1 district. The ~~public~~ **legislative** hearing on the initial development agreement shall be noticed and held concurrently with the hearing on the proposed rezoning. Notice of the ~~public~~ **legislative** hearing before the town council on the proposed development agreement shall follow the same notice requirements as are applicable for hearings on proposed zoning atlas amendments. The public notice shall include the location of the property covered by the proposed development agreement, the development uses proposed on the property, and the place a copy of the proposed development agreement may be obtained or reviewed. The town council's ~~public~~ **legislative** hearing on the proposed development agreement shall be open to the public and all interested persons shall be given the opportunity to present comments. The town council shall take action on an application for an initial development agreement within this zone concurrently with action on the application for rezoning to this district. The initial development agreement may be applicable to all or part of the land within the district.
- D. *Subsequent development agreements and major ~~amendments~~ **modifications**.* Subsequent new development agreements within this zoning district and major ~~amendments~~ **modifications** of a previously approved development agreement shall be considered using the following process:
1. Upon receipt of an application for approval, the town manager shall review the proposal for completeness. The town manager shall determine within fifteen (15) working days whether the application is complete and shall promptly notify the town council and applicant of that determination. If the application is determined to be incomplete, a notice of the deficiencies in the mandatory items to be included in a proposed agreement or major amendment shall be provided to the applicant with the notice of the town manager's determination. If the application is determined to be complete, the town manager shall notify the applicant of that determination and shall prepare a report on the proposed agreement or major ~~amendment~~ **modification**.

2. The town manager shall submit a complete proposed agreement or major ~~amendment~~ **modification** and the town manager's report to the planning commission for review and comment. The planning commission shall review the application and the town manager's report and shall submit to the town council a written recommendation regarding the proposed agreement or amendment. The planning commission shall submit its recommendation within thirty-five (35) calendar 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 town council resolution. If the planning commission fails to prepare its recommendation to the town council within this time limit, or extensions thereof, the town council may consider the proposed agreement without a comment or recommendation from the planning commission.
 3. The town council shall hold a ~~public~~ **legislative** hearing on a proposed subsequent development agreement or major ~~amendment~~ **modification** to a previously approved development agreement. Notice of the date, time, and place of the ~~public~~ **legislative** hearing before the town council shall follow the same published, mailed, and posted notice requirements as are applicable for hearings on proposed zoning atlas amendments. The public notice shall include the location of the property covered by the proposed development agreement, the development uses proposed on the property, and the place a copy of the proposed development agreement may be obtained or reviewed. The town council's ~~public~~ **legislative** hearing on the proposed agreement or major ~~amendment~~ **modification** shall be open to the public and all interested persons shall be given the opportunity to present comments.
 4. The town council shall issue a decision on a proposed subsequent development agreement or major ~~amendment~~ **modification** to a previously approved development agreement within one hundred twenty (120) calendar days of the date of the town manager's determination that a complete application was submitted or such further time as mutually agreed to by the applicant and the town.
- E. Minor modifications to a previously approved development agreement may be approved by the town manager as long as such changes continue to be in substantial compliance with the approving action of the town council and all other applicable requirements and result in a configuration of buildings/development that is generally consistent with the town council-approved development agreement. The town manager shall not have the authority to approve changes that constitute a major ~~amendment~~ **modification** of a town council-development agreement, **which includes change in uses permitted or the density of overall development permitted.**
- F. The time periods referenced in this subsection shall not run during any period in which the applications for subsequent development agreements or major ~~amendment~~ **modification** to a previously approved development agreement have been returned to the applicant for substantial modification or analysis. The time periods set forth in this subsection may also be modified by mutual consent of the applicant and the town council."

Section 21 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (I) Actions after the decision on a development agreement is hereby amended to read as follows:

“

- (1) *Recording approval.* If the application for approval of a development agreement or major ~~amendment~~ **modification** is approved or approved with conditions, the town manager shall execute the development agreement or ~~amendment~~ **modification** in accord with the action of the town council. The applicant shall then execute the development agreement or ~~amendment~~ **modification** and record the development agreement or ~~amendment~~ **modification** in the office of the applicable county register of deeds within fourteen (14) days after the town enters into the development agreement. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.
- (2) *Individual site development permits.* After an executed development agreement is recorded, the town manager may then accept applications for individual site development permits for specific buildings that the applicant proposes to build within the physical boundaries covered by the agreement. No construction work on any such building identified in the agreement 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 the town manager may reasonably require to determine compliance with the agreement. The town manager shall approve or deny of the individual site development permit application within fifteen (15) working days of the manager's determination that the individual site development plan application is complete. The town manager shall approve the application upon finding it is substantially consistent with and does not violate any term of the agreement and shall deny approval upon finding the application is not substantially consistent with or violates a term of the agreement. If the application is denied, the town manager shall specify the grounds for finding that it is inconsistent or in violation and refer the applicant to the special use permit process described in section 4.5 of this appendix. Alternatively, the applicant may modify the site development permit application or apply for a major ~~amendment~~ **modification** to the development agreement. Provided, under no circumstances shall a change in floor area of less than one thousand (1,000) square feet or fewer than ten (10) parking spaces be deemed either a minor modification or major ~~amendment~~ **modification** of the development agreement nor require approval or modification of an individual site development permit; such changes shall be reported by the applicant to the town manager.
- (3) *Expiration, abandonment, revocation of development agreement.* The term of any development agreement shall be set forth in the agreement. The development agreement shall also contain specific provisions relative to default or termination of the agreement.
- (4) *Periodic review and amendment of the development agreement.* The town manager shall at least every twelve (12) months conduct a review of the development agreement at which time the applicant or its successors in interest must demonstrate good faith compliance with the terms of the development agreement. The town manager shall promptly report the results of this review to the town council. If, as a result of this periodic review, the town council finds and determines that the applicant or its successors in interest has committed a material breach of the terms or conditions of the agreement, the town manager shall serve notice in writing, within a reasonable time not to exceed thirty (30) working days after the periodic review, upon the applicant or its successors in interest setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the applicant or their successors in interest a reasonable time in which to cure the material breach. If the applicant or its successors in interest fail to cure the material breach within the time given,

then the town council unilaterally may terminate or modify the development agreement pursuant to ~~G.S. 160A-400.27(c)~~ **NCGS 160D-1008**; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by ~~G.S. 160A-388(b)~~ **NCGS 160D-405**. Thereafter the applicant or its successors in interest may pursue any other rights and remedies available at law or in equity. If the town council elects to unilaterally modify the agreement, the applicant or its successors in interest may elect for the development agreement to be terminated rather than accede to the development agreement with the modifications unilaterally made by the town council.”

Section 22 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (a) Purpose and intent is hereby amended to read as follows:

“Purpose and intent. The purpose and intent of the Development Agreement-1 district (DA-1) is to establish procedural and substantive standards for the town council's review and approval of development where the predominant uses are to be private development that includes uses such as housing, general business, convenience business, office-type business, recreation, utility, and/or open space uses.

The objective of the DA-1 district is to allow for orderly and sustainable growth and major new development while mitigating impacts to nearby neighborhoods, the community, and the environment. A key feature of this district is the concurrent review of a rezoning application and an initial proposed development agreement within such district that allows the property owner, immediate neighbors, and community to understand the type and intensity of development being proposed, the timing of that development, the potential impacts of the development, the mitigation measures that will be implemented to address those impacts, and the commitments of both the developer and the Town regarding public facilities and services needed to support the proposed development. A development agreement that is approved by ordinance as a legislative decision of the town council pursuant to ~~NCGS 160A-400.22~~ **160D-1003** is an integral component of the DA-1 zoning district.”

Section 23 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (c) Minimum Requirements is hereby amended to read as follows:

“(c) Minimum Requirements. Areas with contiguous acres of developable property (as defined by ~~G.S. 160A-400.23~~ **NCGS 160D-1004**) under common ownership or management may be placed in a DA-1 zoning district:

An application for rezoning to a DA-1 district must, in addition to all other requirements for this ordinance, include:

1. An ecological analysis of the entire area proposed to be included in the district.
2. A proposal to establish a development agreement of the land to be placed in the district.

The requirement of an approved development agreement may include work or restrictions beyond the property zoned DA-1.

The town manager may specify forms and reasonable requirements related to these mandated materials to be submitted with a rezoning petition.”

Section 24 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (d) 9. is hereby amended to read as follows:

“A development schedule, including commencement dates and interim completion dates provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to ~~G.S. 160A-400.27~~ **NCGS 160D-1008** but must be judged based upon the totality of the circumstances.”

Section 25 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (e)(2) is hereby amended to read as follows:

“The maximum floor area, density of development, building heights and general locations, other attributes of development intensity, and design guidelines for the development permitted shall be as provided in a town council-approved development agreement. The development agreement may provide that specified uses shall require a town council-approved special ~~or conditional~~ use permit.”

Section 26 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (h) (3) Fiscal impact is hereby amended to read as follows:

“Proposed development shall be accompanied by reasonable measures to mitigate any adverse fiscal impacts for the Town; provided that, pursuant to ~~N.C.G.S. 160A-400.20(b)~~ **NCGS 160D-1001 (b)**, the Town may not impose any tax or fee not authorized by otherwise applicable law.”

Section 27 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (i) Amendments and modifications to development agreements is hereby amended to read as follows:

~~“Amendments~~ **Minor and major** modifications to development agreements. A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

Either party may propose a major ~~amendment~~ **modification** or minor modification to any town council-approved development agreement. Upon receipt of a proposed adjustment, the town manager shall consider the following criteria in making the determination as to whether a proposed adjustment is a major ~~amendment~~ **modification** or a minor modification to a development agreement:

1. A substantial change in the boundaries of the development agreement shall constitute a major ~~amendment~~ **modification**. Any single proposed increase or decrease in the area of land subject to the development agreement approved by the town council of more than five (5) percent shall be considered substantial. A cumulative increase of 15 percent or more in the land area subject to the development agreement shall be considered substantial.
2. A substantial change in the floor area or number of parking spaces shall constitute a major ~~amendment~~ **modification**. Any single proposed increase or decrease in new floor area or number of parking spaces of more than a five (5) percent in a development agreement approved by the town council shall be considered ~~substantial~~ **a major modification**. A cumulative increase of fifteen (15) percent or more in the floor area or number of parking spaces subject to the

development agreement shall be considered ~~substantial~~ **a major modification**. Provided, under no circumstances shall a change in floor area of less than one thousand (1,000) square feet or fewer than ten (10) parking spaces be deemed either a major ~~amendment~~ or minor modification and such changes shall be reported by the applicant to the town manager.

3. Changes that would substantially affect pedestrian, bicycle, or vehicular access or circulation beyond the boundaries of the development agreement shall constitute a major ~~amendment~~ **modification**.
4. Substantial change in the amount or location of open space within the boundaries of a development agreement shall constitute a major ~~amendment~~ **modification**. Any single change that increases or decreases the amount of open space by more than five (5) percent shall be considered ~~substantial~~ **a major modification**. A cumulative increase or decrease in the amount of open space by fifteen (15) percent or more or a substantial change in the location of designated open space shall be considered ~~substantial~~ **a major modification**.

Notwithstanding the above, some proposed changes to a town council-approved development agreement that do not meet the threshold to constitute a major ~~amendment~~ **modification** may in the judgment of the town manager, because of size, perimeter location or transportation impacts, merit public review. In the event the manager makes such a determination he/she may submit the proposed minor modification at a town council meeting to allow an opportunity for council review and public comment. Unless the other party to the development agreement agrees otherwise, such a review shall not extend the time period allowed for a decision by the manager on the minor modification or convert the change from a minor modification into a major ~~amendment~~ **modification**.

All proposed adjustments to a town council-approved development agreement shall be publicly posted in such a manner that the public will have the opportunity to express any concerns to the town council and/or the town manager. The town manager shall determine whether a proposed adjustment to a town council-approved development agreement is a major ~~amendment~~ or a minor modification within fifteen (15) working days of receipt of a proposed adjustment and shall promptly notify the town council and applicant of that determination. If the proposed action is determined to be a major ~~amendment~~ **modification**, the Town Manager shall require the filing of an application for approval of the amendment, following procedures outlined in section 3.5.6(k) of this appendix.

In the event state or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one (1) or more provisions of the development agreement, the town council may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the development agreement. In so doing, the procedures set forth for original approval of the development agreement shall be followed.

Except for grounds specified in ~~N.C.G.S. 160A-385.1(e)~~ **160D-108(c) or 160D-108.1(f)**, the town shall not apply subsequently adopted ordinances or development policies to the development that is subject to the approved development agreement."

Section 28 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (j) Procedure for review of development agreements, amendments, and modifications is hereby amended to read as follows:

"(j) Procedure for review of development agreements, ~~amendments~~, **major and minor modifications**.

- (1) *Application submittal requirements.* Applications for approval of a development agreement, a major ~~amendment~~ **modification** to a previously approved development agreement, and a minor modification to a previously approved development agreement within a DA-1 zoning district shall be submitted to the town manager. The town manager shall prescribe the form(s) of applications as well as any other material as the town manager may reasonably require to determine compliance with this section.
- (2) *Process for review.*
- A. *Informal consultation.* Prior to submission of a proposed development agreement or a major amendment to a previously approved development agreement within this district, the applicant shall consult with the town manager and town council regarding the proposed development. The applicant is encouraged to engage in active discussion and collaboration with the town staff, town council, town advisory boards, neighbors, and the community in the preparation of a proposed development agreement or amendment and plans for development.
 - B. *Draft agreement.* A draft development agreement and long-range development plan for the activity to be addressed in the development agreement shall be submitted to the town manager prior to the submission of a formal development agreement. The manager and applicant shall present the draft agreement to the planning commission, such other advisory boards as deemed appropriate by the town council, and the town council for review and comment. The manager and applicant also shall present the draft agreement in informal public information sessions for public review and comment.
 - C. *Initial development agreement:* Applications for approval of an initial development agreement within this zone shall be processed concurrently with the petition for rezoning to the DA-1 district. The ~~public~~ **legislative** hearing on the initial development agreement shall be noticed and held concurrently with the hearing on the proposed rezoning. Notice of the ~~public~~ **legislative** hearing before the town council on the proposed development agreement shall follow the same notice requirements as are applicable for hearing on proposed zoning atlas amendments. The public notice shall include the location of the property covered by the proposed development agreement; the development uses proposed on the property, and how a copy of the proposed development agreement may be obtained or reviewed. The town council shall take action on an application for an initial development agreement within this zone concurrently with action on the application for rezoning to this district. The initial development agreement may be applicable to all or part of the land within the district.
 - D. *Subsequent development agreements and major ~~amendments~~ **modifications**.* Subsequent new development agreements within this zoning district and major ~~amendments~~ **modifications** of a previously approved development agreement shall be considered using the following process:
 1. Upon receipt of an application for approval, the town manager shall review the proposal for completeness. The town manager shall determine within fifteen (15) working days whether the application is complete and shall promptly notify the town council and applicant of that determination. If the application is determined to be incomplete, a notice of the deficiencies in the mandatory items to be included in a proposed agreement or major ~~amendments~~ **modifications** shall be provided to the applicant with the notice of the town manager's determination. If the application is

determined to be complete, the town manager shall notify the applicant of that determination and shall prepare a report on the proposed agreement or major ~~amendments~~ **modifications**.

2. The town manager shall submit a complete proposed agreement or major ~~amendments~~ **modifications** and the town manager's report to the planning commission for review and comment. The planning commission shall review the application and the town manager's report and shall submit to the town council a written recommendation regarding the proposed agreement or amendment. The planning commission shall submit its recommendation within thirty-five (35) calendar 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 town council resolution. If the planning commission fails to prepare its recommendation to the Town Council within this time limit, or extensions thereof, the town council may consider the proposed agreement without a comment or recommendation from the planning commission.
 3. The town council shall hold a ~~public~~ **legislative** hearing on a proposed subsequent development agreement or major ~~amendments~~ **modifications** to a previously approved development agreement. Notice of the date, time, and place of the ~~public~~ **legislative** hearing before the town council shall follow the same published, mailed, and posted notice requirements as are applicable for hearings on proposed zoning atlas amendments. The public notice shall include the location of the property covered by the proposed development agreement, the development uses proposed on the property, and the place a copy of the proposed development agreement may be obtained or reviewed.
 4. The town council shall make a decision on a proposed subsequent development agreement or major ~~amendments~~ **modifications** to a previously approved development agreement within one hundred twenty (120) calendar days of the date of the town manager's determination that a complete application was submitted or such further time as mutually agreed to by the applicant and the town.
- E. Minor modifications to a previously approved development agreement may be approved by the town manager as long as such changes continue to be in substantial compliance with the approving action of the town council and all other applicable requirements and result in a configuration of buildings/development that is generally consistent with the town council-approved development agreement. The town manager shall make a decision on the proposed minor amendment within one hundred twenty (120) calendar days of the date of the town manager's determination that a complete application was submitted or such further time as mutually agreed to by the applicant and the town. The town manager shall not have the authority to approve changes that constitute a major ~~amendments~~ **modifications** of a town council-development agreement.
- F. The time periods referenced in this subsection shall not run during any period in which the applications for subsequent development agreements or major ~~amendments~~ **modifications** to a previously approved development agreement have been returned to the applicant for substantial modification or analysis. The time periods set forth in this subsection may also be modified by mutual consent of the applicant and the town council.”

Section 29 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.6 (k) Actions after decision on a development agreement is hereby amended to read as follows:

“(k) *Actions after decision on a development agreement.*

- (1) *Recording approval.* If the application for approval of a development agreement or major ~~amendment~~ **modification** is approved or approved with conditions, the town manager shall execute the development agreement or amendment in accord with the action of the town council. The applicant shall then execute the development agreement or amendment and record the development agreement or amendment in the office of the applicable county register of deeds within fourteen (14) days after the town enters into the development agreement. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.
- (2) *Individual site development permits.* After an executed development agreement is recorded, the town manager may then accept applications for individual site development permits for specific buildings that the applicant proposes to build within the physical boundaries covered by the agreement. No construction work on any such building identified in the agreement 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 the town manager may reasonably require to determine compliance with the agreement. The town manager shall approve or deny of the individual site development permit application within fifteen (15) working days of the manager's determination that the individual site development plan application is complete. The town manager shall approve the application upon finding it is substantially consistent with and does not violate any term of the agreement and shall deny approval upon finding the application is NOT substantially consistent with or violates a term of the agreement. If the application is denied, the Town manager shall specify the grounds for finding that it is inconsistent or in violation and refer the applicant to the special use permit process described in section 4.5 of this appendix. Alternatively, the applicant may modify the site development permit application or apply for a major ~~amendment~~ **modification** to the development agreement. Provided, under no circumstances shall a change in floor area of less than one thousand (1,000) square feet or fewer than ten (10) parking spaces be deemed either a minor ~~modification~~ or major ~~amendment~~ **modification** of the development agreement nor require approval or modification of an individual site development permit; such changes shall be reported by the applicant to the town manager.
- (3) *Expiration, abandonment, revocation or development agreement.* The term of any development agreement shall be set forth in the agreement. The development agreement shall also contain specific provisions relative to default or termination of the agreement.
- (4) *Periodic review and amendment of the development agreement.* The town manager shall at least every twelve (12) months conduct a review of the development agreement at which time the applicant or its successors in interest must demonstrate good faith compliance with the terms of the development agreement. The town manager shall promptly report the results of this review to the town council. If, as a result of this periodic review, the town council finds and determines that the applicant or its successors in interest has committed a material breach of the terms or conditions of the agreement, the town manager shall serve notice in writing, within a reasonable time not to exceed thirty (30) working days after the periodic review, upon the applicant or its successors in interest setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and determination, and providing the

applicant or their successors in interest a reasonable time in which to cure the material breach. If the applicant or its successors in interest fail to cure the material breach within the time given, then the town council unilaterally may terminate or modify the development agreement pursuant to ~~N.C.G.S. 160A-400.27(c)~~ **NCGS 160D-1008**; provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by ~~N.C.G.S. 160A-388(b)~~ **160D-405**. Thereafter the applicant or its successors in interest may pursue any other rights and remedies available at law or in equity. If the town council elects to unilaterally modify the agreement, the applicant or its successors in interest may elect for the development agreement to be terminated rather than accede to the development agreement with the modifications unilaterally made by the town council.”

Section 30 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.6.2 (a) (2) is hereby amended to read as follows:

“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, or its successor agency, shall have been given an opportunity, in accord with Chapter ~~160A, Article 19, Part 3C of the N.C. General Statutes~~ **NCGS 160D-944 (b)(2)**, 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.”

Section 31 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.6.2 (b) (4) is hereby amended to read as follows:

“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 works **or modifications**. Minor works **or modifications** 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 **or modifications** shall be limited to those listed in the Commission’s Rules of Procedure, or a successor document. No application involving a minor work **or modification** may be denied without the formal action of the commission. Ordinance requirements for notification of affected property owners must be met for all applications.”

Section 32 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.6.2 (d) Procedures for approval of certificates of appropriateness is hereby amended to add a subsection and renumbered to read as follows:

“(d) *Procedures for approval of certificates of appropriateness.*

(1) Application submittal requirements.

- A. Applications for certificates of appropriateness shall be filed with the town manager.
- B. 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.
- C. The commission may specify criteria for situations in which the town manager may waive any of the application material requirements.

- D. 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.
- (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.

(3) Procedures for decisions on certificates of appropriateness. Decisions on certificates of appropriateness are quasi-judicial and shall follow the procedures in NCGS 160D-406.

~~(3)~~ **(4) Public Evidentiary** hearing. In cases where the commission deems it necessary, it may hold a ~~public~~ **an evidentiary** hearing concerning the application **provided such evidentiary hearing is held pursuant to the quasi-judicial procedures in NCGS 160D-406.**

~~(4)~~ **(5)** Action on the application. The town manager or the commission shall approve the application, approve the application with conditions, or deny the application for a certificate of appropriateness by the end of the next commission meeting following ninety days after the application is filed; provided, if timely action is not taken, and the time for taking action is not extended by the Commission and consented to by written notice from the applicant, the certificate of appropriateness shall be deemed to have been approved as submitted and shall be issued administratively.

The Commission may extend the time for consideration and deliberation for a period or for periods up to a total of one hundred eighty days from the date of acceptance of the application as complete, where it finds such action to be necessary:

- a) Because of meeting cancellations or postponements, quorum shortages, or backlogs of pending applications with priority by filing date, or other practical considerations; or
- b) To receive additional information requested by the Commission, or to deliberate fully on memoranda submitted by one or more parties, or to seek resolution of outstanding questions, issues, or goals.

Nothing herein shall prevent extensions by and with the consent of the Applicant. The time periods for action by the Commission shall be stayed during periods of appeal to the Board of Adjustment by any party.

Under no circumstances shall the time period for which the Commission or staff may take action on an application for a certificate of appropriateness be extended beyond 180 days from the date an application is filed. An application is considered filed when it has been submitted, deemed complete by the town manager, and the requisite application fee has been received by the Town.

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 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."

~~(5)~~ **(6)** 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)~~ **(7)** 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 accordance with the provisions of section 4.10. **Appeals of administrative decisions shall be made to the commission pursuant to the procedures in NCGS 160D-405.**

~~(7)~~ **(8)** Submittal of new application. If the commission denies an application for a certificate of appropriateness, a new application affecting the same property may be accepted by the town manager only if substantial change, with respect to the reasons for its denial, is made in plans for the proposed construction, reconstruction, alteration, restoration, or moving.

~~(8)~~ **(9)** A certificate of appropriateness shall be valid for three hundred sixty-five (365) calendar days from date of issuance, or, in the case of a certificate for demolition, from the effective date. If the authorized work has not commenced within that period, has not been extended by the commission, or has been discontinued for more than three hundred sixty-five (365) calendar days from the date of issuance, such certificate of appropriateness shall expire and the applicant shall be required to reapply and obtain a new certificate of appropriateness before commencing further work.

Section 33 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.7.1 Permitted, Special and Accessory Uses is hereby amended to read as follows:

"Uses of land or structures which are not expressly listed in section 3.7.2 as permitted principal uses, permitted accessory uses, **permitted uses in a conditional zoning district**, 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 in areas outside of Chapel Hill's municipal **boundaries zoning jurisdiction**, but within Chapel Hill's transition **and extra territorial jurisdiction area** as defined in the joint planning agreement with Orange County, are not subject to these use regulations, as provided by N.C. General Statutes **160D-903(c)**."

Section 34 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.10.2 (f) Floor area is hereby amended to read as follows and Table 3.10-2 is hereby deleted as follows:

"Floor area. Each affordable dwelling unit ~~must~~ **shall be substantially similar in livable square footage to unrestricted, market rate units** ~~have the minimum floor area established in Table 3.10-2 below. For~~

each unit type and category, the developers may choose to construct larger units. However, allowable sales or rental prices for the larger units may not exceed the maximum set forth in the agreements and restrictions recorded as required in section 3.10.4.” **Substantial similarity in livable square footage between the affordable and unrestricted market rate units shall be evaluated when considering the suitability of Affordable Housing Plan required in 3.10.4. For the purposes of this section, livable square footage is defined as the portion of the dwelling unit that is heated and/or cooled space.**

Table 3.10-2 Minimum Net Livable Square Footage

Unit Type	Attached Units	Detached Units
Efficiency apartment	500*	—
1 Bedroom	700*	1,000*
2 Bedroom	850*	1,100*
3 Bedroom	1100*	1,200*
4 or more bedrooms	1,200 plus 250 square feet per additional bedroom above 4*	1,300 plus 285 square feet per additional bedroom above 4*

*If unrestricted, market rate units in a building are constructed at sizes below those stated in Table 3.10.2, the minimum floor area for affordable units may be reduced to the size of such comparable unrestricted units in the building.

Section 35 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.10.4 (c) (5) is hereby amended to read as follows:

“The approximate square footage of each affordable **and each unrestricted, market rate** dwelling unit.”

Section 36 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.11.4.7 C. 2. is hereby amended to read as follows:

“~~Site-specific vesting plan development plan.~~ For the purposes of the Land Use Management Ordinance, a Form District Permit constitutes a site-specific ~~development permit~~ **vesting plan.**”

Section 37 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.11.4.7 C. 7. is hereby amended to read as follows:

“*Modification of Form District Permits.* The town manager may approve a minor modification of a Form District Permit administratively. A change from what is included in an approved Form District Permit will be considered a major modification if **under the following circumstances:**

- a. A change of use is proposed.**

- b. An increase in the number of dwelling units is proposed.**
- c. A change in floor area is proposed, resulting in an increase of more than five (5) percent of the permitted amount or two thousand five hundred (2,500) square feet, whichever is greater.**
- d. The change** it would render a building approved under a Form District Permit out of substantial conformance as defined in subsection 3.11.4.8.B.

Any other changes may be approved by the town manager or the town manager's designee and shall not constitute a major modification. The application fee for a modification to a Form District Permit is established by the council as part of the budget process."

Section 38 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.11.4.7 D. 3. c. is hereby amended to read as follows:

"In cases where the commission deems it necessary, it may hold a ~~public~~ **an administrative** hearing concerning the application."

Section 39 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.11.4.7 D. 4. b. is hereby amended to read as follows:

"Such action must be **an administrative decision** based upon the criteria and standards established in this Section 3.11. The Design Guidelines shall serve as a reference for the Community Design Commission's review."

Section 40 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.11.4.7 D 8 Modification of certificate of appropriateness is hereby amended to read as follows:

"Modification of certificate of appropriateness. The community design commission may review and approve a **major** modification of a certificate of appropriateness. A **major** modification ~~of this kind~~ is defined as any change that exceeds "minor work" as it is defined in subsection 3.11.4.7.D.1.e. **Any change considered "minor work" shall be deemed a minor modification and may be reviewed and approved by the Town Manager.** The application fee for a modification to a certificate of appropriateness is established by the council as part of the budget process."

Section 41 – Article 4 – Procedures. Section 4.1.2 is hereby amended to add to a subsection (c) to read as follows:

"4.1.2 Completeness Review.

- (a) No application shall be deemed complete unless all required information is included, and all application fees required by this appendix have been paid. An application which includes such information shall be deemed complete. Current application materials shall be made available in the planning department offices. All decisions of the town manager pertaining to completeness may be appealed to the board of adjustment pursuant to section 4.10 of this appendix.
- (b) Whenever this article establishes a time period for processing of an application, such time period shall not commence until the town manager has reviewed such application for completeness in order to determine whether the application has been properly submitted and the applicant has corrected all deficiencies in such application. Review for completeness of application forms is solely for the purpose of determining whether preliminary information

required for submittal with the application is sufficient to allow further processing, and shall not constitute a decision as to whether application complies with the provisions of this appendix.

(c) Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landholder. An easement holder may also apply for development approval for such development as is authorized by the easement.

Section 42 – Article 4 – Procedures. Section 4.1 General procedural requirements is hereby amended to add a new Section 4.1.3 to read as follows:

4.1.3 Development Approvals and Legislative Decisions, Changes, Modifications and Revocations

(a) Unless otherwise provided by law, all rights, privileges, benefits, burdens, and obligations created by development approvals and legislative decisions made pursuant to this appendix, attach to and run with the land.

(b) Development approvals and legislative decisions, including major and minor modifications, shall be changed, modified, or revoked only as permitted by this appendix. Major modifications, as defined by the appendix, shall be considered utilizing the same development review and approval process, including any required notice and hearing, as required for consideration of the original approval.

Section 43 – Article 4 – Procedures. Section 4.1 General procedural requirements is hereby amended to add to Section 4.1.4 to read as follows:

“4.1.4 Duration of Development Approvals. Unless otherwise specified in this appendix, by town council, or other statute, development approvals expire one year after issuance, unless work authorized by the development approval has substantially commenced.”

Section 44 – Article 4 – Procedures. Section 4.1 General procedural requirements is hereby amended to add to Section 4.1.5 to read as follows:

“4.1.5 Split Jurisdiction Planning and Development Regulations. If a parcel of land lies within the planning and development regulation jurisdiction of the town and another local government, the local governments may, by mutual agreement pursuant NCGS 160D-203 with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to either the town or the other applicable local governments. Such a mutual agreement shall only be applicable to development regulations and shall not affect taxation or other nonregulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by the town and the other governing board and recorded with the register of deeds in the county where the property is located within 14 days of the adoption of the last required resolution. A copy of a recorded resolution shall be provided to each jurisdiction’s Planning Department prior to submitting the initial development application.”

Section 45 – Article 4 – Procedures. Section 4.2 Comprehensive Plan is hereby amended to read as follows:

“Purpose statement: The purpose of this section is to prescribe uniform procedures for the establishment and amendment of the comprehensive plan.

- (a) *Process.* The town council shall adopt and maintain a comprehensive plan for Chapel Hill **pursuant to NCGS 160D-501**. Amendments to the comprehensive plan, or **adoption of** a new comprehensive plan, shall **follow the procedures of a legislative decision pursuant to NCGS 160D-501(c)** and shall be prepared by the planning commission with assistance from the town manager and approved, modified, or rejected by the town council. The comprehensive plan shall be used as a guide for decision-making.
- (b) *Schedule for updates.* The comprehensive plan may be amended at the discretion of the town council and as provided for in this section 4.2.
- (c) *Town council action on applications.* When applications for a conditional zoning district are inconsistent with the land use plan in the comprehensive plan, the town council may consider an amendment to the land use plan pursuant to the procedures for a general **use** rezoning in subsection 4.4.2(a)—(f)(2) and 4.4.2(k)(1). When considering such an amendment to the land use plan, the town council shall review the record of the **public legislative** hearing, the planning commission's recommendation and the town manager's report and shall approve or deny the application based on the following:
- (1) The proposed amendment is consistent with the goals and policies in the comprehensive plan;
 - (2) The proposed amendment addresses significantly changed conditions since the last time the land use plan was adopted and/or amended with significantly changed conditions being defined as demonstrating evidence of change such as unanticipated consequences of an adopted policy, and/or changed conditions on the subject property or its surrounding area;
 - (3) The subject property is suitable for development in general conformance with adjacent land use and the existing surrounding development pattern or patterns as envisioned in adopted plans; and,
 - (4) The proposed amendment enhances the public health, safety, and welfare of the town.”

Section 46 – Article 4 – Procedures. Section 4.4.1 (a) Initiation is hereby amended to read as follows:

- “(a) *A request to amend **or repeal sections of this appendix, including zoning atlas amendments**, may be initiated by:*
- (1) The town council, on its own motion;
 - (2) The planning commission, board of adjustment, historic district commission, or community design commission, on submittal of a request to the town council;
 - (3) The town manager, on submittal of a request to the town council; or
 - (4) Any property owner or citizen, or agent thereof, on submittal of an application to the town manager.”

Section 47 – Article 4 – Procedures. Section 4.4.1 (c) Initiation is hereby amended to read as follows:

~~“Pursuant to N.C.G.S. 160A-382~~ **160D-703 (b)**, a request for rezoning to a ~~conditional use district or~~ conditional zoning district ~~may~~ **shall only** be made ~~only~~ by application from **all 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 section 4.5 of this appendix, and may be reviewed concurrently with the special use permit application; provided, however, that the special use permit application shall be approved separately as provided in section 4.5 of this appendix.”~~

Section 48 – Article 4 – Procedures. Section 4.4.1 Initiation is hereby amended to add 4.4.1 (d) to read as follows:

“Down-zoning. No amendment to zoning regulations or a zoning map that down-zones property shall be initiated nor is it enforceable without the written consent of all property owners whose property is the subject of the down-zoning amendment, unless the down-zoning amendment is initiated by the town council. For purposes of this section, “down-zoning” means a zoning ordinance that affects an area of land in one of the following ways:

- (1) By decreasing the development density of the land to be less dense than was allowed under its previous usage.**
- (2) By reducing the permitted uses of the land that are specified this appendix to fewer uses than were allowed under its previous usage.”**

Section 49 – Article 4 – Procedures. The title for Section 4.4.2 Procedures is hereby amended to read as follows:

~~“4.4.2 Procedures - general use rezoning and conditional use district rezoning”~~

Section 50 – Article 4 – Procedures. Section 4.4.2 (a) Town Council acceptance of requests is hereby amended to read as follows:

~~“On receipt of an amendment request as provided in subsection 4.4.1(a), above, the town council may~~ **shall** set a date for a ~~public~~ **legislative** hearing on the request. If the town council sets a date for a ~~public~~ **legislative** hearing on a proposed amendment, it shall also refer the proposed amendment to the town manager, the planning commission, and any other appropriate board or commission for their consideration.”

Section 51 – Article 4 – Procedures. Section 4.4.2 (d) is hereby amended to read as follows:

“(1) The planning commission shall review the request or application and the town manager's report and recommendations, and shall submit a written recommendation to the town council. Pursuant to NCGS 160D-604 (d), such recommendation shall include consideration of plan consistency. When conducting a review of proposed zoning text or atlas amendments, the planning commission shall advise and comment on whether the proposed action is consistent with the comprehensive plan. The planning commission shall provide a written recommendation to the town council that addresses plan consistency and other matters as deemed appropriate by the planning commission, but a comment by the planning commission that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the town council. If a

zoning map amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the planning commission statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

- (2) The planning commission shall prepare its recommendations within thirty (30) days of the meeting at which the town manager's report is submitted to the planning commission and shall forward its recommendations to the town council at the town council's next available ~~public hearing~~ **meeting where legislative hearings will be held** ~~scheduled for amendment applications~~ or within such further time consented to in writing by the applicant or by town council resolution. If the planning commission fails to complete its recommendation to the town council within this time limit, or extensions thereof, the town council may proceed in its consideration without the planning commission's recommendations."

Section 52 – Article 4 – Procedures. Section 4.4.2 (e) Public hearing is hereby amended to add subsections (3) & (4) and to read as follows:

“Legislative Public-hearing

- (1) After it receives the town manager's report and the planning commission's recommendation or, if applicable, the expiration of the time limit prescribed in subsection 4.4.2.(d)(2), the town council shall hold a **legislative** hearing on the application at the next available **meeting where legislative regularly scheduled public hearings will be held** in order to receive comments, testimony, and exhibits pertaining to the application. The town council, by resolution, shall adopt a schedule of ~~meetings~~ **public hearings**.
- (2) Notice of the date, time, and place of the **legislative** ~~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.
- (3) **Pursuant to NCGS 160D-602, the owners of affected parcels of land, and the owners of all parcels of land abutting a proposed zoning atlas amendment shall be mailed a notice of the legislative hearing by first class mail at the last address listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing. For the purpose of this appendix, properties are "abutting" even if separated by a street, railroad, or other transportation corridor.**
- (4) **Pursuant to NCGS 160D-602(c), for zoning atlas amendments, notice of the legislative hearing shall also be posted on the site from 25 days prior to the hearing until 10 days prior to the legislative hearing.”**

Section 53 – Article 4 – Procedures. Section 4.4.2 (f) Town manager’s report to town council is hereby amended to read as follows:

- “(1) After completion of the ~~initial public~~ **legislative** hearing, the town manager and town attorney shall review the record of the ~~public~~ **legislative** hearing and the town manager shall prepare and submit to the town council a report containing findings as to conformity with the intent of this appendix and a recommendation for action.
- (2) Such report shall be submitted to the town council within thirty (30) days after completion of the ~~initial public~~ **legislative** hearing, or within such further time as may be consented to by written notice

from the applicant or by town council resolution. Failure of the town manager to submit a recommendation to the town council within the prescribed time limit, or extensions thereof, shall be construed as a favorable recommendation.”

Section 54 – Article 4 – Procedures. Section 4.4.2 (g) Town council action is hereby amended to add subsections and to read as follows:

“(g)Town council action. The town council shall review the application or request for amendment, the record of the ~~public~~ **legislative** hearing, the planning commission'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.

- (1) Plan consistency. Pursuant to NCGS 160D-605 (a), when adopting or rejecting any text or atlas amendment, the town council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning commission's recommendations and any relevant portions of the comprehensive plan. If a zoning atlas amendment is adopted and the action was deemed inconsistent with the adopted comprehensive plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. If a zoning atlas amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the town council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the comprehensive plan were considered in the action taken.**
- (2) Statement of Reasonableness for Zoning Atlas Amendments. Pursuant to NCGS 160D-605 (b), when adopting or rejecting any petition for a zoning atlas amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the town council. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning atlas amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the town council statement on reasonableness may address the overall rezoning.**
- (3) Single Statement Permissible. The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement.**
- (4) The town council shall review the application or request for amendment, the record of the ~~public~~ **legislative** hearing, the planning commission'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.**

Section 55 – Article 4 – Procedures. Section 4.4.2 (h) Relationship of conditional use district zoning and special use permit is hereby deleted, and the following sub-sections renumbered as follows:

~~“(h) Relationship of conditional use district zoning and special use permit.~~

~~(1) If the town 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 the town council, the rezoning application shall be deemed to be conditionally approved, subject to submittal and town council approval of an application for a special use permit in accord with section 4.5 of this appendix.~~

~~(2) Failure to submit a special use permit application within one (1) year of the conditional approval of rezoning to a conditional use district or, if submitted, the withdrawal of such application without prior town council approval, shall void the conditional approval.~~

~~(3) If a special use permit issued for a conditional use district is abandoned, revoked, or becomes void, under the provisions of this appendix, the conditional use zoning shall be void and the property shall revert to its previous zoning classification.~~

~~(4) 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.~~

~~(5) The owner(s) of a property subject to conditional approval of rezoning to a conditional use district may, upon notice to the town council, abandon the conditional approval of the rezoning before expiration of the one-year period.~~

~~(i) (h) Effect of denial or withdrawal on subsequent applications. When the town council shall have denied an application for amendment or the application shall have been withdrawn, by written notice, after publication of the first public legislative hearing notice required in subsection 4.4.2.(e), 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-month period extending from the date of denial or withdrawal, as appropriate.~~

~~(j) (i) 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.~~

~~(k) (j) Actions subsequent to decision.~~

(1) 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.

(2) In the case of approval, any necessary changes to the official zoning atlas shall be entered in accord with the provisions of article 3.”

Section 56 - Article 4 – Procedures. Section 4.4.3 (c) (1) is hereby amended to read as follows:

“The planning commission shall review the application and the town manager's report and recommendations, and shall submit a written recommendation to the town council. **Pursuant to NCGS 160D-604 (d), such recommendation shall include consideration of plan consistency. When conducting a review of proposed atlas amendments, the planning commission shall advise and comment on whether the proposed action is consistent with the comprehensive plan. The planning commission shall provide a written recommendation to the town council that addresses plan consistency and other matters as deemed appropriate by the planning commission, but a comment by the planning commission that a proposed amendment is inconsistent with the comprehensive plan**

shall not preclude consideration or approval of the proposed amendment by the town council. If a zoning map amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the planning commission statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the relevant adopted plans were considered in the recommendation made.

Section 57 - Article 4 – Procedures. Section 4.4.3 (d) Public hearing is hereby retitled and amended to add subsections (3) and (4) to read as follows:

“Legislative Public hearing.

- (1) After it receives the town manager's report and the planning commission's recommendation or, if applicable, the expiration of the time limit prescribed in subsection 4.4.3.(c)(2), the town council shall hold a **legislative** hearing on the application at the next available **town council meeting where regularly-scheduled public legislative hearings will be held** in order to receive comments and exhibits pertaining to the application. The town council, by resolution, shall adopt a schedule of **meetings public hearings**.
- (2) Notice of the date, time, and place of the ~~public~~ **legislative** 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.
- (3) **Pursuant to NCGS 160D-602, the owners of affected parcels of land, and the owners of all parcels of land abutting a proposed zoning atlas amendment shall be mailed a notice of the legislative hearing by first class mail at the last address listed for such owners on the county tax abstracts. This notice must be deposited in the mail at least 10 but not more than 25 days prior to the date of the hearing. For the purpose of this appendix, properties are "abutting" even if separated by a street, railroad, or other transportation corridor.**
- (4) **Pursuant to NCGS 160D-602(c), for zoning atlas amendments, notice of the legislative hearing shall also be posted on the site from 25 days prior to the hearing until 10 days prior to the legislative hearing.”**

Section 58 - Article 4 – Procedures. Section 4.4.3 (f) Town council action Conditions is hereby amended to add subsections, renumber subsections, and to read as follows:

“(1) Plan consistency. Pursuant to NCGS 160D-605(a), when adopting or rejecting any text or atlas amendment, the town council shall approve a brief statement describing whether its action is consistent or inconsistent with an adopted comprehensive plan. The requirement for a plan consistency statement may also be met by a clear indication in the minutes of the governing board that at the time of action on the amendment the governing board was aware of and considered the planning commission's recommendations and any relevant portions of the comprehensive plan. If a zoning atlas amendment is adopted and the action was deemed inconsistent with the adopted comprehensive plan, the zoning amendment shall have the effect of also amending any future land-use map in the approved plan, and no additional request or application for a plan amendment shall be required. If a zoning atlas amendment

qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the town council statement describing plan consistency may address the overall rezoning and describe how the analysis and policies in the comprehensive plan were considered in the action taken.

(2) Statement of Reasonableness for Zoning Atlas Amendments. Pursuant to NCGS 160D-605 b), when adopting or rejecting any petition for a zoning atlas amendment, a statement analyzing the reasonableness of the proposed rezoning shall be approved by the town council. This statement of reasonableness may consider, among other factors, (i) the size, physical conditions, and other attributes of the area proposed to be rezoned, (ii) the benefits and detriments to the landowners, the neighbors, and the surrounding community, (iii) the relationship between the current actual and permissible development on the tract and adjoining areas and the development that would be permissible under the proposed amendment; (iv) why the action taken is in the public interest; and (v) any changed conditions warranting the amendment. If a zoning atlas amendment qualifies as a "large-scale rezoning" under NCGS 160D-602(b), the town council statement on reasonableness may address the overall rezoning.

(3) Single Statement Permissible. - The statement of reasonableness and the plan consistency statement required by this section may be approved as a single statement

~~(1)~~ **(3)** The town council shall act on the application after reviewing the application, the planning commission's recommendation and the town manager's report, and the public comment thereon.

~~(2)~~ **(4)** Final action shall be based on the following:

- a. The conformity of the application with the applicable provisions of this appendix and town Code.
- b. The conformity of the application with the comprehensive plan.
- c. The compatibility of the proposed application with adjoining uses.
- d. The impacts of the proposed application on the surrounding properties and town as a whole.
- e. The relationship of the application to existing and proposed built systems including utility infrastructure, transportation facilities, police and fire coverage, and other public services and facilities.
- f. The relationship of the application to natural systems such as hydrology, topography, and other environmental constraints."

Section 59 - Article 4 – Procedures. Section 4.4.3 (g) Conditions is hereby amended as follows:

(g) *Conditions.* In accordance with ~~N.C.G.S. § 160A-382(b)~~ **NCGS 160D-703(b)** any conditions of approval shall be:

- (1) Expressly set forth in the approval;
- (2) Agreed upon by the property owner(s), **in writing**, and **the** town council;

- (3) ~~Limited to conditions deemed necessary to ensure compliance with the requirements and particular standards of this appendix, including compliance with the adopted comprehensive plan and its adopted elements~~ **Conditions and site-specific standards imposed in a conditional district shall be limited to those that address the conformance of the development and use of the site to this appendix, plans adopted pursuant to NCGS 160D-501, or the impacts reasonably expected to be generated by the development or use of the site;** and

Section 60 - Article 4 – Procedures. Section 4.4.4 Minor changes to Approved Rezoning Plans in the Light-Industrial Conditional Zoning District is hereby amended as follows:

The town manager may approve minor ~~changes~~ **modifications** to rezoning plans attached to an approved conditional zoning district rezoning as long as such changes continue to comply with the approving action of the town council and all other applicable requirements or are required specifically by a condition of approval. The town manager shall not have the authority to approve changes to approved rezoning plans that constitute a **major** modification of the rezoning plan. If a **major** modification is proposed, the town manager shall require the filing of an application for approval of the modification. An application for modification of a rezoning plan shall be reviewed in accordance with the procedures established in subsections 4.4.1 and 4.4.3

- a. All minor ~~changes~~ **modifications** must be consistent with the approved rezoning plan and comply with all applicable provisions of this appendix. Consistency means the changes would not significantly negatively alter or increase the development's impervious coverage, demand on public facilities, stormwater runoff, or other characteristic from that indicated by the approved rezoning plan. Where measurable and except where provided otherwise, a ten (10) percent change shall be considered significant whether such change is proposed at one (1) time or over an extended period of time.
- b. Notwithstanding, the following shall constitute a **major** modification to a rezoning plan and require the filing of an application for approval of the **major** modification.
 1. An increase of twenty (20) percent or more in the floor area approved by the town council, whether such addition is proposed at one (1) time or over an extended period of time.
 2. An increase of twenty (20) percent or more in the number of parking spaces approved by the town council, whether such addition is proposed at one (1) time or over an extended period of time.
 3. Substantial changes in the location of the development envelope on the site. Development envelope means the two-dimensional area, as designated on the approved rezoning plan, containing building footprints, parking areas, loading areas, and other appurtenant impervious features. Not included in the term development envelope are below ground utility lines, stormwater management areas, landscape and natural areas, and other non-impervious features. Substantial changes to the development envelope include but are not limited to:
 - A. An increase in size of the development envelope greater than ten (10) percent, whether such change is proposed at one (1) time or over an extended period of time.
 - B. A change in location that decreases the distance between the development envelope and a lot line that abuts existing residential development, approved residential development, or land that is within a residential ("R-") zoning district.

- C. A change in location that decreases the width of a landscape buffer below the minimum applicable buffer width standard.
- 4. Substantial changes in pedestrian and bicycle or vehicular access approved by the town council.
- 5. A change in a condition of town council approval.
- 6. A change in the permitted use(s).**

Section 61 - Article 4 – Procedures. Amend the title of 4.4.5—All Other Conditional Zoning District Rezoning as follows:

“4.4.5 Procedures—All Other Conditional Zoning Districts Rezonings”

Section 62 - Article 4 – Procedures. Section 4.4.5 (f) Expiration of conditional zoning district rezoning approval is hereby amended to add a subsection and to read as follows:

“Expiration of conditional zoning district rezoning approval.

(1) Starting time limit. If a final plans zoning compliance permit application is not filed with the town manager within twenty-four (24) months of the date of approval, or within such further time stipulated in the approval, the approval shall expire, and the conditional zoning district shall be void and the property shall revert to its previous zoning classification. The town manager may grant a single extension of the starting time limit for up to twelve (12) months, unless he/she determines that paramount considerations of health, the general welfare, or public safety require town council re-approval. In such instances or in the instance the town manager has already granted a single extension of the time limit, the town manager shall require the application to be reviewed in accordance with the procedures set forth in subsections 4.4.1 and 4.4.5.

(2) Completion time limit. If all construction and actions authorized or required by the approval of the conditional zoning district and accompanying district-specific plans are not completed by the completion date stated in the approval or modification, the zoning compliance 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/she determines that:

- A. The zoning compliance permit holder submitted the request within sixty (60) days of the completion date;**
- B. The zoning compliance permit holder has proceeded with due diligence and good faith; and**
- C. Conditions have not changed so substantially as to warrant town council reconsideration of the approved development.**

If all of the construction and actions authorized or required are still not completed by the extended completion date granted by the town manager, the permit holder may, within sixty (60) days of the revised completion date, request additional extensions of the completion time

limit from the town council. The town council may grant extensions of the time limit if it makes the determinations required by (f)(2)(A) through (f)(2)(C), above.

Section 63 - Article 4 – Procedures. Section 4.4.5 (g) Minor changes to approved district-specific plans is hereby amended as follows:

*“~~Minor changes~~ **modifications** to approved district-specific plans. The town manager may approve minor ~~changes~~ **modifications** to district-specific plans attached to an approved conditional zoning district ~~rezoning~~ as long as such changes continue to comply with the approving action of the town council and all other applicable requirements or are required specifically by a condition of approval. The town manager shall not have the authority to approve changes to approved district-specific plans that constitute a **major** modification of the district-specific plan. If a **major** modification is proposed, the town manager shall require the filing of an application for approval of the modification. An application for modification of a district-specific plan shall be reviewed in accordance with the procedures established in subsections 4.4.1 and 4.4.5.”*

Section 64 - Article 4 – Procedures. Section 4.4.5 (h) is hereby amended add subsection (1), renumber the subsections and to read as follows:

Notwithstanding, the following shall constitute a **major** modification to a district-specific plan **and/or the approved conditional zoning district** and **will** require the filing of an application for approval of the **major** modification.

(1) A change in the uses permitted or the density of overall development.

- ~~(1)~~**(2)** An increase of ten (10) percent or more in the floor area approved by the town council, **unless the proposed addition is two thousand, five hundred (2,500) square feet or less,** whether such addition is proposed at one (1) time or over an extended period of time.
- ~~(2)~~**(3)** An increase of ten (10) percent or more in the number of parking spaces approved by the town council, unless ten (10) or fewer parking spaces are proposed, whether such addition is proposed at one (1) time or over an extended period of time.
- ~~(3)~~**(4)** A change in location that decreases the width of a landscape buffer below the minimum applicable buffer width standard.
- ~~(4)~~**(5)** Substantial changes in pedestrian and bicycle or vehicular access approved by the town council.
- ~~(5)~~**(6)** A change in a condition of town council approval.

Section 65 – Article 4 – Procedures. Section 4.5 c) is hereby deleted as follows:

~~“c) All uses established in conditional use districts.”~~

Section 66 – Article 4 – Procedures. Section 4.5.1 (e) is hereby deleted as follows:

~~“(e) Any uses in conditional use districts, as described in section 3.4 shall be established only after issuance and recordation of a special use permit.”~~

Section 67 - Article 4 – Procedures. Section 4.5.3 Procedures for Approval of Special Use Permits is hereby amended to read as follows:

“(a) *Application submittal requirements.*

- (1) Applications for special use permits shall be filed with the town manager.
- (2) 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 appendix, with sufficient copies for necessary referrals and records.
- (3) Special use permit and special use permit modification applications shall identify all proposed utilities providing service to the proposed development, whether on- and off-site, increases in utility capacity or modification of utility service facilities that are requested, the type of utility, and whether service lines are provided above the ground surface or underground.
- (4) No application shall be accepted by the town manager unless it complies with such requirements. Applications that are not complete shall be returned forthwith to the applicant, with a notation of the deficiencies in the application.

(b) *Town manager's analysis.* When he/she 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. In the case of planned developments, such representatives, agencies or officials shall define specifically the modifications of regulations which seem justified in view of the standards set out in section 6.18.

(c) *Preliminary conferences with applicant.*

- (1) The town manager shall notify the applicant, in writing, of the proposal's deficiencies. The town manager shall also notify the applicant of his/her willingness to discuss alternatives to correct those deficiencies.
- (2) 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.

(d) *Town manager's report to planning commission.*

- (1) The town manager shall submit to the planning commission a written analysis of the application ~~and his/her recommendation~~ based on the findings required in section 4.5.2.
- (2) If the applicant does not join in preliminary conferences with the town manager, the town manager shall complete his/her report within twenty-five (25) working days after he/she accepts the application or within such further time consented to in writing by the applicant or established by town council resolution. If the town manager fails to prepare his/her report to

the planning commission within this time limit, or extensions thereof, the application shall be **submitted to the Planning Commission without the town manager's written analysis of the application** deemed to be recommended without conditions.

- (3) If the applicant participates in preliminary conferences with the town manager, the town manager shall prepare his/her report to the planning commission when further conferences appear unnecessary. No time limits shall apply to the town manager's review when the applicant joins in preliminary conferences. However, the applicant may require the town manager to submit the application and his/her report to the planning commission whenever the applicant wishes to end discussions.
- (4) The town manager shall forward his/her report to the planning commission at its next available regularly scheduled meeting.

(e) *Planning commission review.*

~~(1) The planning commission shall review the application and the town manager's report and **may conduct a preliminary forum to review the application and the town manager's report and to provide comments to the applicant** shall submit to the town council a written recommendation based on the findings required in subsection 4.5.2.~~

~~(2) The planning commission 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 town council resolution. If the planning commission fails to prepare its recommendation to the town council within this time limit, or extensions thereof, the planning commission shall be deemed to recommend approval of the application without conditions.~~

~~(3) The town manager shall then forward his/her report and the planning commission's recommendation to the town council at the next available public hearing scheduled for special use permit applications.~~

(f) *Public **Evidentiary** hearing.*

(1) After receiving the town manager's report and the planning commission's recommendation or, if applicable, the expiration of the time limit prescribed in subsection 4.5.3.(e)(2), the town council shall hold a **an evidentiary** hearing on the application at the next available regularly scheduled public hearing **council meeting where evidentiary hearings will be held**. The town 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 six (6) months after adoption of the amendment.

(2) Notice of the date, time, and place of the public **evidentiary** 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.

(3) 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 town 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.

Presentation of Evidence. - The applicant, the town council, and any person who would have standing to appeal the decision under NCGS 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the town council. All persons who intend to present evidence at the evidentiary hearing shall be sworn.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the standing of a party, may be made to the town council. The mayor shall rule on any objections, and the mayor's rulings may be appealed to the full town council. These rulings are also subject to judicial review pursuant to NCGS 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

- (4) The applicant shall bear the burden of presenting evidence sufficient to establish that the proposed development will comply with the determinations required in subsection 4.5.2.
 - (5) A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the hearing.
- (g) *Town manager's report to town council.*
- (1) After completion of the ~~initial public~~ **evidentiary** hearing, the town manager and town attorney shall review the record of the ~~public~~ **evidentiary** hearing and the town manager shall submit to the town council an analysis and his/her recommendation for action.
 - (2) The town manager shall submit his/her report to the town council within thirty (30) days after completion of the ~~public~~ **evidentiary** hearing, or within such further time consented to by written notice from the applicant or by town council resolution.
 - (3) If the town manager fails to submit a recommendation to the town council within this time limit, or extensions thereof, his/her recommendation shall be the same as his/her preliminary recommendation.
- (h) *Town council action.*
- (1) The town council shall review the record of the ~~public~~ **evidentiary** hearing, ~~the planning commission's recommendation,~~ and the town manager's report and shall act on the application based on the findings required in subsection 4.5.2. All findings shall be based on competent material and substantial evidence presented at the ~~public~~ **evidentiary** hearing.
 - (2) Action on the application shall be one of the following: (a) Approval; (b) Approval subject to conditions; or (c) Denial.
- (i) *Effect of denial or withdrawal on subsequent applications.* When the town council has denied an application or the applicant has withdrawn his/her application by written notice after publication of the ~~first public~~ **evidentiary** hearing notice required in subsection 4.5.3.(f), 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.
- (j) *Amended applications.* The applicant shall submit an amended application for review as an original application if he/she proposes, in the town manager's opinion, to substantially amend or modify his/her 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 commission, or the town council shall require an amended or original application.

- (k) *Notice of decision and issuance of special use permit.*
- (1) The town manager shall notify the applicant of the town council's decision in writing and shall file a copy of it with the town's planning department.
 - (2) 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 town council. The applicant shall **consent in writing to any conditions placed on the Special Use Permit and** record such permit in the office of the appropriate county register of deeds.
 - (3) 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."

Section 68 - Article 4 – Procedures. Section 4.5.4 Modifications of Special Use Permits is hereby amended and renumbered as follows:

- (a) The town manager is authorized to approve minor ~~changes~~ **modifications** in the approved final plans as long as such changes continue to comply with the approving action of the town council and all other applicable requirements, **or as authorized by Section 4.5.4(b) below**, but shall not have the authority to approve changes that constitute a **major** modification of the special use permit.
- (b) Any change requiring evidentiary support in addition to that presented at a ~~public~~ **evidentiary** hearing on applications for the original special use permit or subsequent modifications of special use permit shall constitute a **major** modification of the special use permit. Before making a determination as to whether a proposed action is a minor ~~change~~ **modification** or a **major** 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 the special use permit. The following shall constitute a **major** modification of the special use permit:
 - (1) A change in the boundaries of the site approved by the town council.
 - (2) A change from the use approved by the town council.
 - (3) A change in the density of the overall development.**
 - ~~(3)~~**(4)** An increase of five (5) percent or more in the floor area approved by the town council, unless proposed addition is two thousand, five hundred (2,500) square feet of floor area or less, whether such addition is proposed at one (1) time or over an extended period of time.
 - ~~(4)~~**(5)** An increase of five (5) percent or more in the number of parking spaces approved by the town council, whether such addition is proposed at one (1) time or over an extended period of time.
 - ~~(5)~~**(6)** Substantial changes in the location of principal and/or accessory structures approved by the town council.
 - ~~(6)~~**(7)** 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 town council.

- (7)(8) Substantial changes in pedestrian and bicycle or vehicular access or circulation approved by the town council. Examples of substantial changes include, but are not limited to:
- A. A change in trip distribution occurs that involves more than five (5) percent of all projected trips; or
 - B. The change results in a reduction in the level of service (LOS) of a street link or intersection within one-quarter (¼) of a mile from the boundaries of the proposed development.
- (8)(9) Substantial change in the amount or location of landscape screens approved by the town council shall constitute a **major** modification.

The following shall constitute a **minor** modification of the special use permit:

(9)(10)

- (a) Changes to a site that constitute a modification of the special use permit under the above subsections 1-8 **9**, and are necessary to address an imminent and substantial threat to public health or safety, as determined by the town manager, such as the installation of stormwater pipes to relieve a documented flooding issue or the removal of structures from the floodplain, shall be considered minor ~~changes~~ **modifications**, provided the changes do not:
 - (i) Increase the intensity **or density** of the **overall** development, including increases to floor area or impervious surface, or allowing ~~more intense~~ **a change to the uses permitted**, or
 - (ii) Make nonconforming or increase a nonconformity with the development's existing special use permit or other standards of this Appendix.
- (b) Prior to the issuance of a Zoning Compliance Permit for a minor ~~change~~ **modification** under this subsection **9 10**, the following shall occur:
 - (i) A public information meeting followed by a courtesy review by the Community Design Commission on the same day, and
 - (ii) Notice of such meetings shall be mailed to owners of property within five hundred (500) feet at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the meetings, and
 - (iii) The Community Design Commission shall forward comments to the town manager within fifteen (15) days from the date of the meeting at which it first considers the proposed change, after which the manager shall make a determination regarding a project's eligibility under this subsection 9, and
 - (iv) The manager shall inform the council of each manager's determination made pursuant to this subsection.
- (c) If the proposed action is determined to be a **major** modification, the town manager shall require the filing of an application for approval of the modification.
- (d) The town manager shall prescribe the form(s) of applications as well as any other material he/she may reasonably require to determine compliance with this article.
- (e) An application for **major** modification of a special use permit shall be reviewed in accord with the procedures established in subsection 4.5.3.

- (f) ~~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 town council proposes to impose on the modification. Acceptance of conditions by the applicant may be indicated at the town council hearing on the special use permit modification or by affidavit submitted prior to the town council taking action on the modification application.~~

Section 69 - Article 4 – Procedures. Section 4.5.5 (a) Special use permit binding on land is hereby amended to delete subsection (2), and renumbered as follows:

“(a) Special use permit binding on land. ~~(1)~~ 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 subsection 4.5.4, or voided or revoked in accord with the provisions of this section.”

~~(2) 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.~~

Section 70 - Article 4 – Procedures. Section 4.5.5 (f) Revocation of special use permit is hereby amended to read as follows:

“(f) *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 appendix applicable to the permit or modification are violated, the town council may revoke or refuse to extend the permit or modification. **Consideration of revocation of a special use permit or a special use permit major modification shall follow the procedures in 4.5.3.** The town 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 appendix. On request by the holder of a special use permit or modification of special use permit, the town council may revoke the permit or modification if it determines that:

- (1) Construction authorized by the permit or modification has been started and the completion time limit has not yet expired; and
- (2) The request is made in conjunction with an application for approval of a development other than that authorized by the permit or modification; and
- (3) The proposed development as approved by town council incorporates adequate consideration of the site's already disturbed land area in its design and previous commitments made under the special use process.”

Section 71 - Article 4 – Procedures. Section 4.6.1 Applicability and Definition of “Subdivision” is hereby amended to add a new section (e) to read as follows:

“(e) The division of a tract into parcels in accordance with the terms of a probated will or in accordance within interstate succession under Chapter 29 of the General Statutes.”

Section 72 - Article 4 – Procedures. Section 4.6.4.2 (b)(1) is hereby amended to read as follows:

“(b) Action on application.

(1) When he/she accepts an application, the town manager shall evaluate the plat for compliance with all applicable regulations, including any applicable conditions of an approved zoning compliance permit, special use permit, or conditional zoning. The town manager shall forward his/her report to the planning commission with a recommendation.

If the subdivision proposal property is located in an historic district, the town manager shall submit to the historic district commission a written analysis of the application and his/her recommendation, prior to the planning commission meeting. The town manager shall forward his/her report to the historic district commission at its next available regularly scheduled meeting. The historic district commission shall review the application and the town manager's report and shall submit a written recommendation to the planning commission. The historic district commission 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 by the applicant or by town council resolution. If the historic district commission fails to prepare its recommendation to the planning commission within this time limit, or extensions thereof, the historic district commission shall be deemed to recommend approval of the application without conditions.

The planning commission shall **make an administrative decision** ~~take action~~ on an application based solely on its findings as to compliance with applicable regulations and conditions. The planning commission shall:

- A. Approve, or
- B. Approve subject to conditions, or
- C. Deny, or
- D. Refer to the major subdivision approval process, if it finds it to be a major subdivision proposal or if requested by the applicant.”

Section 73 - Article 4 – Procedures. Section 4.6.5 (a) (5) C. is hereby amended to read as follows:

“If the planning commission recommends approval of the application with conditions, the applicant may amend his/her 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 commission recommendation. In such cases, the town manager may amend his/her report to conform to any or all of the planning commission's recommendations. The town manager shall then forward his/her report and the planning commission's recommendation to the town council at the town council's next available ~~regularly scheduled public hearing~~ **meeting to consider such administrative decisions.**”

Section 74 - Article 4 – Procedures. Section 4.6.5 (a) (6) A. is hereby amended to read as follows:

“After receiving the town manager's report and the planning commission's recommendation or, if applicable, the expiration of the time limit prescribed in subsection 4.6.5(a)(5), the town council shall

consider the application at its next available meeting to hear to consider administrative decisions regularly scheduled public hearing.”

Section 75 - Article 4 – Procedures. Section 4.6.9 Reserved is hereby retitled and amended to read as follows:

“Reserved. Performance Guarantees. When permitted pursuant to this appendix, performance guarantees posted in lieu of completion of improvements shall conform to the NCGS 160D-804.1.”

Section 76 - Article 4 – Procedures. Section 4.7.1 (d) is hereby amended to read as follows:

“Any development pursuant to an approved certificate of appropriateness, conditional zoning, or special use permit including special use permits that are no longer necessary and have therefore been abandoned, provided the town manager finds that no major modifications are proposed to the plans and conditions in the area have not changed significantly;”

Section 77 - Article 4 – Procedures. Section 4.7.2 (b) (1) is hereby amended to read as follows:

“(1) 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 appropriate to determine compliance with applicable provisions of this chapter and any applicable conditions of an approved certificate of appropriateness. The town manager shall submit to the planning commission a report of his or her analysis of the application. The planning commission shall administratively review the application and the town manager's report and shall take final action on the application.”

Section 78 - Article 4 – Procedures. Section 4.7.2 (b) (2) is hereby amended to read as follows:

“(2) Final action on an application shall be an administrative decision based solely on findings as to compliance with all applicable provisions of this chapter, including all applicable conditions of an approved certificate or appropriateness, and shall include one of the following:

- A. Approval of application; or
- B. Approval of application subject to reasonable conditions necessary to ensure compliance with applicable regulations and conditions; or
- C. Denial of application.”

Section 79 - Article 4 – Procedures. Section 4.7.5 Minor changes to Approved Site Plans is hereby amended to read as follows:

“Minor changes modifications to Approved Site Plans. The town manager may approve minor ~~changes~~ modifications to plans approved under site plan review as long as such changes continue to comply with the approving action of the planning commission and all other applicable requirements. The town manager shall not have the authority to approve any ~~substantial changes~~ major modifications to plans approved under site plan review unless such changes are specifically required by a condition of approval. If a ~~substantial change~~ major modification is proposed, the town manager shall require the filing of an application for approval of the major modification. An application for a major modification of a ~~zoning compliance permit~~ an approved site plan shall be reviewed in accord with the procedures established in

subsections 4.7.1 and 4.7.2. The following shall constitute a major modification of an approved site plan:

- (a) A change in the boundaries of the site approved by the planning commission.
- (b) A change from the use(s) approved by the planning commission.
- (c) A change in the density of the overall development.
- (d) An increase of five (5) percent or more in the floor area approved by the planning commission, unless proposed addition is two thousand, five hundred (2,500) square feet of floor area or less, whether such addition is proposed at one (1) time or over an extended period of time.
- (e) An increase of five (5) percent or more in the number of parking spaces approved by the planning commission, whether such addition is proposed at one (1) time or over an extended period of time.
- (f) Substantial changes in the location of principal and/or accessory structures approved by the planning commission.
- (g) 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 planning commission.
- (h) Substantial changes in pedestrian and bicycle or vehicular access or circulation approved by the planning commission. Examples of substantial changes include, but are not limited to:
 - (1) A change in trip distribution occurs that involves more than five (5) percent of all projected trips; or
 - (2) The change results in a reduction in the level of service (LOS) of a street link or intersection within one-quarter (¼) of a mile from the boundaries of the proposed development.
- (i) Substantial change in the amount or location of landscape screens approved by the planning commission shall constitute a major modification.”

Section 80 - Article 4 – Procedures. Section 4.8. Purpose statement is hereby amended to read as follows:

“Purpose statement: 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 and/or conditional zoning district process.

It is the intent of this chapter that all master land use plans shall demonstrate a high quality of overall site and building design. The criteria and procedures established in this section ensure that the design and construction of site elements 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.”

Section 81 - Article 4 – Procedures. Section 4.8.3 (b) Action on the application is hereby amended to read as follows:

“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, **conditional zoning district and associated district-specific plans**, or certificate of appropriateness.”

Section 82 - Article 4 – Procedures. Section 4.8.3 (e) Planning commission review is hereby amended to read as follows:

~~“The planning commission shall review the application and the town manager's report and **may conduct a preliminary forum to review the application and the town manager's report and to provide comments to the applicant** shall submit a written recommendation to the town council. The planning commission 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 commission 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 town council resolution. If the planning commission fails to prepare its recommendation to the town council within this time limit, or extensions thereof, the planning commission shall be deemed to recommend approval of the application without conditions. If the planning commission recommends approval of the application with conditions, the applicant may amend his/her 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 commission recommendation. In such cases, the town manager may amend his/her report to conform to any or all of the planning commission's recommendations. The town manager shall then forward his/her report and the planning commission's recommendation to the town council at the next available public hearing scheduled for master land use plan applications.”~~

Section 83 - Article 4 – Procedures. Section 4.8.3 (f) Public hearing is hereby retitled and amended to read as follows:

“(f) **Public Evidentiary** hearing.

After receiving the town manager's report ~~and planning commission's recommendation~~ or, if applicable, the expiration of the time limit prescribed in subsection (e), above, the town council shall hold ~~a~~ **an evidentiary** hearing on the application at the next available ~~regularly scheduled public hearing~~ council **meeting where evidentiary hearings will be held**. Notice of the date, time, and place of the ~~public~~ **evidentiary** 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 town 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.~~

Presentation of Evidence. - The applicant, the town council, and any person who would have standing to appeal the decision under NCGS 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the town council. All persons who intend to present evidence at the evidentiary hearing shall be sworn.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the standing of a party, may be made to the town council. The mayor shall rule on any objections, and the mayor's rulings may be appealed to the full town council. These rulings are also subject to judicial review pursuant to NCGS 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

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 4.8.2 and this chapter. A record of the proceedings of the hearing shall be made and shall include all documentary evidence presented at the hearing.”

Section 84 - Article 4 – Procedures. Section 4.8.3 (i) Actions after decision is hereby amended to read as follows:

“The town manager shall notify the applicant of the town 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 town 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 **or a conditional zoning district.**”

Section 85 - Article 4 – Procedures. Section 4.8.3 (k) Minor changes and modifications of master land use plan is hereby amended to read as follows:

“(k) *Minor ~~changes~~ and **major** modifications of master land use plan.*

- (1) The town manager is authorized to approve minor ~~changes~~ **modifications** and **including** changes in the ordering of phases in the approved master plan as long as such ~~changes~~ **minor modifications** continue to be in compliance with the approving action of the town council and all other applicable requirements, but shall not have the authority to approve changes that constitute a **major** modification of the master plan. Before making a determination as to whether a proposed action is a minor ~~change~~ or a **major** 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. The following shall constitute a **major** modification of the master land use plan:

- A. A change in the boundaries of the site approved by the town council;
- B. A change from the use(s) approved by the town council;
- C. A change in the floor area or number of parking spaces approved by the town council by at least five (5) percent;
- D. Changes in pedestrian and bicycle or vehicular access or circulation approved by the town council which:
 - 1. Change trip distribution involving more than five (5) percent of all projected trips; or
 - 2. Reduce the level of service (LOS) of a street link or intersection within one-quarter (¼) of a mile from the boundaries of the proposed development.
- E. Substantial change in the amount or location of landscaped and open areas approved by the town council.

F. A change in the density of the overall development permitted by the town council.

- (2) If the proposed action is determined to be a **major** modification, the town manager shall require the filing of an application for approval of the **major** modification.
- (3) The town manager shall prescribe the form(s) of applications as well as any other material he/she may reasonably require to determine compliance with this ~~article~~ **appendix**.
- (4) An application for **a major** modification of a master land use plan shall be reviewed in accord with the procedures established in subsections (a) through (h), above."

Section 86 - Article 4 – Procedures. Section 4.8.3 (l) Relation to special use permit is hereby retitled and amended to add subsection (3) to read as follows:

“(l) *Relation to special use permit **and conditional zoning districts**.*

- (1) 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.
- (2) 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.

(3) If a master land use plan is approved for a tract of land and an application for a conditional zoning district is subsequently received, then the conditional zoning district shall be consistent with the approved master land use plan. The proposed

conditional zoning district and any associated district-specific plan shall be considered pursuant to 4.4.5.

Section 87 - Article 4 – Procedures. Section 4.8.3 (m) Abandon or revocation of an approved master land use plan is hereby amended to read as follows:

“On request by the holder of an approved master land use plan, the town 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 town council may revoke the plan and any special use permits **and/or conditional zoning districts** approved pursuant to the Master Land Use Plan if it determines that:

- (1) Construction pursuant to the plan has started; and
- (2) The request is made in conjunction with an application for approval of a development other than that authorized by the plan; and
- (3) The proposed development as approved by the town council would incorporate adequate consideration of the site's already disturbed land area in its design; and
- (4) 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
- (5) Public purposes are satisfied to an equivalent or greater degree by the proposed change.”

Section 88 - Article 4 – Procedures. Section 4.10.1 Applicability is hereby amended to read as follows:

- “(a) Any decision of the town manager, **including a determination of vested rights**, made in the administration of the provisions of this appendix, may be appealed to the board of adjustment by any person aggrieved by such decision. Any decision of the planning commission in granting or denying site plan approval may be appealed to the board of adjustment as a new case. Any decision of the historic district commission in granting or denying a certificate of appropriateness may be appealed to the board of adjustment and shall be reviewed on the record. Any decision of the community design commission may be appealed to the board of adjustment as a new case.
- (b) An application for appeal shall be filed, with the town clerk, 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 by the owner or other party. Any other person with standing to appeal shall have thirty (30) days from receipt from any source of actual or constructive notice of the decision within which to file an appeal. **In the absence to the contrary, notice given by first class mail is deemed received on the third business day following deposit of the notice for mailing with the United State Postal Service. Delivery by electronic mail shall be deemed received on the date sent.**”

Section 89 - Article 4 – Procedures. Section 4.11 Interpretations is hereby retitled to read as follows:

“4.11. ~~Interpretations~~ **Determinations.**”

Section 90 - Article 4 – Procedures. The introductory paragraph for Section 4.11.1 Interpretations is hereby amended to read as follows:

*“~~Interpretations.~~ **Determinations.** Where there is any uncertainty as to the intent or actual meaning of any provision of this appendix, 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. In making an interpretation of any zoning district boundary, the town manager shall apply the following standards:”*

Section 91 - Article 4 – Procedures. Section 4.12.1 (b) Public hearing is hereby amended to retitle the subsection, add subsection (4), renumber subsections to read as follows:

“(b) ~~Public~~ **Evidentiary** hearing.

(1) After its receipt of an application for appeal or for a variance, the board of adjustment shall hold a ~~public~~ **an evidentiary** hearing on the application at its next available regularly scheduled meeting.

(2) Notice of the date, time, and place of the ~~public~~ **evidentiary** 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.

Notice of **evidentiary** hearings shall be mailed to the person or entity whose appeal, application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing if the owner did not initiate the hearing; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days, prior to the date of the hearing. Within that same time period, the manager shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way. **For the purpose of this appendix, properties are "abutting" even if separated by a street, railroad, or other transportation corridor.**

~~(3) 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.~~

Presentation of Evidence. - The applicant, the town council, and any person who would have standing to appeal the decision under NCGS 160D-1402(c) shall have the right to participate as a party at the evidentiary hearing. Other witnesses may present competent, material, and substantial evidence that is not repetitive as allowed by the town council. All persons who intend to present evidence at the evidentiary hearing shall be sworn.

Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the standing of a party, may be made to the town council. The mayor shall rule on any objections, and the mayor’s

rulings may be appealed to the full town council. These rulings are also subject to judicial review pursuant to NCGS 160D-1402. Objections based on jurisdictional issues may be raised for the first time on judicial review.

(4) Objections regarding jurisdictional and evidentiary issues, including, but not limited to, the timeliness of an appeal or the standing of a party, may be made to the board. The board chair shall rule on any objections, and the chair’s ruling may be appealed to the full board.

~~(4)~~**(5)** In the case of applications for a dimensional 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 subsection 4.12.2.”

Section 92 - Article 4 – Procedures. Section 4.12.1 (c) (1) is hereby amended to read as follows:

“After completion of the ~~public~~ **evidentiary** hearing, the board of adjustment shall take action on the application.”

Section 93 - Article 4 – Procedures. Section 4.12.2 (a) (2) is hereby amended to read as follows:

“The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance. **A variance may be granted when necessary and appropriate to make a reasonable accommodation under the Federal Fair Housing Act for a person with a disability.**”

Section 94 - Article 4 – Procedures. Section 4.12.3 Variances within the Airport Hazard District is hereby amended to read as follows:

~~“4.12.3 Variances within the Airport Hazard District~~ **Reserved.** See section ~~3.6.1.~~”

Section 95 - Article 4 – Procedures. Section 4.13.3 Procedures Upon Discovery of Violations is hereby amended to retitle the subsection, add subsection (a), renumber subsections to read as follows:

~~“4.13.3.~~ **Inspections and Procedures Upon Discovery of Violations.**

“(a) Pursuant to NCGS 160D 403(e), staff are authorized to enter any premises at all reasonable hours for the purposes of an inspection or other enforcement action, upon the presentation of proper credentials; provided however that the appropriate consent has been given for inspection of areas not open to the public, or that an appropriate inspection warrant has been secured.

~~(a)~~ **(b)** Upon the determination that any provision of this appendix is being violated, the town manager shall send a written notice by personal ~~service~~ **delivery, electronic delivery, first class mail,** or by certified mail, return receipt requested, **to the holder of the development approval and to the landowner of the property involved, and may be delivered by similar means to the occupant of the property, and** 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 **and/or the posting of**

the subject property at the town manager's discretion. **The person providing the notice of violation shall certify that the notice was provided, and the certificate shall be deemed conclusive in the absence of fraud.**

- (b) **(c)** 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 section 4.10 of this appendix.
- (c) **(d)** In cases when delay would seriously threaten the effective enforcement of this appendix, 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 subsection 4.13.4."

Section 96 – Article 5 – Design and Development Standards. Section 5.7.7 (c) Appeals is hereby amended to read as follows:

*“Appeals. Unless otherwise specified in this article **appendix**, interpretations **determinations**, appeals, and variances of or from provisions of this article shall be pursuant to the provisions of article 4 of this chapter **appendix.**”*

Section 97 – Article 5 – Design and Development Standards. Section 5.12.2 Other Utilities is hereby amended to read and renumbered as follows:

- (a) All utility lines, **except as provided in (b),** other than lines used only to transmit electricity between generating stations or substations shall be placed underground, and all surface disruptions required for installation shall be rehabilitated to the original or an improved condition. Three-phase electric power distribution lines are not required to be placed underground except as provided in subsection ~~(b)~~ **(c)**, below.
- (b) Utility lines shall not be required to be buried if the existing power lines meet all of the following criteria:**
- (1) The power lines existed above ground at the time of first approval of a plat or development plan by the local government, whether or not the power lines are subsequently relocated during construction of the subdivision or development plan.**
 - (2) The power lines are located outside the boundaries of the parcel of land that contains the subdivision or the property covered by the development approval and/or the legislative decision.**
- ~~(b)~~ **(c)** Three-phase electric power distribution lines.
- (1) Three-phase electric power distribution lines shall be placed underground if:
 - A. Duke Energy agrees in a written statement to provide utilities underground; and
 - B. Three-phase lines shall be placed underground by the applicant where:
 1. There is a rational nexus between the impact of the proposed development and the proposed utility requirement; and

2. The costs of placing the utilities underground are roughly proportionate to the impacts of the development on adjoining properties or the town; and
 3. Placing the utility underground does not violate any provision of the electrical code or other relevant safety standard; and
 4. ~~The applicant has the legal right to place the lines underground where they are located off site.~~
- (2) Three-phase lines are not required to be placed underground if the applicant or Duke Energy demonstrates **the applicability of the criteria in subsection (b) above and** that the burial would create economic hardship or a danger to public health or safety as it relates to the size, nature, timing, and scope of the proposed development.
- (~~c~~) **(d)** 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.
- (~~d~~) **(e)** No certificate of occupancy for a structure shall be issued until the following documents 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 have been submitted to the town manager.”

Section 98 – Article 5 – Design and Development Standards. Section 5.16.3 is hereby amended to read as follows:

- “(a) No application for approval of a subdivision preliminary plat zoning compliance permit, minor subdivision final plat, zoning compliance permit for site plan review, zoning compliance permit for special use permit, ~~or~~ zoning compliance permit for special use permit modification for a project containing a residential use, or for a zoning compliance permit for a conditional zoning district containing residential uses may be approved unless on the date of such approval there exists a valid and current certificate of adequacy of public school facilities applicable to the project for which such approval is sought.
- (b) A certificate of adequacy of public school facilities shall not be required for a general use ~~or conditional use rezoning~~, a conditional zoning district or for approval of a master land use plan. However, if a rezoning or master plan is approved, a certificate of adequacy of public school facilities ~~will~~ **shall** be required before any residential development of the property is authorized pursuant to any of the approvals specified in subsection (a) of the section, and the rezoning of the property or approval of a master plan provides no indication as to whether the certificate of adequacy of public school facilities will be issued. The application for rezoning or master plan approval shall contain a statement to this effect.
- (c) A certificate of adequacy of public school facilities must be obtained from the school district. The school district will issue or deny a certificate of adequacy of public school facilities in accordance with the provisions of a memorandum of understanding between Chapel Hill, Carrboro, Orange County, and the Chapel Hill/Carrboro School District.
- (d) An applicant shall seek from the school district a certificate of adequacy of public school facilities for a proposed residential development before an application for approval of a zoning

compliance permit for a subdivision preliminary plat application, minor subdivision final plat, zoning compliance permit for a site plan review application, zoning compliance permit for a special use permit, ~~or~~ zoning compliance permit for a special use permit modification, **or for a zoning compliance permit for a conditional zoning district containing residential uses** is submitted to the town. The certificate of adequacy of public school facilities, if issued, shall expire as provided in section 16.5.

- (e) A certificate of adequacy of public school facilities attaches to the land in the same way that development permission attaches to the land. A certificate of adequacy of public school facilities may be transferred along with other interests in the property with respect to which such certificate of adequacy of public school facilities is issued, but may not be severed or transferred separately.”

Section 99 – Article 5 – Design and Development Standards. Section 5.16.5 is hereby amended to read as follows:

“5.16.5. Expirations of Certificates of Adequacy of Public School Facilities.

- (a) A certificate of adequacy of public school facilities that has been obtained pursuant to subsection 16.3(d) before an application for approval of a subdivision preliminary plat, minor subdivision final plat, site plan, special use permit, ~~or~~ special use permit modification, **or for a conditional zoning district containing residential uses** has been submitted shall expire unless the developer submits and the town accepts as complete an application for approval of that subdivision preliminary plat, minor subdivision final plat, site plan, special use permit, ~~or~~ special use permit modification, **or for a conditional zoning district containing residential uses** within ninety (90) days of the date of the certificate of adequacy of public school facilities and receives the requested approval within two (2) years of the date of the certificate of adequacy of public school facilities.
- (b) A certificate of adequacy of public school facilities issued in connection with approval of a subdivision preliminary plat, minor subdivision final plat, site plan, special use permit, ~~or~~ special use permit modification, **or for a conditional zoning district containing residential uses** shall expire automatically upon the expiration or such ~~plat, plan, or permit~~ approval.”

Section 100 – Article 5 – Design and Development Standards. Section 5.16.7 (c) is hereby amended to read as follows:

“The provisions of this article shall not apply to minor ~~changes~~ **modifications** to subdivision preliminary plat, site plan, special use permit, or special use permit modification approvals issued prior to the effective date of this article so long as the approvals have not expired and the proposed minor ~~changes~~ **modifications** do not increase the number of dwelling units authorized within the development by more than five (5) percent or five (5) dwelling units, whichever is less.”

Section 101 – Article 5 – Design and Development Standards. Section 5.16.7 (d) is hereby amended to read as follows:

- “(d) The town council shall issue a ~~special~~ **an** exception to the certificate of adequacy of public school facilities requirement to an applicant whose application for approval of a subdivision preliminary plat, minor subdivision final plat, site plan, special use permit or special use permit modification

covering property within a planned development or master plan project that was approved prior to the effective date of this article, if the town council finds, after an evidentiary hearing, that the applicant has (1) applied to the school district for a certificate of adequacy of public school facilities and the application has been denied, (2) in good faith made substantial expenditures or incurred substantial binding obligations in reasonable reliance on the previously obtained preliminary plat approval, planned development or master plan approval, and (3) would be unreasonably prejudiced if development in accordance with the previously approved development or plan is delayed due to the provisions of this ordinance. In deciding whether these findings can be made, the town council shall consider the following, among other relevant factors:

- (1) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities which were designed to serve or to be paid for in part by the development of portions of the preliminary plat, planned development or master planned project that have not yet been approved for construction;
- (2) Whether the developer has installed streets, utilities, or other facilities or expended substantial sums in the planning and preparation for installation of such facilities that directly benefit other properties outside the development in question or the general public;
- (3) Whether the developer has donated land to the School District for the construction of school facilities or otherwise dedicated land or made improvements deemed to benefit the School District and its public school system;
- (4) Whether the developer has had development approval for a substantial amount of time and has in good faith worked to timely implement the plan in reasonable reliance on the previously obtained approval;
- (5) The duration of the delay that will occur until public school facilities are improved or exist to such an extent that a Certificate of Adequacy of Public School Facilities can be issued for the project, and the effect of such delay on the development and the developer.

The decision of the town council is subject to review by the Orange County Superior Court by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within thirty (30) days after a written copy of the decision of the town council is delivered to every aggrieved party who has filed a written request for such copy with the clerk to the town council at the time of its **evidentiary** hearing on the application for a ~~special~~ **an** exception. The written copy of the decision of the town council may be delivered to the aggrieved party either by personal service or by certified mail, return receipt requested.

The mayor of the town or any member temporarily acting as mayor may, in his or her official capacity, administer oaths to witnesses in any **evidentiary** hearing before the town council concerning a ~~special~~ **an** exception. “

Section 102 – Article 5 – Design and Development Standards. Section 5.16.8 Appeal of School District Denial of a Certificate of Adequacy of Public School Facilities is hereby amended to read as follows:

“The applicant for a certificate of adequacy of public school facilities which is denied by the school district may, within thirty (30) days of the date of the denial, appeal the denial to the town council of Chapel Hill. Any such appeal shall be heard by the town council at an evidentiary hearing before it. At this **evidentiary** hearing the school district will present its reasons for the denial of the certificate of adequacy of public school facilities and the evidence it relied on in denying the certificate of adequacy of public school facilities. The applicant appealing the denial may present its reasons why the certificate of

adequacy of public school facilities application should have, in its view, been approved and the evidentiary basis it contends supports approval. The town council may (1) affirm the decision of the school district, (2) remand to the school district for further proceedings in the event evidence is presented at the **evidentiary** hearing before the town council not brought before the school district, or (3) issue a certificate of adequacy of public school facilities. The town council will only issue a certificate of adequacy of public school facilities if it finds that the certificate of adequacy of public school facilities certificate of adequacy of public school facilities should have been issued by the school district as prescribed in the memorandum of understanding among the school district, Orange County and Chapel Hill. A decision of the town council affirming the school district may be appealed by the applicant for a certificate of adequacy of public school facilities by proceedings in the nature of certiorari and as prescribed for an appeal under section 16.7(d) of this article.”

Section 103 – Article 5 – Design and Development Standards. Section 5.16.9 Information Required From Applicants is hereby amended to read as follows:

“The applicant for a certificate of adequacy of public school facilities shall submit to the school district all information reasonably deemed necessary by the school district to determine whether a certificate of adequacy of public school facilities should be issued under the provisions of the memorandum of understanding between Chapel Hill, Orange County, and the school district. An applicant for a certificate of adequacy of public school facilities ~~special~~ exception or an applicant appealing a certificate of adequacy of public school facilities denial by the school district shall submit to the town council all information reasonably deemed necessary by the town manager to determine whether ~~a special~~ **an** exception should be granted as provided in section 16.7(d) of this article or for the **evidentiary** hearing of an appeal of a school district denial of a certificate of adequacy of public school facilities as provided in section 16.8 of this article. A copy of a request for a certificate of adequacy of public school facilities ~~special~~ exception or of an appeal of a school district denial of a certificate of adequacy of public school facilities shall be served on the superintendent of the school district. Service may be made by personal delivery or certified mail, return receipt requested.”

Section 104 – Article 5 – Design and Development Standards. Section 5.18.8 (c) (3) C. is hereby amended to read as follows:

“The final decision is to be made pursuant to ~~a public~~ **an evidentiary** hearing; or”

Section 105 – Article 5 – Design and Development Standards. Section 5.18.8 (d) (2) Minor variances is hereby amended to read as follows:

“A minor variance request pertains to uses and activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved by the town board of adjustment based on the criteria in subsections 5.18.8(d)(1)A through 5.18.8(d)(1)C and in accordance with section 4.12 and as provided by **NCGS 160D North Carolina General Statute Chapter 160A, Article 19**. The board may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the town board of adjustment shall be made in writing to the director of the division. Appeals from a decision by the director on a minor variance request are subject to review as provided in North Carolina General Statute Chapter **160D 150B, Articles, 3 and 4.**”

Section 106 – Article 5 – Design and Development Standards. Section 5.18.8 (d) (3) Major variances is hereby amended to read as follows:

“A major variance request pertains to uses and activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the town board of adjustment has determined that a major variance request meets the requirements in subsections 5.18.8(d)(1)A through 5.18.8(d)(1)C and as provided by **NCGS 160D** ~~N.C.G.S. Chapter 160A, Article 19~~, then it shall prepare a preliminary finding and submit it to the North Carolina Environmental Management Commission in care of the director of the division. Within ninety (90) days after receipt, the environmental management commission is required to review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a commission decision on a major variance request are subject to review as provided in N.C.G.S. Chapter **160D** ~~150B, Articles 3 and 4.~~”

Section 107 – Article 5 – Design and Development Standards. Sections 5.18.9 (b) (2) and (3) are hereby amended to read as follows:

- “(2) *Notice of civil penalty assessment.* The town manager shall provide written notice of the civil penalty amount and the basis for the assessment to the person assessed. The notice of civil penalty assessment shall be served by any means authorized under N.C.G.S. 1A-1, Rule 4 including personal service or by certified mail, return receipt requested, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment by written demand for ~~a~~ **an evidentiary** hearing.
- (3) *Evidentiary Hearing.* Any decision imposing a civil penalty may be appealed to the town board of adjustment. The board shall hold ~~a~~ **an evidentiary** hearing in accordance with sections 4.10 through 4.13.”

Section 108 – Article 5 – Design and Development Standards. Sections 5.19.11 (d) (2) and (3) are hereby amended to read as follows:

- “(2) *Notice of civil penalty assessment.* The town manager shall provide written notice of the civil penalty amount and the basis for the assessment to the person assessed. The notice of civil penalty assessment shall be served by any means authorized under G.S. 1A-1, Rule 4 including personal service or by certified mail, return receipt requested, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment by written demand for ~~a~~ **an evidentiary** hearing.
- (3) *Evidentiary Hearing.* Any decision imposing a civil penalty may be appealed to the town board of adjustment. The board shall hold ~~a~~ **an evidentiary** hearing in accordance with sections 4.10 through 4.13.”

Section 109 – Article 5 – Design and Development Standards. Section 5.20.1 Authority is hereby amended to read as follows:

“This section is adopted pursuant to the authority vested in the Town of Chapel Hill by the General Assembly of the State of North Carolina with particular reference to Article ~~9 19~~ Part ~~3 3E~~ of Chapter ~~160A 160D~~ of the North Carolina General Statutes, ~~and Session Law 2017-159 (HB 310).~~”

Section 110 – Article 5 – Design and Development Standards. Section 5.20.3 Definitions is hereby amended to read as follows:

“Substantial modification pursuant to ~~NC §160A-400.51~~ **NCGS 160D-931(19)** means a modification or collocation involving the mounting of a proposed wireless facility on a wireless support structure that substantially changes the physical dimensions of the support structure. A mounting is presumed to be a substantial modification if it meets any one or more of the criteria listed below. The burden is on the town to demonstrate that a mounting that does not meet the listed criteria below still constitutes a substantial change to the physical dimensions of the wireless support structure.

- (1) Increasing the existing vertical height of the structure by the greater of (i) more than ten percent (10%) or (ii) the height of one additional antenna array with separation from the nearest existing antenna not to exceed twenty (20) feet.
- (2) Except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure the greater of (i) more than twenty (20) feet or (ii) more than the width of the wireless support structure at the level of the appurtenance.
- (3) Increasing the square footage of the existing equipment compound by more than 2,500 square feet.”

Section 111 - Article 8 – Administrative Mechanisms. The introductory paragraph is hereby amended to read as follows:

“This article formally establishes the agencies and officials involved in processing applications for development approval. **Such agencies and officials shall comply with the Conflict-of-Interest provisions of NCGS 160D-109.**”

Section 112 - Article 8 – Administrative Mechanisms. Section 8.2.4. (m) is hereby amended to read as follows:

“To review and make recommendations to the council on proposed plats of land subdivision, applications for ~~special use permits~~ **conditional zoning districts**, and proposed amendments to Land Use Management Ordinances;”

Section 113 - Article 8 – Administrative Mechanisms. Section 8.3.4. (d) is hereby amended to read as follows:

“To make ~~interpretations~~ **determinations** of the zoning atlas, including disputed questions about zoning district boundary lines or lot lines, and similar questions **as required by the appendix, and** as they arise in the administration of this appendix;”

Section 114 - Article 8 – Administrative Mechanisms. Section 8.3.5. Meetings is hereby amended to read as follows:

“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~~ **determinations**, the board shall observe the quasi-judicial procedural requirements set forth in sections 4.11 and 4.12 of this appendix.

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.”

Section 115 - Article 8 – Administrative Mechanisms. Section 8.4.2 Qualifications is hereby amended to read as follows:

“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, **historic preservation, archaeology, or related fields**. Members shall serve without compensation.”

Section 116 - Article 8 – Administrative Mechanisms. Introductory paragraph of Section 8.5.5. Powers of the Commission is hereby amended to read as follows:

“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 appendix, in Chapter ~~160A~~ **160D**, Article ~~19~~ **9**, Part ~~7~~ **5** 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:”

Section 117 - Article 8 – Administrative Mechanisms. Section 8.5.5. (r) is hereby amended to read as follows:

“To review all schematic building designs for special use permits or special use permit modifications, and forward comments and recommendations for consideration **by the applicant** ~~at council public hearings;~~”

Section 118 - Appendix A. Definitions are hereby amended to read as follows:

Administrative decision: Decisions made in the implementation, administration, or enforcement of development regulations that involve the determination of facts and the application of objective standards set forth in this appendix. These are sometimes referred to as ministerial decisions or administrative determinations.

Administrative hearing: A proceeding to gather facts needed to make an administrative decision.

Bona fide farm: Agricultural activities as defined in NCGS 160D-903(a).

Building: Any structure designed or intended for the support, enclosure, shelter, or protection of persons, animals, ~~chattels~~, or property.

Conditional use district: A zoning district requested by the property owner in which all uses are considered a special use. ~~See section 4.4 of this appendix.~~ **As of July 1, 2021, conditional use districts are no longer permissible pursuant to NCGS 160D-703.**

Construction commences: Means that construction has commenced in accordance with the terms of a building permit, as set forth in ~~N.C.G.S. 160A-418~~ **NCGS 160D-1111.**

Determination: A written, final, and binding order, requirement, or determination regarding an administrative decision.

Developer: A person, **including a governmental agency** who undertakes **any** development activities **and who is the landowner of the property to be developed or who has been authorized by the landowner to undertake development on that property.**

Development approval: An administrative or quasi-judicial approval made pursuant to this appendix that is written and that is required prior to commencing development or undertaking a specific activity, project, or development proposal. Development approvals include, but are not limited to, zoning compliance permits, site plan approvals, special use permits, variances, and certificates of appropriateness. The term also includes all other regulatory approvals required by regulations pursuant to this appendix including but not limited to plat approvals.

General use districts: The zoning districts which govern usual and typical development situations, which are established by section 3.3 of this appendix **and are sometimes referred to as Conventional Districts.**

Evidentiary hearing. - A hearing where sworn testimony is heard to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by this appendix.

Extraterritorial jurisdictions or "ETJ": The territory, outside of the town limits within which the town may exercise the powers conferred by ~~Article 19 of Chapter 160A~~ **160D** of the North Carolina General Statutes, as set forth in ~~N.C.G.S. 160A-360~~ **NCGS 160D-202.**

Legislative decision. - The adoption, amendment, or repeal of a regulation under this appendix. The term also includes the decision to approve, amend, or rescind a development agreement consistent with the provisions of this appendix as well as zoning atlas amendments.

Legislative hearing. - A hearing to solicit public comment on a proposed legislative decision.

Performance guarantee: A letter of credit or cash escrow posted as security for the completion of ~~subdivision~~ improvements **required by this appendix.**

Quasi-judicial decision: A decision involving the finding of facts regarding a specific application of a development regulation and that requires the exercise of discretion when applying the standards of the regulation. The term includes, but is not limited to, decisions involving variances, special use permits, certificates of appropriateness, and appeals of administrative determinations. Decisions on other development approvals are quasi-judicial in nature if this appendix authorizes a decision-making board to approve or deny the application based not only upon whether the application complies with the specific requirements set forth in the regulation, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings to be made by the decision-making board.

Site-specific development vesting plan: An approved special use permit, conditional zoning district that includes a district-specific plan, Form District Permit issued by the council authorizing the development of a zoning lot as provided for in this appendix. Such site-specific vesting plans have vested rights for a period of two years.

Sleeping room: A room designated as sleeping or bedroom on the plans and permit application.

Special use permit: A permit issued by the council authorizing the development of a zoning lot for a special use or a planned development **authorizing development or land uses in a particular zoning district upon presentation of competent, material, and substantial evidence establishing compliance with one or more general standards requiring that judgment and discretion be exercised as well as compliance with specific standards. The term includes permits previously referred to as conditional use permits.**

Substantially commenced: For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of an approved plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantially commenced" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

Transportation facilities: Includes: (1) Streets, including street links and intersections within the jurisdiction of the Town of Chapel Hill, or arterial streets and collector streets within the jurisdiction of or the North Carolina Department of Transportation, or its successor agency, that are located within the incorporated boundaries of the Town of Chapel Hill and any extraterritorial jurisdictions granted pursuant to ~~N.C.G.S. 160A-360~~ **NCGS 160D-202**, and (2) buses owned and operated by Chapel Hill Transit."

Section 119. This ordinance shall be effective on June 28, 2021.

This the _____ day of _____, 2021.