

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-)

Section 1 – 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 code sections from the North Carolina General Statutes, and while these code sections may change after the adoption of this appendix, the intent of these referenced sections shall remain.**

Section 2 – 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 for development regulations from one jurisdiction to apply to the entire parcel as authorized in Chapter 160D-203 and in Section 4.1.5 in this appendix.

Section 3 – 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 4 – 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) 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 5 – 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 6 – Article 3 – Zoning Districts, Uses, and Dimensional Standards. Section 3.4.1 Conditional Use Districts (a) is hereby deleted, and the subsequent sub-section 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 7 - 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 8 - 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 9 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.5.2(b) second 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) 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 10 - 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 11 - 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~~ modification of a development agreement within the district."

Section 12 - 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:"

Section 13 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (k)(2)C. Initial development agreement is hereby amended to read as follows:

"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."

Section 14 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (k)(2)D. Subsequent development agreements and major amendments is hereby amended to read as follows:

*"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."

Section 15 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (k)(2)E. is hereby amended to read as follows:

"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.**

Section 16 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (k)(2)F. is hereby amended to read as follows:

"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 17 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.5.5 (l)(1) 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(e)~~ **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)~~ **160D-1008 (c)**. 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 18 - 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 19 - 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-1007**, 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 3.5.6 (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 21 - 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-1008 (c)**. 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 3.6.2 (d) Procedures for approval of certificates of appropriateness is hereby amended to read as follows and renumbered as shown:

(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.

(4) ~~{3}~~ “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.”

(5) ~~{4}~~ 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. (Ord. No. 2004-02-23/O-2)

- (6) ~~(5)~~ Actions subsequent to decision. The town manager shall notify the applicant of a decision in writing, and shall file a copy of it with the town's planning department. If the application is denied, the notice shall include the reasons for such action.
- (7) ~~(6)~~ Appeal of decision. A decision by the commission on an application for a certificate of appropriateness may be appealed to the board of adjustment in 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.**
- (8) ~~(7)~~ 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.
- (9) ~~(8)~~ 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 23 - 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, 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 24 - Article 3 - Zoning Districts, Uses, and Dimensional Standards. Section 3.10.2 (h) Floor area is hereby amended to read 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 25 - 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 26 - Article 3 - Zoning Districts, Uses, and Dimensional Standard. Section 3.11.4.7 C. 2. is hereby amended to read as follows:

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

Section 27 - 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. Another 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 28 - 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 29 - 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 30 - 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 31 – Article 4 – Procedures. Section 4.1.2 (c) is hereby amended to add to Section 4.1.2 (c) to read as follows:

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

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

(a) Unless 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 modifications, maybe be changed, modified, or revoked as may be required by this appendix or by following the same development review and approval process required for consideration of the approval or modification, including any required notice or hearing.

Section 33 – 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 34 – 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 35 – Article 4 – Procedures. Section 4.2(a) Process is hereby amended to read as follows:

- (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 a new comprehensive plan, shall **follow the procedures of a legislative decision pursuant to NCGS 160D-502(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.

Section 36 – Article 4 – Procedures. Section 4.4.1 (a) Initiation is hereby amended to read as follows:

- “(a) A request to **adopt, amend, or repeal sections of this appendix, including zoning map 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 37 – 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~~ **shall only** be made ~~only~~ by ~~application~~ **petition** from the owner(s) of all the property included in the area proposed to be rezoned. ~~An application for rezoning to a conditional use district may include a request by the property owner(s) to limit the uses allowed with approval of a special use permit. An application for rezoning to a conditional use district may be accompanied by an application for a special use permit, as provided in 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 38 – 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 39 – 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 40 – Article 4 – Procedures. Section 4.4.2 (e) Public hearing is hereby amended 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 regularly scheduled ~~public~~ hearing in order to receive comments, testimony, and exhibits pertaining to the application. The town council, by resolution, shall adopt a schedule of ~~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 section, 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 41 – 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 42 - Article 4 – Procedures. Section 4.4.3 (d) Public hearing is hereby retitled and amended to add sub-section (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 regularly scheduled ~~public~~ **legislative** hearing in order to receive comments and exhibits pertaining to the application. The town council, by resolution, shall adopt a schedule of ~~public~~ **legislative** 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 section, 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 43 - 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)~~ **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; and

Section 44 - 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 45 - 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 46 - 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 47 - Article 4 – Procedures. Section 4.4.5 (h) is hereby amended 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, 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 48 – Article 4 –Procedures. Section 4.5 c) is hereby deleted as follows:

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

Section __ – 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 49 - Article 4 – Procedures. Section 4.5.3 Procedures for Approval of Special Use Permits is hereby amended 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 hold 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 heard**. The town council shall adopt a schedule of ~~public~~ **such** hearings by resolution. Once the schedule is adopted, any amendment which reduces the number of **such** 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~~ **evidentiary** 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~~ **evidentiary** hearing shall be sworn.
 - (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 50 - 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)10 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 51 - Article 4 – Procedures. Section 4.5.5 Expiration and Revocation of Special Use Permit Approvals (2) is hereby deleted, and the following section 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 52 - Article 4 – Procedures. Section 4.6.1 Applicability and Definition of “Subdivision” is hereby amended to add a new section (e) 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 53 - Article 4 – Procedures. Section 4.6.9 Reserved is hereby 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 54 - 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 55 - 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 56 - 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 57 - 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 58 - 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 59 - 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~~ **modification** 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 60 - 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 evaluated pursuant to 4.4.5.**

Section 61 - 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:

“Abandonment or revocation of an approved master land use plan.

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 62 - 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 63 - Article 4 – Procedures. Section 4.11 Interpretations is hereby retitled to read as follows:

“4.11. Interpretations **Determinations.**”

Section 64 - Article 4 – Procedures. Section 4.11.1 Interpretations is hereby amended to read as follows:

“4.11.1. **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 65 - Article 4 – Procedures. Section 4.12.1 (b) Public hearing hereby amended to retitle the subsection and add section (4) and renumbered as follows:

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

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

"(2) 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 67 - 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 68 - Article 4 – Procedures. Section 4.13.3 Procedures Upon Discovery of Violations is hereby retitled, renumbered, and amended 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 69 – 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 70 – 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 71 – Article 5 – Design and Development Standards. Section 5.16.3 (b) is hereby amended to read as follows:

“(b) A certificate of adequacy of public school facilities shall not be required for a general use ~~or conditional use~~ rezoning 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 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.”

Section 72 – 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 73 – Article 5 – Design and Development Standards. Section 5.16.7 (d) is hereby amended to read as follows:

"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 74 – 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 75 – 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 76 – 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 administrative hearing; or

Section 77 – Article 5 – Design and Development Standards. Section 5.18.9 (b) (2) and (3) is 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 ~~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 thorough 4.13.”

Section 78 – Article 5 – Design and Development Standards. Section 5.19.11 (d) (2) and (3) is 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 thorough 4.13.”

Section 79 - Article 8 – Administrative Mechanisms – Section 8.2.4. (m) Powers of the commission 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 80 - Article 8 – Administrative Mechanisms – Section 8.3.4. (d) Powers of the board 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 81 - 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 82 - Article 8 – Administrative Mechanisms – Section 8.5.5. (r) Powers of the commission 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 83 - Appendix A. – Definitions are here by amended 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).

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 a permissible district pursuant to NCGS 160D-703 - Zoning districts.**

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 to gather competent, material, and substantial evidence in order to make findings for a quasi-judicial decision required by this appendix.

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, 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.**