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**CHAPTER 4: ZONING DISTRICTS**

**4.1 GENERAL PROVISIONS**

**4.1.1 General Use Districts Established**

**(A) Establishment**

The following general use zoning districts are hereby established:

<b>TABLE 4.1-1: GENERAL ZONING DISTRICTS ESTABLISHED</b>		
	<b>Abbreviation</b>	<b>District Name</b>
Residential Districts	R-80	Residential District
Residential Districts	R-40	Residential District
Residential Districts	R-20	Residential District
Residential Districts	R-12	Residential District
Residential Districts	R-8	Residential District
Residential Districts	TR	Transitional Residential District
Residential Districts	RMF	Multi-Family Residential District
Non-Residential Districts	RR	Resource/Recreation District
Non-Residential Districts	OI	Office and Institutional District
Non-Residential Districts	GC	General Commercial District
Non-Residential Districts	CT	Corridor Transitional District
Non-Residential Districts	ORD	Office/Research and Development District
Non-Residential Districts	I	Industrial District
Non-Residential Districts	TC	Town Center District
Planned Development Districts	PDD (Minor)	Minor Planned Development District
Planned Development Districts	PDD (Major)	Major Planned Development District

**(B) Hierarchy of General Use Districts**

References in this Ordinance to less restrictive or more restrictive zoning districts refer to the general use districts established above. The above districts are ranked and represent, within the residential and the non-residential categories, a progression from the most restrictive (the "highest" classification) to the least restrictive (the "lowest" classification).

**4.1.2 Relationship to Conditional Use Districts and Overlay Districts**

Lands within the Town and its extraterritorial jurisdiction may be classified into one of the following:

- (A)** General use districts set forth in Section 4.2;

- (B) One or more of the conditional use districts set forth in Section 4.3;
- (C) One or more of the overlay districts set forth in Section 4.4.
- (D) Some lands within a general use district may also be classified as "conditional" when the land was previously designated as a conditional use district prior to July 1, 2003, but which designation was removed concurrent with adoption of this Ordinance. In such cases, any conditions associated with the land remain in effect regardless of the land's current designation as a general use district.

Where the property is classified in an overlay district as well as either a general use district or a conditional use district, then the regulations governing development in the overlay district shall apply in addition to the regulations governing development in the underlying district. In the event of an express conflict between the standards set forth in Section 4.2 and the standards set forth in Section 4.4 for an overlay district, the standards set forth in Section 4.4 shall control. In the event of an express conflict between the standards set forth in Section 4.4 and the provisions set forth in a particular conditional rezoning, then the more restrictive provision of either shall control.

#### **4.1.3 Annexed Lands and Lands Added to the Town's Extraterritorial Jurisdiction**

##### **(A) Zoning Designation**

- (1) The Town Council shall determine the zoning designation and land use plan designation (if applicable) of properties added to the Town's jurisdiction through extraterritorial boundary changes or annexation at the time such properties are added. Such determination shall be based on, but not be limited to, the following factors: the property's designation on the Land Use Plan, the property's current land use, the existence of a previously-approved site or subdivision plan, the character of adjacent properties, current zoning designations, property owner requests or other factors considered relevant at the time of the annexation.
- (2) Any property owner within the land to be added to the Town's jurisdiction may submit a petition requesting a specific zoning designation. If such a petition is received prior to the time the land is added to the Town's jurisdiction, then the public hearing for zoning may be held concurrently with any public hearing required for addition of the property. If no such petition is received prior to the time of addition of the property, then Section 3.4 of this Ordinance shall govern any subsequent rezoning of the property.

##### **(B) Effect of Zoning Designation on Nonconforming Lot Status**

Where a legal, conforming lot existing in a residential zoning district at the time the lot was added to the Town's extraterritorial jurisdiction does not contain sufficient land to permit conformance with the lot size or lot width of this Ordinance, such lot may be used as a building site for a single-family residence notwithstanding the limitations set forth in Chapter 10 of this Ordinance. However, all development on such lot shall comply with the setback requirements of Chapter 6 of this Ordinance.

## **4.2 GENERAL USE DISTRICTS**

### **4.2.1 General Purposes**

The general use zoning districts contained in this section are intended to:

- (A) Provide appropriately located areas for residential development that are consistent with the Comprehensive Plan and with standards of public health and safety established by this Ordinance;
- (B) Protect sensitive environmental and cultural resources;
- (C) Protect existing neighborhoods and community character;
- (D) Ensure adequate light, air, privacy, and open space for each residential dwelling, and protect residents from the harmful effects of excessive noise, traffic congestion, and other significant adverse environmental effects;
- (E) Protect residential areas from fires, explosions, toxic fumes and substances, and other public safety hazards;
- (F) Ensure the provision of public services and facilities needed to accommodate planned population densities;
- (G) Provide sites for public, semi-public, and commercial land uses, such as schools, parks, and churches, that are needed to complement residential development or requiring a residential environment;
- (H) Provide appropriately located areas consistent with the Comprehensive Plan for a full range of office, commercial, and industrial uses needed by the Town's residents, businesses and workers, and protect such uses from the adverse effects of incompatible uses;
- (I) Strengthen the Town's economic base and provide employment opportunities close to home for residents of the Town and surrounding communities;
- (J) Minimize any negative impact of commercial and industrial development on abutting residential districts;
- (K) Ensure that the appearance and effects of commercial and industrial buildings and uses are of high quality and are harmonious with the character of the area in which they are located; and
- (L) Provide sites for residential, public, and semipublic uses needed to complement commercial and industrial development.

#### **4.2.2 Residential and Non-Residential Zoning Districts**

The specific purposes of the general use zoning districts are set forth below, along with any district-specific provisions that may apply. The allowed uses and use specific-standards for each of the districts are set forth in Chapter 5. All uses shall comply with the general dimensional standards set forth in Chapter 6, or as may be specified elsewhere in the Ordinance, including, but not limited to, Section 8.4, Alternative Development Option: Cluster Residential Subdivisions.

Some general use zoning districts and their associated conditional use zoning districts may be requested only within specified land use plan categories of the Cary Land Use Plan or applicable Area Plan that support the land use and development intensity associated with the requested zoning district, as provided in the following table.

LAND USE PLAN DESIGNATIONS AND ASSOCIATED GENERAL USE ZONING DISTRICTS				
LAND USE PLAN DESIGNATION	GENERAL ZONING DISTRICT			
	R-12	R-8	TR	RMF
VLDR	•	•		
LDR	•	•		
MDR	•	•	•	•
HDR		•	•	•
INS				
COM				
OFC/IND				
OFC/INS				
Activity Center	•	•	•	•

**(A) R-80: Residential District**

The R-80 district is established to ensure the protection of open space and to promote very low-density residential development that is compatible with watersheds and other environmentally sensitive areas, subject to appropriate standards. The district also can serve as an appropriate buffer between natural resources and water supply reservoirs and more developed areas. The minimum lot area is eighty thousand (80,000) square feet, and the maximum density allowed is fifty-four hundredths (0.54) units per acre.

**(B) R-40: Residential District**

The R-40 district is established to accommodate large-lot residential uses and development compatible with the natural landscape. The minimum lot area is forty thousand (40,000) square feet, and the maximum density allowed is one and eight hundredths (1.08) units per acre. The R-40 district can accommodate development on wells and/or septic tanks; but lots within new subdivisions in this district are required to connect to public water and sewer.

**(C) R-20: Residential District**

The R-20 district is established as a district in which the principal use of land is for low-density residential purposes, and is appropriate in areas where the Land Use Plan designation supports very low or low density residential use. All development in the R-20 district shall be required to utilize public utilities. The minimum lot area is twenty thousand (20,000) square feet, and the maximum density allowed is two and seventeen hundredths (2.17) units per acre.

**(D) R-12: Residential District**

The R-12 district is established as a district in which the principal use of land is for single-family dwellings, and is appropriate in areas where the Land Use Plan designation supports very low, low or medium density residential use. The regulations of this district are intended to discourage any use that would substantially interfere with the development of single-family dwellings and that would be detrimental to the quiet residential nature of the district. The minimum lot area is twelve thousand (12,000) square feet, and the maximum density allowed is three and sixty-three hundredths (3.63) units per acre.

**(E) R-8: Residential District**

The R-8 district is established as a district in which the principal use of land is for single-family dwellings, and is appropriate in areas where the Land Use Plan designation supports low, medium or high density residential use. The regulations for this district are intended to discourage any use that would substantially interfere with the development, use, and enjoyment of single-family dwellings or that would be detrimental to the quiet residential character of the district. The regulations of this district also are designed to encourage the wise use of land and natural resources, with the aim of reducing sprawl and the costly provision of infrastructure to serve dispersed development. The minimum lot area is eight thousand (8,000) square feet, and the maximum density allowed is five and forty-four hundredths (5.44) units per acre.

**(F) TR: Transitional Residential District**

The TR district is established as a district in which the principal use of land is for a variety of residential uses, and is appropriate in areas where the Land Use Plan designation supports medium or high density residential use, with the exception of multi-family structures. This district is appropriate for infill developments smaller than ten (10) acres in established neighborhoods, for denser residential neighborhoods, and for areas identified for medium-density residential uses in the Town's Land Use Plan. The regulations of this district are intended to allow innovation in the arrangement of buildings within such developments. The minimum lot size for single family detached dwellings is five thousand (5,000) square feet, and the maximum density allowed is six (6) units per acre.

**(G) RMF: Residential Multi-Family District**

The RMF district is established as a district in which the principal use of land is for multi-family dwellings and also less-intensive residential uses such as patio homes, and is appropriate in areas where the Land Use Plan designation supports high density residential use. This district can be applied to locations that are suitable for multi-family development, and thus provide areas within the community for persons desiring to live in multi-family structures at densities sufficient to support public transit. This district should be located so as to not interfere with or damage environmentally sensitive lands and to ensure that adequate open space and recreational facilities are located nearby, or within the district itself, to serve the needs of the persons who are or will be living in the district. The maximum density allowed is twelve (12) units per acre.

**(H) RR: Resource/Recreation District**

The purpose of the RR district is to protect and preserve parks, scenic areas, and open spaces, and to protect watersheds and water supplies and to allow public recreational uses. In considering the appropriateness of classifying any property into this district, the Town shall consider the physical pattern of development in the area, topography, and proximity to important natural resources deemed worthy of protection.

**(I) OI: Office and Institutional District**

The OI district provides for the development of offices and community institutions that have similar development characteristics and require locations close to the more intensive commercial districts. This district requires strict development controls since, in most instances, these districts will be located adjacent to residential districts.

**(J) GC: General Commercial District**

The GC district is generally intended to allow for uses that provide goods and services to residents of the community. Because these commercial uses are subject to the public view, they should provide an appropriate appearance, ample parking, controlled traffic movement, suitable landscaping, and protect abutting residential areas from potentially negative impacts associated with commercial activity.

**(K) CT: Corridor Transitional District****(1) Purpose**

The CT district addresses concerns unique to areas when other zoning districts cannot achieve the desired results. This district addresses the needs of specific areas defined in Comprehensive Plan, special plans, or studies. They may be applied for some or all of the following reasons:

- (a)** To provide buffering and compatible land uses between residential areas and thoroughfares, where the residential character of an area has changed or is changing or may be subject to development pressure;
- (b)** To facilitate development solutions that will enhance area character, address existing deficiencies and provide benefits to the area and/or community; and
- (c)** To provide opportunities for consolidation of properties to encourage and permit unified planning and compatibility of uses within the districts and the existing and anticipated development in the surrounding area. They also provide a means to ensure that the land uses permitted by the existing zoning on adjacent properties are not negatively impacted by the uses permitted in CT districts.

**(2) Establishment**

A CT district shall not be established until a neighborhood plan, a corridor plan, or an area plan is completed for the area encompassed by the district. A CT district may be established if all the following criteria are met:

- (a)** The area proposed for the CT district has special characteristics or problems of a natural, economic, historic, public facility, or transitional land use or development nature which are not common to other areas of the Town;
- (b)** Existing general use districts are inadequate to achieve a desired public benefit or to address an identified problem in the area;
- (c)** The proposed CT district and standards are the result of a study and plan documenting the special characteristics or problems of the area and describing how a CT district will best address the relevant issues; and
- (d)** The standards of the CT district are in conformance with the comprehensive plan, or there is a determination that the comprehensive plan should be amended to reflect the proposed standards

**(3) Scope of Corridor Transitional Districts and Relationship to Other Regulations**

Corridor Transitional districts are areas identified through the Comprehensive Plan as being of a transitional nature. Development within CT districts shall comply with the general provisions required elsewhere in this Ordinance. When there is a conflict between the CT district and the general provisions of this Ordinance, the CT district shall control.

**(4) Standards Applicable in the Walnut Street Corridor**

The Walnut Street Corridor standards are intended to accomplish the following:

- (a) Provide for the development of offices, personal service and other compatible uses in the area defined between existing residential neighborhoods and the Walnut Street Corridor;
- (b) To minimize impacts on adjacent residential uses;
- (c) To provide a landscape buffer to the residential area;
- (d) To encourage the conversion of existing structures where practical;
- (e) To encourage the consolidation of property to facilitate redevelopment and minimize the number of access points to the thoroughfare;
- (f) To require the provision of cross access where possible;
- (g) To encourage new development to be of a residential style and proportion; and
- (h) To ensure compatibility of design in the district, adequate parking, pedestrian and bicycle accessibility, and consistent streetscape treatment.

The standards listed in the Table below shall only be utilized when there is a change in the use of a property from the use in existence on July 1, 2003. Detail on the allowable uses, and development standards are listed in the table below as well as in Chapters 5, and 6 of this Ordinance.

<b>TABLE 4.2-1: BUILDING AND SITE DESIGN STANDARDS FOR CERTAIN NEW CONSTRUCTION AND/OR REDEVELOPMENT IN THE CORRIDOR TRANSITION DISTRICT</b> (Not applicable to structures subject to regulation under the North Carolina Residential Code for one- and two-family dwellings).	
<b>Walnut Street Corridor</b>	
Building Materials	Natural siding, brick, stone and wood.
Roofing Materials	Shingles, slate, standing seam metal.
Roof Design	Buildings shall have pitched roofs which are residential in character. Mansard roofs prohibited.
Building Locations	Non-residential buildings shall provide front elevations and an entrance facing Walnut Street. Corner lots shall be double-fronted.

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<b>TABLE 4.2-1: BUILDING AND SITE DESIGN STANDARDS FOR CERTAIN NEW CONSTRUCTION AND/OR REDEVELOPMENT IN THE CORRIDOR TRANSITION DISTRICT</b> (Not applicable to structures subject to regulation under the North Carolina Residential Code for one- and two-family dwellings).	
<b>Walnut Street Corridor (Cont.)</b>	
Building Size	Building sizes are limited based upon the standards in Chapter 6, but the maximum building square footage for a new non-residential building within the Conversion sub-district may be increased from two thousand five hundred (2,500) square feet up to five thousand (5,000) square feet through the Special Use process (see Section 3.8) provided that two (2) or more contiguous existing lots designated as "Conversion" are being combined as part of the proposal. See 6.1.4 to reference maximum building size for Infill or Redevelopment sub-districts.
Building Facades	If wider than twenty-five (25) feet, the facade surface shall be divided into two (2) or more portions, each distinguished by a variation in building articulation and or facade treatment. This requirement shall not apply to detached dwellings and townhomes.
Window Treatment	A minimum of forty percent (40%) of the first floor and twenty percent (20%) of the upper floors on the front facade shall have window/door fenestration. Tinted or mirrored glass is prohibited on the front facade. Side elevations which can be seen from the public view shall have a minimum of twenty percent (20%) window/door fenestration. These requirements shall not apply to residential uses.
Streetscape Plantings	Existing healthy trees shall be preserved, but if none exist, then one (1) upper-story tree for each thirty (30) feet of street frontage shall be installed (allowable species are limited to: Pacific Sunset Maple, European Hornbeam, Chinese Pistache). In addition, one (1) understory tree for each twenty (20) feet on average of street frontage shall also be installed (allowable species include: Crepe Myrtle, Greenback Magnolia, Hasee Magnolia, Fosters Holly, Greenleaf Holly, Okame Cherry, or appropriate substitute).
Buffer Wall	(1) In the conversion area, a masonry wall is required with a minimum height of six (6) feet, with vegetation consisting of evergreen planting spaced no more than fifteen (15) feet apart and ten (10) feet in height at the time of installation. (2) In the redevelopment or infill area, a masonry wall, a minimum height of eight (8) feet, with vegetation consisting of evergreen planting spaced no more than ten (10) feet apart and ten (10) feet in height at the time of installation is required. A masonry wall is not required for detached dwellings or townhome use in the infill area. (3) Walls shall not be placed within utility easements or required drainage areas. (4) The Buffer Wall shall be located within five (5) feet of the common property line unless required to be located outside this area to avoid the removal of mature vegetation. (5) Openings in the wall are permitted to allow access for maintenance. In situations where such openings are provided, vegetation shall be installed to maintain a visual buffer between uses. (6) Walls shall be constructed of brick, cast stone, stone or other high quality, long-lasting masonry material.
Off-Street Parking	No more than thirty percent (30%) of the parking shall be located between the building and Walnut Street.
Pedestrian Access	Pedestrian access between buildings and to Walnut Street shall be provided.

<b>TABLE 4.2-1: BUILDING AND SITE DESIGN STANDARDS FOR CERTAIN NEW CONSTRUCTION AND/OR REDEVELOPMENT IN THE CORRIDOR TRANSITION DISTRICT</b> (Not applicable to structures subject to regulation under the North Carolina Residential Code for one- and two-family dwellings).	
<b>Walnut Street Corridor (Cont.)</b>	
Vehicular Access	Cross-access connections with shared access provisions shall be required unless waived by the Planning Director. Conversion properties bordering Sturdivant Drive are not required to provide cross-access. Parcels with access to two (2) or more public streets shall not be allowed full access to Walnut Street.
Lighting	Exterior lighting shall not exceed twenty (20) feet in height, and shall include cut-off or shielded fixtures. Light poles shall be neutral earth-tone colors. Accent lighting is only permitted on building fronts, and shall be directed away from adjacent residential dwellings and lots.
Signage	All signs shall comply with the Walnut Street Corridor Master Sign Plan.

**(L) ORD: Office/Research and Development District**

The ORD district is established to provide locations for a wide range of employment generating office, institutional, research and development, and light manufacturing uses, and for certain other uses that could create significant adverse impacts if located in the vicinity of residential areas. The standards of this district are designed to ensure that such uses are developed in a manner compatible with the use and enjoyment of nearby properties, and to minimize potential nuisances or damage to the environment. In addition, by allowing a wide range of permitted uses, this district is intended to accommodate the development of "flex space" arrangements, wherein the developer can establish different combinations of uses on a site over time, as the market dictates, as long as all uses and development conform to the standards established by the Town to protect adjacent land uses and the natural environment.

**(M) I: Industrial District**

The I district is established as a district in which the principal use of land is for industries which can be operated in a relatively clean and quiet manner and which will not be obnoxious to adjacent residential or business districts, for warehousing and wholesaling activities with limited contact with the general public, and for certain outdoor amusement facilities which generate large volumes of automobile traffic. The regulations are designed to encourage the use of land for industry, which should be properly segregated, and to prohibit any other use that would substantially interfere with the development of industrial establishments in the district.

**(N) TC: Town Center District**

**(1) Purpose and Intent**

The purpose of the TC district is to carry out the land use recommendations contained in the Town Center Area Plan, an official amendment to the Land Use Plan. It is also the intent of this district to achieve the urban design principles spelled out in the Downtown Design Guidelines.

**(2) Relationship to Plan and Design Guidelines**

The provisions of this district are based upon the adopted land use policies contained in the Town Center Area Plan and the design principles of the Downtown Design Guidelines, which are hereby incorporated by reference as part of this zoning district. In the event that this district does not specify a particular requirement, or when a conflict between this district and such policy documents arises, the Planning Director shall make a zoning determination based upon the overall direction and intent of the adopted plan and guidelines.

**(3) Findings**

The Town Center district seeks to protect, preserve, and enhance the unique aesthetic and architectural character of the downtown; conserve the value of buildings; and encourage appropriate use of the land in the downtown. This district is based, in part, on the findings that:

**(a) Overall Image**

Cary's central area contributes substantially to the Town's overall image;

**(b) Economic Vitality**

The economic vitality of downtown is important to the overall welfare of the Town;

**(c) Appropriate Uses**

Provisions that ensure the appropriate use of property for the downtown area will safeguard its prosperity and offer social and cultural benefits to the citizens of Cary;

**(d) Urban Design**

Standards that encourage new buildings, retain the values of surrounding properties, and protect the Town's small-town charm and character will promote good urban design;

**(e) Diversity of Development**

A diverse mix of business, office, institutional, recreational, open space, and residential uses is desirable and appropriate in the core area of the community;

**(f) Pedestrian-Friendly Development**

Encouragement of pedestrian-friendly development within walking distance of the future regional transit station at sufficient densities to support the station and downtown businesses is a wise use of land;

**(g) Sense of Place**

Creation of a sense of place that fosters a unique, attractive, and memorable destination for visitors and residents is important; and

**(h) Housing Diversity**

Encouragement of a diverse range of housing types to accommodate a range of needs is good public policy and helps achieve the policy direction contained in the Town's Affordable Housing Plan.

**(4) Applicability**

This zoning district shall apply to the geographic land area covered by the Town Center Area Plan adopted by Town Council on August 9, 2001, or as may be amended. The district boundaries may not necessarily correspond to the Town Center Area Plan boundaries. The current boundaries of this district are shown on the Official Zoning Map.

**(5) Subdistricts Created and Defined**

Due to the existing character and desired types of future development in various portions of the downtown area, differing land uses, building standards, parking requirements, open space requirements, and other related development standards are spelled out in the Town Center Area Plan. In order to present the full range zoning and development requirements for each different area, this zoning district is divided into such subdistricts as delineated in the Town Center Area Plan as follows:

<b>TABLE 4.2-2: TOWN CENTER SUBDISTRICTS</b>	
<b>Subdistrict</b>	<b>Description</b>
HMxD	High Intensity Mixed Use
MXD	Mixed Use
HDR Mid-Rise	High Density Residential Mid-Rise
MXDR	Mixed Density Residential
HDR Garden	High Density Residential Garden
MDR	Medium Density Residential
LDR	Low Density Residential
OFC/INS	Office/Institutional
OFC/IND	Office/Industrial
COM	Commercial
CLI	Commercial Low Intensity
CB&R	Cottage Business and Residential
INS	Institutional

**(6) Treatment of Existing Residential Uses**

- (a) Notwithstanding the provisions of Chapter 10, Nonconformities, residential uses that exist in the HMXD, MXD, HDR Mid-Rise, HDR Garden, COM, CLI, OFC/INS, INS, OFC/IND, MDR and LDR Subdistricts of the Town Center district on the effective date of this Ordinance, or any amendment thereto that adds the property to the Town Center district, are deemed to be conforming to the terms of this Section. Such uses may continue to be used as such, even if left unoccupied for more than 180 days.
- (b) Expansion of existing single family detached dwellings located within HMXD, MXD, HDR midrise, HDR garden, COM, CLI, INS, OFS/INS, OFS/IND subdistricts shall be permitted by right.

**(7) Allowed Principal, Accessory, and Stormwater Uses**

- (a) Principal uses allowed in each subdistrict are detailed in the use table set forth in Section 5.1.3 Accessory or ancillary structures normally associated with such primary uses and that do not constitute more than 33 percent of the total floor area on a site are allowed in conjunction with the principal use.
- (b) The use of residentially zoned property to support nonresidential stormwater devices to include but not limited to detention and retention ponds are allowed in the Town Center (TC) District providing that the following conditions are met:
  - 1. The properties must be contiguous as defined in Section 12.4 of this Ordinance.
  - 2. The same group, entity, or individual must own both properties (residential and nonresidential).

**(8) Rezoning Procedure**

Because the TC district is a single zoning district with various subdistricts, land use changes within this district do not entail a typical rezoning to a different district procedure. See Section 3.4.4 for the rezoning procedure within the TC district.

**(9) General Development Objectives**

This district is designed to provide a maximum amount of flexibility to landowners to facilitate new development and redevelopment of existing sites within the Town Center to create the following:

**(a) Unique and Dynamic Atmosphere**

Create a unique, vibrant, dynamic, pedestrian-friendly location;

**(b) Higher Densities in Proximity to Regional Rail Station**

Encourage higher residential densities within a short walking distance of the planned regional rail transit station in the center of the district; and

**(c) Mix of Uses**

Allow multi-story, mixed use buildings, so that the core area of downtown will include a high-intensity collection of retail shops, restaurants, entertainment, housing, offices, and similar uses to establish a place where residents may live, work, and recreate.

**(10) Standards for New Development****(a) Exemption from Certain Town Standards**

Considering the unique nature of downtown, certain requirements of the following provisions shall not be applicable within the Town Center district in order to provide the flexibility for downtown development:

1. The required number of off-street parking spaces (see Section 7.8) may be reduced up to fifty (50) percent on a case-by-case basis provided there is adequate on-street parking available in the immediate area. All other parking standards in Section 7.8 shall apply.
2. The perimeter buffer requirements in Section 7.2.3 and streetscaping requirements in Section 7.2.4 may be reduced or waived. Additional provisions from Section 7.2 may also be modified on a case-by-case basis provided such modification is consistent with the Town Center Design Guidelines; except that a hardship must be demonstrated before the requirements of Section 7.2.5 related to the retention of champion trees may be modified.
3. The exterior lighting requirements in Section 7.9.3 except in cases where a property is bounded by an existing single-family structure or development.
4. The requirements relating to private open space in Section 8.3.2.

**(b) General Performance Standards**

Except as otherwise exempted, all new projects or proposed expansion, alteration, or major repair must satisfy the standards set forth in all other applicable town plans, guidelines, codes, and regulations. New development shall be appropriate to the site, taking into account the safety, convenience, and amenity of the surrounding neighborhood, and shall be evaluated in relation to existing adjacent or surrounding buildings that fit the overall intent of this section. Downtown projects must, among other requirements, meet the following general performance standards.

1. All access roads, entrance or exit drives will be appropriate for pedestrian and automotive safety and convenience, traffic flow, and control and access in the case of fire or other emergency;
2. All off-street parking, loading, refuse collection and other service areas will be appropriate with respect to pedestrian and automotive safety and convenience, traffic flow, and economic, noise, glare, odor and other impacts upon adjoining properties and other properties in the neighborhood;

3. All landscaping, screening and fencing will be appropriate, with respect to the effectiveness of their type; dimensions and character will be appropriate with respect to minimizing the economic, noise, glare, odor and other impacts adjoining properties and other properties in the neighborhood; and
4. The type, size and intensity of the use and the hours of operation and number of people utilizing the use will be appropriate with respect to minimizing the impact upon adjoining properties and other properties in the neighborhood.

**(c) Statement of Design Compatibility**

[Reserved]

**(d) Required Design Issues**

All new development requiring site and/or subdivision plan approval within the Town Center district shall, at a minimum, adequately address the following design characteristics as detailed separately in the Downtown Design Guidelines:

1. Design (General)
2. Arrangement and Siting
3. Building Height
4. Colors
5. Facades, Windows, Blank Walls and Design
6. Entrances
7. Outdoor Storage, Loading, Service, and Mechanical Areas
8. Security, Gates, Cameras
9. Exterior Lighting
10. Visual Impacts, Views
11. Parking
12. Landscaping

**(e) Other Design Issues**

In addition to all of the required elements to be addressed from paragraph (d) above, development projects that include special features and activities like outdoor use areas shall also meet the standards outlined in the Downtown Design Guidelines for such features or activities:

1. Outdoor Cafés
2. Awnings
3. Sidewalk Displays

**(f) Site- or Area-Specific Requirements**

Some portions of the Town Center Area Plan are subject to additional requirements beyond those for the subdistrict where they are located. The following table lists such affected areas. The recommendations contained in the plan for these areas shall also be addressed and taken into consideration as part of the site and/or subdivision plan review process.

<b>TABLE 4.2-3: SPECIAL LAND USE RECOMMENDATIONS</b>	
<b>Notation</b>	<b>Area</b>
1	"Heart" of Downtown
3	Middleton Avenue Area
4	West Block of Adams Street
5	Around East Block of Adams Street
6	Hillsboro Street
7	Wood/Holloway/West Street Area
8	Cary Recycling Drop Off and Public Works Facility
9	Land South of Old Apex Road
11	Chapel Hill Road and NE Maynard Road Area
12 & 13	Chatham Estates Mobile Home Park and Adjacent Open Space Area
14	Park Area at Kildaire Farm Road and Walnut Street
15	Mixed Use Area on Walnut Street
16	Low Density Area on Pleasants Avenue

**(g) Use-Specific Standards**

The use-specific standards set forth in Chapter 5 shall apply to all uses within each subdistrict.

**(11) Review Procedures**

Review of site plans and/or subdivisions shall be done in accordance with Section 3.9. of this Ordinance.

### 4.2.3 PDD: Planned Development Districts

This section sets forth regulations for the two (2) planned development district (PDD) zoning districts. All PDD zoning districts shall be established either as initial zoning at the time of annexation, or through a rezoning pursuant to the procedures and criteria for rezoning to PDD set forth in Section 3.4.3. PDDs are base zoning districts under this Ordinance (rather than overlay districts, which they were under the previous Unified Development Ordinance).

#### (A) General Intent/Purposes of the PDD Districts

The PDD zoning districts allow projects of innovative design and layout that would not otherwise be permitted under this Ordinance because of the strict application of zoning district or general development standards. The PDD districts encourage innovative land planning and design concepts by:

- (1) Reducing or eliminating the inflexibility that sometimes results from strict application of zoning and development standards that were designed primarily for individual lots;
- (2) Allowing greater freedom in selecting the means to provide access, light, open space, and design amenities;
- (3) Allowing greater freedom in providing a mix of land uses in the same development, including a mix of housing types, housing prices, lot sizes, densities, and non-residential uses in a planned development;
- (4) Promoting quality urban design and environmentally sensitive development by allowing development to take advantage of special site characteristics, locations, and land uses; and
- (5) Encouraging quality urban design and environmentally sensitive development by allowing increases in base densities when such increases can be justified by superior design or the provision of additional amenities such as public and/or private open space.

In return for greater flexibility in site design requirements, planned developments are expected to deliver exceptional quality community designs that preserve critical environmental resources, provide above-average open space amenities, incorporate creative design in the layout of buildings, open space and circulation; assure compatibility with surrounding land uses and neighborhood character; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure. The PDD districts shall not be used as a means of circumventing the Town's adopted land development regulations for routine developments.

**(B) Types of PDD Districts**

**(1) Major PDD District**

Lands rezoned to the Major PDD district shall be twenty-five (25) acres or more in size.

**(2) Minor PDD District**

Lands rezoned to the Minor PDD district shall be at least ten (10) and less than twenty-five (25) acres in size.

**(C) Designation Procedure**

Designation of either a Major or Minor PDD shall require a rezoning pursuant to the procedure set forth in Section 3.4.3, which shall include submission, review, and approval of a planned development master plan. Simultaneous submission of a site and/or subdivision plan is optional for a Major or Minor PDD application. Any rezoning application to a Minor PDD district shall be accompanied by a concept plan unless the Planning Director waives this requirement.

**(D) General Use and Development Standards for All PDD Districts**

**(1) Uses Allowed**

A planned development may contain any or all of the uses specified in the approved PDD master plan, provided such uses are consistent with the Comprehensive Plan. A wide range of uses is possible in a PDD district, and the specific uses allowed may be different in each PDD district, so the use tables in Chapter 5 (Table 5.1-1) do not include the PDD districts. All uses that are set out in an approved master plan shall be treated as permitted uses within the planned development, except that uses which are prohibited in this Ordinance shall not be permitted within a PDD. Any use not set out in an approved master plan is a prohibited use.

**(2) Mixed Uses Encouraged**

**(a)** Mixed use developments are strongly encouraged in the PDD zoning districts, including the mixing of principal residential uses with principal non-residential uses. Mixed use development may occur by having two (2) or more principal uses located in the same building (e.g., retail on ground floor, office space above) or by having two (2) or more principal uses located in different buildings sited on the same lot or parcel (e.g., freestanding child day care center located on the same parcel as an office building).

- (b) Planned developments containing both residential and non-residential uses shall be designed, located, and oriented on the site so that non-residential uses are directly accessible to residents of the development. For the purposes of this section, "directly accessible" shall mean pedestrian and vehicular access by way of improved sidewalks or paths and streets that do not involve leaving the planned development or using a major thoroughfare. "Directly accessible" does not necessarily mean that non-residential uses need to be located in a particular location, but that the siting of such uses considers the accessibility of the residential component of the development to the non-residential use.

**(3) Applicable Standards**

- (a) Development in a PDD district shall be subject to all applicable overlay district regulations in Chapter 4, all applicable use regulations set forth in Chapter 5, and all applicable general regulations set forth in Chapter 7, unless otherwise waived or modified by the Town in the terms of the approved master land use plan. In case of any conflict between a specific regulation set forth in this Section 4.2.3 and any regulation set forth in Chapters 4, 5, and 7, the regulation in this section shall apply unless otherwise expressly allowed.

- (b) Notwithstanding paragraph (a) above, in no case shall the decision-making body waive or modify the following standards for a proposed PDD zoning district:

1. Zones 1, 2, and 3 of stream buffers;
2. Design guidelines;
3. [Reserved]
4. Ownership requirements for any open space, buffers, or streetscapes unless otherwise permitted within this Ordinance;
5. Preservation of existing vegetation in streetscapes, floodplains, and/or buffers;
6. Street connectivity requirements;
7. Sidewalk and greenway requirements;
8. Mixed Use Center requirements (if applicable);
9. Stormwater control requirements;
10. Nitrogen reduction requirements, and
11. Setback reduction below the minimum required by section (c) below.

- (c) There shall be no minimum dimensional standards for planned developments, provided that dimensional standards are stated in the master land use plan and/or the associated site plan, with the following exception:

1. A building setback of less than three (3) feet is permitted only where firewalls are provided in accordance with all applicable building code requirements.

**(4) *Transportation and Circulation System***

The planned development's master plan shall demonstrate a safe and adequate on-site transportation system that addresses vehicular, bicycle, transit and pedestrian circulation. The on-site transportation system shall be integrated with the off-site transportation circulation system of the Town.

**(5) *Off-Street Parking and Loading***

The planned development's master plan shall comply with the off-street parking and loading requirements of Section 7.8, except that variations from these standards may be permitted if a comprehensive parking and loading plan for the development is submitted as part of the master plan that is suitable for the development and consistent with the intent and purpose of the off-street parking and loading standards of this Ordinance.

**(6) *Landscaping*****(a) *Compliance with General Landscaping Requirements***

Landscaping shall comply with the standards of Section 7.2, except that variations from these standards may be permitted where it is demonstrated that the proposed landscaping sufficiently buffers uses from each other, ensures compatibility with land uses on surrounding properties, creates attractive streetscapes and parking areas, and is consistent with the urban design objectives and/or character of the area.

**(b) *Stream Buffers Not Variable***

Variations from the minimum state-mandated stream buffers including any Neuse River Riparian Buffer shall not be allowed without requisite approvals from the appropriate state agency.

**(7) *Recreational and Open Space Requirements*****(a) *Dedication of Recreation Land***

Each residential planned development (or residential portion of a mixed use planned development) shall dedicate recreational open space consistent with the requirements in Chapter 8.

**(b) *Common Open Space***

Each residential planned development (or residential portion of a mixed use planned development) shall provide common open space as a percentage of the entire parcel according to the following table:

<b>TABLE 4.2-4: COMMON OPEN SPACE PROVISION IN PLANNED DEVELOPMENTS</b>		
<b>Number of Acres in Development</b>	<b>Percent of Parcel to be Used as Open Space</b>	<b>Average Gross Density</b>
10 to 49	5.0	0 to 4 units per acre
10 to 49	5.0	4.1 to 8 units per acre
51 to 75	7.5	0 to 4 units per acre
51 to 75	7.5	4.1 to 8 units per acre
76 and above	10.0	0 to 4 units per acre
76 to 100	10.0	4.1 to 8 units per acre
101 to 200	12.5	4.1 to 8 units per acre
201 and above	15.0	4.1 to 8 units per acre

**(c) Open Space Utilization**

Each residential planned development (or residential portion of a mixed use planned development) shall provide adequate private, common open space facilities including both active and passive recreational uses.

**(d) Timing of Completion of Open Space Requirements**

All open space and recreational amenities shall be completed and conveyed before certificates of occupancy may be issued for more than fifty (50) percent of the dwelling units in the planned development or, if the approved master plan divides the development into phases, in that phase of the development of which the amenity is a part.

**(e) Contingency Plan for Reserve Land**

Planned developments with seven hundred (700) or more residential units which are required to set aside reserve land for potential purchase by the Town for use as recreation land shall be required to include alternative contingency plans for the reserve land in the event it is not acquired by the Town.

**(8) Conditions in the Master Plan**

In some cases, the ability to implement or strictly follow approved master plan conditions can be problematic (i.e. conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In such cases, the Planning Director shall implement the condition in a way that most closely meets its original intent. These situations include, but are not limited to:

- (a)** Undisturbed buffers/streetscapes required by the master plan which may be beyond the Town's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;

- (b) Specimen or champion trees required by the master plan to be preserved, but which have been removed due to natural consequences or infrastructure relocation.

The Director may decide to permit re-vegetation when such conditions exist depending upon the extent of the disturbance, the size and quality of the existing vegetation remaining and the long term viability/benefit of retaining the existing vegetation verses re-forestation.

(Ord. No. 04-007, 7-15-04; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-01, 2-12-09; Ord. No. 2009-LDO-03, 5-14-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2010-LDO-03, 2-25-10; Ord. No. 2012-LDO-04, 5-24-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-005, 11-19-15; Ord. No. 2015-LDO-006, 12-10-15)

### 4.3 CONDITIONAL USE DISTRICTS

#### 4.3.1 Purpose and Intent

Conditional use district zoning provides an option by which an applicant for a rezoning may be held to certain promises relating to the type of development that occurs on his or her property. This section sets forth the types of conditional use districts and explains their relationship to the general use districts. The procedure for approving a conditional use district rezoning is set forth in Section 3.4.2.

#### 4.3.2 Districts Established

Each general use district set forth in Section 4.2 of this Ordinance, except for TC and the Planned Development Districts, shall have a corresponding conditional use district. Accordingly, the following conditional use districts are hereby established:

##### (A) Residential Districts

- (1) R-80-CU: Residential district;
- (2) R-40-CU: Residential district;
- (3) R-20-CU: Residential district;
- (4) R-12-CU: Residential district;
- (5) R-8-CU: Residential district;
- (6) TR-CU: Transitional Residential district; and
- (7) RMF-CU: Multi-Family Residential district.

##### (B) Non-Residential Districts

- (1) RR-CU: Resource/Recreation district;
- (2) OI-CU: Office and Institutional district;
- (3) GC-CU: General Commercial district;
- (4) CT-CU: Corridor Transitional district;

- (5) ORD-CU: Office/Research and Development district; and
- (6) I-CU: Industrial district.

#### 4.3.3 Designation of Conditional Use Districts

Conditional use districts shall be designated only in accordance with the procedures and requirements set forth in Section 3.4.2 of this Ordinance, and may not contain conditions which are less restrictive than this Ordinance or other applicable state and/or federal laws.

#### 4.3.4 Allowable Uses

No use shall be permitted within a conditional use district except pursuant to the conditions imposed on the conditional use district as part of the conditional use permit approval. The permitted uses must be ones that this Ordinance allows in the corresponding general use district.

#### 4.3.5 Applicable Regulations

- (A) All standards and requirements that apply to the corresponding general use district shall apply to the conditional use district.
- (B) Conditions imposed on a conditional use district may be no less restrictive than those standards applying to the corresponding general use district.
- (C) Existing conditional use limitations in a conditional use district shall become null and void if future amendments to this Ordinance require stricter standards than those imposed under existing conditional use zoning.
- (D) In some cases, the ability to implement or strictly follow approved conditional use zoning conditions can be problematic (e.g., conditions requiring specimen trees to be preserved, but the trees have subsequently died due to natural causes following the approval). In such cases, the Planning Director shall implement the condition in a way that most closely meets its original intent. These situations include, but are not limited to:
  - (1) Undisturbed buffers/streetscapes required by condition that may be beyond the Town's ability to implement due to road widenings, utility relocation, driveways and/or clear sight distance areas;
  - (2) Specimen or champion trees required by condition to be preserved, but that have been removed due to natural consequences or infrastructure relocation;
  - (3) Type A or opaque buffers required by conditions to be preserved or provided, where achieving opacity may not be feasible due to a combination of the factors specified in Section 7.2.3(D)(1)(a).

The Director may decide to permit re-vegetation when such conditions exist depending upon the extent of the disturbance, the size and quality of the existing vegetation remaining and the long term viability/benefit of retaining the existing vegetation verses re-forestation.

#### 4.3.6 Conditional Zoning Districts

- (A) In addition to "Conditional Use" zoning designations, the Official Zoning Map also contains parcels with "Conditional" zoning. Parcels with conditional zoning are parcels that were in pre-existing conditional use districts prior to July 1, 2003, that were removed or substantially modified by the adoption of this Ordinance. As a result of these changes, the parcels were

translated into corresponding general use districts with the caveat that all previously existing conditions associated with a parcel will remain in effect unless modified through a subsequent rezoning.

- (B) Rezoning requests from a general use designation or conditional use designation to the "conditional" designation shall be prohibited. Any subsequent rezoning of these parcels shall result in the removal of the "conditional" designation in favor of a new general use or conditional use designation.
- (C) The following Conditional zoning districts are hereby established:
  - (1) R-40-C: Residential district;
  - (2) R-12-C: Residential district;
  - (3) R-8-C Residential district;
  - (4) RMF-C Residential district;
  - (5) CT-C Corridor Transition district;
  - (6) TC-C Town Center district.

(Ord. 2015-LDO-003, 7-23-15)

#### 4.4 OVERLAY ZONING DISTRICTS

##### 4.4.1 General Purpose; Relationship to General Use Zoning Districts

The overlay zoning districts of this chapter typically apply in combination with the underlying general use zoning districts to impose regulations and standards in addition to those required by the general use districts except where otherwise specified for a particular overlay district. The requirements of an overlay district shall apply whenever they are in conflict with and are more stringent than those in the general use district. Variances may not be granted from overlay district regulations unless specifically provided for in a particular overlay district. The following overlay districts are hereby created:

- (A) Mixed Use Overlay;
- (B) Conservation Residential Overlay;
- (C) Thoroughfare Overlay;
- (D) Airport Overlay;
- (E) Watershed Protection Overlay; and
- (F) Historic Preservation Overlay.

##### 4.4.2 Mixed Use Overlay

###### (A) Purpose and Intent

It is the purpose and intent of this overlay district to enable the development of land in areas designated as Activity Centers on the Land Use Plan Map in accordance with the guidance

of the Land Use Plan volume of the Town of Cary Comprehensive Plan. Activity Centers vary in scale and intensity, and are intended to have a compatible mixture of commercial, office, residential, recreational, civic and/or cultural uses which are highly integrated and function in a cohesive manner. Benefits of this approach to development will help concentrate land uses, reduce sprawl, promote a more efficient pattern of land uses, provide needed goods and services, reduce automobile trips, and facilitate convenient and safe circulation. The mixed use overlay district (MUOD) was initially established and added to the Official Zoning Map by the Cary Town Council on July 1, 2003.

**(B) Applicability**

The Mixed Use Overlay District may be applied only to areas designated as Activity Centers as described in Chapter 6.2 in the Land Use Plan and identified on the Land Use Plan map.

**(C) Types of Activity Centers**

The intensity, amount, and size of development allowed within a Mixed Use Overlay District are based on the three (3) types of activity center designations used on the Land Use Plan map. The three (3) types of activity centers are intended to function at a neighborhood, community or regional scale, in accordance with guidelines found in Section 6.2 of the Land Use Plan.

**(D) Uses Allowed**

The uses allowed in the Mixed Use Overlay District are set forth in the Table of Permitted Uses in Chapter 5. The applicable designation of Neighborhood, Community or Regional Activity Center will be as identified on the Land Use Plan map.

**(E) Authority Under Overlay District**

**(1) General Authority**

Property in a Mixed Use Overlay District may be developed in accordance with requirements for one (1) of the following, as applicable, and as described below in this Section 4.4.2(E):

- (a)** an existing general use zoning district, conditional use zoning district, or planned development district (hereinafter collectively, "base zoning");
- (b)** an Activity Center Concept Plan ("ACCP") approved between July 1, 2003 and April 27, 2006;
- (c)** a Mixed Use Sketch Plan ("MUSP") approved between April 27, 2006 and August 13, 2009.
- (d)** modification of a planned development district that was initially created prior to August 13, 2009.
- (e)** a MXD District approved after August 13, 2009.

**(2) Utilization of Existing Base Zoning, Excluding Planned Development Districts**

Development plans that are submitted utilizing the base zoning shall be evaluated against established land use plan policies, design guidelines, and related requirements

to determine whether the proposed development is in keeping with the overall intent of the MUOD.

Further, if an ACCP or MUSP has been approved for all or a portion of property proposed for development or redevelopment, and if the ACCP or MUSP includes specific site design guidelines, then the design guidelines shall apply to the property, or portions thereof, covered by the ACCP or MUSP. The aspects of ACCP/MUSP design guidelines that are applicable to development under the base zoning include, but are not limited to, more restrictive guidelines related to building placement and orientation, roadway and sidewalk sections, streetscape treatments, landscaping treatments, individual building or tenant space sizes, open space and public space, parking lot design and placement, block length, connectivity, stormwater controls, block frontage coverage, public art, signage and site entryway features.

Dimensional standards prescribed by ACCP/MUSP site design guidelines are also applicable to development under the base zoning, except for single family detached subdivisions having lots of twenty thousand (20,000) square feet or more. A development or redevelopment proposal submitted under the base district zoning should facilitate the ultimate attainment of the circulation network outlined in the ACCP/MUSP.

**(3) *Utilization of Approved Activity Center Concept Plans or Mixed Use Sketch Plans***

Property for which an ACCP or MUSP was approved prior to August 13, 2009 may be developed in accordance with that ACCP/MUSP.

**(4) *Modification of Planned Development Districts***

Requests to modify or expand existing planned development districts shall be evaluated against established land use plan policies, design guidelines, and related requirements to determine whether the proposed development is in keeping with the overall intent of the MUOD.

Staff may approve changes to PDD Master Plans if such changes fall within the criteria allowed for administrative approval under Section 3.19, Minor Modifications. Applications for such changes shall be considered using the process set forth in Section 3.19. Proposed changes that do not fall within the criteria allowed for administrative approval in Section 3.19 may occur only through rezoning to amend the Planned Development District, following approval procedures set forth in Section 3.4.5.

**(F) *Development Standards***

Notwithstanding an approved ACCP/MUSP or existing planned development master plan, any development and/or redevelopment proposed for parcels located within a Mixed Use Overlay District shall meet the following development standards:

- (1)** Any conditions related to allowable land uses and/or landscaping buffer provisions applied through a conditional use rezoning shall continue to apply unless the property is subsequently rezoned to the MXD district and said conditions are not included as development requirements of the MXD district; and
- (2)** The road network shall be designed to ensure that adjacent residential areas will have direct access to the non-residential portions of the activity center in lieu of entering and exiting through thoroughfares and/or collector streets; and

- (3) The development/redevelopment shall provide or contribute to a pedestrian and road network that connects non-residential and existing residential uses (multi-family and single-family) developments in accordance with town-wide design guidelines.

Exceptions may be considered to items 2 and 3 above where adjacent established single family residential developments (not part of an approved mixed use sketch plan or an existing master plan) are proposed to connect through a roadway to a Regional Mixed Use Center. This exemption shall not apply when public uses (including but not limited to schools, libraries, and parks) are proposed within a Regional Mixed Use Center.

**(G) Dimensional Requirements**

The general dimensional standards shall be as specified for the applicable base zoning district, ACCP, MUSP or preliminary development plan for property zoned MXD.

**(H) Changes to the Preliminary Development Plan Component of an Approved MXD District (Including Activity Center Concept Plans and Mixed Use Sketch Plans)**

Any change in the general location and character of the features depicted on approved preliminary development plans, ACCPs, MUSPs or PDD Master Plans, except where such change is a reduction of density or intensity of use or is necessary to meet minimum development standards of the LDO, shall be considered a material change to the approved preliminary development plan, ACCP, MUSP or PDD Master Plan, and shall be processed as a new application in accordance with the applicable procedures set forth in Sections 3.4.3 and 3.4.5. The Planning Director shall determine whether any such change is a material change.

*[Text continues on page LDO 4-33.]*

CARY LAND DEVELOPMENT ORDINANCE

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#### 4.4.3 Conservation Residential Overlay District

##### (A) Purpose and Intent

The Conservation Residential Overlay District is established to implement the Southwest Area Land Use Plan. The goals and objectives of this overlay are to:

- (1) Encourage environmentally sound planning;
- (2) Protect open space and natural resources;
- (3) Create attractive living environments;
- (4) Encourage the creative placement of dwelling units;
- (5) Limit the consumption of scenic, historic, and forested land for development;
- (6) Design residential developments using natural topography, drainage ways and advanced water-quality protection techniques; and
- (7) Create a contiguous network of open spaces by linking the open space areas within the residential development to open space on adjoining land wherever possible.

To further these goals and objectives, the overlay district provides the opportunity for residential developments to receive an increase in the number of potential dwelling units (based on the underlying zoning requirements) when such residential developments meet open space and other design requirements set forth within this Section.

##### (B) Location of District and Applicability

The provisions of the Conservation Residential Overlay District shall apply to the geographic areas designated as such on the Official Zoning Map, and also areas designated as Low Density Conservation Residential (LCR) and Very Low Density Conservation Residential (VLCR) on the Southwest Area Plan. For properties designated as Conservation Residential on the Southwest Area Plan and located outside of the Town's extraterritorial jurisdiction (ETJ), annexation and rezoning in accordance with this Section and all other applicable sections of the Land Development Ordinance is required before applicants may utilize the density bonus provisions of Sections 4.4.3(D) through (H).

This overlay district does not preclude the non-residential uses allowed within the underlying zoning districts, provided that all applicable Land Development Ordinance requirements are met. Properties may be rezoned to non-residential districts if supported by the Southwest Area Plan and in accordance with applicable sections of the Land Development Ordinance. Parcels zoned as Planned Development Districts and parcels subject to site plans approved before July 15, 2004, are exempt from the application of this Section for so long as the PDD or site plan remains valid.

The density bonus provisions of Sections 4.4.3(D) through (H) are optional. However, all development within the overlay district shall, in addition to all other requirements of the Land Development Ordinance, provide a buffer of fifty (50) feet in width along the American Tobacco Trail. The buffer shall function as visual separation between the public trail and private property; it shall contain native plant material, supplemented where necessary with deciduous and evergreen trees to provide an opaque screen for the benefit of trail users and adjoining property owners. The buffer shall conform to the requirements of a Type 'A' Buffer as described in LDO Section 7.2.3(D).

**(C) Subdistricts Created and Defined**

Due to the existing character and desired types of future development in the Southwest Area, differing residential densities, dimensional standards, open space requirements, and other related development standards are set forth within this Section. In order to present the full range of zoning and development requirements for each different area, this overlay zoning district is divided into two (2) subdistricts that correspond to two (2) of the land use classifications delineated in the Southwest Area Plan as follows:

<b>TABLE 4.4-1: CONSERVATION RESIDENTIAL OVERLAY SUBDISTRICTS</b>	
<i>Subdistrict</i>	<i>Description</i>
LCR	Conservation Residential, Low Density
VLCR	Conservation Residential, Very Low Density

**(D) Eligibility and Process to Obtain Density Bonus**

An increase in the number of lots (density bonus) above the number of lots that could be achieved utilizing the underlying zoning (base number of lots) is allowed, provided the development plan meets open space requirements and other design requirements set forth within this Section.

New residential developments within the Conservation Residential Overlay District seeking to utilize the density bonus provisions of this Section shall require submission of a subdivision plan or site plan in accordance with Section 3.9 of this Ordinance, and approval of such plan by the appropriate decision-making body. To be eligible to gain additional units above the base number of lots, the minimum size of the site shall be ten (10) acres.

**(1) Rezoning**

For property located within the overlay district as shown on the Official Zoning Map, rezoning is not required in order to submit development plan applications that meet the requirements stated in Sections 4.4.3(D) through (H).

For properties designated as Conservation Residential on the Southwest Area Plan and not within the Town Limits and/or Extraterritorial Zoning Jurisdiction (ETJ), annexation and rezoning is required before such properties can be developed pursuant to Sections 4.4.3(D) through (H). Annexation and rezoning (to establish initial zoning) to the Residential-40 district and Conservation Residential Overlay District must be approved before a proposed development plan using the provisions of Section 4.4.3(D) through (H) can be submitted for review.

Rezoning to non-residential and institutional uses may be permitted if consistent with the Southwest Area Plan. Rezoning to non-residential and institutional districts are not required to be subject to this Overlay District.

**(E) Calculating the Base Number of Lots**

The base number of lots is defined as the lot yield based on the implementation of the requirements of the underlying zoning district. The base number of lots is the starting point from which extra lots may be permitted if non-regulatory or bonus open space, as defined below, is provided and other design requirements are met.

The applicant shall choose one (1) of the following methods for calculating the base number of lots:

- (1) The base number of lots may be determined by taking ninety (90) percent of the potential developable area of the site and multiplying by the maximum density (based on lot area requirements) for the underlying zoning district. The purpose of reducing the potential developable acreage by ten (10) percent is to account for the approximate area that would be allocated to roadways within a conventional subdivision. "Potential developable area" within this Section is defined as the total land area of the site excluding all regulatory floodplains, Urban Transition Buffer/stream buffers, streetscapes and other required areas (see Chapter 7: Development and Design Standards). For sites that contain and/or are adjacent to the American Tobacco Trail, a buffer of at least fifty (50) feet in width is required. This minimum buffer width is considered regulatory/required area, and shall not be included in the calculation of potential developable area.

Example: Site A

Total Site Acres: One hundred (100)

Acres in regulated/protected areas: Twenty (20)

Potential Developable Area Including Roadways: One hundred (100) - Twenty (20) = Eighty (80) Acres

Calculated Developable Area: Eighty (80) Acres x Ninety (90) percent = Seventy-two (72) Acres

Base Number of Lots: Seventy-two (72) Acres x 1.09 (density permitted in R-40) = Seventy-eight (78) lots

- (2) The base number of lots may be determined based on the applicant providing a sketch subdivision plan that fully complies with the development requirements of the underlying zoning district for the site.

**(F) Increases to Base Density; Residential Use Type Allowed; and Minimum Dimensional Standards**

- (1) **Increase in Density** - An increase in the number of lots (density bonus) is provided in exchange for the permanent preservation of non-regulatory (referred to as "bonus") open space and compliance with other design requirements. An increase in the number of lots is achieved by allowing a smaller minimum lot size and increasing the permitted density (see Table 4.4-2 below).

(2) **Allowance for Attached Dwelling Units** - All lots developed in accordance with Sections 4.4.3(D) through (H) shall be for single-family detached dwelling units with the exception of lots within the Conservation Residential Low Density (LCR) subdistrict. Within this subdistrict, attached, semi-detached, detached patio dwelling and townhome units shall be permitted, but shall not exceed twenty (20) percent of the total development yield. The lots for attached dwellings and detached patio dwellings shall use the Transitional Residential (TR) dimensional requirements, and therefore may have smaller lot sizes than the minimum lot size for single-family detached lots as prescribed below.

(3) **Specific Requirements by Subdistrict**

<b>TABLE 4.4-2: MAXIMUM DENSITY, MINIMUM LOT SIZE AND OPEN SPACE REQUIREMENTS BY SUBDISTRICT</b>					
Overlay Subdistrict	Maximum Development Density (d.u./acre)	Minimum Lot Size if Site Contains Less than Twenty (20) Percent of the Total Area in regulatory open space (sq. ft.)	Minimum Lot Size if Site Contains between Twenty (20) and Less than Thirty (30) Percent of the Total Area in regulatory open space (sq. ft.)	Minimum Lot Size if Site Contains Thirty (30) Percent or more of the Total Area in regulatory open space (sq. ft.)	Bonus Open Space Required Per Additional Lot
Conservation Residential, Low Density (LCR)	2.5	10,000	8,000	6,000	8,872 sq. ft.
Conservation Residential, Very Low Density (VLCR)	1.5	15,000	8,000	6,000	14,816 sq. ft.

Notes:

Reduction in lot size due to twenty (20) percent or greater area in regulatory open space will be reduced incrementally until the maximum development density or minimum lot size is achieved, whichever occurs first.

The amount of bonus open space required is based on the following ratio:

In VLCR, a density bonus equal to three percent (3%) of the base number of lots is allowed for each one percent (1%) of bonus open space provided from the potential developable area of the site.

In LCR, a density bonus equal to five percent (5%) of the base number of lots is allowed for each one percent (1%) of bonus open space provided from the potential developable area of the site.

LCR Example (continued from 4.4.3(E)(1) above):

Size of Site	Base Number of Lots [see Section 4.4.3 (E)]	Bonus Open Space	Additional Lots (Density Bonus)	Gross Density (d.u./acre)
100 Acres	78	16 acres (20% of potential developable area)	78 (100% more)	1.6
100 Acres	78	24 acres (30% of potential developable area)	117 (150% more)	2.0

**(G) Bonus Open Space Requirements**

All bonus open space provided must meet the following standards:

- (1) Bonus open space shall be retained in a natural, undisturbed state, with the exception of those activities allowed by this Section. No more than five percent (5%) of the bonus open space area may be disturbed and allowed to be planted with grass or improved with other pervious ground cover in order to provide common informal gardens and/or play/open areas for the development or for the extension of main water and sewer lines. The five percent (5%) does not include disturbed areas due to the installation of required pedestrian systems (e.g., sidewalks, trails). However, active recreation facilities (e.g., basketball and tennis courts) are not permitted in the bonus open space used to obtain additional lots.
- (2) In order to use the bonus density provisions of the Conservation Residential Overlay District, per part (F) of this Section, the subdivision must, at a minimum, provide an eighty (80) foot deep Type A opaque streetscape buffer along all of the subdivision's thoroughfare and collector road frontage. The amount of the eighty (80) foot deep streetscape buffer that is in excess of the amount of streetscape buffer normally required for a conventional subdivision under the requirements of Chapter 7 (See Section 7.2.4) qualifies as non-regulatory or bonus open space. Credit for bonus open space beyond a thirty (30) foot streetscape width may be allowed along thoroughfares that are designed as only two (2) lane roadways (similar to a collector roadway).
- (3) Bonus open space shall be no less than thirty (30) feet in width at any point.
- (4) Pedestrian access trails to the bonus open space areas shall be provided.
- (5) No portion of the bonus open space shall be separated into non-contiguous segments smaller than thirty percent (30%) of the total bonus open space area. Open space divided by a roadway shall be defined as contiguous as well as open space adjacent to or across a roadway from regulatory stream and/or urban transition buffers.
- (6) Credit for bonus open space may be provided for the preservation of contributing historic structure(s) within the Green Level National Register Historic District. This refers to the primary contributing structure on the site, such as the main farmhouse, as identified in the Green Level Historic District National Register Nomination document. The primary contributing structure must be located within a site containing at least one (1) acre of contiguous open space in order to better maintain the structure within its context in the landscape. Preservation is defined as the active restoration or

rehabilitation and the ongoing maintenance of a structure. To qualify a primary contributing structure for the density bonus option, the property owner shall enter a preservation agreement with a qualified preservation organization. Preservation agreements may include, but are not limited to, historic preservation easements, facade and exterior covenants, or other methods acceptable to the Town.

The primary contributing structure within the Green Level National Register Historic District shall count as one (1) acre of bonus open space, provided that the structure is preserved and/or rehabilitated to the Secretary of the Interior's Standards for Rehabilitation. The primary structure must also be included within at least one (1) acre of bonus open space to preserve rural character features. This bonus open space may be used in a way that reflects the historic use of the property. If these requirements are met, a minimum of two (2) acres of open space may be credited to obtain bonus lots.

- (7) The bonus open space shall be shown on the site and/or subdivision plan, with a notation to indicate that the bonus open space shall not be used for future structures.
- (8) The developer shall establish and incorporate a Homeowners' Association (HOA), which shall own the bonus open space and have the responsibility for maintaining the bonus open space and associated facilities at its own expense. An exception to the ownership of a portion of the bonus open space surrounding a contributing historic structure(s) within the Green Level National Register Historic District may be provided on a case by case basis. As an alternative to an HOA, a private, non-profit organization, whose primary purpose is open space conservation or preservation can own and manage the bonus open space.
- (9) A portion or all of the bonus open space may be conveyed to the Town for use as greenways and parkland, provided it meets Town standards for such facilities and is agreed to by the Town. Such conveyance would occur at no cost to the Town.

**(H) Additional Design Requirements**

**(1) Lot Dimensions**

- (a) For LCR lots, all dimensional requirements (i.e., setbacks, lot width) shall conform to R-8: Residential District standards with the exception of side yards. Side yards shall be a minimum of five (5) feet and an aggregate minimum of fifteen (15) feet. Residential lots less than eight thousand (8,000) square feet shall conform to TR: Transition Residential District standards.
  - (b) For VLCR, R-12 dimensional requirements shall be used for lots twelve thousand (12,000) square feet and greater in size. For lots between eleven thousand nine hundred ninety-nine (11,999) and eight thousand (8,000) square feet, R-8 dimensional requirements shall be used. For lots less than eight thousand (8,000) square feet, TR dimensional requirements shall be used.
- (2) Where lots abut other residential lots within an existing subdivision that is not developed pursuant to Sections 4.4.3(D) through (H), said lots shall have a side and rear yard setback not less than the required side and rear yard setback required on the abutting property or the side and rear yard setback of the Residential 40 District.
  - (3) All streetscapes along thoroughfares and collectors shall be planted to a Type A standard.

- (4) **American Tobacco Trail (ATT) Buffer** - A buffer of fifty (50) feet in width is required along the American Tobacco Trail. The buffer shall function as visual separation between the public trail and private property; it shall contain native plant material, supplemented where necessary with deciduous and evergreen trees to provide an opaque screen for the benefit of trail users and adjoining property owners. The buffer shall conform to the requirements of a Type 'A' Buffer as described in LDO Section 7.2.3(D). The fifty (50) foot wide buffer is not counted as bonus open space.
- (5) No lot(s) shown on a development plan may be cleared or graded until the building permit for the lot is approved. Exceptions to this requirement may be considered based on factors related to the installation of roadways, public utilities or significant topographic issues. This exception must be approved by the Water Resources Director based on written justification.
- (6) Streets shall be designed and located as to preserve and maintain the natural topography and topographic features, as well as to minimize cut and fill practices.
- (7) [Reserved]
- (8) The requirements of Section 7.3, Stormwater Management, shall be achieved using LID site planning and techniques or a combination of LID and conventional stormwater management practices. The goal of LID is to develop site design techniques, strategies, and best management practices (BMPs) to store, infiltrate, evaporate, retain, and detain run-off on the site to more closely replicate pre-development run-off characteristics and to better mimic the natural and unique hydrology of the site thereby limiting the increase in pollutant loads caused by development. To the extent practical, stormwater shall be treated at its source through the use of small, non-structural BMPs and natural conveyance devices (swales, etc.). All BMPs shall be located in areas owned by the HOA or other entity (see 4.4.3(G)(8)) to ensure adequate maintenance. Structural BMPs may not be located in the bonus open space.

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- (9) **Pedestrian Connectivity:** A comprehensive pedestrian system shall be provided that makes the contiguous open space accessible to neighborhood residents and connects the open space to neighborhood streets. Limited pedestrian access shall be provided through Urban Transition Buffers buffers and floodplain areas in accordance with the standards of this Ordinance.

Pedestrian connectivity shall be provided through an integrated combination of: primary trails, consisting of public sidewalks and greenways; and secondary trails consisting of private trails that provide connections within the development from public sidewalks and greenways to open space areas.

Public greenway trails shall be those depicted on the Parks, Recreation and Cultural Resources Facilities Master Plan. Such trails shall be ten (10) feet wide and constructed within a thirty (30) foot wide permanent Town of Cary greenway easement. The Town shall maintain all public greenway trails.

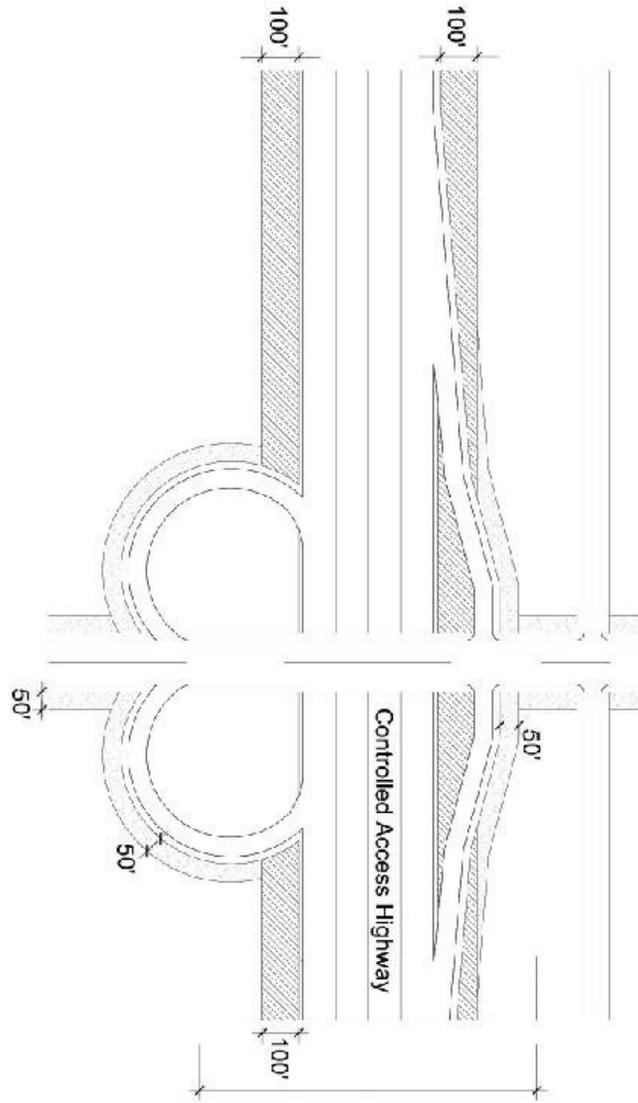
Secondary trails shall be constructed of asphalt, with a minimum width of eight (8) feet. Where feasible, secondary trails shall be located within Homeowners' Association (HOA) maintained common open space. In cases where this is not feasible, a twenty (20)- foot wide private pedestrian easement centered on these trails must be recorded and any required building setback shall be calculated from the outside boundary of the easement on the lot. All secondary trails shall be owned and maintained by the subdivision HOA and shall be available for public use.

(Ord. No. 2009-LDO-02, 3-26-09; Ord. No. 2015-LDO-002, 6-25-15)

#### 4.4.4 Thoroughfare Overlay

##### (A) Purpose and Intent

The purpose of the Thoroughfare Overlay is to provide orderly development along controlled/limited access highways, to encourage the most appropriate use of adjacent lands, to maintain the scenic natural beauty of the area visible from the controlled/limited access highway and from lands adjacent to the overlay, to provide open space, and to promote the safe and efficient movement of traffic. These thoroughfares commonly establish an image of the quality of life in the Town for visitors and residents alike. Preservation of this natural beauty is required to enhance trade, capital investment, tourism, and the general welfare. All development within this overlay district shall comply with the regulations of this Section.



**Thoroughfare Overlay District**

**(B) Location of District**

The Thoroughfare Overlay is established along both sides of existing and planned controlled/limited access highways within the Town's jurisdiction and Extraterritorial Jurisdiction Area, as indicated on the Zoning Map and/or Comprehensive Transportation Plan Thoroughfare Plan Maps. Such highways include, but are not limited to, US 1, US 64, I-40, Cary Town Boulevard (between I-40 and NE Maynard Road), and the Western Wake Expressway. The Thoroughfare Overlay covers all lands within one hundred (100) feet of the right-of-way along both sides of each controlled-access highway, except at interchanges, where the overlay district shall extend back to the established point of the intersecting roadway where the controlled access ends or begins (see Section 4.4.4(D) below).

**(C) Plan Approval Required**

All development within the Thoroughfare Overlay shall require submission of a subdivision plan or site plan in accordance with Section 3.9 of this Ordinance, and approval of such plan by the appropriate decision-making body.

**(D) Buffer Requirements****(1) General Requirement**

A buffer strip, with a width extending one hundred (100) feet from and parallel to the right-of-way boundary of the controlled-access highway, shall be maintained on all property within the Thoroughfare Overlay.

**(2) Interchange Requirements**

A buffer strip width extending fifty (50) feet from and parallel to the right of way for interchange ramps shall be maintained on all property within the Thoroughfare Overlay.

**(3) Reductions**

The Town Council may reduce the required width of this buffer strip as part of its approval of the site and/or subdivision plan, or as part of its approval of a concept plan or preliminary development plan included as a component of a rezoning request, taking into consideration: the topography of the area; surrounding land uses, particularly residential uses; the actual location of the controlled/limited access highway; the size and shape of land parcels affected by the buffer; and whether the buffer requirement would render the entire property unusable. In reducing the width of the buffer strip, the Town Council shall ensure that the applicant and/or developer will provide appropriate landscaping meeting the requirements of Section 4.4.4(D)(4) below. In no event, however, shall the Town Council reduce the required width of the buffer strip to less than thirty (30) feet. See Section 3.19, Minor Modifications.

**(4) Maintenance of Existing Vegetation**

Within the required buffer strip, all existing vegetation shall be maintained in a natural, undisturbed state and, unless the existing natural vegetation provides such a buffer, the applicant and/or developer shall install and maintain an Opaque Type A buffer meeting the requirements of Section 7.2.3(D) and (G) of this Ordinance. The owners of the property are responsible for maintenance of the buffer and the consequences resulting from disturbance to the buffer in accordance with Section 7.2.13, Maintenance Responsibility, Replacement of Damaged Vegetation, and Associated Fines. If the developer caused or is responsible for such disturbance of the buffer, and the developer is not the owner of the buffer, then the developer shall also be responsible for the consequences of such disturbance in accordance with Section 7.2.13.

**(5) Development within Buffer**

No development shall be allowed within the required buffer strip except as provided for herein. The decision-making body may, in approving a site and/or subdivision plan for the property, permit the construction of streets, including greenways, or utilities through the buffer strip upon finding that such construction is necessary for safe ingress, egress, or utility service to the site. If streets or utilities are placed in the required buffer

strip, they shall be located and installed in a way that minimizes disturbance of the buffer area (not parallel but crossing within fifteen (15) degrees of perpendicular). If streets, utilities, stormwater drainage channels or piping, or other similar features are placed or are already located in the required buffer strip in any way other than crossing within fifteen (15) degrees of perpendicular, the area making up the street or utility easement or area shall be replaced with an equal amount of buffer area preferably on the site adjacent to the disturbed area. The nature and limits of such construction or disturbance shall be designated on the approved site and/or subdivision plan.

**(6) Enforcement**

Disturbance of buffers required under this section shall constitute a violation of this Ordinance and shall be subject to appropriate penalties and remedies set forth in Chapter 11. For purposes of this section, "disturbance" shall be defined as any action that causes or allows development in the buffer, reduces the size of the buffer or results in injury or harm to required trees, shrubbery, or other vegetation.

**(E) Variances**

No variance shall be granted that modifies the width of the buffer, or the amount or type of vegetation required under this Section, but the Town Council may grant modifications to these requirements in some circumstances (see paragraph (D)(3) above).

**(F) Actions of Government or Public Utilities**

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

#### **4.4.5 Airport Overlay**

**(A) Purpose and Intent**

The Airport Overlay is established to accomplish the following purposes:

- (1)** To limit allowable land uses in the immediate vicinity of Raleigh-Durham International Airport to non-residential uses, such as industrial, agricultural, commercial, or conservation uses, which are not subject to high population concentrations, and to keep residential and institutional uses from developing in those areas that are subject to the highest levels of aircraft noise;
- (2)** To ensure that such uses are located, designed, constructed, and maintained in a manner that does not impair the safe operation of the airport;
- (3)** To ensure that such uses contribute to the attractiveness of the roadside, which will in turn contribute to and enhance trade, tourism, capital investment, property values, and the general welfare; and
- (4)** To ensure that such uses are in compliance with the Raleigh-Durham International Airport Height Zoning Ordinance and other supplemental regulations.

**(B) Location and Applicability; Compliance Required**

The Airport Overlay is an overlay district that applies over lands in the vicinity of the Raleigh-Durham International Airport. The boundaries of the Airport Overlay shall be shown on the Official Zoning Map.

**(C) Process for Reviewing Developments; Approval by the Raleigh-Durham Airport Authority****(1) Raleigh-Durham Airport Authority Approval**

The authority shall be involved with the review of site and/or subdivision plans and building permits for structures over fifty (50) feet as measured to the highest part of the structure. The following requirements are to ensure compliance with the authority's ordinances.

- (a)** No development plansite and/or subdivision plan for property located within the Overlay may be approved unless notification has been received from the Airport Authority that the development complies with its Height Zoning Ordinance and any other supplemental regulations that may apply. The applicant is required to secure and provide the necessary documentation from the Authority on compliance with its ordinances to the Planning Director.
- (b)** No building permit shall be issued for establishment of a structure or expansion of an existing structure at a height of greater than fifty (50) feet unless there has first been issued by the Raleigh-Durham Airport Authority (1) a permit for the structure under the provisions of its ordinances, or (2) a determination that a permit is not required for the structure.

**(2) Supplemental Regulations of the Raleigh-Durham International Airport Authority**

All development within the Airport Overlay shall also comply with the airspace regulations adopted by the Raleigh-Durham International Airport Authority, as may be amended from time to time, which are incorporated herein by reference. Whenever said airspace regulations impose more stringent requirements or limitations than are required by this Ordinance, the provisions of the airspace regulations shall control.

**(D) Prohibited Uses and Structures****(1) Prohibited Uses**

- (a)** Residential uses, including all forms of dwellings, manufactured homes, nursing homes, and life care communities;
- (b)** Places of public assembly and institutional uses including schools, colleges, churches, day care centers, clubs and lodges, libraries, museums, and hospitals, but not including arenas or stadiums for sporting events;
- (c)** Indoor and outdoor amusement establishments;
- (d)** Guest houses;
- (e)** Correctional or penal institutions;
- (f)** Radio and television broadcasting stations;

- (g) Landfills or quarries;
- (h) Warehousing/above-ground bulk storage of explosive, hazardous, flammable, or combustible materials, and related facilities or operations that could pose a threat to the welfare of the public in the event of an aircraft crash or other mishap;
- (i) Petroleum refining and other related uses that may be susceptible to explosion or fire;
- (j) Outdoor storage of certain goods and materials, including but not limited to the following: oxides; coal; ores; minerals; produce; furniture; flammable or combustible building supplies; paper and frame products; or wrecked, dismantled or partially dismantled vehicles.
- (k) Wildlife sanctuaries, refuges, and other uses that may be an attractant to birds.

**(2) *Prohibited Lighting***

- (a) Any moving, pulsating, flashing, rotating, or oscillating light, other than navigational markings or lights marking potential obstructions in accordance with Federal Aviation Administration requirements;
- (b) Flood lights, spot lights, or other lighting devices which are not shielded so as to prevent illumination in an upward direction;
- (c) Any lights which make it difficult for pilots to distinguish between airport lights and others, results in glare in the eyes of pilots using the airport, impairs visibility in the vicinity of the airport or otherwise in any way endangers or interferes with the landing, takeoff or maneuvering of aircraft intending to use the airport.

**(3) *Prohibited Electronic Signals***

Any electronic impulse or signal which interferes with radio communications between aircraft and the airport, or which interferes with established navigation aids, is prohibited in the Airport Overlay.

**(4) *Prohibited Structures***

Structures in excess of the applicable height limit established for the Zones specified in the "Raleigh-Durham International Airport Height Zoning Ordinance" adopted by the Raleigh-Durham Airport Authority and as may be amended from time to time by the Raleigh-Durham Airport Authority are prohibited in the Airport Overlay. Structure means an object, including a mobile object, constructed, or installed by man, including, but not limited to, buildings, towers, cranes, earth formations, and overhead transmission lines.

**(E) *Nonconforming Uses and Structures***

Nonconforming uses and structures may be continued in the Airport Overlay in accordance with Chapter 10 of this Ordinance. However, no building permit shall be issued that would allow the expansion of a structure or use that does not comply with the requirements of this Ordinance.

**(F) Location of Buildings and Parking Areas**

All buildings and structures located in the Airport Overlay shall meet the minimum setback requirements of the underlying zoning district and any other applicable setback requirements set forth elsewhere in this Ordinance. All parking areas in the Airport Overlay shall be located no less than thirty (30) feet from the right-of-way of a major thoroughfare.

**4.4.6 Watershed Protection Overlay****(A) Purpose and Intent**

The intent of the Watershed Protection Overlay is to ensure the availability of public water supplies at a safe and acceptable level of water quality for present and future residents of the Town and the surrounding region. Watershed protection measures allowed by this section include:

- (1) Restriction of land uses allowed within water supply basins;
- (2) Impervious area and density limitations; and
- (3) Engineered stormwater control structures and the best management practices as listed in the Department of Environment and Natural Resources' State Design Manual.

**(B) Applicability****(1) *Designated Watersheds***

The Watershed Protection Overlay is an overlay district to be applied to all lands lying within the watershed of a public water supply. The boundaries of the Watershed Protection Overlay shall be shown on an official map kept in the Planning Department. The Watershed Protection Overlay consists of three sub-areas:

- (a) Swift Creek Watershed;
- (b) Jordan Lake Watershed; and
- (c) Jordan Lake Watershed Critical Water Quality Area.

**(2) *Applicability to Development Activity***

- (a) The following types of development activity are exempt from the requirements of this Section 4.4.6:
  1. Development existing prior to June 30, 1993;
  2. Development on vacant lots inside of PDs approved prior to June 30, 1993;
  3. Development on vacant lands in subdivisions platted prior to June 30, 1993, unless such lands have undergone a zoning change after June 30, 1993; and
  4. Redevelopment provided there is no increase in the total amount of impervious surface for a lot or development site.

(b) The requirements of this Section 4.4.6 shall apply to the following:

1. Vacant land that is rezoned from its designation in place on June 30, 1993;
2. New lands added to a planned development after June 30, 1993, even if the original planned development was approved prior to June 30, 1993;
3. Development in a planned development if the development had to be amended after June 30, 1993, to accommodate the development;
4. Any expansions to existing development in place as of June 30, 1993 (provisions are only applied to the addition, not the impervious surface in place on June 30, 1993).

**(3) *Sedimentation and Erosion Control***

Responsible control of erosion and sedimentation is crucial to the protection of stormwater quality and the continued proper function of the measures required in this section. Requirements pertaining to sedimentation and erosion control are addressed in Section 7.4 of this Ordinance.

**(C) *Procedures for Development Approval***

**(1) *Development Review***

All development within the Watershed Protection Overlay shall demonstrate compliance with the requirements of this Section 4.4.6 at the time of approval of a subdivision plan or site plan. Applicants complying with the standards of this section must also satisfy all other applicable requirements and obtain all other necessary approvals or permits under this Ordinance.

**(2) *Protection Measures Prerequisite to Certificate of Occupancy***

A Certificate of Occupancy shall not be issued for any development in the Watershed Protection Overlay until all of the watershed protection measures required by this section have been approved and are in place on the property.

**(D) *Overview of High Density and Low Density Development Options***

There are two (2) development options in the Watershed Protection Overlay, a Low Density Option and a High Density Option, each with different provisions related to either the Swift Creek Watershed or the Jordan Lake Watershed as well as to sub-areas within either watershed.

**(1) *Impervious Surfaces***

The maximum allowable amount of impervious surface within a proposed development is limited based upon the Low or High Density Option, and differs from watershed to watershed as depicted in Table 4.4-5.

**(2) *Calculation of Impervious Surfaces***

Calculation of impervious surface area shall include the pavement area of all existing and proposed internal public and private streets, one-half (1/2) of the width of roadways

on the perimeter of the project, driveways, rooftops, parking lots, patios, and all other impervious surfaces. For the purpose of calculating the impervious surface of roadways on the perimeter of a project, the ultimate pavement cross section of the roadway based on the Comprehensive Transportation Plan and any sidewalk(s) or greenway(s) along the perimeter roadway will be included in the calculation. For purposes of calculating the percentage of impervious area coverage, the total project area shall be regarded as the actual area of the property plus the area within the rights-of-way of the internal and perimeter streets included in the calculation of impervious area.

**(3) Residential Density**

In addition to limitations on the amount of impervious surface, the Low and High Density Development Options limit the gross residential densities of projects based upon the watershed where they are proposed, with higher densities allowed under the High Density Option as depicted in Table 4.4-5.

**(4) Runoff Control**

Engineered stormwater controls intended to contain the runoff from the first one (1) inch of rainfall are required in any development utilizing the High Density Option in either watershed.

**(E) Restrictions on Allowed Uses**

The uses allowed within the Watershed Protection Overlay are the same as the uses permitted in the general use zoning district within which the land is located, pursuant to Table 5.1-1. However, the following uses are allowed within the overlay district only if they comply with the performance standards set forth in this Section 4.4.6.

**(1) Swift Creek Watershed and the Jordan Lake Watershed**

- (a)** All industrial service uses;
- (b)** All waste-related uses;
- (c)** Uses producing and/or storing toxic and/or hazardous materials; and
- (d)** Any use discharging sewage, industrial waste and/or non-process industrial waste.

**(2) Jordan Lake Watershed Critical Water Quality Area**

All uses set forth in paragraph (1) above; and all agricultural uses.

**(F) Limitations on Impervious Surface Area and Density**

**(1) Low Density Option**

Maximum impervious surface limits for the Low Density Option are set forth in the table below. Separate regulations are provided for the Jordan Lake and Swift Creek areas. The Jordan Lake regulations recognize two (2) sub-areas, the Critical Area and the remainder of the watershed; while the Swift Creek regulations distinguish between

three (3) different sub-areas: New Suburban, New Urban, and Existing Urban development. These sub-areas are depicted on the Town's Official Zoning Map and the Land Use Plan Map.

<b>TABLE 4.4-4: MAXIMUM IMPERVIOUS SURFACE LIMITS: LOW DENSITY OPTION</b>				
<i>Suburban-New</i>		<i>Urban-New</i>		<i>Existing Urban</i>
<i>Residential</i>	<i>Non-Residential</i>	<i>Residential</i>	<i>Non-Residential</i>	<i>Residential and Non-Residential</i>
<b>Swift Creek Watershed</b>				
Two and one-half (2.5) dwelling units per acre not to exceed twelve (12) percent impervious surface area.	Twelve (12) percent	Six (6.0) dwelling units per acre east of Holly Springs and Jones Franklin Roads, Greater than six (6.0) units per acre west of Holly Springs and Jones Franklin Roads, not to exceed twelve (12) percent, impervious surface area.	Twelve (12) percent	The impervious surface of the underlying zoning of the property not to exceed twelve (12) percent impervious surface area.
<b>Jordan Lake Watershed</b>				
Impervious surfaces shall not exceed twenty-four (24) percent of the project area, or two (2) dwelling units per acre; or three (3) dwelling units per acre and thirty-six (36) percent impervious surface area for projects containing streets built without curbs and gutters.				
<b>Jordan Lake Watershed Critical Area</b>				
Non-residential and non-single-family residential development's impervious surface ratios shall not exceed twenty-four (24) percent. The density of single-family residences shall not exceed two (2) dwelling units per acre.				

**(2) High Density Option**

High Density Option development proposals may be approved, provided that the development applications are consistent with the following standards:

<b>TABLE 4.4-5: MAXIMUM IMPERVIOUS SURFACE LIMITS: HIGH DENSITY OPTION</b>					
	<i>Suburban-New</i>		<i>Urban-New</i>		<i>Existing Urban</i>
	<i>Residential</i>	<i>Non-Residential</i>	<i>Residential</i>	<i>Non-Residential</i>	<i>Residential and Non-Residential</i>
<b>Swift Creek Watershed</b>					
Maximum Impervious Surface Limits	Two and one-half (2.5) dwelling units per acre not to exceed thirty (30) percent impervious surface area.	The impervious area allowed under the underlying general use zoning districts, not to exceed thirty (30) percent.	Six (6.0) dwelling units per acre east of Holly Springs and Jones Franklin Roads. Greater than six (6.0) units per acre west of Holly Springs and Jones Franklin Roads, not to exceed seventy (70) percent impervious surface area.	The impervious area allowed under the underlying general use zoning districts, not to exceed seventy (70) percent.	The impervious area allowed under the underlying general use zoning districts, not to exceed seventy (70) percent.
Sewer	Required				
Impoundment and Maintenance	Required to contain and treat the runoff from the first one (1) inch of rainfall and to achieve a minimum of eighty-five (85) percent average annual removal for Total Suspended Solids (TSS). Public or private maintenance. [Other BMPs besides impoundments may be available; consult the Department of Environment and Natural Resources' State Design Manual for Best Management Practices Related to Stormwater Control.]				
<b>Jordan Lake Watershed</b>					
Where new development exceeds the Low Density Option Standards above, engineered stormwater controls shall be used to control and treat runoff from the first inch of rainfall and to achieve a minimum of eighty-five (85) percent average annual removal for Total Suspended Solids (TSS). Development shall not exceed seventy (70) percent impervious surface area.					
<b>Jordan Lake Watershed Critical Area</b>					
Where proposed development exceeds the Low Density Option Standards above, engineered stormwater controls are required to control and treat runoff from the first inch of rainfall and to achieve a minimum of eighty-five (85) percent average annual removal for Total Suspended Solids (TSS). Development shall not exceed fifty (50) percent impervious surface area.					

**(G) Engineered Stormwater Control Structures****(1) *Ownership and Design Requirements***

Stormwater control structures shall be owned by a property owner's association, or, for all properties except single-family residential development, the owner of the property. All stormwater control structures shall be designed by either a North Carolina registered professional engineer or landscape architect, to the extent that the N.C. General Statutes allow. Other stormwater systems shall be designed by a North Carolina registered professional with qualifications appropriate for the type of system required; these registered professionals are defined as professional engineers, landscape architects, to the extent that the N.C. General Statutes allow and land surveyors, to the extent that the design represents incidental drainage within a subdivision, as provided in N.C. General Statutes.

**(2) *Structures Required for High-Density Option***

All development under the high-density option shall use engineered stormwater control structures as a primary treatment system. Engineered stormwater control structures shall be designed for specific pollutant removal according to modeling techniques approved by the North Carolina Department of Environment and Natural Resources. Specific requirements for these systems shall be in accordance with the Standard Engineering Details and Specifications Manual.

**(3) *Ground Cover Required***

In addition to the vegetative filters required in the Standard Engineering Details and Specifications Manual, all land areas outside of the engineered stormwater control structures shall be provided with a ground cover sufficient to restrain erosion within fifteen (15) days after any land disturbance. Upon completion of the stormwater control structure, a permanent ground cover shall be established and maintained as part of the maintenance plan described in Section 4.4.6(G)(9) below.

**(4) *Legal Description Required***

A legal description of the area containing the stormwater control structure shall be prepared and filed consistent with Section 4.4.6(G)(9) as a separate deed with the Wake County Register of Deeds along with any easements necessary for general access to the stormwater control structure. The deeded area shall include sufficient area to perform inspections, maintenance, repairs and reconstruction. The deeded area shall include, but is not limited to detention pond, vegetative filters, all pipes and water control structures, berms and dikes.

**(5) *Computation of Total Built-Upon Area***

Qualifying areas of the stormwater control structure may be considered pervious when computing total built-upon area. However, if the structure is used to compute the percentage built-upon area for one (1) site, it shall not be used to compute the built-upon area for any other site or area.

**(6) Wet Detention Ponds**

Wet detention ponds designed following the Standard Engineering Details and Specifications Manual, properly constructed, with all required financial assurances and maintenance agreements in place may be regarded as adequate to satisfy the impoundment requirements of the entire upstream contributory drainage basin.

**(7) Posting of Financial Security Required**

All engineered stormwater control structures shall be conditioned on the posting of adequate financial assurance for the purpose of maintenance, repairs, or reconstruction necessary for adequate performance of the stormwater control structures. Financial assurance shall be in the form of the following:

**(a) Acceptable Forms of Security**

Acceptable financial security shall be deposited with the Town to ensure that the engineered stormwater control structure is adequately maintained. The permit applicant shall deposit with the Town of Cary either cash or an evergreen letter of credit as financial security approved by the Town that is readily convertible into cash at face value. The cash or evergreen letter of credit shall be in an amount equal to fifteen (15) percent of the total cost of the stormwater control structure or the estimated cost of maintaining the stormwater control structure over a ten (10) year period. The estimated cost of maintaining the stormwater control structure shall be consistent with the approved operation and maintenance plan or manual provided to the Town by the developer. The amount shall be computed by estimating the maintenance cost for twenty-five (25) years and multiplying this amount by two-fifths (2/5) or 0.4.

**(b) Operation and Maintenance Agreement**

For all development built under the high density development option, the owner shall enter into a binding Operation and Maintenance Agreement between the Town and all persons having a freehold estate in the development. Said Agreement shall require the owning entity to inspect, maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the operation and management plan or manual provided by the owner. The owner of the stormwater control structure shall file the Operation and Maintenance Agreement with the Wake County Register of Deeds.

**(c) Default Under the Cash or Evergreen Letter of Credit**

Upon default of the owning entity to maintain, repair and, if necessary, reconstruct the stormwater control structure in accordance with the Operation and Maintenance Agreement, the Town shall obtain and use all or any portion of the financial security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after exhausting all other reasonable remedies seeking the owning entity to comply with the terms and conditions of the Operation and Maintenance Agreement. The Town shall not return any of the unused deposited cash funds, which shall be retained for maintenance.

**(8) Inspections for Stormwater Control Structures**

- (a)** The Stormwater Management Engineer shall inspect the stormwater control structure after the owning entity notifies the Stormwater Management Engineer that all construction-related work has been completed. At this inspection, the owning entity shall provide:
1. The executed deed, related easements, operation and maintenance agreement and survey plat for the stormwater control structure ready for filing with the Wake County Register of Deeds;
  2. A certification sealed by a qualified professional stating that the stormwater control structure is complete and complies fully with the approved plans and specifications.
  3. Reproducible as built plans showing best management practices.
- (b)** The Stormwater Management Engineer shall review the documents submitted by the owning entity and the Town's inspection report.
1. If the Stormwater Management Engineer approves the inspection report, deed and easements, and accepts the certification, the owning entity shall file the Operation and Maintenance Agreement, deed and easements with the Wake County Register of Deeds and provide proof of recordation to the Stormwater Management Engineer. Upon receipt of proof of recordation, the Stormwater Management Engineer will issue a Certificate of Watershed Protection.
  2. If deficiencies are found, the Stormwater Management Engineer shall direct the owning entity to correct the deficiencies, make improvements and inspections and/or correct documents and resubmit proof of the corrections and/or improvements to the Stormwater Management Engineer.
- (c)** A Certificate of Occupancy shall not be issued for any building within the permitted development until the Town has approved the stormwater control structure, as provided in Section 4.4.6(G)(8)(b).
- (d)** The owner of each stormwater control structure shall submit a Maintenance Inspection Report annually on the anniversary date of the Operation and Maintenance Agreement recording, to the Stormwater Management Engineer. A qualified professional, licensed in the state of North Carolina, must conduct the inspection. Records of inspection shall be maintained on forms approved or supplied by the North Carolina Division of Environmental Management and shall be provided to the Stormwater management Engineer in a timely manner.
- (e)** In the event the annual inspection reveals the need for corrective action or improvements, the Stormwater Management Engineer shall notify the owning entity of the needed improvements and the date by which the corrective action is to be completed. All improvements shall be made consistent with the plans and specifications of the stormwater control structure and the operation and maintenance plan or manual as provided by section 4.4.6(G)(7)(b). After all corrective actions have been taken, the qualified professional shall re-inspect the stormwater control structure and certify to the town that the appropriate corrective actions have been taken.

- (f) Appeals of any order, requirement, decision or determination made by the Stormwater Management Engineer may be made to and decided by the Town Council.

**(9) *Maintenance and Upkeep***

- (a) An operation and maintenance plan or manual shall be provided by the developer for each stormwater control structure, indicating what operation and maintenance actions are needed, what specific quantitative criteria will be used for determining when those actions are to be taken and who is responsible for those actions. The plan shall clearly indicate the steps that will be taken for restoring a stormwater control structure to design specifications if a failure occurs.
- (b) Landscaping and grounds management shall be the responsibility of the owning entity. However, vegetation shall not be established or allowed to mature to the extent that the integrity of the control structure is diminished or threatened, or to the extent of interfering with any easement or access to the stormwater control structure.
- (c) Except for general landscaping and grounds management, the owning entity shall notify the Stormwater Management Engineer prior to any repair or reconstruction of the stormwater control structure. All improvements shall be made consistent with the approved plans and specifications of the stormwater control structure and the operation and maintenance plan or manual. After all repairs have been completed, the owning entity shall engage the services of a qualified professional, licensed in the state of North Carolina, to inspect said improvements and to issue a report to the Stormwater Management Engineer. The owning entity shall perform all additions, changes, or modifications noted in the inspection report supplied by the qualified professional in a timely manner.
- (d) The Stormwater Management Engineer retains the right to perform inspections, deemed necessary by the Stormwater management Engineer, on any stormwater control structure.
- (e) Amendments to the plans and specifications of the stormwater control structure and/or the operation and maintenance plan or manual shall be approved by the Stormwater Management Engineer. Proposed changes shall be prepared by a qualified professional.
  - 1. If the Stormwater Management Engineer approves the proposed changes, the owning entity of the stormwater control structure shall file sealed copies of the revisions with the Office of the Stormwater Management Engineer.
  - 2. If the Stormwater Management Engineer disapproves the changes, the proposal may be revised and resubmitted to the Town Council as a new proposal. If the proposal has not been revised and is essentially the same as that already reviewed, it shall be returned to the applicant.
- (f) If the Town Council or Stormwater Management Engineer finds that the operation and maintenance plan or manual is inadequate for any reason, the Stormwater Management Engineer shall notify the owning entity of any required changes and the owning entity shall prepare and file copies of the revised agreement first with the Wake County Register of Deeds. The owning entity shall

then file a copy certified by the Register of Deeds with the Office of the Stormwater Management Engineer.

**(H) Clustered Development Option**

Clustering of development in the Watershed Protection Overlay may be allowed as an optional configuration in either Low Density or High Density developments on a project-by-project basis. Clustering shall follow the procedures and standards set forth in Section 8.4, and is subject to the following additional criteria:

- (1) The overall density and/or impervious surface coverage of the project may not exceed the density and/or impervious surface coverage allowed under either the Low Density or the High Density option. At a minimum, lot sizes shall conform to the standards of the TR district (see Chapter 6) for single-family residential cluster development projects; however the total number of lots shall not exceed the number of lots allowed for single-family residential development under any Chapter 4 zoning district; and
- (2) Impervious surfaces shall be designed and sited to minimize stormwater runoff impacts on the receiving waters and to minimize the concentration of stormwater flow; and
- (3) The remaining undeveloped portion of the tract shall remain in an undisturbed vegetated or natural state. Where the development has an established property owner's association, the title to the open space area shall be conveyed to the association. Where a property owner's association has not been established, a maintenance agreement shall be filed with the Wake County Register of Deeds.

**(I) Modifications and Variances**

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

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

The Environmental Management Commission shall have the sole authority to grant major variances from the provisions of this Section 4.4.6 for properties in the Jordan Lake Watershed and Jordan Lake Watershed Critical Area. For purposes of this section, a major variance is a variance from the minimum statewide watershed protection or Jordan Rules (contained in 15A NCAC Chapter 2B) that results in (a) the relaxation, by factor greater than five percent (5%) of any buffer, density or built upon area requirement under the high density option; (b) any variation in the design, maintenance or operation requirements of a wet detention pond or other approved stormwater management system; or (c) relaxation by a factor greater than ten percent (10%), of any management requirement under the low density option.

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

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

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

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

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

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

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

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

**(a) Approval**

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

**(b) Disapproval**

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

**(J) Violations; Enforcement**

This Section 4.4.6 shall be enforced by the Director of Water Resources or his designee. Any person or association who fails to comply with any provision of this Section 4.4.6, or who fails to submit a report, or who submits a fraudulent or false report, shall be in violation of this Ordinance for each occurrence or non-compliance.

**4.4.7 Historic Preservation Overlay**

**(A) Purpose and Intent**

The Historic Preservation Overlay is established with the purpose of implementing additional protections and controls on properties and structures located within locally designated Historic Districts. Local historic districts shall be areas which are deemed to be of special significance in terms of their history, architecture, and/or culture, and to possess integrity of design, setting, materials, feeling, and association.

**(B) Location of Districts and Applicability**

The provisions of the Historic Preservation Overlay shall apply to the geographic areas designated as local historic districts on the Official Zoning Map. All uses permitted in the zoning district underlying a historic district are permitted in the historic preservation overlay. (Ord. No. 04-001, 1-8-04; Ord. No. 04-007, 7-15-04; Ord. No. 05-001, 1-13-05; Ord. No. 05-015, 9-08-05; Ord. No. 06-005, adopted 3-23-06; eff. 3-23-06; Ord. No. 06-009, 4-27-06; Ord. No. 2007-04, 3-22-07; Ord. No. 2007-21, 12-13-07; Ord. No. 2008-LDO-01, 9-25-08; Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2010-LDO-01, 1-14-10; Ord. No. 2011-LDO-01, 1-11-11; Ord. No. 2011-LDO-04, 11-17-11; Ord. No. 2012-LDO-08, 10-11-12; Ord. No. 2013-LDO-02, 6-13-13; Ord. No. 2013-LDO-04, 9-26-13; Ord. No. 2014-LDO-02, 6-26-14; Ord. No. 2014-LDO-03, 8-14-14; Ord. No. 2014-LDO-05, 12-11-14; Ord. No. 2015-LDO-001, 4-21-15; Ord. No. 2015-LDO-006, 12-10-15)

**4.5 FLEXIBLE USE DISTRICTS**

**TABLE 4.5-1: FLEXIBLE USE DISTRICTS ESTABLISHED**

<b>TABLE 4.5-1: FLEXIBLE USE DISTRICTS ESTABLISHED</b>	
<i>District Name</i>	<i>Abbreviation</i>
Mixed Use District	MXD

**4.5.1 Flexible Use Districts Generally**

**(A) Purpose of Flexible Use Districts**

Flexible Use Districts are districts in the nature of legislatively approved conditional zoning districts that allow for the establishment of certain uses, or mixes of uses, which because of their nature or scale cannot be properly accommodated within a general use zoning district. Flexible use districts permit multiple, coordinated uses in an integrated concept; require an overall master development plan; and provide suitable open space amenities, resource protection, gathering spaces, recreational opportunities; and architectural cohesion.

**(B) Process Required**

Rezoning to a flexible use district shall require submission and approval of an application for a rezoning in accordance with the general procedures set forth in Section 3.4.1, and any

modifications applicable to the particular type of flexible use district requested. A rezoning to a flexible use district may be initiated only by an application signed by all of the owners of the property to be included in the district or by an agent authorized by all of the owners to file such application. If the application is approved, the Town Council shall adopt an ordinance authorizing the requested use with such reasonable conditions as are mutually approved by the applicant and Town Council and determined to be desirable in promoting public health, safety and general welfare.

**(C) Conditions**

- (1)** The flexible use rezoning application shall include a master land use plan, preliminary development plan or site / subdivision plan that specifies the use or uses that are intended for the property, as well as any additional conditions on the use of the property that the applicant may propose as conditions of the rezoning. Conditions are limited to:

  - (a)** Those that address conformance of the development and use of the site to applicable ordinances, policies, standards and officially adopted plans and
  - (b)** Those that address the impacts reasonably expected to be generated by the development and use of the site.
- (2)** No condition shall be made part of the application, or shall be attached to approval of the conditional use district, which specifies the ownership status, race, religion, or character of the occupants of housing units, the minimum value of improvements, or any illegal exclusionary device; or which states that the use of the property will not be subject to regulations or restrictions set forth in this Ordinance which would apply to the property in any event, such as the regulations for an overlay district which covers the property.

**4.5.2 MXD: Mixed Use District**

This Mixed Use District (MXD) was established on August 13, 2009 and may only be used in areas already zoned Mixed Use Overlay District (MUOD). In support of the MUOD provisions, the Mixed Use District (MXD) is a flexible zoning district that allows property owners to rezone land subject to specific requirements set forth in a preliminary development plan.

**(A) Intent**

Every rezoning to a MXD district must be accompanied by a preliminary development plan that illustrates how the proposed district will yield the required features of mixed use development that conform to the overall policy direction and intent for Activity Centers as specified in Section 6.2 of the Land Use Element of the Comprehensive Plan. Depending upon the location and the existing nature of development, it is not the intent of a MXD district to require each separate building or every individual development site to include a complete, integrated mix of land uses but rather for the Activity Center as a whole to contain a mix of uses designed to meet the Town's overall planning objectives. Instead, the MUOD and MXD districts developed thereunder seek to encourage certain areas of the Town to develop or redevelop in a manner that supports the specific goals for Activity Centers identified in Chapter 6.2 of the Land Use Plan. These goals call for a more efficient and less energy-intensive alternative to suburban growth patterns by creating opportunities for more integrated development of residential uses and the non-residential uses that can provide goods, services and employment opportunities to the residential population.

**(B) Approval Procedure**

Approval of a MXD district shall require a rezoning pursuant to the procedure set forth in Section 3.4.5 which shall include submission, review, and approval of a preliminary development plan (PDP) or site plan.

**(C) Geographic Coverage**

Unless there is no adjacent or closely located property under the same or closely related ownership that qualifies for MXD zoning a single, small parcel or portion of a parcel should not be rezoned to a MXD district when a larger geographic area of developable or redevelopable land could be included. In keeping with the Town's longstanding preference for comprehensively planned areas, the intent of this district is to encompass as much land area as practicable to successfully implement the Comprehensive Plan. However, depending upon the location, size and scale of the activity center, nature of the property proposed to be rezoned, the existing zoning in the vicinity, whether or not the adjoining land is developed or vacant, and ownership patterns, the amount of land included in any MXD rezoning case may vary and cannot be predicted in advance. Following a required presubmittal meeting, the Development Review Committee staff will recommend the extent of property(ies) that should be included in any mixed use rezoning application.

**(D) General Use and Development Standards****(1) Uses Allowed**

The extent of appropriate uses and the intensity of activity centers shown on the Land Use Plan map increases from neighborhood to community to regional in scale. Table 5.1-1 found in Chapter 5 of this Ordinance identifies allowed uses within each category.

**(2) Applicable Standards**

There shall be no minimum dimensional standards for developments in a MXD district. Dimensional standards are stated on the approved preliminary development plan. The applicant shall demonstrate that the requirements of the proposed mixed use district satisfy applicable approval criteria.

**(a)** Development in a MXD district shall be subject to all applicable overlay district regulations in Chapter 4, all applicable use regulations set forth in Chapter 5, and all applicable general regulations set forth in Chapter 7, unless otherwise waived or modified by the approved preliminary development plan. The application shall include development conditions assuring that the proposed preliminary development will meet or exceed the standard requirements of the aforementioned chapters. Where the preliminary development plan is silent as to a term or requirements, the requirements of this Ordinance and the approved policies and procedures of the Town shall control.

**(b)** Notwithstanding paragraph (a) above, in no case shall the Town Council waive or modify environmental or infrastructure adequacy standards for a proposed MXD zoning district including but not limited to:

1. Zones 1, 2, and 3 of urban transition buffers;
2. [Reserved];

3. Stormwater control requirements, and
4. Nitrogen reduction requirements.

**(E) Approval Criteria for Mixed Use District Rezoning**

In addition to the criteria for a general rezoning specified in Section 3.4.1(E), rezoning requests to a MXD district shall be reviewed for compliance with the following criteria, as applicable [i.e., it may not be reasonable or practical to expect that some existing or partially-built mixed use districts (formerly activity center concept plans or mixed use sketch plans) to achieve certain design standards]:

**(1) Intensity, Type, and Mix of Uses**

The preliminary development plan includes an appropriate intensity, type, and mix of land uses, as outlined by the guidelines contained in the Land Use Plan. This shall be assessed in relation to the scale of the activity center and the mix and relationship of existing and planned uses in the activity center, including residential, commercial, office, and institutional uses;

**(2) Site Design**

The preliminary development plan shows how the proposed mixed use development will meet or exceed Town site design guidelines and other established Town standards, including connections and linkages to immediately adjacent properties;

**(3) Expected Land Uses**

The extent to which the proposed development provides the expected land uses, including medium- and higher-density housing, outlined by the numerical and other guidelines contained in the Land Use Plan;

**(4) Public Spaces**

The preliminary development plan includes some formal outdoor space(s) for public use, such as a park, village green, or plaza, with larger mixed use centers including more such space than smaller centers; and

**(5) Scale and Context**

The preliminary development plan demonstrates that the proposed development is appropriate for the context and location, responds to the unique conditions of the area, and provides reasonable transitions within and adjacent to the district.

(Ord. No. 2009-LDO-06, 8-13-09; Ord. No. 2013-LDO-02, 6-13-13)

CARY LAND DEVELOPMENT ORDINANCE

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