

CITY OF HIGH POINT

AGENDA ITEM



Title: Text Amendment 20-02
(City of High Point)

From: Lee Burnette, Planning & Development
Director

Meeting Date: August 3, 2020

Public Hearing: Yes

Advertising Date: July 22, 2020, and
July 29, 2020

Attachments: A. Staff Report
B. Zoning Ordinance

Advertised By: Planning & Development

PURPOSE:

A request by the Planning and Development Department to amend various sections of the City of High Point Development Ordinance to correct errors, provide consistency, and make revisions related to state legislation.

BACKGROUND:

The Planning and Zoning Commission reviewed this request at their June 23, 2020 regular meeting and took final action when the meeting was reconvened on June 25, 2020. On the date of final action, all members of the Commission were present except for Mr. Thad Juszczak. Mr. Chris Andrews, Development Administrator, presented the case and recommended approval as outlined in the staff report.

Speaking on the request:

There were no speakers in favor nor in opposition to this request. No public comments were received for the request.

BUDGET IMPACT:

There is no budget impact.

RECOMMENDATION / ACTION REQUESTED:

A. Staff Recommendation

Staff recommended **approval** of this request as outlined in the attached staff report.

B. Planning and Zoning Commission Action

1. The Planning and Zoning Commission recommended **approval** of this request, as recommended by staff, by a vote of 7-0.

2. Consistency and Reasonableness Statements

The Planning and Zoning Commission voted 7-0 to approve the following statement:

That Text Amendment 20-02 makes the Ordinance more user-friendly and flexible, and supportive of the City's adopted policy guidance. Furthermore, the proposed amendments address necessary changes as a result of state legislation and continue to pursue making the ordinance error free, easier to read and understand, and more consistent in its use of language and formatting.

**CITY OF HIGH POINT
PLANNING AND DEVELOPMENT DEPARTMENT**

**STAFF REPORT
TEXT AMENDMENT CASE TA-20-02
June 23, 2020**

Request	
Applicant: City of High Point Planning & Development Department	Affected Ordinance Sections: Section 1.10., <i>Vested Rights</i> ; Section 2.2., <i>Review Authorities</i> ; Section 2.3., <i>Standard Review Procedures</i> ; Section 2.4., <i>Review Procedures Subject to Decision-Making Body Review and Decision</i> ; Section 2.5., <i>Review Procedures Subject to Staff Review and Decision</i> ; Section 2.6., <i>Financial Guarantees</i> ; Section 2.7., <i>Payment in-Lieu of Required Improvements</i> ; and various other sections of the Ordinance;
Proposal: To amend the Development Ordinance regarding the following: <ol style="list-style-type: none">1) Revise vested rights and establish development permits as required by State legislation;2) Revise conditions of approval as required by State legislation;3) Remove minimum dwelling unit size as required by State legislation;4) Revise financial guarantees to be consistent with State legislation;5) Revise the payment in lieu procedure;6) Remove the sub collector street term for consistency with the Complete Streets Manual;7) Clarify specific commercial use types; and8) Add graphics for clarity, correct errors and promote consistent wording.	

Background

The Development Ordinance was adopted on May 16, 2016 and went into effect on January 1, 2017. Since that time there have been several general amendments proposed by staff and approved by the City Council that have focused on needed changes, clarifications and corrections. This proposed amendment does the same, and includes amendments as necessitated by changes in State legislation.

Details of Proposal

The following is a brief summary of the proposed amendments.

- **Section 1.** Amendment to Table 2.1.2., *Summary Development Review Table*, to correct an error in special use decision making body.
- **Section 2.** Amendment to correct the omission of an alternate design review as a duty of the BOA in Table 2.2.4., *Board of Adjustment (BOA)*.
- **Section 3.** Amendment to correct an omission by deleting administrative adjustments as a duty of the Technical Review Committee in Table 2.2.7., *Technical Review Committee (TRC)*.
- **Section 4.** Amendment to add a definition of “development permit”, explanation of permit choice for development permits, and to revise development permit vested right and expiration sections, as required per state legislation, SL 2019-111.
- **Section 5.** Amendment to Table 2.3.6., *Public Notification Timing Requirements*, regarding mailed notice requirements for certificates of appropriateness, to correct an omission in the required mailed notice.
- **Section 6.** Amendment to conditions of approval as required per state legislation, SL 2019-111.
- **Section 7.** Amendment to provide consistency in the wording of “all applicable City adopted policy guidance” in sections of 2.4.6.B. *Conditional Zoning*, 2.4.9.B., *Planned Development*, 2.4.15., *Text Amendment*, and 2.4.20., *Zoning Map Amendment*.
- **Section 8.** Amendment to correct an omission by deleting reference of Planning and Zoning Commission review of special use applications, and to clarify timing of citizen information meetings and corresponding written summaries for special uses.
- **Section 9.** Amendment to Section 2.4.16.C., *Variance Procedure*, to correct an omission in the text regarding a variance, in order to reflect the voting requirements in state statutes.
- **Section 10.** Amendment to revise determinations, as required per state legislation, SL 2019-111.
- **Section 11.** Amendment to establish Section 2.6, *Financial Guarantee* and to delete and reserve existing Section 7.2, *Financial Guarantees*, to

comply with state legislation, SL 2019-79, and to better organize those standards within the Ordinance.

- **Section 12.** Amendments to provide clarification regarding the process for accepting payments in-lieu of installing required street improvements and sidewalks and to better organize those standards in the Ordinance.
- **Section 13.** Addition of graphics to provide visual explanation of development entry point framing within the MS and MX districts.
- **Section 14.** Amendment to Table 3.8.7.F.5., *Eastchester GCO Landscaping Standards*, to provide consistency by following the Ordinance's standard landscape ratios within this table.
- **Section 15.** Amendment to Table 4.2.6, *Commercial Use Classification*, that clarifies the location of amusement and entertainment use types are indoor facilities, that ABC stores are retail sales establishment use types, and caretaker dwellings are accessory to agricultural principal uses.
- **Section 16.** Amendment to correct City Code references pertaining to visibility at intersections.
- **Section 17.** Amendment to correct an error within Section 5.7.10.A., *General Standards for Attached Signs Requiring a Permit*, regarding the total number of attached signs on a building.
- **Section 18.** Amendment to remove the "sub-collector" street classification from the Development Ordinance, as the classification no longer exists as a result of adoption of the Complete Streets Manual.
- **Section 19.** Amendment to remove the minimum dwelling size permitted within a pocket neighborhood, as required per state legislation, SL 2019-174.
- **Section 20.** Amendment to 7.1.6.C., *Streets*, regarding Public Street Design Criteria, to add maximum cul-de-sac length and block length, which needs to be added back to the Development Ordinance with the adoption of the Complete Streets Manual.
- **Section 21.** Amendment to revise Table 10.2.4.G., *Allowable Encroachments into Setbacks*, to correct inconsistencies regarding canopy, awning, marquee and sign encroachments within the MX, GB and RC districts.
- **Section 22.** Amendment to provide consistency by replacing all references of "preliminary plat" to "preliminary plan".

Analysis

This text amendment includes a variety of changes identified by staff and those necessitated by recent changes in state legislation. As with the previous general amendments to the Development Ordinance, most of the changes identified by staff can be described or categorized as corrections of errors or omissions, or clarifications of existing terms or provisions – mostly wording changes with some minor substantive changes and the addition of clarifying graphics. However, state legislation adopted in 2019 results in most of the Ordinance text requiring changes.

Sections 1, 2, 3, 5 and 14 contain proposed changes that correct errors and omissions within tables in the Development Ordinance related to boards and commissions, as well as landscaping standards. Clarity is often needed as the Ordinance continues in use, to be sure that its interpretation and application is as consistent as possible. No substantive changes are proposed.

Section 4 includes changes to references of vested rights and development permits, as required by changes in state legislation (SL 2019-111). The addition of the term “development permit”, and its associated application requirements, is the chief amendment in this section. Additionally, expiration timelines for development permit types (site plans, final plats, permits, etc.) have been revised according to match those set forth in recent state legislation.

In Section 6, additional clarification is added to the requirements of conditions of approval, reflective of state legislation (SL 2019-111) that such conditions shall be agreed to in writing, incorporated into a conditional zoning district, and may not include conditions otherwise prohibited by State law.

Section 7 includes minor revisions to provide consistency with reference to “all applicable City adopted policy guidance”, which is the collection of policies that guide department recommendations to boards and commissions.

Section 8 provides correction of special use application review standards, eliminating the ability of the City Council to remand an application to the Planning and Zoning Commission for further consideration. Also included in this section are clarifying timing requirements for the timing of citizen information meetings.

Section 9 includes the addition of language regarding the four-fifths majority of the Board of Adjustment required to grant a variance, while Section 10 expands the requirements related to determinations, that they be made in writing and delivered to the applicant.

Section 11 includes revisions to financial guarantees. The amendment establishes Section 2.6, *Financial Guarantee* and deletes and reserves the existing Section 7.2, *Financial Guarantees*, to comply with state legislation (SL 2019-79) and better organizes the accompanying standards. References to these sections within the rest of the Development Ordinance have been revised. This section also includes the establishment of requirements related to as-built stormwater and engineering plans.

The additions within Section 12 provide further clarification to the powers and duties of department directors regarding payment in-lieu of required street improvements. Section 2.7. of the Development Ordinance, *Payment in-Lieu of Required Improvements*, is established to allow payment in-lieu of required public infrastructure improvements.

Section 13 includes the addition of figures to illustrate development framing, a design requirement within the Main Street and Mixed-Use zoning districts.

The amendment to Table 4.2.6, *Commercial Use Classification*, makes clarifications in Section 15. The amendment clarifies that amusement and entertainment use types are indoor facilities, that ABC stores are retail sales establishment use types, and that caretaker dwellings should be included as accessory dwellings to agricultural principal uses.

Section 16 includes amendments to correct City Code references pertaining to visibility at intersections.

Section 17 corrects an error within Section 5.7.10.A., *General Standards for Attached Signs Requiring a Permit*, regarding the total number of attached signs on a building. The stricken sentence was inconsistent with the maximum number of attached signs allowed for single-tenant buildings.

Section 18 removes the “sub-collector” street classification from the Development Ordinance, as the classification no longer exists as a result of adoption of the Complete Streets Manual.

Section 19 removes the minimum dwelling unit size within a pocket neighborhood, as required by state legislation (SL 2019-174).

Section 20 is an amendment to 7.1.6.C., *Streets*, regarding Public Street Design Criteria, to add maximum cul-de-sac length and block length standards, which need to be added back to the Development Ordinance, as they were not included within the adopted Complete Streets Manual.

Section 21 revises Table 10.2.4.G., *Allowable Encroachments into Setbacks*, correcting inconsistencies regarding canopy, awning, marquee and sign encroachments within the MX, GB and RC districts. The amendment removes allowable encroachments within the RC (Retail Center) district, and introduces allowable encroachments for canopies, awnings and marquees within the MX (Mixed-Use) district. Allowing those encroachments within the MX district further allows the built form of buildings close to the street to better meet the goals of the MX district.

Finally, Section 22 proposes that wherever the term “preliminary plat” occurs, regardless of capitalization, that it shall be replaced with the term “preliminary plan”, and reflective of the prior term’s capitalization.

In all, the proposed amendments continue staff’s efforts to make the Development Ordinance more user friendly, consistent in its formatting, language and terminology, and more error free.

Consistency with Adopted Plans:

The proposed text amendments are appropriate and are consistent with the purposes, goals, objectives and policies of relevant comprehensive land use or area plans

These general amendments make the Ordinance more user-friendly and flexible, and supportive of the City's adopted policy guidance.

Reasonableness/Public Interest:

An approval of the proposed text amendments is considered reasonable and in the public interest.

The proposed amendments to the Development Ordinance address necessary changes as a result of state legislation and continue to pursue making the ordinance error free, easier to read and understand, and more consistent in its use of language and formatting.

Recommendation

Staff recommends approval.

Required Action

Planning and Zoning Commission:

The NC General Statutes require that the Planning and Zoning Commission place in the official record a statement of consistency with the City's adopted plans when making its recommendation. This may be accomplished by adopting the statements in the Staff Analysis section of this report or by adopting its own statement.

City Council:

The NC General Statutes require that the City Council place in the official record a statement of consistency with the City's adopted plans, and also explain why the action taken is considered to be reasonable and in the public interest when rendering its decision in this case. This may be accomplished by adopting the statements in the Staff Analysis section of this report or by adopting its own statement.

Report Preparation

This report was prepared by Planning and Development Department staff member(s) Chris Andrews, AICP, and reviewed by Heidi Galanti, AICP and G. Lee Burnette, AICP, Director.

AN ORDINANCE AMENDING THE CITY OF HIGH POINT DEVELOPMENT ORDINANCE

WHEREAS, the City of High Point adopted the “City of High Point Development Ordinance” on May 16, 2016, with an effective date of January 1, 2017, and subsequently amended; and

WHEREAS, public hearings were held before the Planning and Zoning Commission on June 23, 2020 and before the City Council on August 3, 2020 regarding Text Amendment 20-02; and

WHEREAS, notice of the public hearings was published in the High Point Enterprise on June 14, 2020 for the Planning and Zoning Commission public hearing, and on July 22, 2020 and July 29, 2020 for the City Council public hearing pursuant to Chapter 160A-364 of the General Statutes of North Carolina.

NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF HIGH POINT, NORTH CAROLINA:

SECTION 1.

That Table 2.1.2., *Summary Development Review Table*, is hereby amended as follows:

Deletion of the “[D]”, for “Decision”, from the Board of Adjustment column in the Special Use procedure row, and addition of a “[D]”, for “Decision”, to the City Council column in the Special Use procedure row.

SECTION 2.

That Table 2.2.4., *Board of Adjustment (BOA)*, regarding BOA powers and duties, is hereby amended as follows:

TABLE 2.2.4: BOARD OF ADJUSTMENT (BOA)	
A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:
	(a) <u>Alternate design</u>
	(a) (b) Appeals on decisions of the Planning and Development Director, Engineering Services Director, Public Services Director, Transportation Director, TRC, HPC, or UFC;
	(b) (c) Reasonable accommodations; and
	(c) (d) Variances.

SECTION 3.

That Table 2.2.7., *Technical Review Committee (TRC)*, regarding TRC powers and duties, is hereby amended as follows:

TABLE 2.2.7: TECHNICAL REVIEW COMMITTEE (TRC)	
A. POWERS AND DUTIES	1. APPLICATION REVIEW AND DECISION - TO REVIEW AND DECIDE APPLICATIONS FOR:
	(a) Administrative adjustments;
	(b) (a) Easement reconveyances;
	(c) (b) Group developments;
	(d) (c) Preliminary plat <u>ns</u> ;
	(e) (d) Right-of-way encroachments (below ground);
	(f) (e) Site plans; and
	(g) (f) Watershed variances (minor).

SECTION 4.

(Regarding changes to vested rights and development permits as required by State legislation.)

PART A.

That Section 1.10., *Vested Rights*, is hereby amended as follows:

1.10. – Vested Rights

Vested rights under this Ordinance shall be established **and maintained** only in accordance with the following.

1.10.1. - Building Development Permit

The issuance of a **building development** permit, **as defined by this Ordinance**, establishes a vested right to development in accordance with Section 160A-385-~~1~~ of the North Carolina General Statutes, as long as the development complies with the terms and conditions of approval of that **building** permit: **and the permit remains valid pursuant to law.**

1.10.2. – (unchanged)**1.10.3. – Development Agreement**

A vested right for a development may be established in accordance with Section 2.4.7. Development Agreement.

1.10.34. – Common Law Vesting

(Text and A. through C. remain unchanged)

1.10.45. – Prior Vesting *(strike through "4")*

~~Amendments, supplements, repeals, or other changes in zoning regulations and zoning boundaries shall not be applicable or enforceable without the consent of the landowner with regard to lots for which building permits or vested rights certificates have been issued (pursuant to state law) prior to the enactment of the ordinance making the change(s), so long as the vested rights, building permit, or vested rights certificate remain valid and unexpired.~~

Where a vested right is established by a valid and unexpired development permit, vested rights certificate or development agreement, any amendments to the regulations of this Ordinance, including zoning district boundaries, shall not be applicable or enforceable without the written consent of the landowner, except where a change in State or federal law mandates such action.

1.10.6. – Expiration

As provided in State law, a vested right established through an approved development permit, vested rights certificate or development agreement shall terminate at the end of the applicable vesting period. Furthermore, such vesting shall expire for an uncompleted project if development is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, except where a longer vesting period is provided in this Ordinance.

PART B.

That Section 2.3.4., *Application Submittal and Acceptance*, is hereby amended to add the following:

G. Development Permit Applications

1. Permit Choice

(a) When a complete application for a development permit, as defined by this Ordinance, is pending final action at the time of an amendment to the regulations of this Ordinance, including zoning district boundaries, the applicant may opt to have the application reviewed under the regulations in effect at the time the application was determined complete, or under the amended regulations.

(b) Where multiple development permits are required to complete a proposed development, the approval of a certificate of appropriateness, special use, building permit, group development, preliminary plan, site plan or zoning compliance permit establishes the initial development permit required to vest a proposed development in either version of the regulations, provided all subsequent applications for the proposed development are filed within 18 months.

2. Discontinued Application

If a development permit application is placed on hold at the request of the applicant for a period of 6 consecutive months or the applicant fails to respond to comments or provide additional information reasonably requested for a period of 6 consecutive months, then the application shall be discontinued. The applicant may re-apply; however, the application shall be subject to the regulations in effect at the time of the new application submittal.

PART C.

That Section 2.3.15., *Expiration of Permit or Development Approval*, is hereby amended as follows:

~~A. General~~

~~1. A. Expirations~~

Development approvals granted in accordance with this Ordinance shall expire as provided in Section 2.4, Review Procedures Subject to Decision-Making Body Review and Decision, or Section 2.5, Review Procedures Subject to Staff Review and Decision, for the particular type of development permit or approval.

~~2. B. No Expirations~~

If no expiration period is provided in Section 2.4, Review Procedures Subject to Decision-Making Body Review and Decision, or Section 2.5, Review Procedures Subject to Staff Review and Decision, then the development approval does not expire.

~~3. C. Ownership Change~~

A change in ownership of the land shall not affect the established expiration time period. The filing of an appeal shall delay the established expiration period until final resolution of the appeal.

~~B. Extension of Expiration Time Period~~

~~1. Except as otherwise provided in Section 2.4, Review Procedures Subject to Decision-Making Body Review and Decision, or Section~~

~~2.5, Review Procedures Subject to Staff Review and Decision, for the particular type of development permit or approval, the Planning and Development Director may, on receipt a written request for extension before the expiration date and on a showing of good cause, grant one or more extensions of the expiration time period for up to a cumulative total of 1 year.~~

- ~~2. Any further extensions shall be subject to approval by the decision-making body that granted the development permit or approval, on submittal of a request for extension to the Planning and Development Director before the expiration date and a showing of good cause.~~

PART D.

That Section 2.4.2., *Alternate Design*, is hereby amended as follows:

- G. ~~Expiration If the BOA does not include a time period by which development subject to an alternate design expires, development shall commence within 12 months of the date of issuance of the alternate design or the alternate design approval shall expire and become null and void.~~

1. The approval of an alternate design establishes a vested right in accordance with Section 1.10.1, *Development Permit*.
2. An alternate design approval shall expire and become null and void within 1 year of the issuance of the order unless development authorized by the alternate design has substantially commenced.

PART E.

That Section 2.4.5., *Certificate of Appropriateness*, is hereby amended as follows:

H. Expiration

- ~~1. Unless otherwise stated in the approval of a certificate of appropriateness, a certificate of appropriateness shall expire and be null and void if a building permit is not issued or construction or installation commenced for development approved by the certificate within 18 months of the date of certificate issuance.~~

The approval of a certificate of appropriateness establishes a vested right in accordance with Section 1.10.1, *Development Permit*.

- ~~2. If work on development approved under a certificate of appropriateness is started then discontinued for a period exceeding 12 months, the certificate of appropriateness shall expire and become null and void.~~

A certificate of appropriateness approval shall expire and become null and void within 1 year of the issuance of the order, unless development authorized by the certificate of appropriateness has substantially commenced.

PART F.

That Section 2.4.12., *Special Use*, is hereby amended as follows:

H. Expiration

- 1. The approval of a special use establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**
- 2. A special use approval shall expire and become null and void within 1 year of the issuance of the order, unless development authorized by the certificate of appropriateness has substantially commenced.**

3. 1. General

~~(a) Unless otherwise stated in the special use approval, a special use shall expire and become null and void 18 months after the date of issuance if a footing inspection for the development approved has not been passed or an applicant has not requested an extension in accordance with Section 2.4.12 H.2 below.~~

~~(b) If development approved as a special use is discontinued for a period exceeding 18 months, or if a special use is replaced by a use otherwise permitted by right in the zoning district, the special use approval is deemed abandoned and the special use approval is null and void.~~

2. Extension

~~(a) An applicant may request an extension of a special use approval in writing to the Planning and Development Director at least 30 days prior to expiration.~~

~~(b) Extension requests are considered as minor changes and shall be reviewed and approved by City Council in accordance with Section 2.4.12 F.1 above.~~

PART G.

That Section 2.4.16., *Variance*, is hereby amended as follows:

- H. Expiration** ~~If the BOA does not include a time period by which development subject to a zoning variance or a flood damage prevention variance expires, development shall commence within 12 months of the date of issuance of the variance or the variance shall expire and become null and void.~~

- 1. The approval of a variance establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**
- 2. A variance approval shall expire and become null and void within 1 year of the issuance of the order unless development authorized by the variance has substantially commenced.**

PART H.

That Section 2.4.17.F., *Expiration*, is hereby amended as follows:

1. A vested right certificate shall expire and become null and void:
 - (a) If a building permit application for the development subject to the certificate is not submitted within **5 7** years of the approval of the vested rights certificate.
 - (b) through (d) (*unchanged*)
2. (*unchanged*)

PART I.

That Section 2.5.7., *Final Plat*, is hereby amended as follows:

F. Expiration

1. ~~A final plat shall be null and void unless it is recorded in the office of the Register of Deeds for the county where the development is located within 60 days of approval. The approval of a final plat establishes a vested right in accordance with Section 1.10.1, *Development Permit*.~~
2. ~~If a final plat is not recorded within 2 years of the associated preliminary plat approval, or if there is a lapse of more than 2 years between the recording of different sections or phases, then the preliminary plat shall expire. A final plat approval shall expire and become null and void within 1 year of the date of approval unless the plat is recorded in the Office of the Register of Deeds for the county where the development is located.~~
3. ~~An expired preliminary plat may be resubmitted in accordance with Section 2.5.11, Preliminary Plat, and shall be reviewed in accordance with the standards of this Ordinance.~~

PART J.

That Section 2.5.8., *Floodplain Development Permit*, is hereby amended as follows:

- G. Expiration ~~A floodplain development permit shall expire and become null and void if the development it authorizes is not commenced within 6 months of permit issuance.~~

- 1. The issuance of a floodplain development permit establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**
- 2. A floodplain development permit shall expire and become null and void within 1 year of issuance unless the development authorized by the permit has substantially commenced.**

PART K.

That Section 2.5.9., *Group Development*, related to review procedures, is hereby amended as follows:

- ~~G. Expiration Group development approval shall expire and become null and void if the development approved in the plan does not begin within 18 months of issuance of the group development approval.~~**
- 1. The approval of a group development establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**
 - 2. A group development plan approval shall expire and become null and void within 1 year of approval unless the development authorized by the plan has substantially commenced.**

PART L.

That Section 2.5.10., *Land Disturbance Permit*, is hereby amended as follows:

- G. Expiration**
- ~~1. The land disturbance permit shall be null and void if work authorized is not completed within 1 year from the issuance of the permit. The issuance of a land disturbance permit establishes a vested right in accordance with Section 1.10.1, *Development Permit*.~~**
 - ~~2. The Engineering Services Director may, on receipt of a written request for an extension filed at least 30 days prior to the expiration date, renew a land disturbance permit for an additional 180 days, for good cause. A land disturbance permit shall expire and become null and void within 1 year of issuance unless the development authorized by the permit has substantially commenced.~~**

PART M.

That Section 2.5.11., *Preliminary Plan*, is hereby amended as follows:

- ~~F. Expiration An approved preliminary plat shall be valid for two years from the date of approval and may be extended in accordance with Section 2.5.7, *Final Plat*.~~**
- 1. The approval of a preliminary plan establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**

- 2. A preliminary plan approval shall expire and become null and void within 1 year of the date of approval unless the development authorized by the plan has substantially commenced.**

PART N.

That Section 2.5.12., *Public Tree Certificate*, is hereby amended as follows:

G. Expiration ~~A public tree certificate shall expire and become null and void if the activity it authorized is not commenced within 12 months of certificate issuance, or a different time period as approved by the UFC.~~

- 1. The issuance of a public tree certificate establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**
- 2. A public tree certificate shall expire and become null and void within 1 year of issuance unless the development authorized by the certificate has substantially commenced.**

PART O.

That Section 2.5.13., *Sign Permit*, is hereby amended as follows:

G. Expiration ~~If the work authorized by a sign permit is not commenced within 6 months from the date of issuance, the permit shall become null and void.~~

- 1. The issuance of a sign permit establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**
- 2. A sign permit shall expire and become null and void within 1 year of issuance unless the development activity authorized by the permit has substantially commenced.**

PART P.

That Section 2.5.14., *Site Plan*, is hereby amended as follows:

G. Expiration ~~Site plan approval shall expire and become null and void if the development approved in the site plan does not begin within 18 months of issuance of the site plan approval.~~

- 1. The approval of a site plan establishes a vested right in accordance with Section 1.10.1, *Development Permit*.**
- 2. A site plan approval shall expire and become null and void within 1 year of issuance unless the development authorized by the plan has substantially commenced.**

PART Q.

That Section 2.5.15., *Zoning Compliance Permit*, is hereby amended as follows:

G. Expiration

1. General The issuance of a zoning compliance permit establishes a vested right in accordance with Section 1.10.1, Development Permit.

4. 2. Temporary Uses A zoning compliance permit for a temporary use is effective on the date of approval and shall remain effective for the time period indicated in the permit.

2. 3. All Other Development A zoning compliance permit shall expire and become null and void ~~if development it authorizes is not commenced within 180 days of permit issuance.~~ **within 1 year of issuance unless the development authorized by the permit has substantially commenced.**

PART R.

That Section 10.4., *Definitions*, is hereby amended to add the following new definition in the appropriate alphabetic order:

<u>DEVELOPMENT PERMIT</u>	<u>The following administrative and quasi-judicial permits and approvals are defined as development permits pursuant to State law: alternate design, certificate of appropriateness, special use, variance, building permit, final plat, floodplain development permit, group development, land disturbance permit, preliminary plan, public tree certificate, sign permit, site plan, and zoning compliance permit.</u>
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SECTION 5.

That Table 2.3.6., *Public Notification Timing Requirements*, regarding mailed notice requirements for Certificates of Appropriateness is hereby amended as follows:

TABLE 2.3.6: PUBLIC NOTIFICATION TIMING REQUIREMENTS				
APPLICATION TYPE	DECISION-MAKING BODY REVIEW	TYPES OF REQUIRED PUBLIC NOTICE		
		PUBLISHED NOTICE	MAILED NOTICE	POSTED NOTICE
Certificate of Appropriateness	HPC	X [1]	X [2] [4]	X [3]
[1] Published notice provided once, at least 10 days before the hearing.				
[2] Mailed notice provided to affected owners and landowners within 100 feet of the subject lot or site between 10 and 25 days before the hearing.				
[3] Posted notice provided between 10 and 25 days before the hearing.				
[4] Mailed notice provided to all landowners in the subject LHO district between 10 and 25 days before the hearing.				

SECTION 6.

(Regarding changes to Conditions of Approval as required by state legislation.)

PART A.

That Section 2.3.10., *Conditions of Approval*, is hereby amended as follows:

D. No condition shall be made part of an approval that:

1. through 3. *(unchanged)*

4. Excludes residents based upon race, religion or income; ~~or~~
- 5. Contains a requirement that the City is not legally authorized to impose; or**
- ~~5.~~ **6.** Obligates the City to perform in any manner relative to an approval action regarding a development application.

PART B.

That Section 2.4.6.D., *Conditions of Approval*, is hereby amended as follows:

1. Only conditions ~~mutually~~ agreed to **in writing** by the landowner(s) of the land to be conditionally zoned and **approved by** the City Council may be ~~approved as part of~~ **incorporated into** a conditional zoning district.
2. *(unchanged)*
- 3. No conditions may be included within a conditional zoning district that are prohibited by State law.**

PART C.

That Section 3.6.4., *Applicable Standards*, regarding Conditional Zoning Districts, is hereby amended as follows:

Development in a conditional zoning district shall be subject to all the use and development standards and requirements that apply to development in the parallel general zoning district, plus any conditions imposed **and agreed to** as part of the conditional zoning approval (including a conditional zoning plan, if provided), which may not be less restrictive than the regulations for the parallel general zoning district.

SECTION 7.

(Regarding consistency in the wording of "all applicable City adopted policy guidance".)

PART A.

That Section 2.4.6.B., *Conditional Zoning Procedure*, is hereby amended as follows:

6. **P&Z or HPC Review and Recommendation**
 - (a) and (b) *(unchanged)*
 - (c) The P&Z, following a public hearing, shall make a recommendation on the application in accordance with Section 2.4.6 C, Conditional Zoning Review Standards, and shall comment on the application's consistency with **all** applicable City adopted policy guidance.
 - (d) *(unchanged)*

PART B.

That Section 2.4.9.B., *Planned Development Procedure*, is hereby amended as follows:

6. P&Z or HPC Review and Recommendation

(a) and (b) *(unchanged)*

(c) The P&Z, following a public hearing, shall make a recommendation on the application in accordance with Section 2.4.9 C, Planned Development Review Standards, and shall comment on the application's consistency with **all** applicable City adopted policy guidance.

(d) *(unchanged)*

PART C.

That Section 2.4.15.B., *Text Amendment Procedure*, is hereby amended as follows:

5. P&Z Review and Recommendation

(a) and (b) *(unchanged)*

(c) The P&Z shall comment on whether or not the text amendment is consistent with **all applicable City** ~~the City's~~ adopted policy guidance.

6. City Council Review and Decision

(a) through (c) *(unchanged)*

(d) In making its decision, the City Council shall adopt a written statement of consistency and reasonableness that:

(1) Describes whether the decision is consistent with **all applicable City** ~~the City's~~ adopted policy guidance;
and

PART D.

That Section 2.4.20.B., *Zoning Map Amendment Procedure*, is hereby amended as follows:

6. P&Z or HPC Review and Recommendation

(a) and (b) *(unchanged)*

(c) The P&Z, following a public hearing, shall make a recommendation on the application in accordance with Section

2.4.20 C, Zoning Map Amendment Review Standards, and shall comment on the application's consistency with **all applicable City the City's** adopted policy guidance.

7. **City Council Review and Decision**

- (a) through (c) *(unchanged)*
- (d) In making its decision, the City Council shall adopt a written statement of consistency and reasonableness that:
 - (1) Describes whether the decision is consistent with **all applicable City the City's** adopted policy guidance;
and
 - (2) *(unchanged)*

SECTION 8.

(Regarding corrections for special use applications.)

PART A:

That Section 2.4.12.B.6., *City Council Review and Decision*, is hereby amended as follows:

6. **City Council Review and Decision**

- (a) *(unchanged)*
- (b) The City Council, after the conclusion of a quasi-judicial public hearing, shall decide the application in accordance with Section 2.4.12 C, Special Use Review Standards. The decision shall be the one of the following:
 - (1) *(unchanged)*
 - (2) Approval of a revised special use; **or**
 - (3) Denial of the special use; ~~**or**~~
 - ~~**(4) Remand of the special use application to the P&Z for further consideration.**~~
- (c) *(unchanged)*

PART B:

That Section 2.3.3., *Citizen Information Meeting*, is hereby amended as follows:

D. Procedure If a citizen information meeting is required, it shall comply with the following procedures:

- 1. **Timing** The applicant shall hold the citizen information meeting at least

23 days prior to consideration of the application by the P&Z, **or in the case of a special use, 22 days prior to consideration of the application by City Council.**

2. through 5. (*unchanged*)

6. **Written Summary** At least 22 days before the initial consideration of the application by the P&Z, **or in the case of a special use, 21 days prior to consideration of the application by City Council.** the applicant shall submit a written summary of the citizen information meeting or telephone call to the Planning and Development Department that includes:

(a) through (g) (*unchanged*)

SECTION 9.

That Section 2.4.16.C., *Variance Procedure*, regarding BOA voting requirements for a variance is hereby amended as follows:

6. BOA Review and Decision

(a) through (d) (*unchanged*)

(e) The concurring vote of four-fifths of the BOA shall be necessary to grant a variance.

~~(e)~~ **(f) Each decision shall be made in writing and reflect the BOA's determination of contested facts and their application to the standards in this Ordinance.**

~~(f)~~ **(g) The written decision shall be signed by the Chair or other duly authorized member of the BOA.**

~~(g)~~ **(h) The decision of the BOA shall be effective upon the filing of the written decision.**

SECTION 10.

That Section 2.5.4.D., *Effect*, related to a Determination, is hereby amended as follows:

1. General

(a) The decision and explanation shall be made in writing, shall state the determination is final and subject to appeal as provided in Section 2.4.3 Appeals, and shall be delivered by personal service, electronic mail, or by first class mail to the applicant.

~~(a)~~ **(b) A written determination shall be binding on subsequent decisions by the Planning and Development Director or other administrative officials in applying the same provision of this Ordinance or the Official Zoning Map in the same circumstance, unless the determination is**

modified in accordance with this section, or the text of this Ordinance is amended.

- ~~(b)~~(c) The Planning and Development Director shall maintain a record of written determinations in the *Development Guide* that shall be available in the Planning and Development Department for public inspection, on reasonable request, during normal business hours.

SECTION 11.

(Regarding the revision of financial guarantees)

PART A.

That Section 2.6., *Financial Guarantees*, is hereby established as followed:

2.6. - Financial Guarantees

2.6.1. - Overview

- A. General** In-lieu of the completion, installation, and dedication of all required public infrastructure improvements, stormwater control measures, and site improvements prior to the recordation of a final plat, issuance of a permit, or issuance of a certificate of occupancy, an applicant may submit:
- 1. An installation agreement that includes:**
 - (a) A bona fide itemized estimate of the cost, including labor, materials and project management for all required improvements, signed and dated by the preparer; and**
 - (b) The date when the improvements are to be completed.**
 - 2. A financial guarantee for the installation of said required improvements in accordance with this section.**
- B. Timing** The installation agreement and financial guarantee shall not be accepted until after the plan for the development and required improvements have been approved in accordance with this Ordinance.
- C. Effect** Once the installation agreement and the required financial guarantee is accepted by the City, the final plat, permit or certificate of occupancy, as appropriate, may be approved if the proposed development complies with all other requirements of this Ordinance.
- D. Land Disturbance Permit** In accordance with Section 6.3.3, Soil Erosion and Sedimentation Control Plan, a financial guarantee may be required for the issuance of a land disturbance permit.

2.6.2. – Guaranteed Improvements

To ensure the proper completion as required by this Ordinance, the following improvements and site features may utilize financial guarantees upon authorization of the responsible Director.

- A. Public Infrastructure The Engineering Services Director shall review and authorize financial guarantees for required public infrastructure, including but not limited to water, sewer, storm sewer and streets.
- B. Soil Erosion and Sedimentation Control The Engineering Services Director shall review and authorize financial guarantees for land disturbance permits.
- C. Stormwater Control The Public Services Director shall review and authorize financial guarantees for stormwater control measures.
- D. Site Improvements The Planning and Development Director shall review and authorize financial guarantees for required site improvements, including parking, screening, landscaping, protected trees, and fencing.

2.6.3. – Types of Guarantee

The applicant shall determine the type of the financial guarantee, which shall be provided in one or more of the following types:

- A. Surety Bond A surety bond issued by a company authorized to issue surety bonds in the state of North Carolina made payable to the City in an amount as required.
- B. Irrevocable Letter of Credit An irrevocable letter of credit issued by a financial institution licensed to conduct business in the state of North Carolina addressed to the City in an amount as required.
- C. Cash Cash deposited with the City or in escrow with a financial institution licensed to conduct business in the state of North Carolina in an amount as required.
- D. Equivalent Security Another type of financial guarantee that provides equivalent security to a surety bond or letter of credit, as determined by the City Attorney, deposited in escrow with a financial institution licensed to conduct business in the state of North Carolina equal to an amount as required.

2.6.4. – Escrow

- A. Cash or other equivalent security If cash or other guarantee of equivalent security is deposited in escrow with a financial

institution, an agreement between the financial institution and the applicant shall be filed with the City guaranteeing the following:

1. That the escrow account shall be held in trust until released by the City and may not be used or pledged by the applicant for any other matter during the term of the escrow; and
2. That in case of a failure on the part of the applicant to complete or repair the improvements, the financial institution shall, upon notification by the City, immediately pay the funds deemed necessary by the City to complete or repair the improvements up to the full balance of the escrow account, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.

B. Notification The financial institution holding the cash or other instrument shall indicate to the City its notification requirements for release or payment of funds.

2.6.5. – Performance Guarantee

A. General A performance guarantee shall be required to record a final plat, issue a permit or issue a certificate of occupancy as determined by the appropriate Director, in the following circumstances:

1. To ensure the completion of public infrastructure improvements that are required as part of an approved preliminary plan, site plan, or group development.
2. To issue a land disturbance permit and ensure the protection of a site during land disturbance and prevent off-site sedimentation.
3. To ensure the completion of stormwater control measures that are required as part of an approved preliminary plan, site plan, or group development.
4. To ensure the completion of site improvements that are required as part of an approved preliminary plan, site plan, or group development.

B. Amount

1. General Performance guarantees for public infrastructure, stormwater control measures, and site improvements shall be in an amount equal to 125 percent of the total estimated cost of completing the installation of the required improvements, including the costs of materials, labor, and project management.
2. Estimates Cost estimates shall be itemized by improvement type and certified by the applicant's licensed professional engineer, or authorized contractor upon approval of the appropriate Director. Where applicable, the cost estimates shall be based on unit pricing.

- 3. Soil Erosion and Sedimentation Control** A performance guarantee required for a land disturbance permit shall be in the amount established by City Council and included in the *Development Guide*.

C. Duration

1. Public Infrastructure

- (a) The performance guarantee shall be for one year, unless the applicant determines the scope of work for the required public improvements necessitates a longer duration.
 - (b) If the public improvements are not completed and approved by the Engineering Services Director prior to the expiration of the initial period, the performance guarantee shall be extended for one additional period of time at the request of the applicant; however, the extension period shall only be for the duration necessary to complete the required improvements.
 - (c) If the performance guarantee expires without an extension, the applicant shall be required to obtain a new performance guarantee for one additional period of time or be considered in default.
- 2. Soil Erosion and Sedimentation Control** The performance guarantee shall remain in effect until the work is completed in accordance with the land disturbance permit and approved by the Engineering Services Director.
- 3. Stormwater Control** The performance guarantee shall remain in effect until the stormwater control measure is complete in accordance with approved plans and approved by the Public Services Director.
- 4. Site Improvements** The performance guarantee shall be up to a maximum period of one year, as approved by the Planning & Development Director.

D. Terms and Conditions

- 1. The applicant shall determine whether to post one or multiple types of guarantees for all matters related to the same development; however, separate guarantees shall be required for soil erosion and sedimentation control, and for stormwater control measures.
- 2. The performance guarantee shall distinguish between the portion of the guarantee provided for public infrastructure improvements and the portion provided for private improvements, as applicable.
- 3. The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of the required improvements within the duration of the guarantee.

E. Release or Reduction

1. Request The appropriate Director shall release or reduce a performance guarantee only after:

- (a) The applicant has submitted to the appropriate Director a written request for a release or reduction of the performance guarantee that includes certification by the applicant's engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements were completed in accordance with approved plans and specifications, or for a land disturbance permit a written statement from the applicant that the site is stabilized as required;**
- (b) The applicant has submitted to the appropriate Director as-built of the improvements, if required by this Ordinance;**
- (c) City staff has performed a site inspection and certified in writing that installation of the guaranteed improvements is complete in accordance with approved plans and specifications;**
- (d) For stormwater control measures, the operation and maintenance agreement has been approved, executed and recorded, and a maintenance guarantee is in effect as required by this Ordinance; and**
- (e) No release or reduction in performance guarantee amounts will be considered until more than 25 percent of the work is in place and approved by the appropriate Director.**

2. Acceptance The appropriate Director shall provide written notice of the City's final approval or acceptance of the improvements subject to performance guarantee.

F. Default and Forfeiture

1. Notice of Failure to Install or Complete Improvements If the applicant fails to complete installation of the guaranteed improvements within the duration of the performance guarantee (including an additional period of time, if allowed), the appropriate Director shall give the applicant written notice by certified mail of the scope and degree of the deficiency, and state in the notice that 30 days after receipt the City may draw on the performance guarantee.

2. Notice of Insolvency If the applicant becomes insolvent, undergoes bankruptcy, or the property subject to the guarantee undergoes foreclosure, the appropriate Director shall give the applicant written notice by certified mail of the scope and degree the guaranteed improvements are incomplete, and state in the

notice that 30 days after receipt the City may draw on the performance guarantee.

3. City Completion of Improvements After the 30-day notice period expires, the City may draw on the performance guarantee and use the funds to perform work necessary to complete installation of the guaranteed improvements. After completing such work, the City shall provide a complete accounting of the expenditures to the applicant and return any unused deposited cash funds or other equitable security, without interest.

2.6.6. – Stormwater Maintenance Guarantee

A. General

1. Defects To ensure against defects in workmanship or materials of stormwater control measures during the maintenance period, a maintenance guarantee is required for all stormwater control measures in a development.
2. Timing A maintenance guarantee must be established in conjunction with the stormwater performance guarantee or prior to the issuance of a certificate of occupancy, as determined by the Public Services Director.

B. Amount

1. General Maintenance guarantees shall be in an amount equal to 25 percent of the total estimated cost of installing the stormwater control measure, including the cost of materials, labor, and project management.
2. Estimates Cost estimates shall be itemized by improvement type and certified by the applicant's licensed professional engineer. Where applicable, the cost estimates shall be based on unit pricing.

- C. Duration The maintenance guarantee shall remain in effect until the stormwater control measure passes its first annual inspection by City staff.

D. Terms and Conditions

1. The maintenance guarantee is conditioned on the performance of all work necessary to cure defects in materials and workmanship and to properly maintain the required stormwater control measures through the duration of the maintenance period.
2. Only one type of guarantee shall be posted for a stormwater control measure.
3. When a stormwater performance guarantee is required, the financial guarantee shall be apportioned to include the stormwater maintenance guarantee; however, the portion

assigned for the maintenance guarantee shall not be released except in accordance with this subsection.

E. Release The Public Services Director shall release a maintenance guarantee after the first annual inspection only after determining and certifying in writing that the guaranteed stormwater control measure is functioning properly and is in compliance with approved plans and specifications.

F. Default and Forfeiture

1. Notice of Failure to Maintain If the applicant fails to correct any deficiencies discovered during the annual inspection, the Public Services Director shall give the applicant written notice by certified mail of the scope and degree of the deficiency, and state in the notice that 30 days after receipt the City may draw on the maintenance guarantee.

2. City Correction of Defects After the 30-day notice period expires, the City may draw on the maintenance guarantee and use the funds to perform work necessary to correct any deficiencies to ensure the stormwater control measure is in compliance with approved plans and specifications. After completing such work, the City shall provide a complete accounting of the expenditures to the applicant and return any unused deposited cash funds or other equitable security, without interest.

2.6.7. – Improper Release of Guarantee

If the City releases a financial guarantee through error, the error shall not release the developer from responsibility for the improvements in accordance with this Ordinance.

PART B.

That Section 7.2., *Financial Guarantees*, is hereby deleted in its entirety and is reserved for future codification as follows:

7.2. - Financial Guarantees Reserved

7.2.1. Financial Guarantees in lieu of Completion

~~A. General In lieu of the completion, installation, and dedication of all required public improvements (streets, potable water, sanitary sewer, stormwater, electricity, and street lights) and private site improvements (off-street parking, landscaping, screening, protected trees, fencing, stormwater management and sedimentation control)~~

- ~~prior to approval of a final plat or issuance of a certificate of occupancy (as appropriate), a developer may submit:~~
- ~~1. A bona fide itemized estimate of the costs, including labor, for all required improvements, signed and dated by the preparer, for which the developer is responsible, and the date when the improvements are to be completed; and~~
 - ~~2. An acceptable financial guarantee for the installation of said required improvements in accordance with Section 7.2.2., Performance Guarantee.~~
- ~~B. Timing—The itemized estimate of the costs and financial guarantee shall not be accepted until after the construction plans and profiles for the development are approved, in accordance with Section 7.1.3, Street and Utility Construction, and a watershed development plan, if applicable, is approved in accordance with Section 6.2.11 E, Watershed Development Plan.~~
- ~~C. Effect—Once the itemized estimate of the costs and the required financial guarantee is accepted by the City, the final plat or certificate of occupancy (as appropriate) may be approved if the proposed development complies with all other requirements of this Ordinance.~~

~~7.2.2. — Performance Guarantee~~

- ~~A. General—A performance guarantee, in accordance with the standards in this section, shall be required in the following circumstances:~~
- ~~1. To ensure the completion of public infrastructure improvements (streets, potable water, sanitary sewer, stormwater, electricity, and street lights) that are required as part of an approved preliminary plat, site plan, or group development plan, but are not approved as complete before approval of a final plat or certificate of occupancy, as appropriate;~~
 - ~~2. To ensure completion of private site improvements (parking, screening, landscaping, protected trees, fencing, stormwater management, and sedimentation control) that are required as part of a preliminary plat, site plan, or group development plan, but are not installed before approval of a certificate of occupancy.~~
- ~~B. Term of Performance Guarantees—The term of the performance guarantee shall reflect any time limit for completing installation of required improvements that is included in the preliminary or final plat, site plan, or group development plan, as appropriate, but in any case, the term shall not exceed 18 months. The City Manager,~~

- ~~for good cause shown, may grant up to 1 extension of time, for a time period not exceeding 1 year.~~
- ~~6. Form of Performance Guarantee~~
- ~~1. The applicant shall propose the form(s) of the performance guarantee, which shall be provided in one or more of the following forms:~~
- ~~(a) Cash, Irrevocable Letter of Credit, or Equivalent Security~~
- ~~(1) The developer shall deposit cash, or other instrument readily convertible into cash at face value, such as an irrevocable letter of credit, either with the City or in escrow with a financial institution.~~
- ~~(2) If cash or other instrument is deposited in escrow with a financial institution, an agreement between the financial institution and the developer shall be filed with the City guaranteeing the following:~~
- ~~(i) That the escrow account shall be held in trust until released by the City and may not be used or pledged by the developer for any other matter during the term of the escrow; and~~
- ~~(ii) That in case of a failure on the part of the developer to complete or repair the improvements, the financial institution shall, upon notification by the City, immediately pay the funds deemed necessary by the City to complete or repair the improvements up to the full balance of the escrow account, or deliver to the City any other instruments fully endorsed or otherwise made payable in full to the City.~~
- ~~(3) The financial institution holding the cash or other instrument shall indicate to the City its notification requirements for release or payment of funds.~~
- ~~(b) Surety Bond~~
- ~~(1) The developer shall obtain a surety bond from a surety bonding company authorized to issue surety bonds in North Carolina.~~
- ~~(2) The bond shall be payable to the City and shall be in an amount as required by this subsection.~~
- ~~2. The performance guarantee shall distinguish between the portion of the guarantee provided for public improvements as well as the portion of the guarantee provided for private improvements, as appropriate.~~
- ~~3. The performance guarantee shall be conditioned on the performance of all work necessary to complete the installation of~~

~~the required improvements within the term of the financial guarantee.~~

~~D. Apportionment of Performance Guarantee—The performance guarantee shall:~~

- ~~1. Distinguish between the portion of the guarantee provided for public improvements versus the amount provided for private improvements, as appropriate.~~
- ~~2. Be conditioned on the performance of all work necessary to complete the installation of the required improvements within the term of the performance guarantee.~~

~~E. Amount of Performance Guarantee~~

- ~~1. General—Performance guarantees shall be in an amount equal to 125 percent of the estimated cost of completing the installation of the required improvements, including the costs of materials, labor, and project management.~~

~~2. Estimated Costs~~

- ~~(a) Estimated costs of completing installation of required public improvements shall be itemized by improvement type and certified by the developer's licensed professional engineer, and is subject to approval by the Engineering Services Director.~~
- ~~(b) Estimated costs for completing costs of private site improvements shall be itemized and certified by the developer's contractor, and is subject to approval by the Engineering Services Director or the Planning and Development Director, as appropriate.~~

~~F. Release or Reduction of Performance Guarantees~~

- ~~1. Requirements for Release or Reduction—The Planning and Development Director or Engineering Services Director, as appropriate, shall release or reduce a performance guarantee only after:~~

- ~~(a) The owner or developer has submitted to the City a written request for a release or reduction of the performance guarantee that includes certification by the owner's or developer's engineer or contractor, whichever is appropriate, that installation of the guaranteed improvements has been completed in accordance with approved plans and specifications, and as-builts (if applicable);~~
- ~~(b) City staff has performed an inspection of the improvements and certified in writing that installation of the guaranteed improvements is completed in accordance with approved plans and specifications; and~~

~~(c) No release or reduction in performance guarantee amounts will be considered until more than 25 percent of the work is in place and approved.~~

~~2. Acceptance Shall be Documented The Planning and Development Director or Engineering Services Director, as appropriate, shall provide written notice of the City's final acceptance of the improvements subject to performance guarantees.~~

~~G. Default and Forfeiture of Performance Guarantees~~

~~1. Notice of Failure to Install or Complete Improvements If the owner or developer fails to complete installation of the guaranteed improvements within the term of the financial guarantee (as may be extended), the Planning and Development Director or Engineering Services Director, as appropriate, shall give the owner or developer 30 days written notice of the scope and degree of the default, by certified mail.~~

~~2. City Completion of Improvements After the 30-day notice period expires, the City may draw on the guarantee and use the funds to perform work necessary to complete installation of the guaranteed improvements. After completing such work, the City shall provide a complete accounting of the expenditures to the owner or developer. In the event of a default triggering the use of the financial guarantee, the City shall return any of the unused deposited cash funds or other security.~~

~~7.2.3. Maintenance Warranty~~

~~A. General A maintenance warranty in accordance with the standards in this section is required to ensure against defects in workmanship or materials in providing stormwater management facilities required as part of an approved preliminary plat, site plan, or group development plan, as appropriate.~~

~~B. Term of Maintenance Warranty The term of a maintenance warranty shall be 1 year from the date of the engineer's certification of completion.~~

~~C. Form of Maintenance Warranty The applicant shall propose the form(s) of the maintenance warranty, which shall be provided in one or more of the forms in Section 7.2.2 C, Form of Performance Guarantee.~~

~~D. Function of Maintenance Warranty The maintenance warranty shall:~~

~~1. Be conditioned on the performance of all work necessary to cure defects in materials and workmanship and maintain the required~~

~~stormwater management facilities during the term of the maintenance warranty.~~

- ~~2. Provide that in case of the owner's or developer's failure to maintain and repair or replace the stormwater management facilities, the City shall be able to obtain the funds necessary to make necessary repairs or replacements in accordance with the warranty provisions for timeframe and forfeiture.~~

~~E. Amount of Maintenance Warranty—Maintenance warranty shall be in an amount up to 25 percent of the full actual cost, including the costs of materials and labor, of installing the required stormwater management facilities.~~

~~F. Release of Maintenance Warranty—The Public Services Director shall release a maintenance warranty at the end of the term of the guarantee only after an inspection is conducted of the stormwater management facilities, and it is certified in writing that the guaranteed stormwater management facilities have been maintained in accordance with approved plans and specifications.~~

~~G. Default and Forfeiture of Maintenance Warranty~~

- ~~1. Notice of Failure to Maintain Improvements—If the owner or developer fails to maintain the stormwater management facilities improvements during the term of the maintenance warranty, the Public Services Director shall give the owner or developer 30 days written notice of the scope and degree of the default by certified mail.~~

- ~~2. City Correction of Defects—After the 30-day notice period expires, the City shall present a plan to cure any defects within 30 days, and following such presentation, draw on the security and use the funds to perform work necessary to ensure the guaranteed stormwater management facilities comply with approved plans and specifications. After completing the work, the City shall provide a complete accounting of the expenditures to the owner or developer and, as applicable, refund all unused funds, without interest.~~

~~7.2.4. —As-Built Plans Required~~

~~Upon completion of a public infrastructure project, the developer shall certify to the Engineering Services Director that the completed project has been constructed in accordance with the approved plans and shall submit actual "as-built" plans for all public improvements after final construction is completed. Upon completion of a private stormwater management facility, the developer shall certify to the Public Services Director that the completed project is in accordance with the approved~~

~~plans and shall submit actual "as built" plans after final construction is completed. The plans shall show the final design specifications for all improvements and the field location, size, depth, and related measures, controls and devices, as installed. The designer shall certify, under seal, that the as-built design, measures, controls, and devices are in compliance with the approved plans and with the requirements of this Ordinance. A final inspection and approval by the respective Director shall occur before the release of the financial guarantee.~~

~~7.2.5. Improper Release of Financial Guarantees~~

~~If the City releases a financial guarantee through error, the error shall not release the developer from responsibility for the completion of all improvements required by this section and this Ordinance.~~

PART C.

That the references to Section 7.2., *Financial Guarantees*, are hereby changed to reference Section 2.6., *Financial Guarantees*, in the following sections of the Development Ordinance:

- Section 2.5.3. – *Building Permit*, subsection B.3.(e)
- Section 2.5.7. – *Final Plat*, subsections A.3. and C.3.
- Section 2.5.9. – *Group Development*, subsection E.4.
- Section 2.5.11. – *Preliminary Plan*, subsection D.5.
- Section 2.5.14. – *Site Plan*, subsection E.4.
- Section 5.5.9. – *Time for Installation of Required Landscaping*, subsection B.
- Section 6.2.11. – *General Standards & Restrictions*, subsection D.2.(a)

PART D.

That Section 6.3.3.N., *Financial Guarantee*, is hereby amended as follows:

- N. Financial Guarantee The applicant for a land disturbance permit to grade more than 1 acre may be required to file with the Engineering Services Director a financial guarantee to cover all the costs of protection of the site, which shall be established in accordance with Section **2.6., Financial Guarantees**~~7.2.2 C, Form of Performance Guarantee, and Section 7.2.2 E, Amount of Performance Guarantee~~. The guarantee shall remain in force until the work is completed in accordance with the land disturbance permit and the work is approved by the Engineering Services Director. Upon violation of this Ordinance, the Engineering Services Director may draw on the financial guarantee in accordance with Section **2.6., Financial Guarantees**~~7.2.2 C, Default and Forfeiture of Performance~~

Guarantees, to establish protective cover on the site, to control the velocity of runoff, and/or prevent off-site sedimentation.

PART E.

That Section 6.2.11.F., *Stormwater As-Built Plans Required*, is hereby established as follows:

F. Stormwater As-Built Plans Required Upon completion of a stormwater control measure, the developer shall certify to the Public Services Director that the completed project is in accordance with the approved plans and shall submit actual "as built" plans after final construction is completed. The plans shall show the final design specifications for all improvements and the field location, size, depth, and related measures, controls and devices, as installed. The designer shall certify, under seal, that the as-built design, measures, controls, and devices are in compliance with the approved plans and with the requirements of this Ordinance. A final inspection and approval by the Public Services Director shall occur before the release of the performance guarantee.

PART F.

That Section 7.1.3.H., *As-Built Plans Required*, is hereby established as follows:

H. As-Built Plans Required Upon completion of a public infrastructure project, the developer shall certify to the Engineering Services Director that the completed project has been constructed in accordance with the approved plans and shall submit actual "as built" plans for all public improvements after final construction is completed. A final inspection and approval by the Engineering Services Director shall occur before the release of the performance guarantee, as applicable.

PART G.

That the references to 7.2.4., *As-Built Plans Required*, are hereby changed to reference Section 7.1.3.H., *As-Built Plans Required*, in the following sections of the Development Ordinance:

Section 2.5.9. – *Group Development*, subsection E.5.

Section 2.5.11. – *Preliminary Plan*, subsection D.6.

Section 2.5.14. – *Site Plan*, subsection E.5.

PART H.

That Section 7.1.7., *Performance Guarantee for Required Improvements*, is hereby established as follows:

7.1.7. – Performance Guarantee for Required Improvements

A performance guarantee for the installation of required public infrastructure may be accepted in accordance with Section 2.6, Financial Guarantees.

SECTION 12

(Regarding payment in-lieu of installing required street improvements)

PART A.

That Table 2.2.12., *Public Services Director*, regarding powers and duties is hereby amended as follows:

A. POWERS AND DUTIES

1. THE PUBLIC SERVICES DIRECTOR SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(a) though (c) *(unchanged)*

(d) Determine if required utility improvements warrant approval for payment in lieu of installation.

PART B.

That Table 2.2.13., *Transportation Director*, regarding powers and duties is hereby amended as follows:

A. POWERS AND DUTIES

1. THE TRANSPORTATION DIRECTOR SHALL HAVE THE FOLLOWING POWERS AND DUTIES:

(a) *(unchanged)*

(b) ~~To determine if the installation of a required sidewalks conflicts with other city, state, or federal road projects, and if an in-lieu fee is an appropriate remedy.~~

To determine if required transportation improvements warrant approval for payment in lieu of installation.

(c) *(unchanged)*

PART C.

That Section 2.7., *Payment in-Lieu of Required Improvements*, is hereby established as followed:

2.7. – Payment in-Lieu of Required Improvements

2.7.1. Overview

Where the installation of public infrastructure improvements are required by this Ordinance, the applicant may make a payment of fees in lieu of such required improvements, in accordance with the provisions of this section.

2.7.2. Improvements

- A. Transportation** The Transportation Director may approve payment in lieu of required transportation improvements, including but not limited to streets, sidewalks, and curb and gutter, provided that the Director determines that installation of the improvements:
1. At the time of development would conflict with a city, state, or federal roadway project or other utility project; or
 2. To the boundary of the development is impractical due to topography, streams or other environmental limitations; or
 3. Apart from any immediate minor public benefit, the improvement would be warranted in the future.
- B. Utility** The Public Services Director may approve payment in lieu of required utility improvements, including but not limited to water, sewer, and storm drainage, provided that the Director determines that installation of the improvements:
1. At the time of development would conflict with a city, state, or federal roadway project or other utility project; or
 2. To the boundary of the development is impractical due to topography, streams or other environmental limitations; or
 3. Apart from any immediate minor public benefit, the improvement would be warranted in the future.

2.7.3. Payment Amount

Payment of fees shall be in an amount equal to 100 percent of the actual installation and construction cost of completing the infrastructure improvements, as estimated by a professional engineer licensed by the State of North Carolina and approved by the Engineer Services Director.

2.7.4. Use of Fees

- A. All fees collected by the City pursuant to this section shall be deposited in a fund and used only for the installation of the required infrastructure improvements on the site or in the general vicinity of the site for the infrastructure for which the fee is collected.
- B. Use of submitted funds to construct the required infrastructure improvements shall be coordinated with the appropriate phase of any conflicting roadway or utility project.

PART D.

That Section 5.9.7., *Fee in-Lieu of Required Sidewalk Installation*, is hereby amended as follows:

5.9.7. – Fee Payment in-Lieu of Required ~~Sidewalk~~ Installation

A payment in lieu of the installation of required sidewalks may be accepted in accordance with Section 2.7., *Payment in-Lieu of Required Improvements*.

- ~~A. Conflict Anticipated Where the installation of a sidewalk is required, and the Transportation Director determines that installation at the time of development would conflict with a city, state, or federal roadway project or other utility project, the applicant shall be required to submit a fee in lieu of sidewalks in accordance with the following:~~
 - ~~1. Fees shall be in an amount equal to the entire estimated cost of completing the installation, based on current contract unit prices, as approved by the Engineer Services Director.~~
 - ~~2. All fees collected by the City pursuant to this section shall be deposited in the City's sidewalk revolving fund and used only for construction of sidewalks on the site, or in the street right-of-way abutting the site, for which the fee is collected.~~
 - ~~3. Use of submitted funds to construct sidewalks shall be coordinated with the appropriate phase of the conflicting roadway project.~~
- ~~B. Conflict Eliminated In the event that the conflict necessitating the fee in lieu is eliminated, one of the following shall occur:~~
 - ~~1. If the scheduled project is configured with a different alignment, the in-lieu fee shall be refunded to the applicant.~~

~~2. If the scheduled project is a widening of an existing roadway, in-lieu fees for sidewalks shall be used by the City to construct the sidewalk after the widening.~~

PART E.

That Section 7.1.8., *Payment in-Lieu of Required Improvements*, is hereby established as follows:

7.1.8. – Payment in Lieu of Required Improvements

A payment in lieu of the installation of required public infrastructure may be accepted in accordance with Section 2.7., *Payment in-Lieu of Required Improvements*.

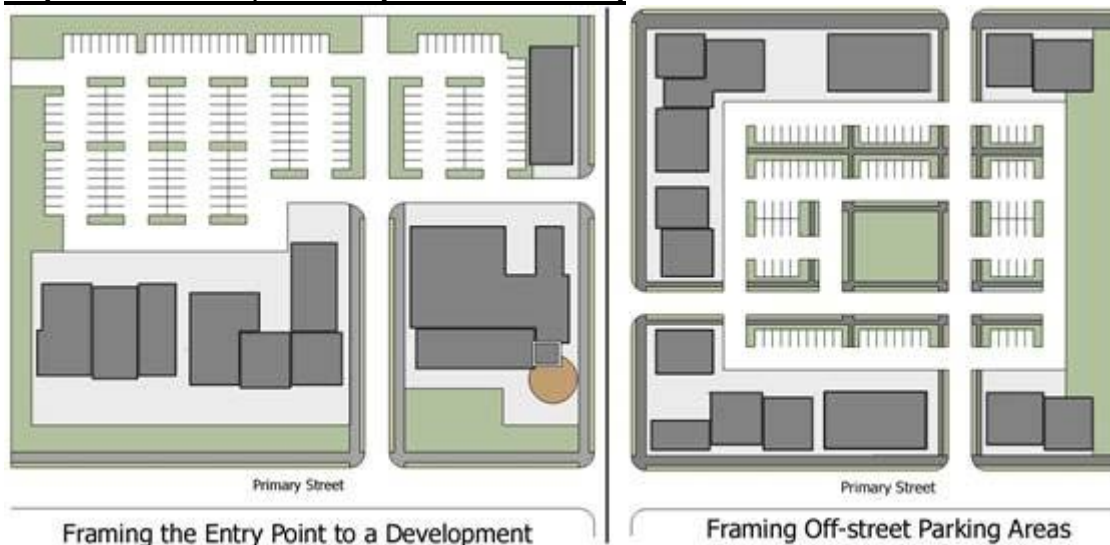
SECTION 13.

(Regarding the addition of figures to illustrate development framing.)

PART A.

That Section 3.5.6.G., *District Standards*, regarding the Main Street district is hereby amended to insert Figure 3.5.6.G1, Development Framing, after Section 3.5.6.G.3 (a) (3) and to renumber Figure 3.5.6.G1, Parking Lot Location, as Figure 3.5.6.G2.

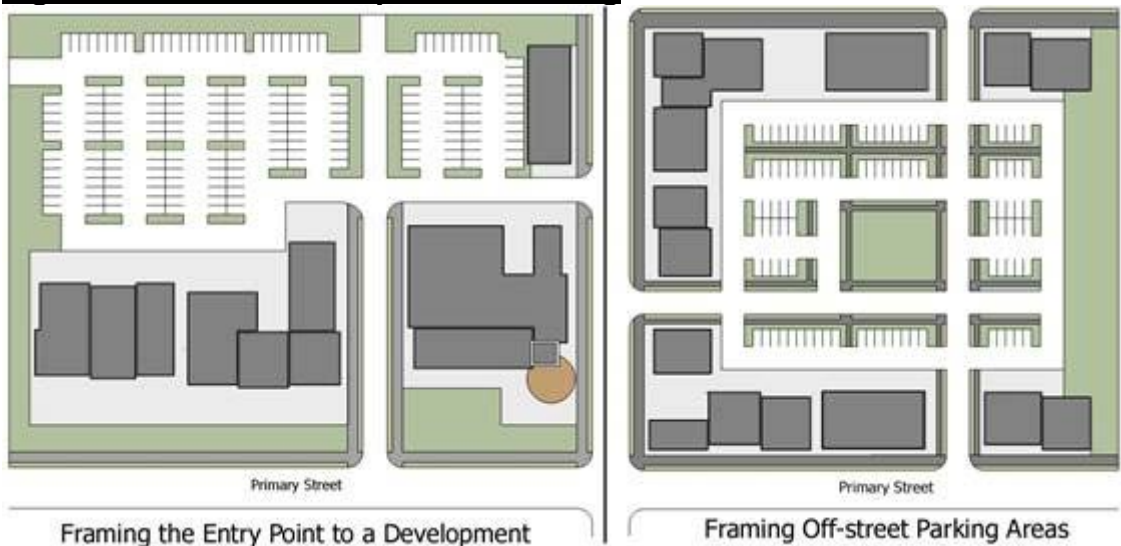
Figure 3.5.6.G1, Development Framing



PART B.

That Section 3.5.7.C., *General Standards for All MX Districts*, regarding the Mixed-Use district and the building orientation of development sites, is hereby amended to insert Figure 3.5.7.C1, Development Framing, after Section 3.5.7.C.2 (a) (3) and to renumber Figure 3.5.7.C1, Parking Lot Configuration, as Figure 3.5.7.C2.

Figure 3.5.7.C1, Development Framing



SECTION 14.

That Table 3.8.7.F.5., *Eastchester GCO Landscaping Standards*, regarding the landscaping requirement for the minimum number of canopy trees is hereby amended as follows:

TABLE 3.8.7.F.5: EASTCHESTER GCO LANDSCAPING STANDARDS			
REQUIREMENT	NORTH MAIN ST. TO JOHNSON ST.	JOHNSON ST. NORTH TO PENNY RD.	PENNY RD NORTH TO GALLIMORE DAIRY RD.
Minimum number of canopy trees required per 25 <u>100</u> linear feet of streetyard	1 <u>4</u>		

SECTION 15.

PART A.

That Table 4.2.6., *Commercial Use Classification*, within use category *G. Recreation and Leisure* and within use type 2. (a) *Amusement and entertainment*, is hereby amended as follows (*remainder of table remains unchanged*):

TABLE 4.2.6: COMMERCIAL USE CLASSIFICATION		
G. RECREATION AND LEISURE	1. CHARACTERISTICS:	
	The Recreation and Leisure Use Category is characterized by use types that provide recreational, amusement, and entertainment opportunities that are commercial in nature.	
	2. USE TYPES:	
	(a) Amusement and entertainment	A commercial use that is typically indoors and that provides recreational, amusement, and entertainment opportunities. Examples include billiards, bingo, bowling, fortune tellers, sweepstakes, skating rinks, movie theaters, coin-operated games, and shooting ranges.

PART B.
That Table 4.2.6., *Commercial Use Classification*, within use category *H. Retail Sales* and within use type 2 (e), *Retail sales establishment*, is hereby amended as follows:

TABLE 4.2.6: COMMERCIAL USE CLASSIFICATION		
H. RETAIL SALES	1. CHARACTERISTICS:	
	The Retail Sales Use Category includes use types involved in the sale, lease, or rent of new or used products primarily intended for the general public. Accessory uses may include offices, storage of goods, limited assembly, processing, or repackaging of goods for on-site sale, concessions, ATM machines, outdoor display/sales areas, and parking. Use types within this use category are categorized based on their intensity, scale, and function.	
	2. USE TYPES:	
	(e) Retail sales establishment	An establishment that sells goods directly to the consumer, where such goods are available for immediate purchase and removal by the purchaser. Examples include stores selling, leasing, or renting consumer, home, and business goods, whether new or used, including ABC stores , art and art supply stores, audio/video stores, bicycle sales, book stores, clothing stores, convenience stores, department stores, dry good sales, electronic equipment stores, fabric shops, furniture stores, florist shops, garden supply centers, gift shops, grocery stores, hardware stores, stores that sell household products, jewelry stores, office supply stores, pet and pet supply stores, and pharmacies. Accessory uses may include storage of products for sale, offices, concessions, seating areas, areas for testing of products prior to purchase, and provision of product-related service or repair.

PART C.
That Section 4.4.5.B., *Caretaker Dwelling*, regarding the uses permitting a caretaker dwelling is hereby amended as follows:

- B. **Caretaker Dwelling** One caretaker dwelling unit is permitted as accessory to an agricultural, commercial, institutional or industrial use either within the principal building or in an accessory building on the lot.

SECTION 16.

(Regarding correcting City Code references pertaining to visibility at intersections.)

PART A.

That Section 4.5.4.C.2., *Subject to this Ordinance*, is hereby amended as follows:

(a) and (b) *(unchanged)*

(c) Mobile food vendors shall not obstruct visibility for motorists at any street intersection in accordance with the standards of ~~Chapter 6 of the City Code, Visibility at Intersections~~ Title 6, Chapter 1, Streets and Sidewalks, of the City's Code of Ordinances.

(d) though (g) *(unchanged)*

PART B.

That Section 5.5.7.C., *Obstructions at Intersections*, is hereby amended as follows:

- C. **Obstructions at Intersections** No trees or shrubs shall be planted or maintained in such a manner as to obstruct visibility for motorists at any street intersection in accordance with the standards of ~~Chapter 6 of the City Code, Visibility at Intersections~~ Title 6, Chapter 1, Streets and Sidewalks, of the City's Code of Ordinances.

PART C.

That Section 5.7.4.E., *Obstructions at Street Intersections*, is hereby amended as follows:

- E. **Obstructions at Street Intersections** No sign shall be erected or maintained in a manner that obstructs visibility for motorists at any street intersection in accordance with the standards ~~in Chapter 6: Visibility at Intersections, of the City Code of Ordinances.~~ of Title 6, Chapter 1, Streets and Sidewalks, of the City's Code of Ordinances.

PART D.

That Section 5.11.4.D., *Obstructions at Intersections*, is hereby amended as follows:

- D. **Obstructions at Intersections** No fence shall be erected or maintained in a manner that obstructs visibility for motorists at any street intersection in accordance with the standards of ~~Chapter 6 of the City Code, Visibility at Intersections.~~ Title 6, Chapter 1, Streets and Sidewalks, of the City's Code of Ordinances.

PART E.

That Section 10.2.4.G., *Setback Encroachments*, is hereby amended as follows:

- G. **Setback Encroachments** Table 10.2.4.G, Allowable Encroachment into Setbacks, sets out the kinds of features that are permitted to encroach within a required setback, provided they do not obstruct visibility for motorists at any street intersection in accordance with the standards ~~in Chapter 6 of the City Code, Visibility at Intersections.~~ of Title 6,

Chapter 1, Streets and Sidewalks, of the City's Code of Ordinances.

SECTION 17.

That Section 5.7.10.A.1., *Maximum Number of Attached Signs*, regarding single tenant buildings is hereby amended as follows:

(a) **Single-tenant Buildings**

- (1) Except in the CB district, up to 1 attached sign in a single-tenant building is permitted per each building wall that faces a street or parking area. ~~In no instance shall the total number of attached signs on a building exceed four.~~

(2) *(unchanged)*

(b) *(unchanged)*

SECTION 18.

(Regarding the removal of references to sub-collector streets)

PART A.

That Section 5.9.3., *Exemptions*, regarding sidewalks is hereby amended as follows:

- A. **Residential Areas** Along existing local ~~and sub-collector~~ residential streets where the TRC determines the following conditions exist:

1. through 3. *(unchanged)*

- B. **Subdivisions and Group Developments** Along an existing local ~~or sub-collector~~ street abutting a proposed development where the TRC determines the following conditions exist:

1. through 3. *(unchanged)*

- C. through E. *(unchanged)*

PART B.

That Section 5.9.4.C, *Collector and Sub-Collector Streets*, regarding sidewalks is hereby amended as follows:

C. ~~Collector and Sub-Collector Streets~~

1. Sidewalks shall be installed on 1 side of collector ~~and sub-collector~~ streets.
2. The TRC may determine, during review of a development application, that a collector ~~or sub-collector~~ street requires sidewalks along both sides of the street if one or more of the following conditions exists:
(a) through (d) *(unchanged)*

PART C.

That Section 10.4., *Definitions*, regarding the definition of *Street, Collector* is hereby amended as follows:

STREET, COLLECTOR	A street whose principal function is to carry traffic between cul-de-sac, local streets and streets of higher classification but which may also provide direct access to abutting lands. Term also includes subcollector streets.
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SECTION 19.

(Regarding removal of minimum dwelling unit size as required by state legislation.)

That Section 5.14.6.E.2., *Dwelling size*, is hereby amended as follows:

2. **Dwelling size**
 - ~~(a)~~ A pocket neighborhood dwelling unit shall have **at least 600 square feet of gross floor area, but** not more than 2,000 square feet of gross floor area.
 - ~~(b)~~ **At least 2 dwellings in a pocket neighborhood shall maintain a total square footage that differs by at least 200 square feet in floor area from the average square footage of all other dwellings. Nothing shall prohibit a configuration where all dwellings are different sizes.**

SECTION 20.

That Section 7.1.6.C.8., *Public Street Design Criteria*, regarding Public Street Design Criteria is hereby amended as follows:

8. **Public Street Design Criteria** Streets shall be designed to conform to the standards set forth in the *High Point Street Design Standards Manual* located in the *Development Guide*, and the following standards:

(a) Maximum Cul-de-sac Length

The maximum distance from an intersecting through street to the end of a cul-de-sac shall be 1,200 feet, except that a distance up to 1,600 feet may be approved in the WCA.

(b) Block Length

A block shall not exceed a perimeter length of 6,000 feet, except that a perimeter length of up to 12,000 feet may be approved in the WCA. For the purposes of this section perimeter length is defined as the shortest perimeter measurement along the abutting street right-of-way lines.

SECTION 21.

(Regarding the correction of inconsistency as it relates to setback encroachments.)

That Table 10.2.4.G., *Allowable Encroachments into Setbacks*, is hereby amended as follows:

TABLE 10.2.4.G: ALLOWABLE ENCROACHMENTS INTO SETBACKS	
FEATURE	ALLOWABLE ENCROACHMENT
Canopies attached to a building in the RC district	May extend into the street setback provided no portion of the canopy is closer than 10 feet to the street right-of-way line
Canopies, awnings, and marquees attached to a building in the GB , CB, MX and MS districts	May extend into the street right-of-way if: <ul style="list-style-type: none"> - No portion is closer than 3 feet to the face of the curb; - No portion is less than 9 feet above grade; and - No portion requiring vertical support from the sidewalk is located above a sidewalk of less than 8 feet in width

TABLE 10.2.4.G: ALLOWABLE ENCROACHMENTS INTO SETBACKS	
FEATURE	ALLOWABLE ENCROACHMENT
Wall signs in the CB, <u>MX</u> and MS districts	May project into the street right-of-way

SECTION 22.

That anywhere within this Ordinance where the term “preliminary plat” occurs, regardless of capitalization, it shall be replaced with the term “preliminary plan”, and reflective of prior capitalization.

SECTION 23.

Should any section or provision of this ordinance be declared invalid, such decision shall not affect the validity of the remaining portions of this ordinance.

SECTION 24.

All ordinances or parts of ordinances in conflict with the provisions of this ordinance are hereby repealed.

SECTION 25.

This ordinance shall become effective upon adoption.

Adopted by the City Council
City of High Point, North Carolina
The ____ day of _____, 2020
Lisa B. Vierling, City Clerk