

**2.3 DEVELOPMENT APPROVALS**

**2.3.1 General Overview**

Table 2.3.1 summarizes the development review procedures for all types of applications for development approvals and other permits outlined in this article.

<b>TABLE 2.3.1: DEVELOPMENT REVIEW PROCEDURES</b>				
<b>D = Final Decision Maker R = Recommendation A = Appellate Body</b>				
<b>DEVELOPMENT PERMIT</b>	<b>Planning Director/ Technical Review Committee</b>	<b>Board of Adjustment</b>	<b>Planning Board</b>	<b>Town Council</b>
Text Amendment (UDO) (Sec. 2.3.2)	R		R	D
Rezoning (Sec. 2.3.2)	R		R	D
Conditional Zoning (CZ) District (Sec. 2.3.3)	R		R	D
Planned Unit Development District (PUD-CZ) District (Sec. 2.3.4)	R		R	D
Traditional Neighborhood District (TND-CZ) (Sec. 2.3.4)	R		R	D
Sustainable Development Conditional Zoning District (SD-CZ) (2.3.16)	R		R	D
Major Employment Center (MEC-CZ) District (Sec. 2.3.4)	R		R	D
Special Use (Sec. 2.3.5)	R			D
Site Plans (Major) (Sec. 2.3.6)	R			D
Site Plans (Minor) (Sec. 2.3.6)	D	A		
Master Subdivision Plan (Sec. 2.3.7.D)	D	A		
Construction Plans (Sec. 2.3.7.E)	D	A		
Master Subdivision Final Plat (Sec. 2.3.7.F)	D	A		
Variance Permit (Sec. 2.3.8)	R	D		
Administrative Adjustment (Sec. 2.3.9)	D	A		
Certificate of Zoning Compliance (Sec. 2.3.10)	D	A		
Temporary use (Sec. 2.3.11)	D	A		
Appeals not identified in Table 2.3.1 (Sec. 2.3.12)	D	A		
Beneficial use Determination (Sec. 2.3.13)		D		
Vested Rights (Sec. 2.3.14)				D
Tree Removal and/or Pond Drainage Plan (Sec. 2.3.15)	D	A		

**2.3.2 Amendments to the Text of this Ordinance or Official Zoning District Map (Rezoning)**

A) **Purpose**

The purpose of this Section is to provide a means for amending the text of this Ordinance or changing the Official Zoning District Map of this Ordinance.

- B) **Authority**  
The Town Council may adopt an ordinance amending the text of this Ordinance or amending the Official Zoning District Map of this Ordinance upon compliance with the provisions of this Section.
- C) **Initiation**
- 1) *Amendment to the text of this Ordinance.* An amendment to the text of this Ordinance may be proposed by the Town Council, the Planning Board, the Board of Adjustment, the Planning Director, or pursuant to Sec. 2.2.1 *Authority to File Applications*.
  - 2) *Amendment to the Official Zoning District Map.* An amendment to the Official Zoning District Map of this Ordinance may be proposed by the Town Council, the Planning Board, the Planning Director, or pursuant to Sec. 2.2.1 *Authority to File Applications*.
- D) **Procedures**  
The procedures for the application contents, fees, submission and review by Town staff, public notification, review by the Planning Board and then approval or disapproval by the Town Council at a public hearing shall comply with the requirements of Sec. 2.2, *Common Review Procedures*, except that a public hearing shall not be required at the Planning Board for Amendments to the Text of this Ordinance.
- E) **Standards**  
The advisability of amending the text of this Ordinance or the Official Zoning District Map is a matter committed to the legislative discretion of the Town Council and is not controlled by any one factor. In determining whether to adopt or disapprove the proposed amendment to the text of this Ordinance or the Official Zoning District Map, the Town Council shall consider the following factors:
- 1) *Compatible with surrounding uses.* Whether and the extent to which the proposed amendment is compatible with existing and proposed uses surrounding the subject land.
  - 2) *Changed conditions.* Whether and the extent to which there are changed conditions that require an amendment.
  - 3) *Effect on natural environment.* Whether and the extent to which the proposed amendment would result in significantly adverse impacts on the natural environment, including but not limited to water, air, noise, storm water management, wildlife, vegetation, wetlands, and the natural functioning of the environment.
  - 4) *Community need.* Whether and the extent to which the proposed amendment addresses a demonstrated community need.
  - 5) *Development patterns.* Whether and the extent to which the proposed amendment would result in a logical and orderly development pattern and not constitute spot zoning.
  - 6) *Public facilities.* Whether and the extent to which the proposed amendment would result in development that is adequately served by public facilities (roads, potable water and sewage, schools, parks, police, and fire and emergency medical facilities).
  - 7) *Consistency with 2045 Land Use Map.* Consistency with the 2045 Land Use Map.

### 2.3.3 Conditional Zoning Districts

- A) **Purpose**  
Conditional Zoning (CZ) Districts are zoning districts in which the development and use of property is subject to the predetermined ordinance standards applicable to the corresponding general use district as well as additional rules, regulations, and conditions, that are imposed as part of the legislative decision creating the district. A Conditional Zoning (CZ) District allows particular uses to be established only in accordance with site specific standards and conditions pertaining to each individual development project. All site-specific standards and conditions must be consistent with the objectives of these regulations, the adopted 2045 Land Use Map and adopted area plans. The review process established in this part provides for the accommodation of such uses by a reclassification of property into a Conditional Zoning (CZ) District, subject to site-specific standards and conditions.
- B) **Uses**  
Conditional Zoning (CZ) Districts are established (Sec 3.2, *Zoning Districts Established*, bearing the designation -CZ) to correspond with each of the general use zoning districts. The uses permitted in a Conditional Zoning (CZ) District are, except as limited by the conditions imposed on the district, of the same character or type as the use or uses permitted in the corresponding general use district.
- C) **Application**  
Property may be rezoned to a Conditional Zoning (CZ) District only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. In addition to the requirements set out in Sec 2.2 *Common Review Procedures*, a petition for Conditional Zoning shall include text that specifies the actual use or uses intended for the property and any rules, regulations, site-specific standards and conditions that, in addition to all ordinance requirements applicable to the corresponding general use district, will govern the development and use of the property. The petition may also include supporting information, such as an exhibit, that illustrates the intent of a proposed condition or standard.
- D) **Required Neighborhood Meeting**  
Neighborhood meetings are required to be held pursuant to Sec. 2.2.7 *Neighborhood Meeting*.
- E) **Approval of Conditional Zoning District**  
Conditional Zoning (CZ) District decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. In considering a petition for a Conditional Zoning (CZ) District, the council shall act in accordance with Sec 2.2.15, *Action by Town Council*. Conditional Zoning (CZ) District decisions shall be made in accordance with the procedures and standards set forth in this section and Sec. 2.3.2, *Amendments to the Text of this Ordinance or Zoning District Map (Rezoning)*s).
- F) **Legislative Considerations**  
The applicant shall propose site-specific standards and conditions that take into account the following considerations, which are considerations that are relevant to the legislative determination of whether or not the proposed conditional zoning district rezoning request is in the public interest. These considerations do not exclude the legislative consideration of any other factor that is relevant to the public interest.

- 1) *Consistency with 2045 Land Use Map.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and consistency with the purposes, goals, objectives, and policies of the 2045 Land Use Map.
- 2) *Compatibility.* The proposed Conditional Zoning (CZ) District use's appropriateness for its proposed location and compatibility with the character of surrounding land uses.
- 3) *Zoning district supplemental standards.* The proposed Conditional Zoning (CZ) District use's compliance with Sec 4.4, *Supplemental Standards*, if applicable.
- 4) *Design minimizes adverse impact.* The design of the proposed Conditional Zoning (CZ) District use's minimization of adverse effects, including visual impact of the proposed use on adjacent lands; and avoidance of significant adverse impacts on surrounding lands regarding trash, traffic, service delivery, parking and loading, odors, noise, glare, and vibration and not create a nuisance.
- 5) *Design minimizes environmental impact.* The proposed Conditional Zoning District use's minimization of environmental impacts and protection from significant deterioration of water and air resources, wildlife habitat, scenic resources, and other natural resources.
- 6) *Impact on public facilities.* The proposed Conditional Zoning (CZ) District use's avoidance of having adverse impacts on public facilities and services, including roads, potable water and wastewater facilities, parks, schools, police, fire and EMS facilities.
- 7) *Health, safety, and welfare.* The proposed Conditional Zoning (CZ) District use's effect on the health, safety, or welfare of the residents of the Town or its ETJ.
- 8) *Detrimental to adjacent properties.* Whether the proposed Conditional Zoning (CZ) District use is substantially detrimental to adjacent properties.
- 9) *Not constitute nuisance or hazard.* Whether the proposed Conditional Zoning (CZ) District use constitutes a nuisance or hazard due to traffic impact or noise, or because of the number of persons who will be using the Conditional Zoning (CZ) District use.
- 10) *Other relevant standards of this Ordinance.* Whether the proposed Conditional Zoning (CZ) District use complies with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

G) **Conditions to Approval of Petition**

Specific conditions applicable to this Conditional Zoning (CZ) District may be proposed by the petitioner or the Town or its agencies, but only those conditions mutually approved by the Town and the petitioner may be incorporated into the zoning regulations. Conditions and site-specific standards imposed in a Conditional Zoning (CZ) District are limited to those that address the conformance of the development and use of the site to Town ordinances, the 2045 Land Use Map or other applicable officially adopted plan, and those that address the impacts reasonably expected to be generated by the development or use of the site. Conditions shall not be in conflict with Town of Apex policies.

H) **Written Statement**

Per NCGS 160A-383, prior to adopting or rejecting any zoning amendment, the

Town Council shall adopt a statement describing whether its action is consistent with all applicable officially adopted plans and explaining why the Council considers the action taken to be reasonable and in the public interest.

**I) *Effect of Approval***

- 1) If a petition for a Conditional Zoning (CZ) District is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved site plan for the district, and any additional approved rules, regulations, site-specific standards and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the zoning maps.
- 2) A Conditional Zoning (CZ) District approval and the conditions imposed upon its approval shall be perpetually binding on the land unless it is subsequently amended pursuant to Sec 2.3.3 (J), *Amendments* or otherwise rezoned.
- 3) Any Conditional Zoning (CZ) District approved under this ordinance shall have vested rights pursuant to NCGS 160A-385.1 as set forth in Sec. 2.3.14, *Vested Rights*, of this ordinance.

**J) *Amendments to Approval***

- 1) Except as provided in subsection (2) below, changes to an approved petition or to the conditions attached to the approved petition shall be treated the same as amendments to these regulations or to the zoning maps and shall be processed in accordance with the procedures in this chapter.
- 2) Minor deviations from the approved plan may be made in accordance with Sec. 2.3.6(K) *Minor Deviations* or 2.3.4(M) *Minor Deviations*, or Sec. 2.3.16(J) *Minor Deviation to a SD Plan* or Sec. 2.3.16(K) *Modification of SD Plan*.

**K) *Transitional Provisions***

- 1) *Pending Applications*. Upon the applicant's request, an application for a conditional use permit/rezoning submitted, but not approved, before June 20, 2006, may proceed for approval under the former UDO Sec. 2.3.3 *Conditional Use* as Sec. 2.3.3 existed on June 20, 2006 before amendments were made to Sec. 2.3.3 on June 20, 2006 ("Former Sec. 2.3.3").
- 2) *Amendments to Conditional Use Permits*. A conditional use permit/rezoning approved on or before June 20, 2006 may be amended, extended or modified in accordance with the procedures and standards established under Former Sec. 2.3.3 provided the amendment request is submitted within five (5) years following the initial permit issuance / rezoning. Any amendment request submitted more than five (5) years following the initial issuance of the conditional use permit/rezoning will be considered a request to rezone in accordance with the Town's Planning ordinances as they exist at the time of the request.
- 3) Former Section 2.3.3 – Status. Former Sec. 2.3.3 is re-enacted and incorporated herein by reference to, and only to, the extent necessary to accomplish the purposes of Subsections (1) and (2) immediately above. Except that Former Section 2.3.3(J) *Amendments* is not re-enacted in whole but is changed to read: A conditional use permit/rezoning may be

amended, extended or modified only in accordance with the procedures and standards established for its original approval.

#### 2.3.4 Planned Development Districts

- A) **General**  
This Section establishes the procedures and standards for review of the Town's Planned Development (PD) Zoning Districts: the Planned Unit Development (PUD-CZ) District; the Traditional Neighborhood District (TND-CZ); and the Major Employment Center (MEC-CZ) District.
- B) **General Applicability**  
Before any development shall be designated as a Planned Development PD District (either Planned Unit Development (PUD-CZ) District, Traditional Neighborhood District (TND-CZ) or Major Employment Center (MEC-CZ) District) on the Official Zoning District Map, it shall receive approval pursuant to the terms of this Section and Sec. 2.3.3 Conditional Zoning Districts.
- C) **Location**  
A Planned Development (PD) District designation may be established on any land located in the Town and its ETJ that complies with all of the applicable standards of this Section.
- D) **Unified Ownership or Control**  
The title to all land that is part of a Planned Development (PD) District designation shall be owned or controlled by one person. A person shall be considered to control all lands in the Planned Development (PD) District either through ownership or by written consent of all owners of said land that they will be subject to the conditions and standards of the adopting ordinance and the Planned Development (PD) Plan. This one person, who shall be identified in the Planned Development (PD) Plan document, will be the sole party from which the Town will accept decisions regarding the Planned Development (PD) Plan.
- E) **Procedures**
- 1) *Overview.* A Planned Development District (for Planned Unit Development (PUD-CZ), Traditional Neighborhood District (TND-CZ) or Major Employment Center (MEC-CZ)) shall constitute an amendment to the Official Zoning District Map. It shall be controlled by a PD Plan that is approved as part of the Planned Development (PD) district designation. The procedure requires review and recommendation of approval, approval with conditions or disapproval by the Planning Board and approval, approval with conditions or disapproval by the Town Council.
  - 2) *General.* The procedures for initiation of the application, the application contents, fees, submission and review by Town staff and/or consulting firms on retainer, public notification, review by the Planning Board and then approval, approval with conditions or disapproval by the Town Council at a public hearing(s) shall comply with the requirements of Sec. 2.2 *Common Review Procedures*, Sec 2.2.7 *Neighborhood Meeting* and Sec. 2.3.4(F) *Standards*.
- F) **Standards**  
In return for greater flexibility in site design requirements, Planned Development (PD) Districts are expected to deliver exceptional quality community designs that preserve critical environmental resources; provide high quality community amenities; incorporate creative design in the layout of buildings, Resource Conservation Area and circulation; ensure compatibility with surrounding land

uses and neighborhood character; provide high quality architecture; and provide greater efficiency in the layout and provision of roads, utilities, and other infrastructure. The Planned Development (PD) Districts shall not be used as a means of circumventing the Town's adopted land development regulations for routine developments.

1) *Planned Unit Development (PUD-CZ) District*

In approving a Planned Development (PD) Zoning District designation for a PUD-CZ, the Town Council shall find the PUD-CZ district designation and PD Plan for PUD-CZ demonstrates compliance with the following standards:

a) *Development parameters*

- (i) The uses proposed to be developed in the PD Plan for PUD-CZ are those uses permitted in Sec. 4.2.2, *Use Table*.
- (ii) The uses proposed in the PD Plan for PUD-CZ can be entirely residential, entirely non-residential, or a mix of residential and non-residential uses, provided a minimum percentage of non-residential land area is included in certain mixed use areas as specified on the 2045 Land Use Map. The location of uses proposed by the PUD-CZ must be shown in the PD Plan with a maximum density for each type of residential use and a maximum square footage for each type of non-residential use.
- (iii) The dimensional standards in Sec. 5.1.3 *Table of Intensity and Dimensional Standards, Planned Development Districts* may be varied in the PD Plan for PUD-CZ. The PUD-CZ shall demonstrate compliance with all other dimensional standards of the UDO, North Carolina Building Code, and North Carolina Fire Code.
- (iv) The development proposed in the PD Plan for PUD-CZ encourages cluster and compact development to the greatest extent possible that is interrelated and linked by pedestrian ways, bikeways and other transportation systems. At a minimum, the PD Plan must show sidewalk improvements as required by the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details*, and greenway improvements as required by the Town of Apex Parks, Recreation, Greenways, and Open Space Plan and the Apex Transportation Plan. In addition, sidewalks shall be provided on both sides of all streets for single-family detached homes.
- (v) The design of development in the PD Plan for PUD-CZ results in land use patterns that promote and expand opportunities for walkability, connectivity, public transportation, and an efficient compact network of streets. Cul-de-sacs shall be avoided unless the design of the subdivision and the existing or proposed street system in the surrounding area indicate that a through street is not essential in the location of the proposed cul-de-sac, or where sensitive environmental areas such as

- streams, floodplains, and wetlands would be substantially disturbed by making road connections.
- (vi) The development proposed in the PD Plan for PUD-CZ is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties.
  - (vii) The development proposed in the PD Plan for PUD-CZ has architectural and design standards that are exceptional and provide higher quality than routine developments. All residential uses proposed in a PD Plan for PUD-CZ shall provide architectural elevations representative of the residential structures to be built to ensure the Standards of this Section are met.
- b) Off-street parking and loading. The PD Plan for PUD-CZ shall demonstrate compliance with the standards of Sec. 8.3 *Off-Street Parking and Loading*, except that variations from these standards may be permitted if a comprehensive parking and loading plan for the PUD-CZ is submitted as part of the PD Plan that is determined to be suitable for the PUD-CZ, and generally consistent with the intent and purpose of the off-street parking and loading standards.
- c) *RCA*. The PD Plan for PUD-CZ shall demonstrate compliance with Sec. 8.1.2 *Resource Conservation Area*, except that the percentage of RCA required under Sec. 8.1.2 may be reduced by the Town Council by no more than 10% provided that the PD Plan for PUD-CZ includes one or more of the following:
- (i) A non-residential component;
  - (ii) An overall density of 7 residential units per acre or more; or
  - (iii) Environmental measures including but not limited to the following:
    - (a) The installation of a solar photovoltaic (PV) system on a certain number or percentage of single-family or townhouse lots or on a certain number or percentage of multifamily, mixed-use, or nonresidential buildings. All required solar installation shall be completed or under construction prior to 90% of the building permits being issued for the approved number of lots or buildings. For single-family or townhouse installations, the lots on which these homes are located shall be identified on the Master Subdivision Plat, which may be amended;
    - (b) The installation of a geothermal system for a certain number or percentage of units within the development; or
    - (c) Energy efficiency standards that exceed minimum Building Code requirements (i.e. SEER rating for HVAC).



- d) Landscaping. The PD Plan for PUD-CZ shall demonstrate compliance with the standards of Sec. 8.2 *Landscaping, Buffering and Screening*, 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 character of the area. In no case shall a buffer be less than one half of the width required by Sec. 8.2 or 10 feet in width, whichever is greater.
  
- e) *Signs*. Signage in the PD Plan for PUD-CZ shall demonstrate compliance with Sec. 8.7 *Signs*, except that the standards can be varied if a master signage plan is submitted for review and approval concurrent with the PD plan and is determined by the Town Council to be suitable for the PUD-CZ and generally consistent with the intent and purpose of the sign standards of the UDO. The master signage plan shall have design standards that are exceptional and provide for higher quality signs than those in routine developments and shall comply with Sec. 8.7.2 *Prohibited Signs*.
  
- f) *Public facilities*. The improvements standards and guarantees applicable to the public facilities that will serve the site shall comply with Article 7: *Subdivision* and Article 14: *Parks, Recreation, Greenways, and Open Space*.
  - (i) The PD Plan for PUD-CZ demonstrates a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town. The PD Plan for PUD-CZ shall be consistent with the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details* and show required right-of-way widths and road sections. A Traffic Impact Analysis (TIA) shall be required per Sec. 13.19.
  - (ii) The PD Plan for PUD-CZ demonstrates a safe and adequate on-site system of potable water and wastewater lines that can accommodate the proposed development, and are efficiently integrated into off-site potable water and wastewater public improvement plans. The PD Plan shall include a proposed water and wastewater plan.
  - (iii) Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the development proposed in the PD Plan for PUD-CZ, and the development is conveniently located in relation to schools and police protection services.
  - (iv) The PD Plan shall demonstrate compliance with the parks and recreation requirements of Sec. Article 14: *Parks, Recreation, Greenways, and Open Space* and Sec. 7.3.1 *Privately-owned Play Lawns* if there is a residential component in the PUD-CZ.

- g) Natural resource and environmental protection. The PD Plan for PUD-CZ demonstrates compliance with the current regulatory standards of this Ordinance related to natural resource and environmental protection in Sec. 6.1 *Watershed Protection Overlay District*, Sec. 6.2 *Flood Damage Prevention Overlay District*, and Sec. 8.1 *Resource Conservation*.
  - h) *Storm water management*. The PD Plan shall demonstrate that the post-development rate of on-site storm water discharge from the entire site shall not exceed pre-development levels in accordance with Sec. 6.1.7 of the UDO.
  - i) *Phasing*. The PD Plan for PUD-CZ shall include a phasing plan for the development. If development of the PUD-CZ is proposed to occur in more than one phase, then guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.
  - j) *Consistency with 2045 Land Use Map*. The PD Plan for PUD-CZ demonstrates consistency with the goals and policies established in the Town's 2045 Land Use.
  - k) *Complies with the UDO*. The PD Plan for PUD-CZ demonstrates compliance with all other relevant portions of the UDO.
- 2) *Traditional Neighborhood District (TND-CZ)*
- a) *General*. The purpose of the Traditional Neighborhood District is to allow for the development of fully integrated, mixed-use pedestrian oriented neighborhoods as described in Section 3.3.3.B. The intent is to minimize traffic congestion, suburban sprawl, infrastructure costs, and environmental degradation. The TND-CZ is recommended to include the following elements:
    - (i) All neighborhoods have identifiable centers and edges.
    - (ii) Edge lots are readily accessible to retail and recreation by non-vehicular means (a distance not greater than one-fourth of a mile).
    - (iii) Uses and housing types are mixed and in close proximity to one another.
    - (iv) Street networks are interconnected and blocks are small.
    - (v) Civic building, if provided, is given prominent site in the neighborhood.
    - (vi) Neighborhoods have a discernible center such as a square or green.
    - (vii) A small ancillary building is permitted within the backyard of each house and may be used for one (1) accessory apartment or a place of work.
    - (viii) Playgrounds should be close (not more than one-eighth of a mile) so that children can walk from their dwelling.

- (ix) Buildings at the neighborhood center should be placed close to the street while still allowing enough space for sidewalks, and provide a mix of uses within the building to create a strong sense of place. The neighborhood center does not have to be physically in the center of the development, but rather is encouraged to be located along a major or minor thoroughfare.
- (x) Designated on-street parking is encouraged. Parking lots should be located to the side or rear of main entrances primarily accessible by alleyways. Garages should be located to the rear of the main structure.
- (xi) Buildings for meetings, education, religion or culture should be located at the termination of a street or vista.
- (xii) A homeowners' association should be established to decide on matters of maintenance, security and physical change.
- (xiii) Most dwellings are within a five-minute walk of a neighborhood center.
- (xiv) There is a variety of dwelling types within the neighborhood.
- (xv) The following table provides land uses and suggested amounts of land area devoted to each use. The 2045 Land Use Map provides for a minimum percentage of non-residential land area for certain mixed-use areas.

<i><b>Use</b></i>	<i><b>Amount (percent)</b></i>
Public and Civic	2-5
Shopfront	2-30
Attached homes	15-30
Detached homes	30
Business	5-15

- b) *Development parameters*  
In approving a Planned Development (PD) Zoning District designation for a TND-CZ, the Town Council shall find the zoning district designation and PD Plan for TND-CZ complies with the following standards:

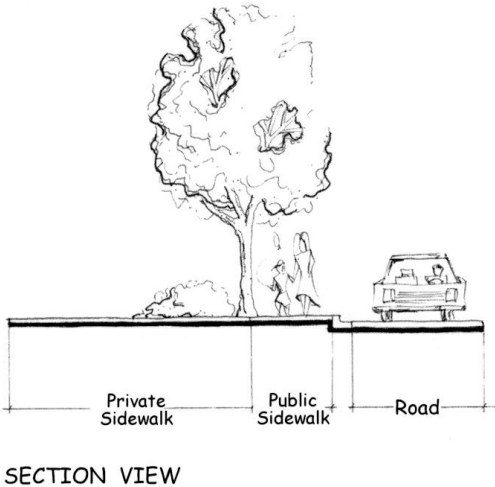
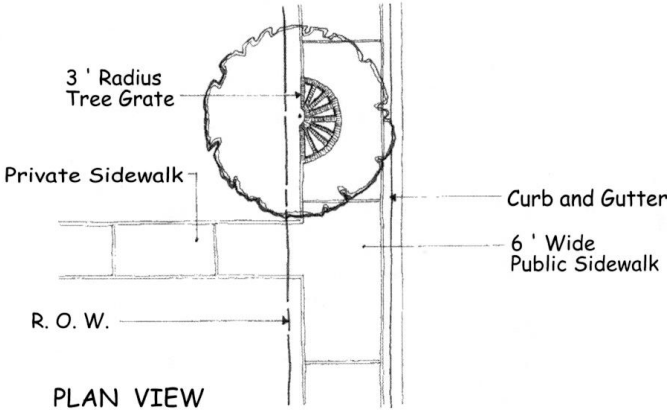
- (i) The uses proposed to be developed in the PD Plan for TND-CZ are those uses permitted in Sec. 4.2.2 *Use Table*.
- (ii) The uses proposed in the PD Plan for TND-CZ shall be a mix of residential types and non-residential uses, with a minimum percentage of non-residential land area for certain mixed-use areas as specified on the 2045 Land Use Map. The location of uses proposed by the TND-CZ must be shown in the PD Plan with a maximum density for each type of residential use and a maximum square footage for each type of non-residential use.
- (iii) The dimensional standards in Sec. 5.1.3 *Table of Intensity and Dimensional Standards, Planned*

*Development Districts* may be varied in the PD Plan for TND-CZ. The TND-CZ shall demonstrate compliance with all other dimensional standards of the UDO, North Carolina Building Code, and North Carolina Fire Code.

- (iv) The development proposed in the PD Plan for TND-CZ encourages cluster and compact development to the greatest extent possible that is interrelated and linked by pedestrian ways, bikeways and other transportation systems. At a minimum, the PD Plan must show sidewalk improvements as required by the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details*, and greenway improvements as required by the Town of Apex Parks, Recreation, Greenways, and Open Space Plan and the Apex Transportation Plan.
- (v) The design of development in the PD Plan for TND-CZ results in land use patterns that promote and expand opportunities for walkability, connectivity, public transportation, and an efficient compact network of streets. Cul-de-sacs shall be avoided unless the design of the subdivision and the existing or proposed street system in the surrounding area indicate that a through street is not essential in the location of the proposed cul-de-sac, or where sensitive environmental areas such as streams, floodplains, and wetlands would be substantially disturbed by making road connections.
- (vi) The development proposed in the PD Plan for TND-CZ is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties.
- (vii) *Off-street parking and loading.* Variations from the standards of Sec. 8.3 *Off-Street Parking and Loading*, may be permitted provided that the proposed off-street parking and loading is suitable for the TND-CZ, and is generally consistent with the intent and purpose of the off-street parking and loading standards.
- (viii) *RCA.* The PD Plan for TND-CZ shall demonstrate compliance with Sec. 8.1.2 *Resource Conservation Area*, except that the percentage of RCA required under Sec. 8.1.2 may be reduced by the Town Council by no more than 10% provided that the PD Plan for TND-CZ includes one or more environmental measure including but not limited to the following:
  - (a) The installation of a solar photovoltaic (PV) system on a certain number or percentage of single-family or townhouse lots or on a certain number or percentage of multifamily, mixed-use, or nonresidential buildings. All required solar installation shall be completed or under construction prior to 90% of the building permits being issued for the approved number of lots or buildings. For single-family or townhouse installations, the lots on which these homes are

- located shall be identified on the Master Subdivision Plat, which may be amended;
- (b) The installation of a geothermal system for a certain number or percentage of units within the development; or
  - (c) Energy efficiency standards that exceed minimum Building Code requirements (i.e. SEER rating for HVAC).
- (ix) *Landscaping.* The PD Plan for TND-CZ shall demonstrate compliance with the standards of Sec. 8.2 *Landscaping, Buffering and Screening*, 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 character of the area. In no case shall a buffer be less than one half of the width required by Sec. 8.2 or 10 feet in width, whichever is greater.
- (x) *Signs.* Signage in the PD Plan for TND-CZ shall demonstrate compliance with Sec. 8.7 Signs, except that the standards can be varied if a master signage plan is submitted for review and approval concurrent with the PD plan and is determined by the Town Council to be suitable for the TND-CZ and generally consistent with the intent and purpose of the sign standards of the UDO. The master signage plan shall have design standards that are exceptional and provide for higher quality signs than those in routine developments and shall comply with Sec. 8.7.2 *Prohibited Signs*.
- (xi) *Public facilities.* The improvements standards and guarantees applicable to the public facilities that will serve the site shall comply with Article 7: *Subdivision* and Article 14: *Parks, Recreation, Greenways, and Open Space*.
- (xii) The PD Plan for TND-CZ demonstrates a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town. The PD Plan for TND-CZ shall be consistent with the Apex Transportation Plan and the *Town of Apex Standard Specifications and Standard Details* and show required right-of-way widths and road sections. A Traffic Impact Analysis (TIA) shall be required per Sec. 13.19.
- (xiii) The PD Plan for TND-CZ demonstrates a safe and adequate on-site system of potable water and wastewater lines that can accommodate the proposed development, and are efficiently integrated into off-site potable water and wastewater public improvement plans. The PD Plan shall include a proposed water and wastewater plan.

- (xiv) Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the development proposed in the PD Plan for TND-CZ, and the development is conveniently located in relation to schools and police protection services.
- (xv) The PD Plan shall demonstrate compliance with the parks and recreation requirements of Article 14: *Parks, Recreation, Greenways, and Open Space* and Sec. 7.3.1 *Privately-owned Play Lawns* if there is a residential component in the TND-CZ.
- (xvi) *Natural resource and environmental protection.* The PD Plan for TND-CZ demonstrates compliance with the current regulatory standards of this Ordinance related to natural resource and environmental protection in Sec. 6.1 *Watershed Protection Overlay District*, Sec. 6.2 *Flood Damage Prevention Overlay District*, and Sec. 8.1 *Resource Conservation*.
- (xvii) *Storm water management.* The PD Plan shall demonstrate that the post-development rate of on-site storm water discharge from the entire site shall not exceed pre-development levels in accordance with Sec. 6.1.7 of the UDO.
- (xviii) *Phasing.* The PD Plan for TND-CZ shall include a phasing plan for the development. If development of the TND-CZ is proposed to occur in more than one phase, then guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.
- (xix) *Consistency with Apex Comprehensive Plan and 2045 Land Use Map.* The PD Plan for TND-CZ demonstrates consistency with the goals and policies established in the Apex Comprehensive Plan and 2045 Land Use Map.
- (xx) *Complies with the UDO.* The PD Plan for TND-CZ demonstrates compliance with all other relevant portions of the UDO.
- (xxi) The Town Council may permit special exceptions to the requirements of Sec. 2.3.4.F.2.b as part of its approval of the PD Plan for TND-CZ upon finding that (1) the requested special exception will not adversely affect adjacent land in a material way, and (2) the requested special exception will be generally consistent with the purposes and intent of this Ordinance. Provided, however, that the concurring vote of four-fifths of the members of the Town Council shall be necessary to grant any such special exception.



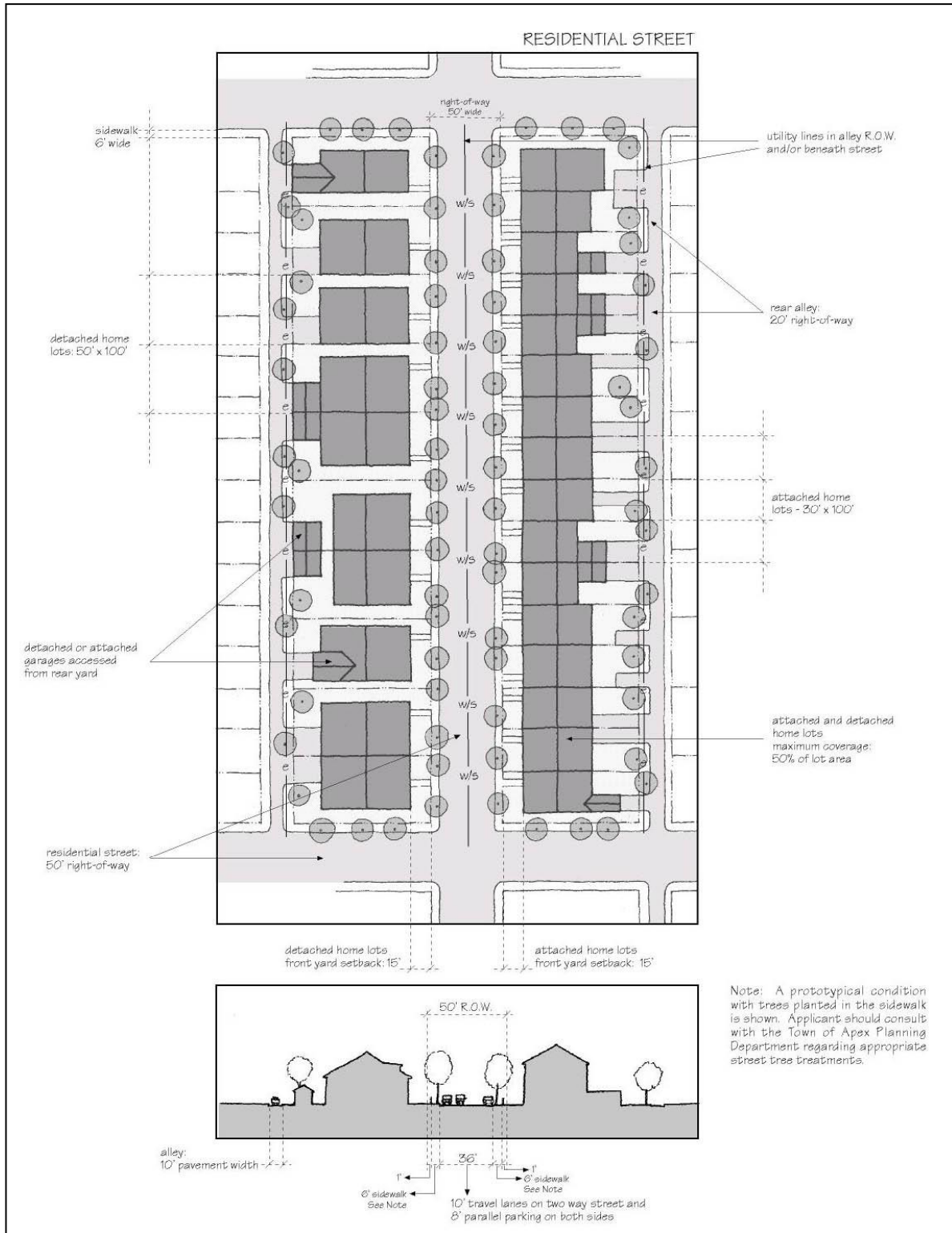
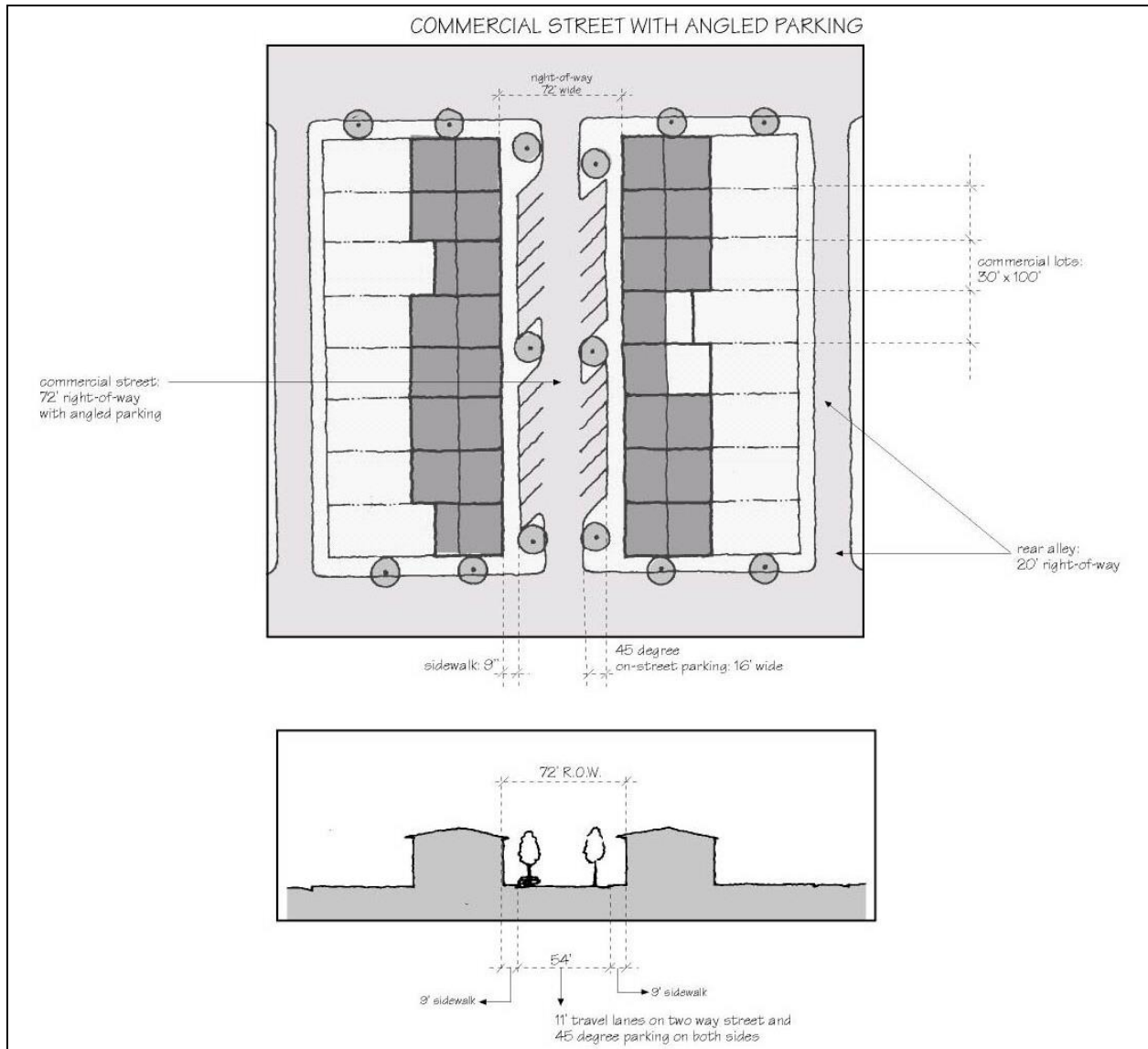


Figure 2.3.4(F)(2): TND-CZ Traditional Neighborhood District – Overview and Cross-Section of Residential Street





**Figure 2.3.4(F)(2): Traditional Neighborhood District – Overview and Cross-Section of Commercial Street**

- 3) *Major Employment Center (MEC-CZ) District*  
 In approving a Planned Development (PD) Zoning District designation for a MEC-CZ, the Town Council shall find the zoning district designation and PD Plan for MEC-CZ complies with the following standards:
  - a) *Development parameters.*
    - (i) The uses proposed to be developed in the PD Plan for MEC-CZ are those uses permitted in Sec. 4.2.2, *Use Table*.
    - (ii) All dimensional standards (including density/intensity standards) identified in Secs. 5.1 *Table of Intensity and Dimensional Standards* and 5.2 *General Measurement Requirements*, may be varied in the development proposed in the PD Plan for MEC-CZ if the development

plan provides for a mix of major employment center uses that are designed or located in a way that results in interconnectivity between uses. The MEC-CZ shall demonstrate compliance with all other dimensional standards of the UDO, North Carolina Building Code, and North Carolina Fire Code.

- (iii) The design of development in the PD Plan for MEC-CZ results in:
  - (a) Integration and mixing, rather than separation of, major employment center uses, and encourages a mixture of residential uses within the major employment center uses. The 2045 Land Use Map provides for a minimum percentage of non-residential land area for certain mixed-use areas.
  - (b) Interconnectivity between uses.
  - (c) The design of development at a scale that is consistent with Apex's small-town character.
  - (d) Land use patterns that promote and expand opportunities for public transportation and for efficient, compact networks of streets and utilities that lower development and maintenance costs and conserve energy.
  - (e) The preservation of natural features and the natural environment on the site.
  - (f) The integration of open space into the plan for development.
  - (g) A design that is compatible with the character of surrounding land uses and maintains and enhances the value of surrounding properties.
- b) *Off-street parking and loading.* Off-street parking and loading complies with the standards of Sec. 8.3 *Off-Street Parking and Loading*, except that variations from these standards may be permitted if a comprehensive parking and loading plan for the MEC-CZ is submitted that is determined to be suitable for the MEC-CZ, and generally consistent with the intent and purpose of the off-street parking and loading standards.
- c) *RCA and landscaping.* The PD Plan for MEC-CZ establishes a resource conservation area (RCA). The criteria used to establish the RCA shall comply with Sec. 8.1.2 *Resource Conservation Area*. Landscaping and illumination complies with the standards of Sec. 8.2, *Landscaping, Buffering and Screening*, and Sec. 8.7 *Exterior Lighting*, 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 character of the area.

- d) *Signs.* Signage complies with Sec. 8.7 *Signs*, except that signs within the MEC-CZ may vary if a comprehensive sign plan for the MEC-CZ is submitted that is determined to be suitable and consistent with the plan of development for the MEC-CZ, and consistent with the intent and purpose of the sign regulations.
  
- e) *Public facilities*
  - (i) The PD Plan for MEC-CZ demonstrates a safe and adequate on-site transportation circulation system. The on-site transportation circulation system shall be integrated with the off-site transportation circulation system of the Town.
  
  - (ii) The PD Plan for MEC-CZ demonstrates a safe and adequate on-site system of potable water and wastewater lines that can accommodate the proposed development, and are efficiently integrated into off-site potable water and wastewater public improvement plans.
  
  - (iii) Adequate off-site facilities for potable water supply, sewage disposal, solid waste disposal, electrical supply, fire protection and roads shall be planned and programmed for the development proposed in the PD Plan for MEC-CZ, and the development is conveniently located in relation to police protection services.
  
  - (iv) Detailed Design Guidelines are prepared for the PD Plan for MEC-CZ that shall control design guidelines for architecture, the development of open space, natural drainage areas, streets, utilities, and if appropriate, off-street parking and loading, landscaping and signage. The Detailed Design Guidelines shall ensure development proposed for the site is compatible with surrounding land uses, maintains Apex's small-town character, and encourages compact development and interconnectivity to the greatest extent possible through the use of interrelated and linked pedestrian ways, bike ways and other transportation systems.
  
- f) *Natural resource and environmental protection.* The PD Plan for MEC-CZ complies with the current regulatory standards of this Ordinance related to natural resource and environmental protection.
  
- g) *Storm water management.* The post-development rate of on-site storm water discharge from the entire site shall not exceed pre-development levels in accordance with Sec. 6.1.7 of the UDO.
  
- h) *Phasing.* The PD Plan for MEC-CZ shall include a phasing plan for the development. If development of the MEC-CZ is proposed to occur in more than one phase, then guarantees shall be provided that project improvements and amenities that are necessary and desirable for residents of the project, or that are of benefit to the Town, are constructed with the first phase of the project, or, if this is not possible, then as early in the project as is technically feasible.

- i) *Consistency with 2045 Land Use Map.* The PD Plan for MEC-CZ shall be consistent with the goals and policies established in the Town's 2045 Land Use Map.
  - j) *Complies with this Ordinance.* The PD Plan for MEC-CZ complies with all other relevant portions of this Ordinance.
- G) **Conditions**  
The Planning Director and the Planning Board shall have the authority to recommend and the Town Council shall have the authority to impose such conditions on a Planned Development (PD) Zoning District designation and PD Plan that are necessary to accomplish the purposes of this Section, this Article, this Ordinance and the goals and policies of the 2045 Land Use Map.
- H) **Reserved**
- I) **Placement of Planned Development District (PD) Designation on Official Zoning District Map**  
After final approval of the adopting ordinance for the Planned Development (PD) Zoning District designation and the PD Plan, the Planning Director shall amend the Official Zoning District Map to show a Planned Development (PD) Zoning District designation (for Planned Unit Development (PUD-CZ) District, Traditional Neighborhood District (TND-CZ) or Major Employment Center (MEC-CZ) District, whichever is appropriate).
- J) **Reserved for Future Use**
- K) **Effect**  
Approval of an adopting ordinance for Planned Development (PD) Zoning District designation and the PD Plan shall constitute an Official Zoning District Map designation and recognition by the Town that the landowner may proceed, consistent with the PD Plan, to develop the land. The next appropriate development approval for the land is a Site Plan or Master Subdivision Plan.
- L) **Expiration**  
The approval of the adopting ordinance for a Planned Development (PD) Zoning District designation and the PD Plan shall be null and void unless construction of required improvements is commenced and diligently pursued to completion, and a Site Plan or Master Subdivision Plan is submitted for at least the initial phase of the PD Plan within five (5) years after the date of approval of the PD Plan if the use authorized by the development approval for a Major or Minor Site Plan has not commenced. No extensions are allowed.
- M) **Minor Deviations**  
A minor deviation to a PD Plan may be approved by the Planning Director. A minor deviation shall be limited to technical or engineering considerations first discovered during actual development which could not reasonably be anticipated during the approval process or any other change which has no material effect on the character of the approved PD development or any of its approved terms or conditions, as long as it complies with the standards of this Ordinance. Minor deviations shall be limited to the following:
- 1) *Height.* An increase of building height by not more than ten (10) percent, as long as the height increase is consistent with the contextual height of the surrounding buildings and structures, the PD Plan and Article 9: *Design Standards*, or a detailed design plan (if appropriate).

- 2) *Alteration of the building envelope.* Alteration of the building envelope of up to ten (10%) percent, provided such alteration does not materially change the design of the development approved in the PD Plan, and does not change the number of stories, density or intensity.
- 3) *Reduction of open space.* Reduction of the total amount of open space by not more than two (2%) percent.
- 4) *Parking spaces.* A decrease of parking spaces by not more than five (5%) percent, if it is demonstrated that the minor deviation complies with an approved parking plan.
- 5) *Relocation of buildings.* Relocation of buildings or uses, as long as they maintain the same general building relationships, topography, landscaping and utility design and are consistent with the PD Plan and Article 9: *Design Standards*, or a detailed design plan (if appropriate).

- N) **Amendment**  
An amendment to the Official Zoning District Map for a Planned Development (PD) District and/or a PD Plan may be amended only pursuant to the procedures and standards for its original approval.

### 2.3.5 Special Use

- A) **Purpose**  
Special uses are those uses that are potentially incompatible with the other uses permitted in a zoning district and, therefore, require, special, individual review of their location, design, configuration, intensity, and density of use or structures. To ensure land use compatibility, conditions of approval may be imposed that are pertinent to the particular use at a particular location.
- B) **Authorization**  
Only those uses authorized as special uses in Sec. 4.2.2 *Use Table* may be approved as special uses. The designation of a use as a special use in Sec. 4.2.2 *Use Table*, does not constitute an authorization that such use shall be approved as a special use pursuant to this Section. Rather, each proposed special use shall be evaluated by the Town Council for compliance with the standards set forth in this Section and applicable supplementary standards for the use in Sec. 4.4 *Supplemental Standards*.
- C) **Procedures**
- 1) **General**  
The procedures for initiation of the application, the application contents, neighborhood meeting, its submission, the fees, the review by Town staff, public notification, and then approval, approval with conditions or disapproval by the Town Council at a public hearing(s) shall comply with the requirements of Sec. 2.2 *Common Review Procedures*.
  - 2) **Town Council Quasi-judicial Hearing Procedures**  
In addition, to ensure review of the application complies with quasi-judicial requirements, it shall comply with the following.
    - a) All persons offering testimony or evidence before the Town Council on the application shall be sworn.

- b) The applicant shall have the burden of production and proof by competent testimony and/or evidence that the facts and opinions stated in the application are accurate and that the proposed special use complies with the relevant review standards. The designation of a use as a special use in the UDO does not create a legislative presumption that the use is appropriate in or compatible with any particular location or surroundings.
- c) Any person who is a resident of the Town or its ETJ, any person owning land adjoining the land that is subject to the application, Town staff, or any other person the Town Council determines appropriate may also introduce competent testimony or evidence in support of or in opposition to the application.
- d) At the public hearing, the Town Council shall consider the application, the relevant support materials, the Staff Report, the testimony and/or evidence submitted by the applicant, and any testimony and/or evidence submitted by other persons.
- e) After the close of the public hearing, the Town Council shall approve, approve with conditions or disapprove the application based on the review standards in Sec. 2.3.5.D. Thereafter, the Town Council shall enter its findings of fact, conclusions of law and decision into its minutes.
- f) The Town Clerk shall retain possession of all exhibits submitted and recordings of all testimony on the matter heard before the Town Council, which shall constitute the record, until the time limit for appeal or petition for certiorari to the General Court of Justice has expired.

D) **Standards**

To approve an application for a special use, the Town Council shall find that:

- 1) *Compatibility.* The proposed special use shall be appropriate for its proposed location and compatible with the character of surrounding land uses.
- 2) *Zoning district supplemental standards.* The proposed special use shall comply with Sec. 4.4, *Supplemental Standards*.
- 3) *Design avoids significant adverse impacts, avoids being a nuisance, and minimizes adverse impact.* The proposed special use shall not have a significant adverse impact on surrounding lands (including but not limited to) regarding trash, traffic service delivery, parking and loading, odors, noise, glare, visual impact, and vibration. The proposed special use shall not create a nuisance. The proposed special use shall be designed to minimize adverse effects of the proposed use on adjacent lands.
- 4) *Design minimizes environmental impact.* The proposed special use shall minimize environmental impacts and shall not cause significant deterioration of water and air resources, wildlife habitat, and other natural resources.
- 5) *Impact on public facilities.* The proposed special use shall not have a significant adverse impact on public facilities and services, including

roads, potable water and wastewater facilities, parks, police, fire, and EMS facilities.

- 6) *Standards of this Ordinance.* The proposed special use shall comply with all standards imposed on it by all other applicable provisions of this Ordinance for use, layout, and general development characteristics.

E) **Conditions and Restrictions**

The Town Council may impose, in approving the special use, such restrictions and conditions on such approval, the proposed use, and the premises to be developed or used pursuant to such approval, it determines are required by the standards of this Section to prevent or minimize adverse effects from the proposed use and development on surrounding land uses. All conditions imposed on any special use shall be expressly set forth in the special use permit.

F) **Expiration for Non-initiation of a Special Use**

If a special use authorized by a special use permit is not initiated within twenty-four (24) months of issuance of the special use permit, the special use permit shall expire and be void. A different time may be specified in the special use permit within which the special use must be initiated. For purposes of this Subsection, "initiated" means that a building permit has been issued for the special use or if the special use does not require a building permit, the special use is established, ongoing, and in operation. Time frames do not change with successive owners. Upon written request, one twelve (12) month extension of the time to initiate a special use may be granted by the Town Council for good cause shown.

G) **Amendments**

A special use permit may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

### 2.3.6 Site Plan

A) **Purpose**

Site plan review is required by this Ordinance to ensure that the proposed layout and general design of proposed development complies with Article 8: *General Development Standards*, all other appropriate portions of this Ordinance, and the proposed development is compatible with surrounding land uses.

B) **Applicability**

All development shall be required to have an approved site plan pursuant to the procedures and standards of this Section prior to development and/or the issuance of a building permit, except for development exempted pursuant to Sec. 2.3.6(C), *Exemptions*.

C) **Exemptions**

- 1) Any development or activity that is exempt from site plan review pursuant to Subsection 2.3.6.C.2.b., d., e., f., g., h., i., or j. below shall not be undertaken without an administrative approval by the Planning Director. Any proposed expansion exempt under 2.3.6.C.2.g. must meet all applicable provisions of this Ordinance to the extent of the expansion and not increase any nonconformity. The application for administrative approval shall be in a form approved by the Planning Director.
- 2) The following development or activities shall be exempted from the requirements of this Section:

- a) *Single-family.* Single-family detached homes. However, single-family development within the Small Town Character Overlay District (see Sec. 6.3) shall refer to subsection 2.3.6.C.2.i.;
- b) Historic structures (as defined in Article 12) within the National Register Historic District may not be relocated. Historic structures not located within the National Register Historic District may be relocated to a different location within the Town of Apex Planning Jurisdiction, as identified by all current and future land classifications on the Town of Apex 2045 Land Use Map, subject to the following standards:
  - (i) An historic preservation easement and a rehabilitation agreement shall be granted to a qualified holder of historic preservation agreements as defined by NCGS Chapter 121, Article 4. Said easements shall be drafted, regulated, and enforced consistent with NCGS Chapter 121, Article 4 and shall be submitted to the Planning Director for review prior to being recorded by the applicant.
  - (ii) The historic structure shall be situated on a site that is compatible in character with its original setting. The structure's existing and proposed setback and orientation shall be considered when determining the compatibility of the proposed site. The building shall be set back no greater than twice the minimum front yard setback required by the zoning district of the property on which the building is proposed to be located.
- c) *Temporary uses.* Temporary uses that do not exceed six (6) months in duration and meet all applicable provisions of Section 2.3.11 *Temporary Use*;
- d) *Utilities and public works projects.* Utilities and public works projects, including, but not limited to road improvements, utility improvements, above ground utility boxes, bus shelters, and co-location of communication equipment;
- e) *Preliminary testing.* Preliminary site testing, including, but not limited to soil testing, soil borings, land surveying, and tree surveying;
- f) *Minor site elements and features.* Addition of minor site elements and features, including, but not limited to playground fencing, play equipment, mechanical equipment, sidewalks, expansion of seating for outdoor or indoor events, and dumpsters; and
- g) *Expansion, repair or re-use.* The expansion, repair, or re-use of existing buildings, structures, or land, that does not involve any of the following:
  - (i) Enlargement of the building or structure by more than 25%. Demolition with reconstruction of any building or structure or portion of any building or structure will be considered an enlargement of more than 25% under this Section;



- (ii) Expansion of the number of parking spaces by more than 10;
  - (iii) Enlargement of the land area used by more than 25%;
  - (iv) A change in the land use class as defined by Sec. 8.2.6.B.4 *Land Use Classes*.
  - (v) The addition of new buildings or structures.
- h) *Central Business District*. Central Business District as defined in Sec.12.2 except that demolition (as defined in Sec. 12.2) shall be governed by Sec. 2.2.8 and new construction, additions, renovations, or redevelopment shall be governed by Sec. 6.3 *Small Town Character Overlay District*;
- i) *Small Town Character Overlay District*. Small Town Character Overlay District as referenced in 3.3.5 except that demolition (as defined in Sec. 12.2) shall be governed by Sec. 2.2.8 and new construction, additions, renovations, or redevelopment shall be governed by Sec. 5.1.5 *Table of Intensity and Dimensional Standards* and Sec. 6.3 *Small Town Character Overlay District*.
- j) *Modular units for schools, public or private*. The addition or relocation of modular units for schools, public or private. Such units shall be sited so that their visibility from public streets is screened to the extent reasonable and practicable by permanent buildings and/or existing or planted evergreen screening to a height of six (6) feet at time of planting.

D) **Procedures**

- 1) *Minor Site Plans (No public hearing required, staff review and approval)*. Procedures for the review of site plans that have less than 100,000 square feet of nonresidential floor area, less than 20 multi-family units, or those that do not rise to the level of Major Site Plan per the criteria in Sec. 2.3.6.D.2 shall be processed and reviewed according to the standards below. All Town of Apex development projects, and sites designated as North Carolina Certified Sites by the North Carolina Department of Commerce, not exempt from review according to Sec. 2.3.6.C shall be reviewed as Minor Site Plans. A "Town of Apex development project" is defined as a development project performed or funded in part or in whole by the Town, with or without the use of either federal or state funds.
- a) The procedures for initiation of an application for a Minor Site Plan, the application contents, fees, application submission, and staff review shall comply with the relevant provisions of Sec. 2.2 *Common Review Procedures*, except that:
- (i) A Traffic Impact Analysis (TIA) shall be required per Sec. 13.19.
  - (ii) The Planning Director shall forward applications for Minor Site Plans to the TRC for review and recommendation.
  - (iii) Within five (5) calendar days of the recommendation of the TRC on the application, the Planning Director shall review the TRC recommendation and determine if the application complies with Sec. 2.3.6.E *Standards*.

- (iv) If the Planning Director determines the application complies with Sec. 2.3.6.E *Standards*, a notice of approval shall be sent to the applicant. If the Planning Director determines the application does not comply with Sec. 2.3.6.E *Standards*, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be taken on the application until the Planning Director has received a corrected application from the applicant. The Planning Director may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Planning Director.
- 2) *Major Site Plans*. For the purposes of this Section and this Ordinance, Major Site Plans shall be considered site plans that propose 100,000 square feet or greater of nonresidential floor area, or 20 multi-family units or more, or those site plans that rise to the level of Major Site Plan based on the thresholds listed below. Any Town of Apex development project, and sites designated as North Carolina Certified Sites by the North Carolina Department of Commerce, meeting the thresholds of this Section shall be reviewed as a Minor Site Plan.
- a) Multiple site plan applications within any three year period for one property, or portions of the same property, or neighboring properties if owned by the same entity, shall be considered as one site plan for the determination of Major Site Plan. The non-residential square footage and multi-family unit count will be added together over the three-year period, and the multiple site plan applications will be considered as one for the criteria in Secs. 2.3.6.D.2.b., c., d., and e.
  - b) Site plans proposing 100 or more additional parking spaces to existing development.
  - c) Site plans proposing to grade more than 25 acres.
  - d) Site plans proposing any building taller than four (4) stories.
  - e) Site plans proposing the mixing of architectural types, exotic architecture, or the use of non-standard materials.
- 3) Major Site Plans shall be processed and reviewed as follows:
- a) Reserved.
  - b) The procedures for initiation of an application for a Major Site Plan, the application contents, fees, application submission, and staff review shall comply with the relevant provisions of Sec. 2.2 *Common Review Procedures*, except that:
    - (i) A Traffic Impact Analysis (TIA) shall be required in accordance with Sec. 13.19.
    - (ii) If the Planning Director determines the application complies with Sec. 2.3.6.E *Standards*, it shall be forwarded to the Town Council for consideration. If the Planning Director determines the application does not

comply with Sec. 2.3.6.E *Standards*, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be taken on the application until the Planning Director has received a corrected application from the applicant. The Planning Director may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Planning Director.

- c) Town Council Quasi-judicial Hearing and Decision
  - (i) At the meeting, the Town Council shall conduct a quasi-judicial hearing and consider the application, Staff Report, and all other relevant matters and approve, approve with conditions or disapprove the application based on the standards in Sec. 2.3.6.E *Standards*. The applicant shall have the burden of production and proof that standards are met.
  - (ii) The Town Council may, on its own motion and for good cause shown, continue consideration of the Major Site Plan to a future meeting, fixing the date, time, and place. An applicant shall be entitled to one continuance as of right; however, all subsequent continuances shall be granted at the discretion of the Town Council only upon good cause shown.

E) **Standards**

- 1) *Minor Site Plan*. In order to approve an application for a Minor Site Plan, the Planning Director shall find the standards provided below are met by the proposed Minor Site Plan. Notwithstanding anything to the contrary in this subsection, Town of Apex development projects shall meet such standards only to the maximum extent reasonable and practicable, as determined by the Planning Director.
  - a) *Zoning district supplemental standards*. The development and uses in the site plan comply with Sec. 4.4 *Supplemental Standards*.
  - b) *Site development standards*. The development proposed in the site plan and its general layout and design comply with all appropriate standards in Article 8: *General Development Standards*.
  - c) *Mitigation of development on steep slopes*. If appropriate, the site plan complies with the requirements of Sec. 8.1.4 *Slope Protection Standards*.
  - d) *Dedication of ROW for Thoroughfare Plan*. The development proposed in the site plan conforms to the requirements of Sec. 7.4 *Dedication of ROW for Thoroughfare Streets and Highways*.
  - e) *Required improvements*. The development proposed in the site plan conforms to the requirements of Sec. 7.5 *Required Improvements*.
  - f) *Other relevant standards of this Ordinance*. The development proposed in the site plan and its general layout and design

comply with all other relevant standards of this Ordinance, except that a site plan is not required to comply with a setback standard if there is a permanent improvement on the site that existed prior to August 1, 2000 that makes compliance impossible and the exception to the setback standard is the minimum necessary to accommodate the pre-existing permanent improvement.

- g) *Applicable Standards of Article 7: Subdivision and Article 14: Parks, Recreation, Greenways, and Open Space.* The development proposed in the site plan shall comply with the applicable standards of Article 7: *Subdivision* and Article 14: *Parks, Recreation, Greenways, and Open Space*, including, but not limited to, street and utility improvements and park, recreation, and open space dedication or fee-in-lieu.
- 2) *Major Site Plan.* In order to approve an application for a Major Site Plan, the Town Council shall find the following standards are met by the proposed Major Site Plan:
- a) *Compatibility.* The development proposed in the site plan and its general location is compatible with the character of surrounding land uses.
  - b) *Zoning district supplemental standards.* The development and uses in the site plan comply with Sec. 4.4 *Supplemental Standards*.
  - c) *Site development standards.* The development proposed in the site plan and its general layout and design comply with all appropriate standards in Article 8: *General Development Standards*.
  - d) *Mitigation of development on steep slopes.* If appropriate, the site plan complies with the requirements of Sec. 8.1.4 *Slope Protection Standards*.
  - e) *Dedication of ROW for Thoroughfare Plan.* The development proposed in the site plan conforms to the requirements of Sec. 7.4 *Dedication of ROW for Thoroughfare Streets and Highways*.
  - f) *Required improvements.* The development proposed in the site plan conforms to the requirements of Sec. 7.5 *Required Improvements*.
  - g) *Other relevant standards of this Ordinance.* The development proposed in the site plan and its general layout and design comply with all other relevant standards of this Ordinance, except that a site plan is not required to comply with a setback standard if there is a permanent improvement on the site that existed prior to August 1, 2000 that makes compliance impossible and the exception to the setback standard is the minimum necessary to accommodate the pre-existing permanent improvement.
  - h) *Applicable Standards of Article 7: Subdivision and Article 14: Parks, Recreation, Greenways, and Open Space.* The development proposed in the site plan shall comply with the applicable standards of Article 7: *Subdivision* and Article 14: *Parks, Recreation, Greenways, and Open Space*, including, but not limited to, street and utility improvements and park, recreation, and open space dedication or fee-in-lieu.

- i) *Impact on public facilities.* The proposed development shall not have a significant adverse impact on public facilities and services, including roads, potable water and wastewater facilities, parks, police, fire, and EMS facilities.

F) **Conditions and Restrictions**

The Town Council shall have the authority to impose such conditions on a Major Site Plan that are necessary to accomplish the purposes of this Section, this Article, this Ordinance and the goals and policies of the 2045 Land Use Map. All conditions imposed on a Major Site Plan shall be expressly set forth on the site Construction Plans.

G) **Phasing Plan**

Provisions of required public improvements, buffers, Resource Conservation Area, and recreation areas may be installed in phases as approved by the Planning Director, Planning Board and Town Council such that the improvements reasonably relate to the use intended for the site and as required by the *Town of Apex Standard Specifications and Standard Details*. A Phasing Plan clearly showing the phases and any other pertinent information required by the applicant, Planning Department, Planning Board, or Town Council shall be recorded by the applicant with the Wake County Register of Deeds.

H) **Site Construction Plan**

After a Site Plan has been approved by the Town Council or a Minor Site Plan approved by the Planning Director, the applicant shall submit the Site Construction Plans to the Development Services Supervisor. The submission shall be in a form approved by the Assistant Town Manager. The applicant shall ensure that the Construction Plans conform to the approved Site Plan design and that all conditions imposed on the Site Plan by the Town Council, or the Planning Director for a Minor Site Plan, are met in the Construction Plans. The Construction Plans shall be reviewed by the Technical Review Committee to ensure compliance with the approved Site Plan and all applicable Town, county, state, and federal regulations and requirements, including all relevant construction standard specifications and details. Any modifications to or deviations from the approved Site Plans must be requested in writing to the Planning Director and may require additional review by the relevant permit issuing authority if deemed appropriate by the Planning Director. All Construction Plans shall bear the seal and signature of a professional engineer, landscape architect, surveyor, or architect, who is authorized to perform such work and licensed in the State of North Carolina. Once the Construction Plan is approved, it is signed by the relevant members of the Technical Review Committee and forwarded to the applicant. The applicant is responsible for returning the requisite number of copies, as determined by the Assistant Town Manager, to the Development Services Supervisor.

I) **Final Plat**

After the Construction Plans are signed and the requisite number of copies are returned to the Development Services Supervisor, the grading permit has been issued, and all relevant fees have been paid, then the applicant may commence work on the site as per the approved construction sequence. At some point during site construction, the applicant may determine that sufficient work has been completed and that they want to proceed with recording a final plat. At that point the applicant shall submit a final plat to the Planning Department for review and approval. All incomplete or insufficient site work must be guaranteed by the provision of a sufficient surety prior to approval of the final plat. All drainage and utility easements must be centered on the as-built locations of the installed improvements. The submission shall be in a form approved by the Planning Director, and should be made at least two months prior to the time that the

applicant would like to obtain the Certificate of Occupancy (CO). This will allow the staff adequate time for review and for any necessary revision and re-review to be made to the plat submittal. The applicant shall ensure that all public utility easements, private access easements, Resource Conservation Area (with metes and bounds description), buffers, setbacks, and any other items required by the Planning Director are shown on the final plat and anchored, or described, with a metes and bounds description. Payment of all applicable fees and requisite bonding is due prior to final plat approval. The final plat must be recorded prior to a CO being issued for the project.

J) **Expiration**

- 1) A development approval for a Major, Minor, or Exempt Site Plan shall automatically expire at the end of three (3) years after the date of approval if:
  - a) The use authorized by the development approval for a Major or Minor Site Plan has not commenced; or
  - b) Less than 10% of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any approved development has been completed on the site. With respect to phased development, this requirement shall only apply to the first phase.
- 2) No extensions are allowed.

K) **Minor Deviations**

Minor deviations from a Site Plan may be approved by the Planning Director. Minor deviations that are authorized are those that appear necessary in light of technical or engineering considerations as long as they comply with the standards of this Ordinance (variations from the standards of this Ordinance require administrative adjustments (Sec. 2.3.9) or variance permits (Sec. 2.3.8). Minor deviations shall consist of:

- 1) *Floor area.* Expansion of building floor area by not more than 10%.
- 2) *Height.* An increase of building height by not more than 10%.
- 3) *Parking spaces.* An increase or decrease of parking spaces by not more than 10% or 10 spaces, whichever is less.
- 4) *Relocation of buildings.* Minor relocation of buildings or other site elements if they maintain the same general building relationships, topography, landscaping and utility design.
- 5) *Minor changes.* Minor changes in building elevations and landscaping provided that the change retains the same general architectural relationships and uses equivalent building and/or landscaping materials.

L) **Amendments**

A Site Plan may be amended, extended or modified in accordance with the procedures and standards established in Sec. 2.3.6.

M) **Nonconformities**

Any expansion, repair, or re-use of existing legal nonconforming buildings, structures, or land that is required to have an approved Site Plan pursuant to the procedures and standards of this Section shall meet all applicable standards of this Ordinance to the extent reasonable and practicable.

### 2.3.7 Subdivision

A) **Purpose**

This Section, Article 7: *Subdivision*, and Article 14: *Parks, Recreation, Greenways, and Open Space*, are designed and enacted for the purpose of promoting the health, safety, morals, convenience, order, prosperity and welfare of the present and future inhabitants of the Town by: (1) providing for the orderly growth and development of the Town; (2) coordinating streets and highways within proposed subdivisions with existing planned streets and highways and with other public facilities; (3) providing for the dedication or reservation of recreation areas serving residents of the immediate neighborhood within the subdivision or, alternatively, for provision of funds to be used to acquire and/or construct recreation areas serving residents of the development or subdivision or more than one subdivision or development within the immediate area; (4) providing right-of-way easements for streets and utilities; (5) avoiding congestion and overcrowding, and encouraging the proper arrangement of streets in relation to existing or planned streets; and (6) regulating such other matters as the Town Council may deem necessary in order to protect the general health, safety and welfare of the Town.

B) **Overview**

Prior to the subdivision of a tract or parcel of land, the landowner/subdivider shall receive approval of a Master Subdivision Plan pursuant to Sec. 2.3.7.D *Master Subdivision Plan*, approval of Construction Plans pursuant to Sec. 2.3.7.E *Construction Plans for Subdivision*, and approval of a Master Subdivision Final Plat pursuant to Sec. 2.3.7.F *Master Subdivision Final Plat*.

C) **Reserved**

D) **Master Subdivision Plan**

1) *Procedures*

- a) The procedures for initiation of an application for a Master Subdivision Plan, the application contents, fees, application submission, and review by Town staff and/or consulting firms on retainer shall comply with the relevant provisions of Sec. 2.2 *Common Review Procedures*, except that a Traffic Impact Analysis (TIA) shall be prepared pursuant to Sec. 13.19. The Planning Director shall forward applications for the Master Subdivision Plan to the Technical Review Committee (TRC) for review and decision pursuant to Sec. 2.3.7.D.1.c.
- b) Additionally, the Parks, Recreation, and Cultural Resources Director shall also provide a copy of any Master Subdivision Plan for residential development to the Parks, Recreation, and Cultural Resources Advisory Commission which shall review the application and provide comments to the TRC about whether the proposed Master Subdivision Plan complies with the standards of Sec. 2.3.7.D.2 *Standards*.
- c) If the TRC determines the application complies with Sec. 2.3.7.D.2 *Standards*, it shall be approved. If the TRC determines the application does not comply with Sec. 2.3.7.D.2 *Standards*, a written notice shall be transmitted to the applicant specifying the application's deficiencies from the appropriate review standards of this Ordinance. No further action shall be taken on the application

until the TRC has received a corrected application from the applicant. The Planning Director may consider maintaining the same review schedule for an application that requires only a minor correction, and is modified by the applicant in a timely manner as specified by the Planning Director.

2) *Standards.*

To approve a Master Subdivision Plan, the TRC shall find that the Master Subdivision Plan complies with all the standards of this Ordinance and all other relevant Town ordinances and regulations.

3) *Expiration.*

a) A development approval for a Master Subdivision Plan shall automatically expire four (4) years after the date of the TRC's approval if:

- (i) The use authorized by the development approval for the Master Subdivision Plan has not commenced; or
- (ii) Less than 10% of the total cost of all construction, erection, alteration, excavation, demolition, or similar work on any approved development has been completed on the site. With respect to phased development, this requirement shall only apply to the first phase.

b) No extensions are allowed.

4) *Minor deviations.*

The Planning Director, with the consent of the Public Works and Transportation Director and Water Resources Director, may approve a minor deviation to a Master Subdivision Plan. A minor deviation shall be limited to technical or engineering considerations first discovered after Master Subdivision Plan approval which have no material effect on the character of the approved Master Subdivision Plan. Minor deviations shall be limited to slight relocation of lot lines, greenways, streets and utilities, and minor changes to grading and stormwater infrastructure.

5) *Amendments.*

A Master Subdivision Plan may be amended, extended, or modified only in accordance with the procedures and standards established in this Section.

E) ***Construction Plans for Master Subdivision Plans***

1) *General.*

After approval of a Master Subdivision Plan, the subdivider may proceed with the preparation of Construction Plans.

2) *Procedures.*

The procedures for initiation of an application (Sec. 2.2.1) for Construction Plans for subdivision, the application contents (Sec. 2.2.4), fees (Sec. 2.2.5), and application submission (Sec. 2.2.8) shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. Within 60 days after the application is determined sufficient, the Planning Director (acting as the subdivision administrator) and the Development Services Supervisor shall review the application, refer it to the TRC for review and comment, and approve, approve with conditions, or



disapprove the Construction Plans based on the standards in Sec. 2.3.7.E.4 *Standards*.

- 3) *Appeal.*  
The subdivider may appeal the decision of the TRC to the Board of Adjustment. In reviewing the appeal, the Board of Adjustment shall only consider the record of the decision. A decision of the TRC shall not be reversed or modified unless there is demonstrated evidence that the decision fails to comply with the standards in Sec. 2.3.7.E.4 *Standards*.
- 4) *Standards.*  
Construction Plans shall conform to the approved Master Subdivision Plan, conform to *Town of Apex Standard Specifications and Standard Details*, and comply with all the standards of this Ordinance and all other relevant Town ordinances and regulations.
- 5) *Compliance/non-compliance*
  - a) If the Construction Plans are found to comply with the standards in Sec. 2.3.7.E.4 *Standards*, the evidence of such compliance shall be noted by the TRC on the Construction Plans. The official copy shall be retained by the Town.
  - b) If the Construction Plans are found in non-compliance with the standards in Sec. 2.3.7.E.4 *Standards*, the subdivider shall be given an opportunity to submit revised Construction Plans. If revised Construction Plans are not submitted and the TRC disapproves the same, the TRC shall specify in writing the reasons for non-compliance. One copy of this statement shall be transmitted to the subdivider within 30 days of disapproval.
- 6) *Expiration.*  
If construction of the project or phase of the project does not commence within 12 months after the date of the approval of the Construction Plans, the Construction Plans shall become null and void. Permitted time frames do not change with successive owners. Upon written request, the TRC may extend the approval of the project 12 months if the request is made within 12 months of the original approval.
- 7) *Amendments.*  
Construction Plans may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

F) ***Master Subdivision Final Plat***

- 1) *General*
  - a) The subdivider shall prepare the Master Subdivision Final Plat and the installation or arrangement for required improvements in accordance with the approved Construction Plans and the procedures and standards of this Section.
  - b) The Master Subdivision Final Plat shall constitute only that portion of the Master Subdivision Plan that the subdivider proposes to record and develop at the time. The Master Subdivision Final Plat shall contain no fewer than 15 lots except in the case of one of the following:

- (i) Where there is a phase to be completed with fewer than 15 lots remaining or where the development contains fewer than 15 lots, in which case the application for Final Plat must contain all remaining lots;
- (ii) When the lots are located in a nonresidential subdivision; or
- (iii) When approved by the Planning Director, with the consent of the Public Works and Transportation Director and Water Resources Director.

2) *Procedures.*

The procedures for initiation of an application for a Master Subdivision Final Plat, the application contents, fees, and application submission and review by Town staff, shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. In addition, the applicant shall submit signed certifications on the Master Subdivision Final Plat in a form established in the Master Subdivision Final Plat application. The Planning Director (acting as the subdivision administrator) shall review the application and approve, approve with conditions, or disapprove the Master Subdivision Final Plat based on the standards in Sec. 2.3.7.F.3 *Standards*.

3) *Standards.*

To approve a Master Subdivision Final Plat, the Planning Director shall find that the Master Subdivision Final Plat conforms with the approved Master Subdivision Plan and the relevant Construction Plans, and complies with all the standards of this Ordinance and all other relevant Town ordinances and regulations. In addition, no Master Subdivision Final Plat shall be approved unless the developer shall have installed in the area represented on the Master Subdivision Final Plat all improvements required by Article 7: *Subdivision*, Article 14: *Parks, Recreation, Greenways, and Open Space*, and this Ordinance, or shall have guaranteed their installation.

4) *Compliance/non-compliance*

- a) If the Master Subdivision Final Plat is found to comply with the standards in Sec. 2.3.7.F.3 *Standards*, all relevant and appropriate fees are paid pursuant to this Ordinance, and the relevant bonds are posted, then approval shall be noted on each copy of the Master Subdivision Final Plat by the signed "Certificate of Approval for Recording". The subdivider shall record and return one (1) original recorded mylar and two (2) paper copies of the recorded mylar to the Planning Director.
- b) If the Master Subdivision Final Plat is found in non-compliance with the standards in Sec. 2.3.7.F.3 *Standards*, the Planning Director shall provide within 15 days of disapproval a written statement to the subdivider that includes the specific reasons for disapproval. The subdivider shall be given an opportunity to submit a revised Master Subdivision Final Plat.

5) *Recordation.*

The subdivider shall file the approved Master Subdivision Final Plat with the Register of Deeds of Wake County for recording within 60 days after the date of approval of the Master Subdivision Final Plat.

- 6) *Effect of Master Subdivision Final Plat on dedications.*  
The approval of a Master Subdivision Final Plat shall not be deemed to constitute or effect the acceptance by the Town of the dedication of any street or other ground, public utility line, or other public facility shown on the plat. However, the Town may by resolution accept any dedication made to the public of lands or facilities for streets, parks, public utility lines, or other public purposes when the lands or facilities are located within its subdivision regulation jurisdiction. Acceptance of dedication of lands or facilities located within the subdivision regulation jurisdiction, but outside the corporate limits of the Town, shall not place on the Town any duty to open, operate, repair, or maintain any street, utility line or other land or facility, and the Town shall in no event be held to answer in any civil action or proceeding for failure to open, repair or maintain any street located outside its corporate limits. The Town has no obligation to open any street even after acceptance of dedication.
  
- 7) *Appeal.*  
The subdivider may appeal the decision of the Planning Director to the Board of Adjustment. In reviewing the appeal, the Board of Adjustment shall only consider the record of the decision. A decision of the Planning Director shall not be reversed or modified unless there is demonstrated evidence that the decision fails to comply with the standards in Sec. 2.3.7.F.3 *Standards.*
  
- 8) *Amendments.*  
A Master Subdivision Final Plat may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.

### **2.3.8 Variance Permit**

- A) **Purpose**  
Variances are deviations from the dimensional standards in the applicable zoning district when owing to special circumstances or conditions (like exceptional topographical conditions, narrowness, shallowness, or the shape of a specific piece of property), the literal enforcement of the provisions of this Ordinance would result in peculiar and practical difficulties to, or exceptional and undue hardships on the owners of the property, and the deviation would not be contrary to the public interest. No variances from the schedule of permitted uses or special uses applicable in a zoning district shall be allowed pursuant to the terms of this Section.
  
- B) **Authority**  
The Board of Adjustment, in accordance with the procedures, standards and limitations of this Section, is authorized to review and approve, approve with conditions, or disapprove an application for a variance permit.
  
- C) **Procedures**
  - 1) *Initiation, submission, and review of application.* The procedures for initiation of the application for a variance permit, the application contents, fees, submission and review by Town staff, public notification, and scheduling of a public hearing shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures.*
  
  - 2) *Action by Board of Adjustment.* After completion of the Staff Report on the application (Sec. 2.2.9) and public notification (Sec. 2.2.11) and scheduling of a public hearing (Sec. 2.2.10), the Board of Adjustment shall conduct a public hearing on an application for a variance permit pursuant

to Sec. 2.2.18 *Public Hearing Procedures*. At the public hearing, the Board of Adjustment shall consider the application, the Staff Report, the relevant support materials, and the public testimony given at the public hearing. Within a reasonable period of time after the close of the public hearing, the Board of Adjustment shall approve, approve with conditions, or disapprove the application for a variance permit pursuant to the standards of Sec. 2.3.8.D *Standards*. The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to approve an application for a variance permit.

D) **Standards**

In order to approve an application for a variance permit, the Board of Adjustment shall find the following:

- 1) *Unnecessary Hardship*. Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.
- 2) *Hardship Results from Peculiar Conditions*. The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.
- 3) *Not Result of Action by Applicant*. The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.
- 4) *Consistency with the UDO*. The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

E) **Conditions of Approval**

The Board of Adjustment may, in approving the variance permit, impose such restrictions and conditions on such approval, the proposed use, and the premises to be developed or used pursuant to such approval as it determines are required to ensure compliance with the general goals, objectives, and policies of this Ordinance to prevent or minimize adverse effects from the proposed variance on the general health, safety and welfare of the Town, landowners in the Town and its residents.

F) **Effect of Variance Permit**

Issuance of a variance permit shall authorize only the particular variation that is approved in the variance permit. A variance permit shall run with the land and not be affected by a change in ownership, provided that a new landowner shall be obligated to sign a request for transfer of the variance permit, indicating acceptance of any applicable conditions.

G) **Subsequent Development**

Development authorized by the variance permit shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable provisions of the Town. A variance permit shall not ensure that the development approved as a variance shall receive subsequent approval for other applications for development unless the relevant and applicable portions of this Ordinance or any other applicable provisions are met.

- H) **Amendment**  
A variance permit may be amended, extended or modified only in accordance with the procedures and standards established for its original approval. A request for a change in a condition of approval of a variance permit shall be considered an amendment.
- I) **Lapse of Permit**  
If development occurs pursuant to a variance permit and the development is discontinued for any reason for a period of 12 months, the variance permit shall automatically become null and void and the development may not be resumed. Upon written application during the 12-month period by the landowner and upon a showing of good cause, the Board of Adjustment may grant an extension not to exceed six months.

### 2.3.9 Administrative Adjustment

- A) **General**  
This Section sets out the procedures and standards for administrative adjustments, which are modifications of 10% or less of any setback set out in Sec. 5.1 *Table of Intensity and Dimensional Standards*.
- B) **Procedures**  
The procedures for initiation of an application for an administrative adjustment, the application contents, fees, and application submission shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. Within 30 days after the application is determined sufficient, the Planning Director shall review the application and approve, approve with conditions or disapprove the administrative adjustment based on the standards in Sec. 2.3.9.C *Standards*.
- C) **Standards**  
Administrative adjustments shall be approved by the Planning Director only upon a finding that the applicant has demonstrated that all of the following conditions are met:
- 1) *Existing encroachment*. The request relates to an existing encroachment into a setback.
  - 2) *One encroachment*. The encroachment involves one encroachment into one required setback.
  - 3) *Substantial hardship*. The encroachment cannot be corrected without substantial hardship to the property owner.
  - 4) *Error made in good faith*. The error is not the result of negligence, recklessness or intentional conduct.
  - 5) *Not substantially interfere with the convenient and enjoyable use of adjacent properties*. The adjustment will not substantially interfere with the convenient and enjoyable use of adjacent properties, and will not impose a danger to the public health or safety.
  - 6) *Consistent with intent of this Ordinance*. The adjustment is consistent with the general intent and purposes of this Ordinance.
- D) **Conditions of Approval**  
The Planning Director may, in approving the administrative adjustment, impose such restrictions and conditions on such approval and the premises to be developed or used pursuant to such approval as are determined are required to

ensure compliance with the general goals, objectives, and policies of this Ordinance to prevent or minimize adverse effects from the proposed administrative adjustment on the general health, safety and welfare of the Town, landowners in the Town and its residents.

- E) ***Effect of Administrative Adjustment***  
Issuance of an administrative adjustment shall authorize only the particular modification that is approved in the administrative adjustment. An administrative adjustment shall run with the land and not be affected by a change in ownership, provided that a new landowner shall be obligated to sign a request for transfer of the administrative adjustment, indicating acceptance of any applicable conditions.
  
- F) ***Expiration***  
Unless otherwise specified in the Administrative Adjustment, the Administrative Adjustment shall expire at the end of one year after the date of its initial approval if an application for a building permit has not been approved, or if the use does not require a building permit, the use is established, ongoing, and in operation. Permitted time frames do not change with successive owners. Upon written request, one 12 month extension may be granted by the Planning Director for good cause shown.
  
- G) ***Subsequent Development***  
Development authorized by the administrative adjustment shall not be carried out until the applicant has secured all other permits required by this Ordinance or any other applicable provisions of the Town. An administrative adjustment shall not ensure that the development approved as an administrative adjustment shall receive subsequent approval for other applications for development unless the relevant and applicable portions of this Ordinance or any other applicable provisions are met.
  
- H) ***Amendments***  
An administrative adjustment may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

### 2.3.10 Certificate of Zoning Compliance

- A) ***Purpose***  
A Certificate of Zoning Compliance shall be required in accordance with the provisions of this Section in order to ensure that proposed development complies with the standards in this Ordinance, and to otherwise protect the public health, safety and welfare of the citizens of the Town.
  
- B) ***Applicability***  
Where no other type of development permit is required by this Ordinance, a Certificate of Zoning Compliance shall be required for the following types of development, including, but not limited to:
  - 1) Fit-ups for shopping centers, office parks, industrial parks, and other similar type uses.
  - 2) Change of use within the same land use class (1, 2, 3, 4, 5, or 6) as defined by Section 8.2.6.B.4 *Land Use Classes*.
  
- C) ***Procedures***  
The procedures for initiation of an application for a Certificate of Zoning Compliance, the application contents, fees, and application submission shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. Within 15 days after the application is determined sufficient, the Planning Director

shall review the application and provide written documentation stating whether the application complies with the standards in Sec. 2.3.10.D *Standards*. A copy of this documentation shall be provided to the applicant. If the Planning Director finds that the application complies with the standards in Sec. 2.3.10.D *Standards*, the Certificated of Zoning Compliance shall be approved. If the Planning Director recommends disapproval of the application, the applicant shall have 30 calendar days from the date of disapproval to submit a corrected application. If a corrected application is received, the Planning Director shall approve, approve with conditions, or disapprove the application, based on the standards in Sec. 2.3.10.D *Standards*. If the application is not resubmitted within 30 calendar days, the application shall be considered withdrawn.

- D) **Standards**  
Prior to approval of a Certificate of Zoning Compliance, the Planning Director shall find that the application complies with all standards of this Ordinance.
- E) **Effect of Certificate of Zoning Compliance**  
Issuance of a Certificate of Zoning Compliance shall mean that the proposed development is in compliance with the procedures and standards of this Ordinance.
- F) **Expiration**  
Receipt of a Certificate of Zoning Compliance shall expire at the end of one year after the date of its initial approval if an application for a building permit has not been approved, or if the use does not require a building permit, the use is established, ongoing, and in operation. Upon written request, one 12 month extension of the Certificate of Zoning Compliance may be granted by the Planning Director for good cause shown.
- G) **Amendment**  
A Certificate of Zoning Compliance may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

### 2.3.11 Temporary Use

- A) **Applicability**  
The provisions of this Section shall apply to all proposed temporary uses as set forth in Sec. 4.6 *Temporary Uses and Structures*, unless otherwise specifically exempted.
- B) **Procedure**  
The procedures for initiation of an application for a temporary use permit, the application contents, fees, and application submission shall comply with those relevant provisions in Sec. 2.2 *Common Review Procedures*. Within 30 days after the application is determined sufficient, the Planning Director shall review the application and approve, approve with conditions, or disapprove the temporary use permit based on the standards in Sec. 2.3.11.C *Standards*.
- C) **Standards**  
The Planning Director shall issue a temporary use permit upon a finding that the temporary use, as proposed, will comply with the relevant standards set forth in Sec. 4.6 *Temporary Uses and Structures*.
- D) **Permit Issued**  
All approved applications shall be issued a temporary use permit, except Sec. 4.6.1.C *Yard sales*, by the Planning Director authorizing the establishment of the approved temporary use on the subject property. The temporary use permit shall

be subject to the time limits and expiration provisions set forth in Sec. 4.6 *Temporary Uses and Structures*.

- E) **Compliance**  
Following the issuance of the temporary use permit, the Planning Director shall ensure that establishment and discontinuance of the temporary use are undertaken in compliance with the permit.
- F) **Effective Date of the Permit**  
Temporary use permits shall be effective beginning on the date of approval, and shall remain effective for the period indicated on the permit.
- G) **Expiration**  
All temporary use permits shall expire within six (6) months unless expressly permitted in the Temporary Use Permit issued for a use listed in Sec. 4.6.1.C *Uses Allowed*. Upon written request, one (1) 12-month extension may be granted by the Planning Director for good cause shown.
- H) **Amendment**  
A temporary use permit may be amended, extended or modified only in accordance with the procedures and standards established for its original approval.

#### 2.3.12 Appeals

- A) **Purpose**  
Any person aggrieved by any decision or interpretation made by the Planning Director or other officials administering this Ordinance may appeal such decision to the Board of Adjustment, which shall review the decision or interpretation pursuant to the requirements of this Section.
- B) **Authorization**  
On the action appealed from, the Board of Adjustment shall have the same authority as the reviewing body to make the correct order, requirement, decision or determination.
- C) **Procedures**
  - 1) *Initiation of appeals.* Notices of Appeal shall be filed within the time prescribed in the Rules of Procedure of the Town of Apex Board of Adjustment.
  - 2) *Contents of appeal.* The Notice of Appeal shall include a statement of the error or improper decision or interpretation made by the Planning Director or other officer, the date of that decision, and all support materials related to the decision. The specific form of the Notice of Appeal shall be established by the Planning Director.
  - 3) *Forwarding record to the appellate body.* Upon receiving the Notice of Appeal, the Planning Director shall forward the Notice of Appeal and the record of the decision on which the appeal is based to the Board of Adjustment.
  - 4) *Notice procedures.* Notice shall be in accordance with Sec. 2.2.11 *Public Notification*.
  - 5) *Action by Board of Adjustment.* At the hearing on the appeal, the Appellant or the Appellant's agent shall state the grounds for the appeal and include any materials or evidence to support the appeal. The Planning Director, or a designated representative, shall be provided the



opportunity to respond, as well as any other persons the Board of Adjustment deems necessary. After the conclusion of the hearing, the Board of Adjustment shall either affirm, affirm with modifications, or reverse the contested decision or interpretation, based on the standards in Sec. 2.3.12.E *Standards*. The concurring vote of four-fifths of the members of the Board of Adjustment shall be necessary to reverse any order, requirement, decision or determination on appeal.

- D) **Stay**  
 An appeal shall stay all proceedings in furtherance of the action appealed, unless the Town Attorney certifies that by reason of facts stated in the appeal, a stay would cause imminent peril to life or property.
- E) **Standards**  
 A decision/interpretation of the Planning Director or other official under this Ordinance shall not be reversed or modified unless there is demonstrated evidence that the interpretation/decision is inconsistent with the intent and standards of this Ordinance.
- F) **Hearing on Record**  
 All appeals will be held solely on the record.

### 2.3.13 Beneficial Use Determination

If, after the submission and decision on the appropriate applications for development permits for a plan for the development of land, a landowner in the Town is of the opinion that an economically beneficial use of that landowner's land has been denied by the application of this Ordinance, then the procedures of this Section shall be used prior to seeking relief from the courts in order that any denial of economically beneficial use of land may be remedied through a non-judicial forum.

- A) **Purpose**  
 The purpose and intent of the Town Council is that every landowner in the Town enjoy an economically beneficial use of land. It is also the purpose and intent of this Section to provide for relief to the landowner, where appropriate, from the application of this Ordinance. The procedures set forth in this Section are intended to permit landowners who believe they have been deprived of economically beneficial use of their land to apply to the Board of Adjustment for relief sufficient to provide an economically beneficial use of the land.
- B) **Procedures**
- 1) *Application for an appeal for beneficial use determination.* An Appeal for a Beneficial Use Determination may be filed by a landowner at any time to the Planning Director, along with an application fee established pursuant to Sec. 2.2.5 *Fees*.
  - 2) *Contents of application.* The application shall be submitted in a form established by the Planning Director and made available to the public, and shall include the following:
    - a) The landowner's name and address.
    - b) A legal description and the street address (when a street address is available) of the land.
    - c) Documentation of the date of purchase and the purchase price of the land, and any offers to purchase the land made by any person, corporation, or association, within the last three years.

- d) A description of the physical features present on the land, the land's total acreage, the present use of the land, and the use of the land at the time of the adoption of this Ordinance.
  - e) Evidence of any investments made by the landowner to improve the land, the date the improvements were made, and the costs of the improvements.
  - f) A description of what uses of land were available when the land was purchased by the landowner.
  - g) A description of the regulations and uses permitted which are alleged to result in an elimination of economically beneficial use of the land.
  - h) All appraisals, studies, and any other supporting evidence, and any actions taken by Town related to the land.
  - i) A description of the use which the landowner believes represents the minimum legally required economically beneficial use of the land and all documentation, studies, and other supporting evidence thereof.
- 3) *Determination of sufficiency.* The Planning Director shall determine if the application is sufficient and includes data in sufficient detail to evaluate the application to determine if it complies with the appropriate substantive requirements of this Section.
- a) If the Planning Director determines the application is not sufficient, a written notice shall be mailed to the applicant specifying the application's deficiencies. No further action shall be taken on the application until the deficiencies are remedied. If the applicant fails to correct the deficiencies within 30 calendar days, the application shall be considered withdrawn, and the application fee shall be refunded.
  - b) When the application is determined sufficient, the Planning Director shall notify the applicant, in writing, of the application's sufficiency, and forward the application to the Hearing officer for the scheduling of a hearing.
- 4) *Establishment of date for hearing and notice.* Within 30 calendar days of the date that the application has been determined sufficient by the Planning Director, the Hearing Officer shall schedule a hearing on the Appeal for Beneficial Use Determination. The Planning Director shall provide the applicant and all landowners within 100 feet of the land subject to the Appeal for Beneficial Use Determination at least 20 calendar days notice of the hearing by mail.
- 5) *Hearing.* At the hearing, the applicant shall present the applicant's case and the Town Attorney shall represent the Town. All evidence presented shall be under oath, and the parties involved shall be permitted to cross-examine witnesses. The sworn testimony and evidence shall pertain to the standards set forth in Sec. 2.3.13.C *Beneficial Use Standards*, as to whether the applicant has been deprived of an economically beneficial use of the land and the standards in Sec. 2.3.13.D *Granting of Relief*, pertaining to the degree of relief needed to provide the landowner with an economically beneficial use of the land.

- 6) *Findings of the Hearing Officer.* Within 30 calendar days of the close of the hearing, the Hearing Officer shall prepare recommended findings of fact and a proposed order for the consideration of the Town Council. The findings and recommendations of the Hearing Officer as to whether the land is provided economically beneficial use shall be based on the evidence submitted and the standards in Sec. 2.3.13.C *Beneficial Use Standards*. If the Hearing Officer finds that the applicant has been denied economically beneficial use of the subject land, then the Hearing Officer shall recommend a use that permits an economically beneficial use and results in a minimum change from the regulations of this Ordinance as they apply to the subject land, pursuant to the standards set forth in Sec. 2.3.13.C *Beneficial Use Standards*, and Sec. 2.3.13 *Granting of Relief*, or other relief as is determined appropriate. The Hearing Officer's recommended findings of facts and proposed order shall be in writing and shall detail the basis of the conclusions from the record of the hearing.
- 7) *Action by Board of Adjustment.* The Board of Adjustment shall schedule a hearing on the application within 30 calendar days of the date the hearing officer issues the recommended findings of fact and proposed order. The Planning Director shall provide the applicant and all landowners within 100 feet of the land subject to the Appeal for Beneficial Use Determination at least 15 calendar days notice of the hearing by mail. At the hearing, the Board of Adjustment shall approve the findings of fact and proposed order of the Hearing Officer, or may attach conditions, modify, or reverse the findings of fact or proposed order of the Hearing Officer, based on the standards of Sec. 2.3.13.C *Beneficial Use Standards*, and Sec. 2.3.13.D *Granting of Relief*. If the Board of Adjustment attaches conditions, modifies or reverses the findings of fact or proposed order, it shall do so only where the record of the hearing indicates that the hearing officer is unsupported by the record, or that the proposed order is not in conformance with the standards of Sec. 2.3.13.C *Beneficial Use Standards*, and Sec. 2.3.13.D *Granting of Relief*.
- C) ***Beneficial Use Standards***  
In determining if a landowner has been deprived of an economically beneficial use of land, the Hearing Officer and Board of Adjustment shall take into account the following factors:
- 1) *Economically viable use.* In making the determination of whether the land is provided an economically viable use, the Hearing Officer/Board of Adjustment shall first evaluate the uses of the land as provided by this Ordinance, and the uses of land in relation to the uses provided similarly situated lands. For the purposes of this Section, economically viable use means the opportunity to make a return equivalent to that which would have been received from a conservative financial investment. Transitory economic issues shall not be relevant to this determination.
- 2) *Diminution in value.* The market value of the land, as established by the comparable sales approach, prior to adoption of this Ordinance, which caused the landowner to apply for relief shall be compared to the market value of the land, as established by the comparable sales approach, with the regulations as applied. Market value of the land prior to the adoption of this Ordinance shall constitute its highest and best use on July 31, 2000 or the date of purchase of the land, whichever is later, and any other land value/appraisal information that the applicant would like to be considered. All appraisals shall be proposed by qualified licensed appraisers, and shall follow the best professional practices as established by the

profession. A mere diminution in market value is not sufficient to support a determination of denial of economically beneficial use.

- 3) *External costs*
  - a) The amount or nature of any subsidy that may be required by the Town, neighbors, purchasers, tenants, or the public-at-large if the uses allowed under this ordinance are modified; or
  - b) Any other adverse effects on the Town or its residents.
- 4) *Subsidy.* The amount or nature of any subsidy that may be required by the Town, neighbors, purchasers, tenants, or the public at large if the uses allowed under this Ordinance are modified.
- 5) *Other adverse effects.* Any other adverse effects on the Town and its residents.
- 6) *Current state of the law.* The state of the law established by the United States Supreme Court, the federal Circuit Courts of Appeals, and the North Carolina Supreme Court, relevant to these standards.

**D) *Granting of Relief***

- 1) *Relief.* If the finding is that a landowner has been deprived economically beneficial use of land, or is otherwise entitled to relief pursuant to the standards of this Section, relief shall be granted.
- 2) *General.* In granting relief, the hearing officer may recommend and the Board of Adjustment may adopt any legally available incentive or measure reasonably necessary to offset any substantial economic hardship, and may condition such incentives upon approval of specific development plans. If there is a finding that the denial of the application would create a substantial economic hardship, the hearing officer may recommend and the Board may consider additional relief to provide an appropriate increase in market value or other benefit or return to the applicant sufficient to offset the substantial economic hardship. The types of incentives that the hearing officer may recommend and the Board of Adjustment may consider includes, but are not limited to, the following:
  - a) A rezoning of property to a more appropriate classification, issuance of a variance, approval of a development plan, or other appropriate land use regulatory action that will enable the applicant to realize a reasonable return on the property;
  - b) An opportunity to transfer density or cluster development on other property;
  - c) A waiver of permit fees;
  - d) Development finance assistance;
  - e) Approval of development on some portion of the property; or
  - f) Acquisition of all or a portion of the property at market value.
- 3) *Minimum increase.* In granting relief, the landowner shall be given the minimum increase in use density/intensity or other possible concessions from this Ordinance and Sec. 2.3.13.D.2 in order to permit an economically viable use of the land or a use that is determined to be

required by law. The highest use, or even an average or generally reasonable expectation, is not required or intended as the appropriate remedy. The following guidelines shall be used for determining the minimum economically viable use of land and, therefore, the amount of relief to be granted a landowner in order to reach that minimum.

- a) A minimum economically viable use of the land should be one that does not have any governmental subsidy attached to the long-term safe occupation of the land. If such a subsidy is needed, then that should be reflected by lowering the use intensity that is considered a minimum economically viable use on a market valuation basis.
- b) A use common to the Town, although it may not involve further development of the land, is considered an economically viable use. Attention shall also be given to land uses that are considered to be the lowest intensity in the Town but which uses still provide for occupation and living within the Town. These land uses, as well, shall be considered economically viable uses.
- c) The actual condition of the land shall be considered. The reality of limited development potential, given the natural condition of the land, shall not be attributed to the regulations applied to the land. If the land is such that it cannot safely accommodate development with normal grading and clearing practices, this fact shall lower the intensity of use that is considered a minimum economically viable use.
- d) The potential for damages to either residents or land shall be assessed in determining economically viable use. The need for a governmental subsidy to future landowners shall be considered, and the cost of such subsidies shall be deducted from the otherwise established minimum economically viable use.
- e) Expectations shall, in general, not be considered. Only reasonable expectations backed by investments as required by the current state of the law, shall they be considered.
- f) The current state of law established by the United States Supreme Court, the federal Circuit Court of Appeals, and the North Carolina Supreme Court, relevant to the granting of relief.

- E) **Appeal**  
The decision of the Board of Adjustment may be appealed to a court of law.

#### 2.3.14 Vested Rights

- A) **Establishment of a Vested Right**
- 1) *Purpose.* The purpose of this Section is to establish procedures and standards to implement the vested rights provision of Sec. 160A–385.1, N.C.G.S.
  - 2) *General.* A vested right shall be established pursuant to this Section upon the valid approval, or conditional approval, by the Town Council, of a site-specific development plan consistent with the public hearing notification requirements and public hearing procedures established in Sec. 2.2 *Common Review Procedures*, for an amendment to the Official Zoning District Map (Rezoning).

- B) ***Protect Health, Safety, and Welfare***  
The Town Council may approve a site specific development plan for the purposes of establishing a vested right pursuant to this Section, upon such terms and conditions as may reasonably be necessary to protect the public health, safety and welfare of the Town and its residents.
- C) ***Variance Required***  
Approval of a site-specific development plan with the condition that a variance be approved shall not confer a vested right pursuant to this Section until and unless the variance permit is approved pursuant to Sec. 2.3.8 *Variance Permit*.
- D) ***Effective Date***  
A vested right pursuant to this Section shall be deemed approved and effective upon the effective date of the Town Council action approving the site specific development plan, or if no effective date is stated in the development approval, upon the adoption of the Ordinance or motion approving the site specific development plan.
- E) ***Definitions***  
For the purposes of this Section, the following definitions shall apply.
- 1) *Approval authority*. The Town Council, Board of Adjustment, Planning Board, or other official designated by this Ordinance as being authorized to approve a site specific development plan.
  - 2) *Landowner*. The meaning provided by Sec. 160A–385.1(b)(1), N.C.G.S.
  - 3) *Property*. The meaning provided by Sec. 160A–385.1(b)(4), N.C.G.S.
  - 4) *Site-specific development plan*. As defined by Sec. 160A–385.1 (b)(5), NCGS, a plan of development submitted to the Town for purposes of obtaining one of the following development approvals: site plan; master subdivision plan; a rezoning to a conditional zoning district which includes a site plan or master subdivision plan; and special use permit including a site plan or master subdivision plan. Notwithstanding the foregoing, neither a variance, a sketch plan nor any other document that fails to describe with reasonable certainty the type and intensity of use for a specified parcel or parcels of property shall constitute a site specific development plan.
  - 5) *Vested right*. As defined in Sec. 160A–385.1(b)(6), N.C.G.S., the right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan.
- F) ***Application of Existing and New Regulations***  
The establishment of a vested right pursuant to this Section shall not preclude the application of Sec. 6.1 *Watershed Protection Overlay Districts*, Sec. 6.2 *Flood Damage Prevention Overlay District*, Article 8: *General Development Standards*, and Article 9: *Design Standards* to the site specific development plan (except that these regulations shall not affect the allowable type or intensity of use), or ordinances or regulations that are general in nature and are applicable to all land in the Town subject to land use regulation, including but not limited to, state building, fire, plumbing, electrical, and mechanical codes and the *Town of Apex Standard Specifications and Standard Details*. Otherwise, applicable new or amended regulations shall become effective to a site-specific development plan approved pursuant to this Section upon the expiration or termination of the vested right.

G) **Procedures**

- 1) *General.* Except as otherwise provided in this Section, an application for a vested right for a site specific development plan shall be processed concurrent with the application for the site specific development plan established in Article 2: *Administration*. In order for a vested right to be considered pursuant to this Section, the applicant shall state in writing in the application that a vested right is being requested pursuant to this Section.
- 2) *Notation.* If a vested right is granted for the site specific development plan, the development approval shall contain the following notation: "Approval of this site specific development plan establishes a vested right under Sec. 160A-385.1, N.C.G.S. Unless terminated at an earlier date, the vested right shall be valid for two (2) years after the date of approval."
- 3) *Receipt of subsequent development approvals.* Following establishment of a vested right for a site specific development plan pursuant to this Section, nothing in this Section shall exempt the site specific development plan from compliance with the requirements of this Ordinance and receipt of subsequent development approvals, as long as they are consistent with the site specific development plan.
- 4) *Revocation.* A vested right approved pursuant to this Section, and the site specific development plan, may be revoked for failure to comply with the terms and conditions of development approval and this Ordinance, provided that prior to revocation the landowner shall be given an opportunity to be heard.
- 5) *Duration*
  - a) The duration of a vested right for a site specific development plan approved pursuant to this Section shall be for two years from the effective date of approval of the site specific development plan unless specifically and unambiguously provided otherwise pursuant to Sec. 2.3.14.H.5.b. This vested right shall not be extended by any amendment to a site specific development plan unless expressly provided by the Town Council at the time the amendment to the site specific development plan is approved pursuant to the procedures and standards of this Ordinance.
  - b) The Town Council, in its discretion, may provide that the duration of a vested right for a site specific development plan approved pursuant to this Section may be for greater than two years but no greater than five years, where a longer period of vesting is reasonably justified in light of the circumstances relevant to the development for which the site specific development plan is approved. Reasonable justifications include, but are not limited to, the size of the development, the level of infrastructure investment needed for the development, economic cycles and other relevant market conditions.

H) **Issuance of Building Permit**

Upon issuance of a building permit, the expiration provisions of Sec. 160A-418, N.C.G.S. and the revocation provisions of Sec. 160A-422, N.C.G.S. shall apply, except that a building permit shall not expire or be revoked because of the running of time while a vested right under this Section is outstanding.

I) **Termination**

A vested right for a site-specific development plan pursuant to this Ordinance shall terminate:

- 1) *End of the vesting period.* At the end of the vesting period with respect to buildings and uses for which no valid building permit applications have been approved.
- 2) *Written consent.* With the written consent of the landowner of the property that has received a vested right for a site-specific development plan.
- 3) *Hazard poses threat if project proceeds.* Upon findings by the Town Council, by ordinance after notice and public hearing, that natural or man-made hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety and welfare if the project were to proceed as contemplated in the site-specific development plan.
- 4) *Payment to affected landowner.* Upon payment to the affected landowner of compensation for all costs, expenses and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property that is caused by such action.
- 5) *Inaccurate information.* Upon findings by the Town Council, by ordinance after notice and a public hearing, that the landowner or the landowners' representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval of the Town Council of the site specific development plan.
- 6) *State or federal law or regulation that preclude development.* Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the Town Council may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance, after notice and a public hearing.

J) **Voluntary Annexation**

A petition for annexation filed with the Town pursuant to Secs. 160A-31 or 160A-58.1, N.C.G.S., shall contain a signed statement declaring whether or not any vested right with respect to the land subject to the petition has been established under Secs. 160A-385.1 or 153A-344.1, N.C.G.S. A statement that declares no vested right has been established under Secs. 160A-385.1 or 153A-433.1, N.C.G.S., or failure to sign a statement declaring whether or not a vested right has been established, shall be binding on the landowner and any such vested right shall be terminated.

K) **Limitations**

Nothing in this Section is intended or shall be deemed to create any vested right other than those established pursuant to Sec. 160A-385.1, N.C.G.S.



### 2.3.15 Tree Removal and/or Pond Drainage Plan

A) **Purpose**

Tree Removal and/or Pond Drainage Plan review is required by this Ordinance to ensure that any tree removal and/or pond drainage activities are done in a manner that protects future buffers and Resource Conservation Areas, meets the Ordinance's watershed and floodplain restrictions, and ensures that appropriate measures are taken for stormwater management and sedimentation and erosion control.

B) **Applicability**

No person shall engage in tree removal and/or pond drainage activities unless such person has applied for and has been issued a Tree Removal and/or Pond Drainage Permit, and all other applicable federal, state, and local permits have been issued. The Tree Removal and/or Pond Drainage Permit is issued by the Town of Apex Planning Department and authorizes tree removal and/or pond drainage activities consistent with this Ordinance. All tree removal and/or pond drainage activities shall be conducted in conformity with the approved Tree Removal and/or Pond Drainage Plan and Permit. Tree removal activities include cutting of trees. Pond drainage activities include drainage of water bodies.

The Tree Removal Plan cannot be reviewed concurrently with any other development application (including Rezoning, conditional zoning, PUD-CZ, SD-CZ, TND-CZ, MEC-CZ, Master Subdivision Plan, Site Plan, Administrative Approval, etc.) and must be approved or withdrawn prior to the submission of any other development application.

The Pond Drainage Plan can be reviewed concurrently with any other development application (including but not limited to Rezoning, conditional zoning, PUD-CZ, SD-CZ, TND-CZ, Master Subdivision Plan, Site Plan, Administrative Approval, etc.). Minimal tree removal and grading necessary to facilitate draining the pond and establishing sedimentation and erosion control measures shall be permitted as part of the Pond Drainage Plan.

C) **Exemptions**

The following tree removal or non-structural development activities shall be exempted from the requirements of this section:

- 1) Tree removal activities which are not conducted to facilitate development and which are normal forestry activities conducted pursuant to a forestry management plan prepared or approved by a forester registered pursuant to Chapter 89B of the General Statutes on land classified by Wake County as agricultural, forestry, or horticultural land use or that meet Sec. 8.1.3.B *Tree and Vegetation Conservation, Exemptions for Specific Activities*.

However, if a Tree Removal and/or Pond Drainage Permit is not issued, per NCGS 160A-458.5(c)(1), no approval of a Site or Master Subdivision Plan or issuance of a building permit shall occur for a period of three (3) or five (5) years from the date the tree removal activities are completed, based on the following:

- a) Three (3) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought.

- b) Five (5) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.
- 2) Tree removal activities which are not conducted to facilitate development and which occur on property zoned for single-family or duplex residential uses or where single-family or duplex residential uses already exist. However, if a Tree Removal and/or Pond Drainage Permit is not issued, no Master Subdivision Plan or development applications shall be accepted for 48 months from the date the tree removal activities are completed.
- 3) Tree removal and/or pond drainage activities that are specifically authorized by a development plan approved by the TRC or Town Council (including but not limited to Master Subdivision Plan or Site Plan) that specifically authorizes the tree removal and/or pond drainage activities.
- 4) Tree removal and/or pond drainage activities that meet the criteria of Sec. 2.3.6.C.2.d, e, f, g, h, or i *Exemptions from Site Plan* approval and that are specifically authorized by an administrative approval (if applicable) by the Planning Director in accordance with Sec. 2.3.6.C *Exemptions*.

D) **Procedures**

- 1) *Application for Tree Removal and/or Pond Drainage Permit.* Applicants shall submit a form and fee specified by the Town of Apex Planning Department along with a Tree Removal and/or Pond Drainage Plan. The Tree Removal and/or Pond Drainage Plan shall specify that trees will not be removed in those areas of the site that correspond with areas that would be buffers or Resource Conservation Areas if the site were being developed for the highest and best use permitted in the applicable zoning district. No person shall remove trees or conduct pond drainage activities in these areas.
- 2) *Contents of application.* The Tree Removal and/or Pond Drainage Plan shall include the following information:
  - a) The boundaries of the site upon which tree removal and/or pond drainage activities are proposed.
  - b) A tree survey locating all trees 8" caliper and larger on the site.
  - c) The areas where the applicant proposes to cut trees and/or drain ponds.
  - d) Those areas of the site that correspond with areas that would be buffers or Resource Conservation Areas (including stream corridors, wetlands, stands of large trees, etc.) if the site were being developed for the highest and best use permitted in the applicable zoning district.
- 3) *Action by the Technical Review Committee.* The Technical Review Committee shall review the application. If the application complies with the standards set forth in 2.3.15(E) Standards, then the Tree Removal and/or Pond Drainage Permit shall be approved. If the application does not comply with the standards set forth in 2.3.15(E) Standards, then the

Tree Removal and/or Pond Drainage Permit shall be denied. The applicant shall have the opportunity to revise and resubmit the application and Tree Removal and/or Pond Drainage Plan in accordance with the published schedule provided by the Planning Department.

- E) **Standards**  
Prior to approval of a Tree Removal and/or Pond Drainage Permit, the Technical Review Committee shall find that the Tree Removal and/or Pond Drainage Plan complies with all applicable sections of the Ordinance, as well as any other applicable federal, state, or local requirements. Applicable sections of the Ordinance include, but are not limited to, Sec. 2.3.15 *Tree Removal and/or Pond Drainage Plan*, Sec. 6.1 *Watershed Protection Overlay Districts*, Sec. 6.2 *Flood Damage Prevention Overlay District*, Sec. 8.1 *Resource Conservation*, and Sec. 8.2 *Landscaping, Buffering, and Screening*.
- F) **Expiration**  
A Tree Removal and/or Pond Drainage Permit shall expire at the end of one year after the date of its initial approval if the use has not been established, ongoing, and in operation. Upon written request, one 6 month extension of the Tree Removal and/or Pond Drainage Permit may be granted by the Planning Director for good cause shown.
- G) **Amendment**  
A Tree Removal and/or Pond Drainage Permit may be amended, extended, or modified only in accordance with the procedures and standards established for its original approval.
- H) **Failure to Obtain Tree Removal and/or Pond Drainage Permit**  
If a Tree Removal and/or Pond Drainage Permit is not issued prior to tree removal activities on land not exempted per Sec. 2.3.15.C *Exemptions*, per NCGS 160A-458.5(c)(1), no approval of a site or subdivision plan or issuance of a building permit shall occur for a period of 3 or 5 years from the date the tree removal activities are completed, based on the following:
- 1) Three (3) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought.
  - 2) Five (5) years after the completion of a timber harvest if the harvest results in the removal of all or substantially all of the trees that were protected under Town regulations governing development from the tract of land for which the permit or approval is sought and the harvest was a willful violation of the Town regulations.

### 2.3.16 Sustainable Development Conditional Zoning District

- A) **General**  
This Section establishes the procedures and standards applicable to the Town's Sustainable Development Conditional Zoning District SD-CZ.
- B) **General Applicability**  
Before any development shall be designated as a Sustainable Development Conditional Zoning District SD-CZ on the Official Zoning District Map, it shall receive approval pursuant to the terms of this Section and Section 2.3.3 of this Ordinance.

C) **Location**

A Sustainable Development Conditional Zoning District SD-CZ designation may be established on any land located in the Town and its ETJ that complies with all of the applicable standards of this Section and Sec. 3.3.4(B), including the requirement that a Sustainable Development Conditional Zoning District SD-CZ include a minimum of 500 contiguous acres. An SD-CZ District may include other parcels of any size within 2000 feet of such parcel of at least 500 contiguous acres.

D) **Unified Ownership or Control**

One person shall have all the responsibility and authority to make all the developer land use planning decisions for all land that is part of a Sustainable Development Conditional Zoning District SD-CZ. A person shall be considered to have such responsibility and authority for all lands in the Sustainable Development Conditional Zoning District SD-CZ either through ownership or by written agreement by and between such person and each owner of parcels comprising said lands agreeing to the conditions and standards of the adopting ordinance and the Sustainable Development Conditional Zoning District SD-CZ and granting the person such responsibility and authority. This one person, who shall be identified in the Sustainable Development Conditional Zoning District SD-CZ Re-Zoning Application as the "Responsible Person," will be the sole person from whom the Town will accept decisions regarding the Sustainable Development (SD) Plan and Sustainable Development Conditional Zoning District SD-CZ, including amendments, modifications or supplements thereof or the addition of lands thereto. The SD Plan shall provide the process for effecting a change or succession of Responsible Person for the purposes of a specific district. A parcel or parcels (the "Parcel") of any size may be added to an existing Sustainable Development Conditional Zoning District if (i) any portion of the Parcel is within two thousand (2000) feet of such existing district, (ii) the Responsible Person of the existing district consents in writing and (iii) the Town Council approves a rezoning of the Parcel to Sustainable Development Conditional Zoning District SD-CZ in accordance with Secs. 2.3.3 and 2.3.16. In such event the SD Plan approved for the existing SD-CZ District shall be applicable to the Parcel(s) added to such existing district, and the development densities authorized in the existing SD Plan (including number of residential units and authorized square footage of other land uses) shall be increased on a pro-rata basis based on the size of the Parcel(s) added to the district, unless the Town Council provides otherwise with the consent of the Responsible Person.

E) **Procedures**

- 1) *Overview.* Approval of a Sustainable Development Conditional Zoning District SD-CZ shall constitute an amendment to the Official Zoning District Map. It shall be controlled by an SD Plan that is approved as part of the Sustainable Development Conditional Zoning District SD-CZ designation and that designates the appropriate form and scale of development within the Sustainable Development Conditional Zoning District SD-CZ. The procedure requires review and recommendation of approval or disapproval by the Planning Board and approval, approval with conditions, or disapproval by the Town Council.
- 2) *General.* The procedures for initiation of the application, the application contents, fees, submission and review by Town staff and/or consulting firms on retainer, public notification, review by the Planning Board and then approval, approval with conditions, or disapproval by the Town Council at a public hearing(s) shall comply with the requirements of Sec. 2.2 *Common Review Procedures*, Sec. 2.2.7 *Neighborhood Meeting* and Sec. 2.3.16.F *Sustainability Standards*.

F) **Standards**

- 1) In return for greater flexibility in site design requirements, the Sustainable Development Conditional Zoning District SD-CZ is expected to deliver exceptional quality designs on a large-scale basis that:
  - a) facilitate the integration of a broad array of uses;
  - b) preserve and enhance critical environmental and natural resources, including water resources and ecosystem services in the stream network flowing through the district;
  - c) incorporate creativity in the design and configuration of buildings, roads, public space and infrastructure; and
  - d) employ innovative techniques and practices aimed at maximizing efficiency in the use of energy and materials.

In short, the Sustainable Development Conditional Zoning District SD-CZ is expected to provide a high quality of life through the creation of a healthy, living landscape within a high-intensity mixed-use community.

- 2) The purpose, intent and scale of the Sustainable Development Conditional Zoning District SD-CZ are unique from the other districts established in Sec. 3.2. Thus, the unique nature of the Sustainable Development Conditional Zoning District SD-CZ necessitates alternative standards, regulations, specifications, details, designs, and criteria (the "Sustainability Standards") to meet the spirit and intent of this Ordinance. These Sustainability Standards, which shall be set forth in the SD Plan and may be established pursuant to paragraph 3) hereafter, may:
  - a) specify the nature, density, maximums on development, minimums on development, development thresholds, and design characteristics proposed for the Sustainable Development Conditional Zoning District SD-CZ;
  - b) address the relationship between building facades and the public realm, the form and mass of buildings in relation to one another, and the scale and types of streets and blocks;
  - c) facilitate a full diversity of building types, thoroughfare types, and public space types with appropriate characteristics for their respective locations;
  - d) facilitate the restoration and enhancement of the environment and natural resources through both accepted practice and innovative practices; and
  - e) modify and supersede the provisions of this Ordinance or any land development document referenced or incorporated therein, or other land development ordinances or policies of the Town. However, an SD Plan and development pursuant thereto shall conform to all applicable Town ordinances and policies, including the UDO, except to the extent that ordinances or policies, including the UDO, are varied in the approved SD Plan or in Sustainability Standards adopted pursuant to paragraph 3) hereafter. An SD Plan and the Sustainability Standards may not modify the requirement that an SD-CZ District include a minimum of 500 contiguous acres.

- 3) The Sustainability Standards and other provisions of the SD Plan, as well as Sustainability Standards established pursuant to this paragraph F) 3), shall form the basis for a development of exceptional quality and innovation that is an enhancement to the welfare of the Town's citizens. At any time, and from time to time:
- a) with the consent of the Responsible Person, the Town Council may adopt additional or modified Sustainability Standards for an approved SD-CZ District following review and recommendation by the Planning Board;
  - b) where an SD Plan requires additional or modified Sustainability Standards for an approved SD-CZ District, site plan approval, subdivision approval, construction or grading shall not commence within such SD-CZ District unless and until the required Sustainability Standards are adopted as provided in the SD Plan; with the consent of the Responsible Person, the Town Council shall review and consider and may adopt such additional and modified Sustainability Standards following review and recommendation by the Planning Board;
  - c) as an amendment to this Ordinance, the Town Council may adopt elective Sustainability Standards for SD-CZ districts, which may, at the election of a Responsible Person, (i) be incorporated, in whole or in part, into an approved SD Plan for an existing SD-CZ district or (ii) be included within an SD Plan for a proposed SD-CZ district. In the case of an approved SD Plan, the elective Sustainability Standards so incorporated may provide that they serve as a supplement to the provisions of the SD Plan and serve as an alternative to the application of any inconsistent provisions of the Plan;
  - d) actions by the Town Council under the foregoing subsections 2.3.16(F)(3)(a), (b) and (c) shall be taken in accordance with the provisions of Sec. 2.3.2 applicable to *Amendments to the Text of this Ordinance*. It is provided, however, that such actions may be proposed only by the Town Council, the Planning Director, or the Responsible Person; and
  - e) this Subsection 2.3.16 does not reduce any authority that the Town otherwise has to amend its UDO or an approved SD-CZ rezoning and SD Plan; the vested rights applicable to a SD-CZ rezoning and SD Plan shall be determined by other applicable law and by the provisions of a developer agreement if any.

G) ***SD Plan***

To the degree necessary and appropriate, the SD Plan and the Sustainability Standards shall include, but shall not be limited to, requirements related to:

- 1) standards a) through d) set forth in the foregoing Section 2.3.16(F)(1);
- 2) design guidelines;
- 3) parks, open space and greenways;
- 4) water resources and ecosystem services;
- 5) comprehensive signage;

- 6) landscaping conditions;
- 7) parking requirements; and
- 8) public infrastructure improvements and public facilities.

The SD Plan shall also include a map depicting the concept for the development of the property. To the extent that provisions of the SD Plan or Sustainability Standards vary the provisions of this Ordinance, or other ordinances or policies of the Town, the provisions of the SD Plan or Sustainability Standards shall be applicable.

H) ***Placement of Sustainable Development Conditional Zoning District SD-CZ Designation on Official Zoning District Map***

After final approval of the adopting ordinance for the Sustainable Development Conditional Zoning District SD-CZ designation and the SD Plan, the Planning Director shall amend the Official Zoning District Map to show a Sustainable Development Conditional Zoning District SD-CZ designation.

I) ***Effect***

Approval of an adopting ordinance for Sustainable Development Conditional Zoning District SD-CZ designation and the SD Plan shall constitute an Official Zoning District Map designation and recognition by the Town that the landowner may proceed, consistent with the SD Plan, to develop the land. The next appropriate development approval for the land is a site plan or subdivision plan.

J) ***Deviation to SD Plan***

When appropriate to further the goals of an approved SD-CZ District and its SD Plan, the Planning Director may approve deviations of up to ten percent (10%) with respect to any standard, design, configuration, disposition, or matter established or quantified in an SD Plan or the Sustainability Standards, except that this authority shall not apply to density, maximums on development, minimums on development or thresholds. Any other modification, revision or supplementation of an SD Plan or the Sustainability Standards shall require the approval of the Town Council following review by the Planning Board.

K) ***Amendment to Sustainable Development Conditional Zoning District SD-CZ***

An amendment to the Official Zoning District Map for a Sustainable Development Conditional Zoning District SD-CZ may be made only pursuant to the procedures and standards for its original approval, and specifically Sec. 2.3.16(D) *Unified Ownership or Control*.

**2.3.17 Site Work Prior to Development Approvals**

Any work performed on a site prior to being granted an appropriate approval by the Town of Apex as outlined in Section 2.3 shall be in violation of the Unified Development Ordinance.

**2.3.18 Utility Service**

Development approvals as outlined in Table 2.3.1 and Section 2.3 of this Ordinance do not constitute allocation, reservation, guarantee or the provision of any utility service or capacity.