

Agenda

PLANNING BOARD

Regular Meeting

6:30 p.m. December 21, 2023

Human Resources Training Room, Town Hall Administration Building
101 E. Orange Street



1. **Call to order and confirmation of quorum**
2. **Agenda changes and approval**
3. **Approval of minutes (August 17, 2023 Joint Public Hearing)**
4. **Adopt 2024 Planning Board meeting schedule**

5. Discussion Items

A. UDO text amendment: Riparian buffers and variances

An amendment proposed by Stormwater and Environmental Services that updates sections on riparian buffers and associated variance procedures

B. UDO text amendment: Streets

An amendment clarifying requirements for streets in Hillsborough's jurisdiction and when those requirements apply

C. UDO text amendment: Government maintenance yards

Proposes to make government maintenance yards permitted by right in the Light Industrial (LI) district instead of requiring a special use permit (SUP)

D. UDO text amendment: Off-street parking

An amendment to clarify off-street parking regulations and consolidate them under Section 6.13 *Parking, Loading, and Circulation*

E. UDO text amendment: Accessory dwelling units (ADUs) and home occupations

Proposes to allow larger ADUs and home occupations and also to establish minimum setback/location requirements for detached ADUs

6. Updates

- A. Board of Adjustment
- B. Parks and Recreation Board
- C. Staff and Board Members

7. Adjournment

Interpreter services or special sound equipment for compliance with the Americans with Disabilities Act is available on request. If you are disabled and need assistance with reasonable accommodations, call the Town Clerk's Office at 919-296-9443 a minimum of one business day in advance of the meeting.

101 E. Orange St., PO Box 429, Hillsborough, NC 27278
919-732-1270 | www.hillsboroughnc.gov | [@HillsboroughGov](https://twitter.com/HillsboroughGov)

Public Comment Instructions

For agenda items and items not on the agenda

Public Comment — Written

Members of the public may provide written public comment by submitting it via the Planning Board [contact form](#) by noon the day of the meeting.

When submitting the comment, include the following:

- Date of the meeting
- Agenda item you wish to comment on (Example: 5C)
- Your name, address, email, and phone number

Public Comment — Verbal

Members of the public can indicate they wish to speak during the meeting by contacting the Planning Board's staff support at 919-296-9477 or through the board [contact form](#) by noon the day of the meeting.

When submitting the request to speak, include the following:

- Date of the meeting
- Agenda item you wish to speak on (Example: 5C)
- Your name, address, email, and phone number

Members of the public can also attend the meeting and sign up to speak prior to the meeting starting. For concerns prior to the meeting related to speaking, contact staff support at 919-296-9477.

Minutes

PLANNING BOARD AND BOARD OF COMMISSIONERS

Joint public hearing

7 p.m. August 17, 2023

Town Hall Annex Board Meeting Room, 105 E. Corbin St.



Present

Town board: Mayor Jenn Weaver and commissioners Mark Bell, Kathleen Ferguson, Matt Hughes and Evelyn Lloyd

Planning Board: Chair Frank Casadonte, Vice Chair Hooper Schultz, Robert Iglesias, Sherra Lawrence and Saru Salvi

Absent: Board of Commissioners: Robb English; Planning Board: Cassandra Chandler, John Giglia

Staff: Senior Planner Tom King

1. Call to order and confirmation of quorum

Mayor Jenn Weaver called the meeting to order at 7:01 p.m. and confirmed a quorum for the Board of Commissioners. Planning Board Chair Frank Casadonte confirmed a quorum of the Planning Board. Weaver turned the meeting over to Casadonte.

2. Agenda changes and approval

Motion: Commissioner Matt Hughes moved to approve the agenda as presented. Commissioner Kathleen Ferguson seconded.

Vote: 10-0.

3. Minutes review and approval

Minutes from the joint public hearing on April 20, 2023

Motion: Hughes moved to approve the minutes as presented. Planning Board Vice Chair Hooper Schultz seconded.

Votes: 10-0.

Senior Planner Tom King explained that minutes for the June meeting were not available yet.

Minutes from the regular Planning Board meeting on May 18, 2023

Motion: Schultz moved to approve the minutes as presented. Planning Board member Robert Iglesias seconded.

Vote: 5-0.

4. Open the public hearing

Motion: Hughes moved to open the public hearing. Ferguson seconded.

Vote: 10-0.

5. Text amendments to the Unified Development Ordinance

A. Unified Development Ordinance text amendment- Section 6.13.3.4, Minimum Number of Parking Spaces Required- Places of Worship (Applicant Initiated)

Tom King explained that the proposed text amendment to the Unified Development Ordinance (UDO) would change the current minimum and maximum of one space per eight seats to a minimum of one space per five seats with a maximum of one space per two seats. He noted the staff report included background on this request, the contents of the old zoning ordinance and the current UDO, and what changes the amendment would make. He reminded the boards that the current UDO already has a provision, based on the number of parking spaces, that allows a few less or a few more spaces than the standard stipulates. When asked where the church was located, King projected a map showing its location on Governor Burke Rd.

Greg Payne, a member of the Holy Family Catholic Church, said the church's membership had grown 33% in the past five years and the church was planning a new sanctuary on the eight-acre property. The architect for the new building discovered that the current parking standard allowed only one space per eight seats of sanctuary and that outside of the central commercial district, that standard was both the minimum and maximum. Payne said that standard was unworkable for his church and probably any church outside of the town center. He said on-site parking at the church was the only safe option because Governor Burke Rd has no shoulder, making it dangerous to park there. He added there are no public lots, parking decks, or shared parking nearby. He said nearby municipalities have lower ratios and allow more flexibility. For instance, outside the town center, Chapel Hill has a minimum of one space for five seats and a maximum of one space for two seats. Durham allows 75% more space for parking in suburban neighborhoods than in the town center. Both Carrboro and Mebane allow more flexibility in applying their standards than does Hillsborough. He added that the church schedules activities every day of the week and four services each weekend to relieve parking pressure.

Weaver asked if the church's parking lots were full for every service. Father Ryan, pastor of Holy Family, said the church currently has 110 parking spaces and average attendance for services ranges from 200 to 380. He said fourteen services were offered over the course of a week. While a mid-week service may draw only 20 people, for evening services, held at the same time as youth education programs, the parking lot is functionally full. Schultz said he understood the request to raise the maximum and asked why the church wanted to raise minimum. Payne said because a higher standard seemed to be the norm in nearby municipalities.

Planning Board member Saru Salvi said it was difficult to judge the proposal because the board hadn't seen any plans for the expansion. Schultz explained the church couldn't add parking under the current UDO parking standard. King noted the board should consider any amendment as a town-wide change effecting any current or future church in town.

Planning Board member Robert Iglesias noted that staff comments, included in the agenda packet, seemed to support the change and asked if there was any potential negative impact to amending the ordinance. Schultz suggested raising the minimum would force a church that wanted to promote walking and biking to build more parking. Commissioner Mark Bell noted the amendment could potentially quadruple the density of parking spaces and asked if the town would still require a site review for stormwater runoff and retention. King said yes.

Hughes said he'd like to see the town's land use policy orient towards parking maximums rather than minimums, adding it would be difficult for churches in town to expand parking. He said the town's UDO is overly prescriptive, which is why people often come to the boards with requests, and that there should be

more delineation in the UDO parking standards between in-town and the periphery of town. Casadonte, noting that the UDO covers all places of worship in town and that one space per eight seats seemed insufficient for many churches, asked if allowing a maximum of one space per two seats would meet the needs of all churches. Weaver pointed out that many in-town churches use on-street parking and that raising the maximum to one space per two seats might encourage churches to substantially expand parking lots. She asked if raising the minimum to one space per five seats would require existing churches to increase their parking. King said that change wouldn't require existing churches to comply to a new minimum. He noted that in some circumstances increased parking may require more room for stormwater infrastructure. Ferguson asked about the possibility of installing pervious surfaces. It's permitted, King said, but town stormwater staff have told him the local soils are not suited to pervious surfaces. Iglesias asked if keeping the minimum at one space per eight seat and increasing the maximum to one space per two seats would provide a solution for the Holy Family Church. King said it would.

There was some discussion of the needs of churches on the periphery of town compared to those in town. Bell noted there were three churches near his home, all with very different parking capacities, and said, given these variables, it was probably not a good idea to create one standard for all churches. Casadonte asked if it was possible to amend the ordinance to set separate standards for churches in town and those in the extraterritorial jurisdiction (ETJ). King said the UDO recognizes a minimum number of parking spaces within the central commercial district, based on the square footage of the gross floor area of a property. Casadonte said the board could alter the amendment without impacting the central commercial district. Bell asked what the options were for churches asking for a variance. King said only if a hardship resulted from conditions peculiar to the property, such as location, size, or topography, could an applicant make a case for a variance; if an applicant was causing the need for the variance, the Board of Adjustments would likely deny the request.

Weaver noted that the boards had moved into deliberation and, since this was a public hearing, should move to the next agenda item. Casadonte asked if there were other comments or questions for either the applicant or King. Salvi said she lives in the ETJ and would hate to see a large increase in space devoted to parking. Casadonte said there seem to be two separate standards needed, one for the central commercial district and another for the ETJ and asked if an amendment would apply to the entire ETJ. King said any amendment would apply town wide, noting that he wasn't sure if there were any churches in the central commercial district. King said he was not sure if there was a way to accommodate different parking needs for churches in the ETJ and those in town. He noted that because the public hearing had been postponed a month, Planning and Economic Development Manager Shannan Campbell had said the board was being asked to make a recommendation at this meeting if they were comfortable doing so. Casadonte said the boards would need to close the public hearing to go into deliberation before making a recommendation.

B. Unified Development Ordinance text amendment- Section 6.17, Sidewalks (Staff Initiated)

King said no member of the public had signed up to speak on this topic. He explained that town staff are running into issues such as challenging topography or lack of connectivity to other sidewalks. The current UDO still refers to the former community connectivity map, but staff is now referencing the new comprehensive sustainability plan, with the intent of pursuing its goals and strategies. He pointed to the proposed new section on exceptions to applicability. He said there were situations where it doesn't make sense to require sidewalks. He displayed a map of a subdivision with a cul-de-sac and eight lots and identified two area where building a sidewalk wouldn't be feasible, one because of steep slopes and a stream with a riparian buffer of 100' and another segment where there was no connectivity. Weaver asked if it was impossible or just too expensive to build a sidewalk because of topography, noting the town wants residents to be able to move around outside of their street. King said whenever a stream buffier is involved, stormwater staff doesn't want

to see the buffer impacted by a sidewalk. He said he had seen one ordinance that does require to build sidewalk over a gully, no matter how difficult. Schultz said if a road can be built there, it seems like a sidewalk could be built as well. King said a buffer authorization would be needed from stormwater staff, who would rather not see sidewalks built in stream buffers. Salvi said a sidewalk might be feasible, but might be expensive, which could be the real reason a developer requests a payment in lieu. Ferguson noted the town has lots of hills and must deal with topography issues, adding that the absence of sidewalks leaves steep shoulders, which can be dangerous. She added she didn't want to give developers an easy out through payment in lieu. Hughes said it was not just developers who are required to make impractical sidewalks. He cited a resident who had removed a mobile home and built a house and was required to put in a sidewalk in an inhospitable location with no curb or gutter and no connectivity to other sidewalks. In this case, he said, payment in lieu would have been a better option. Ferguson said that while there might be sidewalks to nowhere in the short term, in the long view these sidewalks might eventually have connectivity.

Salvi asked how the town would make sure the payment in lieu was sufficient to cover costs. Casadonte noted the board had discussed that question in its last meeting and had agreed to require a payment in lieu equal to 150% of the estimated cost. King said there was no timeline on using a payment in lieu, but the amendment stipulates that it be used on a sidewalk within 1000 feet. Ferguson said that requirement seemed too restrictive and didn't leave the town much flexibility in planning for the future and using the money where it's most needed. King said he believed any payment in lieu had to be spent on sidewalk construction in a nearby area. Weaver asked if that restriction was based on best practices or current law. King said he thought it might be a legal requirement. Ferguson said to the extent the law allows, the town should be strategic in using payments in lieu. King said he would check about laws concerning payment in lieu. He then summarized other changes included in the amendment and explained the rationale behind them.

6. Close the public hearing

Motion: Schultz moved to close the public hearing. Ferguson seconded.

Vote: 10-0.

Casadonte suggested the planning board take a short break and then reconvene.

7. Planning Board recommendations

A. Section 6.13.3.4, Parking

Casadonte asked King if the board needed to make recommendations on both agenda items. King said yes, if the board was ready to make them. Schultz suggested the board amend the request to keep the minimum of one space per eight seats and raise the maximum to one space per four seats. Iglesias agreed the current minimum should remain the same. Casadonte noted a maximum of one space per two seats wouldn't mean churches always have permission to build that many spaces, since they may be limited by stormwater and topography issues. King reminded the board that the applicant wants to increase its parking spaces from 110 to 200 and is planning a sanctuary that seats 500 people. Schultz said the current standard of one space per eight seats was untenable, so the board should change that standard regardless of how it felt about this church. Salvi suggested the board should require the applicant to plant more trees and shrubs around the parking. King said the church would be required to plant trees inside the lot as part of the expansion. Casadonte noted that if the new sanctuary will have a seating capacity of 500 and the board sets a new maximum of one space per four seats, that will limit the church to 125 spaces, which is not much more than its current 110 spaces. Schultz said the congregation is mostly families, so most members would not be

arriving in a car with two passengers and the town shouldn't be encouraging that. Casadonte noted that it was unlikely 500 members would ever use the church at one time.

Motion: Schultz moved to modify the requested amendment to the UDO and retain the current parking minimum requirement of one space per eight seats and set the maximum parking requirement at one space per four seats. Salvi seconded.
 Vote: 5-0.

B. Section 6.17, Sidewalks

Casadonte turned the board's attention to the sidewalk payment in lieu. Several members noted that the board had discussed the proposed changes in its June meeting. King noted that the current ordinance refers to a map and a plan that the town no longer uses and contains confusing language. The changes proposed by staff are intended to eliminate confusion, allow payments in lieu for situations where sidewalks aren't feasible, clarify design and construction standards, clean up language about sidewalk shade trees, and build in flexibility for staff to deal with certain issues.

Schultz said he was comfortable approving the amendments, but asked if town management decided whether construction of a sidewalk is impractical. King explained that the decision would be made by the permit issuing authority, which would generally be the staff reviewing the plans. He added that he'd would like to make one more amendment to the section on exceptions for the scenario when a business changes ownership without any site improvements. Iglesias asked if the board needed to wait for the revised amendment before it made a recommendation. King said that revision would be addressed by the Board of Commissioners, so the planning board could make a recommendation. Asked by Salvi if the town might still require a sidewalk when property changes ownership without any site improvements, King explained there were legal barriers to doing so.

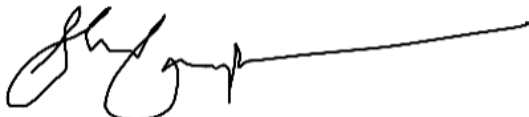
Motion: Salvi moved to recommend approval of the amendment to the UDO with one addition to the exceptions to applicability suggested by staff as discussed during the hearing. Schultz seconded.
 Vote: 5-0.

8. Updates

- A. Board of Adjustment. There was no meeting in July. King noted there may be see some requests in the fall or winter.
- B. Parks and Recreation Board. There was no meeting in July.
- C. Staff and board members. King noted there were three vacancies on the Planning Board, two ETJ and one town position. He noted ETJ positions were becoming harder to fill. Casadonte added there was a vacant seat on the Board of Commissioners

9. Adjournment

Motion: Salvi moved to adjourn the joint public hearing at 9:08 p.m.
 Vote: 5-0.



Shannan Campbell
Planning and Economic Development Manager
Staff support to the Planning Board

Approved: Month X, 202X

Meeting Schedule: 2024

PLANNING BOARD



Meetings start at 6:30 p.m. in the Board Meeting Room of the Town Hall Annex, 105 E. Corbin St., unless otherwise noted.

Times, dates and locations are subject to change.

Regular meetings

Regular meetings typically occur the third Thursday of the month.

January 18 (Quarterly Public Hearing; 7pm start)

February 15

March 21

April 18 (Quarterly Public Hearing; 7pm start)

May 16

June 20

NO JULY MEETING

August 15 (Quarterly Public Hearing; 7pm start)

September 19

October 17 (Quarterly Public Hearing; 7pm start)

November 21

December 19



Agenda Abstract PLANNING BOARD

Meeting Date:	December 21, 2023
Department:	Stormwater and Environmental Services
Agenda Section:	5A
Public hearing:	Yes
Date of public hearing:	January 18, 2024 (tentative)

PRESENTER/INFORMATION CONTACT

Terry Hackett, Stormwater and Environmental Services Manager

ITEM TO BE CONSIDERED

Subject: Unified Development Ordinance (UDO) text amendment (Staff Initiated):

- Section 3.10.3 *Variance – General Standards/Findings of Fact*
- Section 3.10.6 *Variance – Procedure*
- Section 6.20.16 *Stormwater Management - Riparian Buffers*

Attachments:

1. Background and summary of proposed changes
2. UDO sections referenced above, as proposed to be amended

Comprehensive Sustainability Plan goals:

- Environment and Natural Systems Goal 1: Employ an integrated ecosystem approach and stewardship mentality to protect, conserve, and restore critical environmental areas and natural systems.
- Strategy: Develop and participate in programs that contribute to sustained ecological health of the environment and natural systems (delegated local authority from the state to enforce the Neuse Riparian Buffer Rules)

Financial impacts:

None.

Staff recommendation and comments:

Send the proposed text amendment to the joint public hearing on January 18, 2024, after which the Planning Board may make a recommendation to approve the amendment.

Action requested:

Send the proposed text amendment to the joint public hearing on January 18, 2024.

Background

The Town of Hillsborough has local delegated authority from the state to enforce the Neuse Riparian Buffer Rules (15A NCAC 02B .0714 Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers) within the town’s planning jurisdiction. The town’s Stormwater and Environmental Services Division staff administer and enforce the riparian buffer program through *Section 6.20.16, Riparian Buffers*, of the town’s Unified Development Ordinance (UDO).

The town received delegated authority in 2013 and has not made significant changes to *Section 6.20.16* since then. There was a legislative session law in 2016 that attempted to force local governments to be no more restrictive than the state’s rules. That prompted an update to *Section 6.20.16* of the UDO, but in the end the North Carolina Department of Environmental Quality (NCDEQ) determined that this session law did not apply to local riparian buffer programs like Hillsborough’s.

In 2020, the state updated the Neuse Riparian Buffer Rules including redefining the category of uses in the riparian buffer and expanding the table of allowable uses. Since that time Stormwater and Environmental Services Division staff have been reviewing the state’s updated riparian buffer rules and how the town’s riparian buffer plan is implemented.

Current Request

Stormwater and Environmental Services Division and Planning and Economic Development Division staff have been contacted by two property owners within town limits regarding text amendments to *Section 6.20.16* of the UDO. This, coupled with staff’s review of the town’s riparian buffer regulations in the UDO has prompted staff to propose amendments to *Section 6.20.16*. The reasons for the proposed changes include:

- Provide flexibility to staff in enforcing riparian buffers by expanding uses which include more specific requirements and conditions;
- Itemize more uses with specific impact thresholds; this will provide equal or better protection because allowable impacts with specific thresholds are more enforceable;
- Update “diffuse flow” of stormwater requirements to meet current state rules regarding stormwater runoff through the riparian buffer; this will provide better protection to receiving streams and improve enforceability of the runoff requirements;
- Provide “equality” between town impacts and private citizens or developers; currently, the town riparian buffer activities/impacts are governed by the current state rules. We do not “self permit” our own buffer impacts;
- Residential infill lots have garnered a lot of attention; many of these have streams and without some flexibility cannot easily be developed;
- Correct references and typographical errors.

It is important to note that staff intends to keep what is referred to as the “kick-in” clause. In *Section 6.20.16.3.c* of the UDO, even an unmapped stream may require a riparian buffer if field evidence indicates a stream is present. This is more restrictive than the state’s rules. The state only applies riparian buffers to mapped streams, unless field evidence indicates they are not present. Given climate change impacts, staff has documented that the hydrology of streams—especially intermittent streams—does change. Keeping this section intact helps to protect stream quality throughout the town’s jurisdiction.

Proposed Riparian Buffer Rule Changes



The proposed changes to Section 6.20 includes a stipulation that only prohibited uses can seek a variance and that variance must be granted by the North Carolina Environmental Management Commission. Therefore staff is also proposing changes to Section 3.10 of the town’s UDO to reflect the separate variance process.

Proposed Changes

The following table summarizes the proposed changes to Section 6.20.16 of the town’s UDO.

Table of Proposed Riparian Buffer UDO Changes

UDO Section 6.20.16 Riparian Buffers		Change
6.20.16.1	Purpose and Intent	Changed the reference to the Nuese Buffer rules to the new citation
6.20.16.2	Delegated Authority	None
6.20.16.3	Applicability	Changed the reference from NC Division of Water Quality to the NC Department of Environmental Quality to reflect the department's name change.
6.20.16.4	Exemption Based upon an On-site Determination	Changed the reference from NC Division of Water Quality to the NC Department of Environmental Quality to reflect the department's name change. Also corrected the reference to the O2B rules and fixed a typo.
6.20.16.5	Exemption when Existing Uses are Present and Ongoing	Changed the reference to the new citation
6.20.16.6	Calculations for Width of Riparian Buffers	Minor changes made to reference how the buffer is measured for each zone as described in new Section 6.20.16.7.
6.20.16.7	Zones of the Riparian Buffer	Added new section to define Zone 1 and 2. In practice Zone 1 gets more protection and staff has been utilizing the zones, especially for buffer authorization and determination of mitigation. Makes sense to now include the definitions which are needed for the updated table of uses.
6.20.16.8	Permitted Uses within Riparian Buffers Table 6.20.16.8 Permitted Uses/Activities within Riparian Buffers	Section was modified to include DEQ's use definitions. Added new table of uses/activities to essentially match the current DEQ rules with a few exceptions.
6.20.16.9	Basis for “No Practical Alternatives”	Added the reference to the permitted use section.
6.20.16.10	Written Authorization Required	Added the reference to the permitted use section.

(continued next page)

Table of Proposed Riparian Buffer UDO Changes (continued)

UDO Section 6.20.16 Riparian Buffers		Change
6.20.16.11	Stormwater Runoff Through the Riparian Buffer	This section was previously titled, "Diffuse Flow Requirement," and has been replaced with new language from DEQ's regulations. This section is more protective but defines when stormwater conveyances through the buffer are allowed which generally requires meeting nutrient thresholds and other requirements. This will be much more enforceable.
6.20.16.12	Mitigation	Changed the reference to the permitted use section.
6.20.16.13	Riparian Buffer and Minimum Lot Requirements	None.
6.20.16.14	Existing Vegetation and New Vegetation in Riparian buffers	Deleted because the new table of uses, details vegetative management allowed in the riparian buffer and this section is no longer needed.

The following table summarizes the proposed changes to Section 3.10 of the town's UDO.

Table of Proposed Variance UDO Changes

UDO Section 3.10. Variance		Change
3.10.3.1	Findings of Fact	Changed to reflect that riparian buffer variances have their own requirements.
3.10.3.3	Riparian Buffer Variance Findings	Changed to show that riparian buffer variances only go to the NC EMC.
3.10.3.4	Minor and Major Variances	Deleted since this no longer applies to riparian buffers
3.10.6.4	Notice of Public Hearing	Minor clarification
3.10.6.5.b	Board of Adjustment Determination	Deleted, no longer needed.

3.10 VARIANCE

3.10.3 GENERAL STANDARDS/FINDINGS OF FACT

3.10.3.1 A Variance from all provisions of this Ordinance, with the exception of Section 4.5.1, *Upper Eno Watershed District*; Section 4.5.2, *Upper Eno Protected Watershed, Critical Area District* and Section 6.20.16, *Riparian Buffers* (which contain their own separate ~~findings-required~~ requirements to receive a variance), shall be approved only upon a finding that all of the following standards are met:

3.10.3.3 RIPARIAN BUFFER VARIANCES FINDINGS

Variances ~~from the provisions of Section 6.20.16, *Riparian Buffers*~~, shall be approved ~~only upon a finding that all of the following standards are met:~~ by the North Carolina Environmental Management Commission on a case by case basis pursuant to 15A NCAC 02B .0226.

~~**3.10.3.3.a** There are practical difficulties or unnecessary hardships that prevent compliance with the strict letter of the riparian buffer protection requirements. Practical difficulties or unnecessary hardships shall be evaluated in accordance with the following:~~

- ~~(a) If the applicant complies with the provisions of the riparian buffer protection requirements, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board shall consider whether the variance is the minimum possible deviation from the terms of the buffer requirements that shall make reasonable use of the property possible.~~
- ~~(b) The hardship results from application of the riparian buffer protection rules to the property rather than from other factors such as deed restrictions or other hardship.~~
- ~~(c) The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, which is different from that of neighboring property.~~
- ~~(d) The applicant did not cause the hardship by knowingly or unknowingly violating the riparian buffer protection requirements.~~
- ~~(e) The applicant did not purchase the property after the effective date of the riparian buffer protection requirements (July 22, 1997), and then requesting a variance.~~
- ~~(f) The hardship is unique to the applicant's property, rather than the result of conditions that are widespread. If other properties are equally subject to the hardship created in the restriction, then granting a variance would be a Special privilege denied to others and would not promote equal justice.~~

~~**3.10.3.3.b** The variance is in harmony with the general purpose and intent of the riparian buffer protection requirements and preserves their spirit, and~~

~~**3.10.3.3.c** In granting the variance, the public safety and welfare have been assured,~~

~~water quality has been protected, and substantial justice has been done.~~

~~3.10.3.4 MINOR AND MAJOR VARIANCES~~

~~A minor variance request pertains to activities that are proposed only to impact any portion of Zone 2 of the riparian buffer. Zone 2 begins at the outer edge of Zone 1 and extends landward 20 feet as measured horizontally on a line perpendicular to the surface water.~~

~~A major variance request pertains to activities that are proposed to impact any portion of Zone 1 or any portion of both Zones 1 and 2 of the riparian buffer. For intermittent and perennial streams, Zone 1 begins at the most landward limit of the top of bank or the rooted herbaceous vegetation and extends landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to the surface water. For ponds, lakes and reservoirs located within a natural drainage way, Zone 1 begins at the most landward limit of the normal water level or the rooted herbaceous vegetation and extends landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 is 50 feet on all sides of the surface water.~~

~~Additional requirements for processing of major variances are found in Section 3.10.6.5.b.~~

3.10.6 PROCEDURE

3.10.6.4 Notice of Public Hearing

Written notice shall be mailed to the aggrieved person (applicant), property owner involved in original case being appealed (if different), to the owners of all parcels of land abutting the parcel of land that is subject to the evidentiary hearing (including those across a public or private street), to any other persons entitled to receive notice as provided by this Ordinance. The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days before the hearing date. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

A notice of the request shall be placed on the site that is subject to the hearing or on an adjacent street or highway right-of-way at least ten (10) days, but not more than twenty-five (25) days before the hearing date.

In cases where a variance is requested from the provisions of Section 4.5.1, Upper Eno Watershed District; Section 4.5.2, ~~Upper Eno Protected Watershed, Critical Area District~~ Upper Eno Protected Watershed, Critical Area District of this Ordinance, all local governments having jurisdiction within the watershed area and the entity using the water supply for consumption shall be notified of the proposed variance. Comments from these entities shall be submitted to the Planning Director before the Board of Adjustment decision and shall be made a part of the record of the Board of Adjustment decision.

3.10.6.5 Public Hearing

~~3.10.6.5.b If the Board of Adjustment determines that a major variance request meets the requirements in Section 3.10.3.3, Riparian Buffer Variance Findings, then it~~

~~shall prepare a preliminary finding and submit it to the State Environmental Management Commission. Preliminary findings on major variance requests shall be reviewed by the Commission within 90 days after receipt by the Director. The purpose of the Commission's review is to determine if it agrees that the requirements for granting of a variance have been met. Requests for appeals of decisions made by the Commission shall be made to the Office of Administrative hearings. The following actions shall be taken depending on the Commission's decision on the major variance request:~~

- ~~(a) Upon the Commission's approval, the Board of Adjustment shall issue a final decision granting the major variance.~~
- ~~(b) Upon the Commission's approval with conditions or stipulations, the Board of Adjustment shall issue a final decision, which includes these conditions or stipulations.~~
- ~~(c) Upon the Commission's denial, the Board of Adjustment shall issue a final decision denying the major variance.~~

6.20 STORMWATER MANAGEMENT

6.20.16 RIPARIAN BUFFERS

6.20.16.1 Purpose and Intent

In order to minimize sedimentation and pollution of surface waters within the planning jurisdiction, riparian buffers shall be provided along all surface waters identified in *Section 6.20.16.3, Applicability*. Undisturbed natural areas along surface waters act as a filter for sedimentation control and as a stabilizing agent for the banks of surface waters. In addition, these areas filter storm water run-off which may carry significant amounts of bacteria, excess nutrients and heavy metals into surface waters. The buffer areas, along with controls on impervious surfaces, provide a good measure of water quality protection for the Eno River.

The Neuse River Basin Nutrient Sensitive Waters Management Strategy riparian buffer protection rules (Neuse Rules) of 15A NCAC ~~028-0233 and 0241~~ 02B .0714, apply to all lands within the Town of Hillsborough's planning jurisdiction. Wherever standards of the Neuse Rules and the standards listed in this ordinance differ, the more restrictive provisions shall apply.

6.20.16.3 Applicability

6.20.16.3.c A surface water identified in a field determination made by staff trained in surface water identification through the North Carolina ~~Division of Water Quality (NCDWQ)~~ Department of Environmental Quality (NCDEQ). Disputes pertaining to water feature decisions by staff shall be filed directly to the Director of ~~NCDWQ~~ NCDEQ.

6.20.16.4 Exemption Based upon an On-site Determination

When a landowner or other affected party including ~~the Division~~ NCDEQ believes that the maps inaccurately depict surface waters, they may request an On-site determination conducted by staff who has successfully completed the ~~Division's~~ NCDEQ's Surface Water Identification Training Certification course, its successor, or other equivalent training curriculum approved by ~~the Division~~ NCDEQ. Any disputes over on-site determinations shall be referred to the Director of ~~the Division of Water Resources~~ NCDEQ in writing. A determination of the Director of ~~the Division of Water Resources~~ NCDEQ as to the accuracy or application of the maps is subject to review as provided in articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to ~~this Rule~~ Section 6.20.16, Riparian Buffers is a site evaluation ~~revels~~ reveals any of the following cases:

6.20.16.4.a Man-made ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC ~~02B-0110~~ 02B .0101, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.

6.20.16.5 Exemption when Existing Uses are Present and Ongoing

Section 6.20.16, Riparian Buffers does not apply to portions of the riparian buffer where a use is considered existing and ongoing according in accordance with 15A NCAC ~~028-0233 (3)~~

02B .0714 (6) (a). A use is considered existing if it was present within the riparian buffer as of July 22, 1997. Existing uses shall include, but not be limited to, agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems. Only the portion of the riparian buffer that contains the footprint of the existing use is exempt from ~~this Rule~~ Section 6.20.16, Riparian Buffers.

6.20.16.6 Calculations for Width of Riparian Buffers

~~The width of the buffer along the Eno River shall be the floodway as shown on the Floodway Map from the National Flood Insurance Program, plus fifty (50) feet. However, in no case, shall the riparian buffer exceed the outer line of the floodplain as shown on the Flood Insurance Rate Map (FIRM) of the National Flood Insurance Program.~~

A buffer of fifty (50) feet in width as defined in Section 6.20.16.7 is required on all sides of the surface water as identified in Section 6.20.16.3, Applicability. For streams within the PW and PWCA zoning districts (see Section 4.5, Other Zoning Districts), the width of the stream is calculated as outlined in Section 4.5.3.8.d, Calculating Width of Riparian Buffer.

~~In all other cases, a buffer of fifty (50) feet in width measured from the most landward limit of the top of bank, normal water level or rooted herbaceous vegetation of surface waters identified in Section 6.20.16.3, Applicability.~~

6.20.16.7 Zones of the Riparian Buffer

6.20.16.7.a Zone 1 shall consist of a vegetated area that is undisturbed except for uses provided for in sections 6.20.16.8, Permitted Uses within Riparian Buffers and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer. The location of Zone 1 shall be as follows:

- (i) For intermittent and perennial streams, Zone 1 shall begin at the most landward limit of the top of bank or the rooted herbaceous vegetation and extend landward a distance of 30 feet on all sides of the stream, measured horizontally on a line perpendicular to the stream (where an intermittent or perennial stream begins or ends, including when it goes underground, enters or exits a culvert, or enters or exits a wetland, the required distance shall be measured as a radius around the beginning or the end).
- (ii) For ponds, lakes and reservoirs, Zone 1 shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to the surface water.

6.20.16.7.b Zone 2 shall consist of a stable, vegetated area that is undisturbed except for activities and uses provided for in sections 6.20.16.8, Permitted Uses within Riparian Buffers and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer. Grading and revegetating Zone 2 is allowed provided that the health of the vegetation in Zone 1 is not compromised. Zone 2 shall begin at the outer edge of Zone 1 and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones 1 and 2 shall be 50 feet on all sides of the surface water.

6.20.16.76.20.16.8 Permitted Uses Within Riparian Buffers

~~It is the intent of this section to restrict the use of land adjacent to streams, ponds, lakes and reservoirs in order to reduce sedimentation and pollution. The following uses are permitted within a designated riparian buffer. All other land uses are prohibited.~~

~~Uses within the riparian buffer, or outside the riparian buffer with hydrological impacts on the riparian buffer, shall be designated as deemed allowable, allowable upon authorization, allowable with mitigation upon authorization, allowable with exception or prohibited. Potential new uses shall have the following requirements.~~

~~**6.20.16.8.a Deemed Allowable.** Uses designated as deemed allowable in *Table 6.20.16.8 Permitted Uses within Riparian Buffers* and *6.20.16.11 Stormwater Runoff Through the Riparian Buffer* may occur within the riparian buffer. Deemed allowable uses shall be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities. In addition, deemed allowable uses shall meet all requirements listed in *Table 6.20.16.8 Permitted Uses within Riparian Buffers* for the specific use.~~

~~**6.20.16.8.b Allowable Upon Authorization.** Uses designated as allowable upon authorization in *Table 6.20.16.8 Permitted Uses within Riparian Buffers* and *6.20.16.11 Stormwater Runoff Through the Riparian Buffer* require a written Authorization Certificate for impacts within the riparian buffer pursuant to *Section 6.20.16.9, Basis for “No Practical Alternatives”* and *Section 6.20.16.10, Written Authorization Required*.~~

~~**6.20.16.8.c Allowable with Mitigation Upon Authorization.** Uses designated as allowable with mitigation upon authorization in *Table 6.20.16.8 Permitted Uses within Riparian Buffers* require a written Authorization Certificate for impacts within the riparian buffer pursuant to *Section 6.20.16.9, Basis for “No Practical Alternatives”* and *Section, 6.20.16.10 Written Authorization Required*. In addition, an appropriate mitigation strategy is required pursuant to *Section 6.20.16.12, Mitigation*.~~

~~**6.20.16.8.d Prohibited.** Uses designated as prohibited in *Table 6.20.16.8, Permitted Uses within Riparian Buffers* may not proceed within the riparian buffer unless a variance is granted by the North Carolina Environmental Management Commission pursuant to 15A NCAC 02B .0226. Mitigation may be required as a condition of variance approval.~~

Table 6.20.16.7 Permitted Uses within Riparian Buffers

Riparian Buffer Use		Allowable	Allowable w/Mitigation
Utilities	Perpendicular crossings of above-ground and buried utility lines for local distribution of electricity, telephone, and cable television service, plus accessory and appurtenant apparatus such as poles, guy wires, transformers, and switching boxes, with a construction width of less than or equal to 40 feet and a 10-foot maintenance corridor.	X	
	Perpendicular utility crossings that exceed 40 feet of construction width and/or require more than a 10-foot maintenance corridor through the riparian buffer.		X
	Non-perpendicular riparian buffer impacts for utilities.		X
Water and Sewer	Perpendicular crossings of water and sewage distribution, collection, and treatment facilities, but not private in-ground sewage disposal facilities, with a construction width of less than or equal to 40 feet and a 10-foot maintenance corridor.	X	
	Perpendicular water and sewage crossings that exceed 40 feet of construction width and/or require more than a 10-foot maintenance corridor through the riparian buffer.		X
	Non-perpendicular riparian buffer impacts for public water and sewage distribution.		X
	Water wells	X	
Streets and Bridges	Perpendicular crossings of streets, bridges, and railroad rights-of-way impacting less than 150 feet of riparian buffer.	X	
	Perpendicular crossings of streets, bridges, and railroad rights-of-way that exceed 150 feet of riparian buffer impact.		X
	Temporary access roads disturbing less than 2,500 square feet of riparian buffer provided vegetation is restored within six months of initial disturbance.	X	
	Temporary roads disturbing more than 2,500 square feet of riparian buffer.		X
	Non-perpendicular riparian buffer impacts of streets and railroad rights-of-way		X

Riparian Buffer Use		Allowable	Allowable w/Mitigation
Restoration	Stream restoration and/or stream bank stabilization.	X	
	Wetland restoration, in accordance with all applicable local, State and Federal regulations.	X	
	Removal of previous fill or debris provided that diffuse flow is maintained and any vegetation removed is restored.	X	
Stormwater Facilities	Maintenance of existing stormwater outfalls provided they are managed to minimize the sediment, nutrients, and other pollution they convey to waterbodies.	X	
	New drainage outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges into the riparian buffer.		X
	Engineered stormwater ponds, bioretention and wetlands provided that a riparian buffer meeting the requirements of Section 6.20.16.3 is established.	X	
	Engineered stormwater ponds, bioretention and wetlands where a riparian buffer cannot be established in accordance with Section 6.20.16.3.		X
Maintenance	Drainage of a pond in a natural drainage way provided that a new riparian buffer that meets the requirements of Section 6.20.16.6 is established adjacent the new channel.	X	
	Maintenance activities of existing dams	X	
	Periodic maintenance of modified natural streams	X	
	Protection of existing structures, facilities and streambanks when this requires additional disturbance of the riparian buffer or the stream channel	X	
Miscellaneous	Greenways	X	
	Archeological research and excavation	X	
	Scientific studies and stream gauging	X	
	Fences provided that disturbance is minimized and existing trees and woody vegetation is not disturbed during installation and maintenance	X	
	Ponds in natural drainage ways (excluding dry ponds) provided that a riparian buffer meeting the requirements of Section 6.20.16.3 is established	X	
	Ponds in natural drainage ways (excluding dry ponds) where a riparian buffer cannot be established in accordance with Section 6.20.16.3		X
	Water dependent structures as defined in 15A NCAC 2B .0202	X	

Table 6.20.16.8 Permitted Uses within Riparian Buffers

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
a) <u>Archaeological activities</u>	X			
b) <u>Bridges:</u>				
i) <u>Impact equal to or less than one-tenth of an acre of riparian buffer</u>	X			
ii) <u>Impact greater than one-tenth of an acre of riparian buffer</u>		X		
c) <u>Dam maintenance activities:</u>				
i) <u>Dam maintenance activities that do not cause additional riparian buffer disturbance beyond the footprint of the existing dam</u>	X			
ii) <u>Dam maintenance activities that do cause additional riparian buffer disturbance beyond the footprint of the existing dam</u>		X		
d) <u>Drainage of a pond subject to Section 6.20.16.3, Applicability provided that a new riparian buffer is established by natural regeneration or planting, within 50 feet of any stream which naturally forms or is constructed within the drained pond area. Drained ponds shall be allowed to naturalize for a minimum of six months from completion of the draining activity before a stream determination is conducted pursuant to Section 6.20.16.3.c.</u>	X			
e) <u>Fences:</u>				
i) <u>Fencing livestock out of surface waters</u>	X			
ii) <u>Installation does not result in removal of trees from Zone 1</u>	X			
iii) <u>Installation results in removal of trees from Zone 1</u>		X		
f) <u>Fertilizer application:</u>				
i) <u>One-time fertilizer application at agronomic rates in the riparian buffer to establish replanted vegetation. No runoff from this one-time application in the riparian buffer is allowed in the surface water</u>	X			
ii) <u>Ongoing fertilizer application</u>				X
g) <u>Grading only in Zone 2 provided that the health of existing vegetation in Zone 1 is not compromised, Section 6.20.16.11, Stormwater Through the Riparian Buffer is complied with, and disturbed areas are stabilized and revegetated</u>		X		

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>h) Greenways, trails, sidewalks or linear pedestrian/bicycle transportation systems:</u>				
<u>i) In Zone 2 provided that no built-upon area is added within the riparian buffer</u>	X			
<u>ii) In Zone 1 provided that no built-upon area is added within the riparian buffer and the installation does not result in the removal of tree(s)</u>	X			
<u>iii) When built-upon area is added to the riparian buffer, equal to or less than 10 feet wide with two foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative</u>		X		
<u>iv) When built-upon area is added to the riparian buffer, greater than 10 feet wide with two foot wide shoulders. Shall be located outside Zone 1 unless there is no practical alternative</u>			X	
<u>i) Historic preservation</u>	X			
<u>j) New Landfills as defined by NC G.S. 130A-290</u>				X
<u>k) Mining activities:</u>				
<u>i) Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements in sections 6.20.16.7, Zones of the Riparian Buffer and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer are established adjacent to any relocated channels</u>		X		
<u>ii) Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements in sections 6.20.16.7, Zones of the Riparian Buffer and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer are not established</u>			X	
<u>iii) Wastewater or mining dewatering wells with approved NPDES permit</u>	X			
<u>l) On-site sanitary sewage systems - new ones that use ground absorption</u>				X
<u>m) Pedestrian access trails and associated steps leading to a surface water, dock, canoe or kayak access, fishing pier, boat ramp or other water dependent structure:</u>				
<u>i) Equal to or less than six feet wide that does not result in the removal of tree(s) within the riparian buffer and does not result in the addition of built-upon area to the riparian buffer</u>	X			
<u>ii) Equal to or less than six feet wide that results in the removal of tree(s) or the addition of built-upon area to the riparian buffer</u>		X		
<u>iii) Greater than six feet wide</u>			X	

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
n) <u>Playground equipment:</u>				
i) <u>Playground equipment on single-family lots provided that installation and use does not result in removal of vegetation</u>	X			
ii) <u>Playground equipment on single-family lots where installation or use results in the removal of vegetation</u>		X		
iii) <u>Playground equipment installed on lands other than single-family lots</u>		X		
o) <u>Ponds created or modified by impounding streams subject to riparian buffers pursuant to Section 6.20.16.3, Applicability and not used as stormwater control measures (SCMs):</u>				
i) <u>New ponds provided that a riparian buffer that meets the requirements of sections 6.20.16.7, Zones of the Riparian Buffer and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer is established adjacent to the pond</u>		X		
ii) <u>New ponds where a riparian buffer that meets the requirements of sections 6.20.16.7, Zones of the Riparian Buffer and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer is NOT established adjacent to the pond</u>			X	
p) <u>Protection of existing structures and facilities when this requires additional disturbance to the riparian buffer</u>		X		
g) <u>Public Safety - Publicly owned spaces where it has been determined by the head of the local law enforcement agency with jurisdiction over that area that the riparian buffers pose a risk to public safety. The head of the local law enforcement agency shall notify the local government with land use jurisdiction over the publicly owned space and the Division of Water Resources of any such determination in writing</u>	X			
r) <u>Removal of previous fill or debris provided that Section 6.20.16.11, Stormwater Runoff Through the Riparian Buffer is complied with and any vegetation removed is restored</u>		X		

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>s) Residential Properties: Where application of this Rule would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence complies with <i>Section 6.20.16.11, Stormwater Runoff Through the Riparian Buffer</i>; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:</u>				
<u>i) The residence or necessary infrastructure only impact Zone 2</u>		X		
<u>ii) The residence or necessary infrastructure impact Zone 1</u>			X	
<u>iii) Impacts other than the residence or necessary infrastructure</u>			X	
<u>t) Restoration or enhancement (wetland, stream) as defined in 33 CFR Part 332 available free of charge on the internet at: http://water.epa.gov/lawsregs/guidance/wetlands/wetlandsmitigation_index.cfm:</u>				
<u>i) Wetland or stream restoration is part of a compensatory mitigation bank, nutrient offset bank, or the In Lieu Fee program</u>	X			
<u>ii) Wetland or stream restoration other than those listed above</u>		X		
<u>u) Road, driveway or railroad - impacts other than perpendicular crossings of streams and other surface waters subject to this Rule</u>			X	
<u>v) Road, driveway or railroad - perpendicular crossings of streams and other surface waters subject to this Rule</u>				
<u>i) Impact equal to or less than one-tenth of an acre of riparian buffer</u>	X			
<u>ii) Impact greater than one-tenth of an acre but equal to or less than one-third of an acre of riparian buffer</u>		X		
<u>iii) Impact greater than one-third of an acre of riparian buffer</u>			X	
<u>iv) Driveway crossings in a residential subdivision that cumulatively impact equal to or less than one-third of an acre of riparian buffer</u>		X		

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
v) <u>Driveway crossings in a residential subdivision that cumulatively impact greater than one-third of an acre of riparian buffer</u>			X	
vi) <u>Farm roads and forest roads that are exempt from permitting from the U.S. Army Corps of Engineers per Section 404(f) of the Federal Clean Water Act</u>	X			
w) <u>Road relocation of existing private access roads associated with public road projects where necessary for public safety:</u>				
i) <u>Less than or equal to 2,500 square feet of riparian buffer impact</u>		X		
ii) <u>Greater than 2,500 square feet of riparian buffer impact</u>			X	
x) <u>Scientific studies and stream gauging</u>	X			
y) <u>Slatted uncovered decks, including steps and support posts, which are associated with a dwelling, provided that it meets the requirements of sections 6.20.16.7, Zones of the Riparian Buffer and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer and:</u>				
i) <u>Installation does not result in removal of vegetation in Zone 1</u>		X		
ii) <u>Installation results in removal of vegetation in Zone 1</u>			X	
z) <u>Stormwater Control Measure (SCM) as defined in 15A NCAC 02H .1002:</u>				
i) <u>In Zone 2 if Section 6.20.16.11, Stormwater Runoff Through the Riparian Buffer is complied with</u>		X		
ii) <u>Installation results in removal of vegetation in Zone 1</u>			X	
aa) <u>Streambank or shoreline stabilization</u>		X		
bb) <u>Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in 15A NCAC 02B .0295:</u>				
i) <u>Less than or equal to 2,500 square feet of riparian buffer disturbance</u>	X			
ii) <u>Greater than 2,500 square feet of riparian buffer disturbance</u>		X		
iii) <u>Associated with culvert installation or bridge construction or replacement</u>		X		

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>cc) Temporary sediment and erosion control devices provided that the disturbed area is restored to preconstruction topographic and hydrologic conditions and replanted with comparable vegetation within two months of when construction is complete. Tree planting may occur during the dormant season. At the end of five years, any restored wooded riparian buffer shall comply with the restoration criteria in 15A NCAC 02B .0295:</u>				
<u>i) In Zone 2 provided that ground cover is established within the timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone 1 is not compromised, and that discharge is released in accordance with Section 6.20.16.11, Stormwater Runoff Through the Riparian Buffer</u>	X			
<u>ii) In Zones 1 and 2 to control impacts associated with uses identified in this table or uses that have received an Authorization Certificate with Exception provided that sediment and erosion control for upland areas is addressed outside the riparian buffer</u>		X		
<u>iii) In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Clean Water Act</u>	X			
<u>dd) Utility Lines - Streambank stabilization for the protection of publicly owned utility lines (not including new line installation):</u>				
<u>i) Less than 150 feet of streambank disturbance</u>	X			
<u>ii) Greater than 150 feet of streambank disturbance</u>		X		
<u>ee) Utility – Sewer lines – Sanitary Sewer Overflows:</u>				
<u>i) Emergency sanitary sewer overflow response activities, provided that the disturbed area within the riparian buffer outside of the existing utility line maintenance corridor is the minimum necessary to respond to the emergency overflow, is restored to pre-construction topographic and hydrologic conditions, and is replanted with comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) within two months of when disturbance is complete</u>	X			
<u>ii) Emergency sanitary sewer overflow response activities that do not meet the listing above. For any new proposed permanent impacts that are not a "Deemed Allowable" activity, an application for an Authorization Certificate shall be submitted to the Authority no later than 30 calendar days of conclusion of the emergency response activities</u>		X		

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>ff) Utility - Sewer Lines – Vegetation maintenance activities that remove forest vegetation from existing sewer utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:</u>				
<u>i) Zone 2 impacts</u>	X			
<u>ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide</u>	X			
<u>iii) Zone 1 impacts other than those listed above</u>		X		
<u>gg) Utility - Sewer Lines –Replacement/Rehabilitation of existing sewer lines within, or adjacent to, an existing right of way but outside of an existing utility line maintenance corridor provided that comparable vegetation (e.g. grass with grass, hardwoods with hardwoods) is allowed to regenerate in disturbed riparian buffers outside of the permanent maintenance corridor and riparian buffers outside of the permanent maintenance corridor are not maintained:</u>				
<u>i) Permanent maintenance corridor equal to or less than 30 feet wide provided there is no grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream</u>	X			
<u>ii) Grading and/or grubbing within 10 feet of the top of bank when the sewer line is parallel to the stream and permanent maintenance corridor equal to or less than 30 feet wide</u>		X		
<u>iii) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts</u>			X	
<u>hh) Utility - Sewer Lines – New Line Construction/Installation Activities – Perpendicular crossings of streams and other surface waters subject to Section 6.20.16, or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to Section 6.20.16, provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:</u>				
<u>i) Construction corridor of less than or equal to 40 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</u>	X			

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>ii) Construction corridor of greater than 40 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</u>		X		
<u>iii) Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</u>			X	
<u>iv) Permanent maintenance corridor greater than 30 feet wide. For impacts other than perpendicular crossings, mitigation is only required for Zone 1 impacts. For perpendicular crossings that disturb equal to or less than 40 linear feet, no mitigation is required. For perpendicular crossings that disturb greater than 40 linear feet, mitigation is only required for Zone 1 impacts</u>			X	
<u>ii) Utility - Sewer Lines – New Line Construction/Installation Activities – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:</u>				
<u>i) Zone 2 impacts</u>	X			
<u>ii) Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided</u>		X		
<u>iii) Zone 1 impacts other than those listed above</u>			X	
<u>ii) Utility - Non-sewer Underground Lines – Vegetation maintenance activities that remove forest vegetation from existing utility right of ways (not including new line installation) outside of the existing utility line maintenance corridor:</u>				
<u>i) Zone 2 impacts</u>	X			
<u>ii) Zone 1 impacts: For lines that have not been maintained, the vegetation can be mowed, cut or otherwise maintained without disturbance to the soil structure for a maintenance corridor that is equal to or less than 30 feet wide</u>	X			
<u>iii) Zone 1 impacts other than those listed above</u>		X		

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
kk) <u>Utility – Non-Sewer Underground Lines – Perpendicular crossings of streams and other surface waters subject to Section 6.20.16, or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to Section 6.20.16, provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:</u>				
i) <u>Construction corridor of less than or equal to 50 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</u>	X			
ii) <u>Construction corridor of greater than 50 linear feet wide and less than or equal to 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</u>		X		
iii) <u>Construction corridor of greater than 150 linear feet wide and a permanent maintenance corridor that is equal to or less than 30 feet wide</u>			X	
iv) <u>Permanent maintenance corridor that is greater than 30 linear feet wide (mitigation is required only for Zone 1 impacts)</u>			X	
ll) <u>Utility – Non-Sewer Underground Lines – Impacts other than perpendicular crossings provided that vegetation is allowed to regenerate in disturbed areas outside of the permanent maintenance corridor:</u>				
i) <u>Zone 2 impacts</u>	X			
ii) <u>Zone 1 impacts to less than 2,500 square feet when impacts are solely the result of tying into an existing utility line and when grubbing or grading within 10 feet immediately adjacent to the surface water is avoided</u>		X		
iii) <u>Zone 1 impacts other than those listed above</u>			X	
mm) <u>Utilities – Non-sewer aerial lines - Perpendicular crossings of streams and other surface waters subject to Section 6.20.16, or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to Section 6.20.16:</u>				
i) <u>Disturb equal to or less than 150 linear feet wide of riparian buffer provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that poles or aerial infrastructure are not installed within 10 feet of a waterbody</u>	X			

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>ii) Disturb greater than 150 linear feet wide of riparian buffer</u>		X		
<u>nn) Utilities – Non-sewer Aerial Lines - Impacts other than perpendicular crossings of streams and other surface waters subject to this Section 6.20.16, or perpendicular entry into the riparian buffer that does not cross a stream or other surface water subject to this Section 6.20.16:</u>				
<u>i) Impacts in Zone 2 only</u>	X			
<u>ii) Impacts in Zone 1 provided that a minimum zone of 10 feet wide immediately adjacent to the waterbody is managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed, that no land grubbing or grading is conducted in Zone 1, and that poles or aerial infrastructure are not installed within 10 feet of a waterbody</u>		X		
<u>oo) Vegetation management:</u>				
<u>i) Emergency fire control measures provided that topography is restored</u>	X			
<u>ii) Periodic mowing and harvesting of plant products only in Zone 2</u>	X			
<u>iii) Placement of mulch ring around restoration plantings for a period of five years from the date of planting</u>	X			
<u>iv) Planting non-invasive vegetation to enhance the riparian buffer</u>	X			
<u>v) Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised</u>	X			
<u>vi) Removal of individual trees, branches or limbs which are in danger of causing damage to dwellings, existing utility lines, other structures or human life, or are imminently endangering stability of the streambank provided that the stumps are left or ground in place without causing additional land disturbance</u>	X			
<u>vii) Removal of individual trees that are dead, diseased or damaged</u>	X			
<u>viii) Removal of poison ivy, oak or sumac. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant, then the riparian buffer shall be replanted with non-invasive species</u>	X			

Table 6.20.16.8 Permitted Uses within Riparian Buffers (continued)

<u>Riparian Buffer Use/Activity</u>	<u>Deemed Allowable</u>	<u>Allowable Upon Authorization</u>	<u>Allowable with Mitigation Upon Authorization</u>	<u>Prohibited</u>
<u>ix) Removal of understory nuisance vegetation as defined in: Smith, Cherri L. 2008. Invasive Plants of North Carolina. Dept. of Transportation. Raleigh, NC. Removal can include application of pesticides within the riparian buffer if the pesticides are certified by EPA for use in or near aquatic sites and are applied in accordance with the manufacturer's instructions. If removal is significant then the riparian buffer shall be replanted with non-invasive species</u>	X			
<u>x) Removal of woody vegetation in Zone 1 provided that Section 6.20.16.11, Stormwater Runoff Through the Riparian Buffer is complied with</u>			X	
<u>pp) Vehicle access roads and boat ramps (excluding parking areas) leading to surface water, docks, fishing piers, and other water dependent activities:</u>				
<u>i) Single vehicular access road and boat ramp to the surface water but not crossing the surface water that are restricted to the minimum width practicable not to exceed 15 feet wide</u>		X		
<u>ii) Vehicular access roads and boat ramps to the surface water but not crossing the surface water that are restricted to the minimum width practicable and exceed 15 feet wide</u>			X	
<u>qq) Water dependent structures (except for boat ramps) as defined in 15A NCAC 02B .0202</u>		X		
<u>rr) Water supply reservoirs:</u>				
<u>i) New reservoirs provided that a riparian buffer that meets the requirements of sections 6.20.16.7, Zones of the Riparian Buffer and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer is established adjacent to the reservoir</u>		X		
<u>ii) New reservoirs where a riparian buffer that meets the requirements of sections 6.20.16.7, Zones of the Riparian Buffer and 6.20.16.11, Stormwater Runoff Through the Riparian Buffer is NOT established adjacent to the reservoir</u>			X	
<u>ss) Water wells</u>	X			
<u>tt) Wildlife passage structures</u>		X		

~~6.20.16.8~~**6.20.16.9** **Basis for “No Practical Alternatives”**

~~In order for a permitted use to be authorized~~Where written authorization is required in Section 6.20.16.8, Permitted Uses Within Riparian Buffers, the applicant must demonstrate “no practical alternatives.” The determination of “no practical alternatives” will be made by the Planning Director or designee based upon the following:

- 6.20.16.9.a** The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- 6.20.16.9.b** The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality.
- 6.20.16.9.c** Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

~~6.20.16.9~~**6.20.16.10** **Written Authorization Required**

~~Where written authorization is required in Section 6.20.16.8, Permitted Uses Within Riparian Buffers, Proposed-proposed~~ impacts ~~from permitted uses~~ to the riparian buffer may not commence until written authorization is provided by the Planning Director or designee. Use authorization may include conditions specific to the proposed activity. Unauthorized impacts to riparian buffers are subject to enforcement penalties as outlined in *Section 8, Enforcement*.

~~6.20.16.10~~**6.20.16.11** **Diffuse Flow Requirement**Stormwater Runoff Through the Riparian Buffer

~~6.20.16.10.a~~ Diffuse flow or runoff shall be maintained in the riparian buffer by dispersing concentrated flow and re-establishing vegetation.

~~6.20.16.10.b~~ Concentrated runoff from new ditches or manmade conveyances shall be converted to diffuse flow before the runoff enters the riparian buffer.

~~6.20.16.10.c~~ Periodic corrective action to restore diffuse flow shall be taken if necessary to impede the formation of erosion gullies.

~~6.20.16.11.a~~ Stormwater runoff into the riparian buffer shall meet dispersed flow as defined in 15A NCAC 02H .1002 except as otherwise described in this section. Drainage conveyances include drainage ditches, roadside ditches, and stormwater conveyances.

The following stormwater conveyances through the riparian buffer are either deemed allowable or allowable upon authorization, as defined in Section 6.20.16.8, Permitted Uses within Riparian Buffers, provided that they do not erode through the riparian buffer and do not cause erosion to the receiving waterbody. Stormwater conveyances through the riparian buffer that are not listed below shall be allowable with exception as defined in Section 6.20.16.8.e, Allowable with Exception.

~~6.20.16.11.b~~ The following are deemed allowable as defined in Section 6.20.16.8.a, Deemed Allowable:

- i. New drainage conveyances from a Primary SCM, as defined in 15A NCAC 02H .1002, when the Primary SCM is designed to treat the drainage area to the conveyance and that comply with a stormwater management plan reviewed and approved under a state stormwater program or a state-approved local government stormwater program; and
- ii. New stormwater flow to existing drainage conveyances provided that the addition of new flow does not result in the need to alter the conveyance.

6.20.16.11.c The following are allowable upon authorization as defined in Section 6.20.16.8.b, Allowable Upon Authorization:

- i. New drainage conveyances from a Primary SCM as defined in 15A NCAC 02H .1002 when the Primary SCM is provided to treat the drainage area to the conveyance but are not required to be approved under a state stormwater program or a state-approved local government stormwater program;
- ii. New drainage conveyances when the drainage area to the conveyance is demonstrated via approved nutrient calculation methodologies to meet the nutrient loading goal of 2.2 pounds per acre per year of Nitrogen (N) and 0.33 pounds per acre per year of Phosphorus (P);
- iii. New drainage conveyances when the flow rate of the conveyance is less than 0.5 cubic feet per second during the peak flow from the 0.75 inch per hour storm;
- iv. New stormwater runoff that has been treated through a level spreader-filter strip that complies with 15A NCAC 02H .1059;
- v. Realignment of existing drainage conveyances applicable to publicly funded and maintained linear transportation facilities when retaining or improving the design dimensions provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations;
- vi. Realignment of existing drainage conveyances retaining or improving the design dimensions provided that the size of the drainage area and the percent built-upon area within the drainage area remain the same;
- vii. New or altered drainage conveyances applicable to publicly funded and maintained linear transportation facilities provided that SCMs, or BMPs from the NCDOT Stormwater Best Management Practices Toolbox, are employed;
- viii. New drainage conveyances applicable to publicly funded and maintained linear transportation facilities that do not provide a stormwater management facility due to topography constraints provided other measures are employed to protect downstream water quality to the maximum extent practical; and
- ix. New drainage conveyances where the drainage area to the conveyance has no new built-upon area as defined in 15A NCAC 02H .1002 and the conveyance is necessary for bypass of existing drainage only.

~~6.20.16.11~~6.20.16.12 Mitigation

Where mitigation is required pursuant to the permitted uses listed in *Section ~~6.20.16.6~~ 6.20.16.8, Permitted Uses Within Riparian Buffers* and *Table ~~6.20.16.8~~ 6.20.16.8, Permitted Uses within Riparian Buffers*, mitigation shall follow the standards set out in the state's consolidated Riparian Buffer Mitigation Rule, 15A NCAC 02B .0295.

~~6.20.16.12~~6.20.16.13 Riparian Buffer and Minimum Lot Requirements

The riparian buffer may be used in meeting the required minimum lot areas set forth in the Ordinance.

~~6.20.16.13~~ Existing Vegetation and New Vegetation in Riparian buffers

~~Existing vegetation shall not be disturbed within a riparian buffer without prior approval of the Planning Director or designee. Existing vegetation may be augmented within the buffer and invasive vegetation may be removed if the Planning Director or designee approves the plans in advance. Any work done in the riparian buffer must be designed and intended to increase the infiltration capability of the buffer and reduce the velocity of stormwater run-off.~~

~~In the situation where the required buffer experiences erosion problems due to topography or other existing conditions of the land, the Planning Director or designee shall require that the buffer be planted so that it will function as a sediment and pollutant trap. Such planting shall be completed prior to the issuance of a Certificate of Occupancy.~~

~~The use of pesticides, herbicides, or chemicals is not allowed in the riparian buffer except with the prior approval of the Planning Director or designee, and only allowed as described within the Neuse Buffer Rules.~~



Agenda Abstract PLANNING BOARD

Meeting Date:	December 21, 2023
Department:	Planning and Economic Development Division
Agenda Section:	5B
Public hearing:	Yes
Date of public hearing:	January 18, 2024 (tentative)

PRESENTER/INFORMATION CONTACT

Molly Boyle, Planner II

ITEM TO BE CONSIDERED

Subject: Unified Development Ordinance (UDO) text amendment to Section 6.21.2 *Streets – Applicability* (Staff Initiated)

Attachments:

1. UDO Section 6.21.2, as proposed to be amended

Summary:

This amendment clarifies requirements for new and improved streets in the town’s jurisdiction. It makes clear that improved streets are also subject to this section (not just new streets). Also, it makes clear that a new or improved street within town limits must comply with both the town’s standard specifications and street manual.

Comprehensive Sustainability Plan goals:

- Transportation and Connectivity Goal 1:
Develop and maintain a safe, efficient, and sustainable multimodal transportation system (including bicycle, pedestrian, and transit options) that offers alternatives to single-occupancy vehicle trips and promotes health and access to area jobs, destinations, and services.
- Strategy:
Adopt regulations that contribute to meeting identified transportation and connectivity needs in town.

Financial impacts:

None.

Staff recommendation and comments:

Send the proposed text amendment to the joint public hearing on January 18, 2024, after which the Planning Board may make a recommendation to approve the amendment.

Action requested:

Send the proposed text amendment to the joint public hearing on January 18, 2024.

6.21 STREETS

6.21.2 APPLICABILITY

New or improved streets will generally be dedicated to the town or NC Department of Transportation. New or improved streets within town limits must comply with the town's standard specifications and its adopted street manual, including the submission of a Traffic Impact Analysis, if required. Private streets are generally ~~only~~ permitted only in minor subdivisions and some developments where land ownership is not defined by the vehicle circulation system (e.g., apartment complexes, shopping centers, or office parks). Allowable private streets are also regulated by this section.



Agenda Abstract PLANNING BOARD

Meeting Date:	December 21, 2023
Department:	Planning and Economic Development Division
Agenda Section:	5C
Public hearing:	Yes
Date of public hearing:	January 18, 2024 (tentative)

PRESENTER/INFORMATION CONTACT

Molly Boyle, Planner II

ITEM TO BE CONSIDERED

Subject: Unified Development Ordinance (UDO) text amendment (staff initiated):

- Table 5.1.8 *Use Table for Non-Residential Districts – Government Maintenance Yard*
- Section 9.2 *Definitions – Government Maintenance Yard*

Attachments:

1. UDO Table 5.1.8 and Section 9.2, as proposed to be amended

Summary:

Currently, the UDO requires a Special Use Permit for government maintenance yards in the Light Industrial (LI) zoning district. Staff is proposing to make the use permitted by right in the district. UDO Section 9.2 *Definitions* defines a government maintenance yard as follows:

Government Maintenance Yard: A facility owned and operated by a unit of government to park, storage (sic), repair, and stage service vehicles and repair equipment includes (sic) but not limited to transit vehicles, solid waste and street repair vehicles, utility system and park vehicles.

While a government maintenance yard requires a Special Use Permit in the Light Industrial district, comparable land uses are permitted by right, including the following as defined in Section 9.2:

- **Motor Vehicle Repair:** An establishment where automobile maintenance or service is rendered, with the addition of body work, straightening of body parts, painting, welding, temporary storage of motor vehicles not in operating condition, and major mechanical work, including engine overhaul and other major work requiring overnight storage.
- **Storage and Warehousing, Outdoor:** The keeping, in an unroofed area, of any goods, junk, material, merchandise, or vehicles in the same place for more than twenty-four (24) hours. This shall not include the display of vehicles for sale in a new or used car sales lot. Such activities may be the principal use of the land where located or an accessory use to a principal use.

The Light Industrial district is designed to support light manufacturing, research and development, and similar uses that are less intense compared to those in General Industrial (GI). A government maintenance yard is consistent with this intent and comparable to other allowable uses in the district. Staff is proposing to amend Table 5.1.8 accordingly and correct minor typos in the “government maintenance yard” definition.

Comprehensive Sustainability Plan goals:

- Land Use and Development Goal 1:
Ensure that future growth and development, including infill and redevelopment, are aligned with smart growth principles and consider infrastructure constraints such as water and wastewater system capacity.
- Strategy:
Revise zoning and development regulations in accordance with the Future Land Use Plan and Future Land Use Map and water and sewer needs. Condense land use classifications.

Financial impacts:

None.

Staff recommendation and comments:

Send the proposed text amendment to the joint public hearing on January 18, 2024, after which the Planning Board may make a recommendation to approve the amendment.

Action requested:

Send the proposed text amendment to the joint public hearing on January 18, 2024.

5.1 USE TABLE

5.1.8 TABLE: USE TABLE FOR NON-RESIDENTIAL DISTRICTS

	P = Permitted by Right			SUP = Permitted with a Special Use Permit				PA = Permitted as accessory use			
	LO	NB	OI	CC	GC	HIC	ARU	BP	EDD	LI	GI
Flex Space						P	P	P	P	P	P
Food Preparation Business					P	P	P		P	P	P
Funeral Home	P		P	P	P	P			P		
Gallery/Museum	P	P	P	P	P	P	P				
Government Maintenance Yard			SUP						SUP	SUP P	

9.2 DEFINITIONS

Government Maintenance Yard

A facility owned and operated by a unit of government to park, storage store, repair, and stage service vehicles and repair equipment, ~~includes~~ including but not limited to transit vehicles, solid waste and street repair vehicles, and utility system and park vehicles.



Agenda Abstract PLANNING BOARD

Meeting Date:	December 21, 2023
Department:	Planning and Economic Development Division
Agenda Section:	5D
Public hearing:	Yes
Date of public hearing:	January 18, 2024 (tentative)

PRESENTER/INFORMATION CONTACT

Molly Boyle, Planner II

ITEM TO BE CONSIDERED

Subject: Unified Development Ordinance (UDO) text amendment (staff-initiated):

- Section 6.5.11.3 *South Churton Non-Residential Buffer - Requirements*
- Section 6.7.11.2 *Parking and Circulation, Site Layout*
- Sections 6.13.3.1 – 6.13.3.3 *Off-Street Parking Provisions*
- Sections 6.13.9.1 – 6.13.9.2 *Off-Street Parking Design Requirements*

Attachments:

1. UDO sections listed above, amended as proposed

Summary:

This amendment is intended to clarify and consolidate off-street parking regulations. It removes portions from Sections 6.5.11 *South Churton Non-Residential Buffer* and 6.7.11 *Parking and Circulation, Site Layout*. Clarified language is then consolidated with Section 6.13.9 *Off-Street Parking Design Requirements*.

Section 6.13 *Parking, Loading, and Circulation* applies to all developments (except one- and two-family detached houses). All new non-residential and multi-family developments will be subject to off-street parking requirements under this section. The proposed amendment also includes some “housekeeping” items, including:

- Clarified rounding conventions for parking space requirements;
- General reformatting and grammatical corrections; and
- Corrections to the parking reduction/addition provision, so that smaller projects can benefit from the section as well.

Comprehensive Sustainability Plan goals:

- Transportation and Connectivity Goal 1:
Develop and maintain a safe, efficient, and sustainable multimodal transportation system (including bicycle, pedestrian, and transit options) that offers alternatives to single-occupancy vehicle trips and promotes health and access to area jobs, destinations, and services.
- Strategy:
Adopt regulations that contribute to meeting identified transportation and connectivity needs in town.

Financial impacts:

None.

Staff recommendation and comments:

Send the proposed text amendment to the joint public hearing on January 18, 2024, after which the Planning Board may make a recommendation to approve the amendment.

Action requested:

Send the proposed text amendment to the joint public hearing on January 18, 2024.

6.5 BUFFERS

6.5.11 SOUTH CHURTON NON-RESIDENTIAL BUFFER

6.5.11.3 Requirements

~~6.5.11.3.c Immediately adjacent to the buffer, a property owner may install a paved drive aisle up to 24 feet wide OR a paved drive aisle and one row of perpendicular parking along the building frontage. The total pavement width adjacent to the buffer may not exceed 44 feet.~~

6.7 DESIGN REQUIREMENTS FOR NEW NON-RESIDENTIAL AND MULTI-FAMILY BUILDINGS

6.7.11 PARKING AND CIRCULATION, SITE LAYOUT

~~6.7.11.2 The preferred location for parking areas is behind a line projected from the building façade. However, if needed, one row of parking and a two-lane drive aisle for vehicular circulation may be located between the primary building and the right-of-way. Parking areas shall be placed to the side or rear and behind the front façade of the primary building(s).~~

6.13 PARKING, LOADING, AND CIRCULATION

6.13.3 OFF-STREET PARKING PROVISIONS

6.13.3.1 General

~~Each of the following uses shall provide off-street parking spaces in accordance with the table below; except for properties located in CC District. Except as detailed in Section 6.13.3.2, Minimum Number of Parking Spaces Required in the CC District, the required number of off-street parking spaces shall be calculated using Table 6.13.3.4, Minimum Number of Parking Spaces Required. When a calculation results in a fraction, fractions of less than 0.5 shall be rounded down and fractions of 0.5 or more shall be rounded up. This same rounding convention applies when calculating allowable reductions or additions as detailed in this section.~~ The term "per employee" shall mean per employee at the time the maximum number of employees ~~are~~ is present.

6.13.3.2 Minimum Number of Parking Spaces Required in the CC District

Due to the presence of on street and off-street public parking and the overlapping and walkable nature of areas zoned Central Commercial, the requirement of parking applies by square feet of building within the entire Central Commercial district rather than use by use.

In 2010, the town prepared an inventory of downtown parking. Any off-street parking shown in that inventory (Parking Study, Phase 2) should be retained by the private property owner or replaced space for space if proposed to be built over.

~~For every 500 square feet of gross floor area within the CC district, one parking space shall be provided. In the CC district, parking shall be provided at a rate of one parking space per 500 square feet of gross floor area.~~ If a property owner proposes to build additional building area or renovate space not occupied during the 2010 inventory, the owner shall provide additional parking to reflect the demand generated by the addition of occupied

square footage. ~~Parking demand of 0.7 parking space or more shall be rounded up.~~

6.13.3.3 **Number of Parking Spaces Required outside the CC-district District**

The following Table establishes the formulas to be used to calculate the number of parking spaces required for a particular use. If no specific parking standard is established in this Table for a particular use, the permit issuing authority shall apply the most analogous standard. Some uses identified in this Table are not identified in the Table of Permitted Uses as specific uses. Nevertheless, parking standards for the most similar use shall apply.

6.13.3.3.a Allowable Parking Reductions and Additions

The number generated by applying the parking standard is the required number of parking spaces for a defined use, ~~constituting~~ This constitutes both a minimum and maximum. ~~Rounding conventions shall be employed when the standard requires a fractional parking space.~~ with the following exceptions:

- (a) Uses requiring ~~20 or fewer~~ 5-20 spaces after rounding are allowed to build up to ~~5% more or 5% fewer spaces if the addition or reduction does not represent a deviation of 50% or more from the standard.~~ 2 more or 2 fewer spaces.
- (b) Uses requiring 21-99 spaces after rounding are allowed to build up to 5 more or 5 fewer spaces.
- (c) Uses requiring 100 spaces or more after rounding are allowed ~~flexibility~~ to build up to 10 more or 10 fewer spaces.

~~Example—a use that is required to have 10 spaces must build at least 5 and cannot build more than 15. A use requiring 25 spaces must build at least 20 but no more than 30.~~

6.13.9 OFF-STREET PARKING DESIGN REQUIREMENTS

6.13.9.1 ~~Except as permitted consistent with Section 6.5.10, South Churton Non-Residential Buffer, parking shall be placed at the side or rear of the lot and screened from view consistent with landscaping requirements and screening requirements in this section.~~ One row of parking spaces and one drive aisle, which together shall not exceed 44 feet in width, may be located between the primary building(s) and the street right-of-way. All other off-street parking areas shall be located to the side or rear of the primary building(s) behind the front façade(s).

6.13.9.2 ~~Except as otherwise allowed under subsection 6.13.9.1,~~ visual ~~visual~~ impact of parking areas shall be reduced by locating the parking areas away from rights-of-way.



Agenda Abstract PLANNING BOARD

Meeting Date: December 21, 2023
 Department: Planning and Economic Development Division
 Agenda Section: 5E
 Public hearing: Yes
 Date of public hearing: January 18, 2024 (tentative)

PRESENTER/INFORMATION CONTACT

Molly Boyle, Planner II

ITEM TO BE CONSIDERED

Subject: Unified Development Ordinance (UDO) text amendment (staff initiated):

- Section 5.2.8.1 – 5.2.8.2 *Dwelling, Accessory*
- Section 5.2.18.1 *Home Occupation*

Attachments:

1. UDO sections listed above, as proposed to be amended

Summary:

The UDO currently caps the size of accessory dwelling units (ADUs) at 50% of the primary dwelling’s heated living area or 800 square feet, whichever is less. This creates a “small house penalty.” In other words, the regulation works well for larger primary homes but is less accommodating to smaller ones, as illustrated in this table:

Examples of Maximum ADU Sizes (Current UDO)	
Primary Dwelling Size (sq. ft.)	Maximum ADU Size (sq. ft.)
900	450
1,100	550
1,200	600
1,600	800
2,000	800
2,500	800

This amendment proposes changes to ADU regulations to create more flexibility for smaller primary homes. Minimum setbacks and location requirements for detached ADUs are also proposed. Changes to Section 5.2.18.1 *Home Occupation* are included as well since home occupations are allowed in ADUs.

Comprehensive Sustainability Plan goals:

- Land Use and Development Goal 1:
Ensure that future growth and development, including infill and redevelopment, are aligned with smart growth principles and consider infrastructure constraints such as water and wastewater system capacity.
- Strategy:
Ensure that land use and redevelopment regulations are aligned with preferred future land use and growth patterns.

Financial impacts:

None.

Staff recommendation and comments:

Send the proposed text amendment to the joint public hearing on January 18, 2024, after which the Planning Board may make a recommendation to approve the amendment.

Action requested:

Send the proposed text amendment to the joint public hearing on January 18, 2024.

5.2 USE-SPECIFIC STANDARDS

5.2.8 DWELLING, ACCESSORY

5.2.8.1 Accessory dwelling units in freestanding structures

5.2.8.1.d ~~The structure containing the accessory dwelling must meet the applicable primary building setbacks established in Table 6.3.1, Dimensional Requirements—residential OR Section 7.5.3, Non-conforming lot setback requirements. The existing, primary dwelling may be non-conforming in regard to building setbacks required in the zoning district. The setback provision in Section 9.1.5.2.c of this ordinance is not available for an accessory building containing a dwelling unit. An accessory dwelling unit shall be located to the side or rear of the primary dwelling and behind the primary dwelling’s front façade. Accessory dwelling units shall conform to all applicable setback requirements of this ordinance except that the minimum setback from each property line shall be five (5) feet.~~

5.2.8.1.f The accessory dwelling unit ~~does shall~~ not exceed fifty (50) percent of the ~~heated living area gross floor area~~ of the principal dwelling unit or ~~800-1,000~~ square feet in gross floor area, whichever is ~~less~~ greater. In no case shall the accessory dwelling unit exceed the gross floor area and/or height of the principal dwelling unit.

5.2.8.2 Accessory dwelling units within a principal single-family dwelling

5.2.8.2.d The accessory dwelling unit ~~does shall~~ not exceed fifty (50) percent of the ~~heated living area gross floor area~~ of the principal dwelling unit or ~~800-1,000~~ square feet in gross floor area, whichever is ~~less~~ greater. In no case shall the accessory dwelling unit exceed the gross floor area of the principal dwelling unit.

5.2.18 HOME OCCUPATION

5.2.18.1 All home occupations shall comply with the following conditions:

5.2.18.1.c The area occupied by the home occupation shall not exceed ~~25~~ fifty (50) percent of the ~~heated floor area gross floor area~~ of the dwelling unit to which it is accessory. ~~A home occupation may also occupy no more than 500 square feet of an accessory building on the same parcel as the dwelling to which it is accessory.~~ In no case may the area of a home occupation account for more than ~~600-1,000~~ square feet of total area on a parcel (dwelling, outbuilding, and area involved in raising an agricultural product).