

Section 5 – Overlay Districts

5.1 Airport Overlay

5.1.1 Purpose

The Airport Overlay District is established to contribute to the safe operation of airports, to facilitate orderly development around airports, and to control and minimize impacts on surrounding activities. It is also the intent of this district to encourage land use patterns which are appropriate for the airport vicinity and public safety by avoiding concentrations of population. Standards are provided to ensure an attractive entrance to the area in order to encourage trade and commerce and thereby maintain economic vitality.

5.1.2 Applicability

The Airport Overlay District applies to properties in the vicinity of Raleigh Durham Airport. The specific boundaries are defined on the Official Zoning Map and are imposed on property as an addition to the underlying zoning district. The boundaries generally follow physical boundaries which are identifiable on the landscape and are related to the airport noise contours as determined by the Raleigh Durham Airport Authority. The Airport Overlay District is divided into 2 sub-districts which are further described below:

Area A - shall be that area generally found within the 65Ldn of the Raleigh Durham Airport and shown on Official Zoning Map.

Area B - shall be that area generally located outside the 65Ldn but within the 60 Ldn of the Raleigh Durham Airport and shown on the Official Zoning Map

5.1.3 Permitted Uses

All uses permitted in the underlying district are permitted with the exception of those uses described below.

5.1.4 Prohibited Uses in Area

All uses allowed in the underlying district are allowed except for the following:

1. Places of public assembly not designed for airport patrons including but not limited to: day care centers, schools, hospitals, places of worship, theaters, museums, libraries, and stadiums.
2. Places of residence including, but not limited to single family homes, multifamily homes, manufactured homes, convalescent centers, group homes, and family care homes.
3. Recreational establishments not designed to serve airport patrons.
4. Correctional facilities or jails.
5. Radio and television broadcasting facilities.
6. Landfills or quarries.
7. Above ground bulk storage of explosive, hazardous, or flammable materials and related facilities which could pose a threat to the public in the event of an aircraft crash.
8. Storage yards for oxides, coal, stone, concrete mixing supplies, asphalt plants, building supplies and dismantled vehicles.

5.1.5 Prohibited Lighting in Area A and B

1. Any moving, pulsating, flashing, rotating, or oscillating light, which may interfere with air traffic other than navigational markings or lights marking potential obstructions in accordance with Federal Aviation Administration requirements.
2. Flood lights, spot lights, or other lighting devices which are not shielded so as to prevent illumination in an upward direction.
3. Any light which constitutes a "misleading light" within the meaning of Federal Aviation Administration regulations.

5.1.6 Prohibited Electronic Signals in Area A and B

Any electronic impulse or signal which interferes with communications between aircraft and the airport, or which interferes with established navigation aids.

5.1.7 Prohibited Heights in Area A and B

Structures and signs of a height which obstructs the takeoff and landing of aircraft, as determined by the Federal Aviation Administration.

5.1.8 Additional Requirements

1. The Raleigh Durham Airport Authority shall have the opportunity to review applications for rezoning, subdivision, or site plan approval prior to a decision by the approving authority. All development within the Airport Overlay District shall also comply with the airspace regulations adopted by the Raleigh-Durham Airport Authority. Whenever said airspace regulations impose more stringent requirements or limitations than are required by this ordinance, the provisions of the airspace regulations shall prevail.
2. Proposals for rezoning applications for residential zones within area B shall demonstrate that aircraft noise exposure within the dwellings shall not exceed decibel levels of 45 Ldn and be certified by an acoustical engineer or a board certified member of the Institute of Noise Control Engineering. Measures for reducing noise exposure may include: orientation of structures, design standards, landscaping, or construction materials used in walls, windows, doors, roofs, floors, or ceilings. Design guidelines for noise reduction are available from publications of the RDU Airport Authority.
3. Proposals for residential zoning or residential development within Area B shall demonstrate that purchasers of the dwellings will be notified that the property may be subject to noise exposure from aircraft using Raleigh Durham Airport. Measures used to notify purchasers may include notices on plats or deeds.
4. Development shall meet the requirements of the underlying zoning district in addition to the requirements of the Airport Overlay District.
5. Nonconforming uses may be continued subject to the regulations found elsewhere in this ordinance. However, no building permit shall be issued which would allow a greater hazard (for example: more units, or brighter lighting) to airport safety than existed at the time of adoption of this ordinance.

5.2 Downtown Transition Area Overlay

5.2.1. Purpose

The Downtown Transition Area Overlay District is established to provide for a transition of uses between the central business district and nearby uses which surround the downtown. Standards are established to allow for the growth of the central business district in order to maintain its economic vitality yet also to protect the less intensive mixture of uses adjacent to downtown. It is also the intent of this district to encourage land use patterns which will enhance property values, maintain economic viability, and provide for the general welfare.

5.2.2 Applicability

This district is intended for properties adjacent to the Central Business District of the City of Durham. The regulations of the underlying district apply in addition to the requirements of this Section. The actual boundaries of the district shall be displayed on the Official Zoning Map.

5.2.3 Height Limitations

1. At time of subdivision or site plan approval the Development Review Board (DRB) may approve building heights up to 10% higher than the building height maximums of the underlying zoning district. Approval of additional height is dependent upon the finding that the height will not adversely affect adjoining properties as determined by the DRB.
2. Within the boundaries of this overlay district, the Board of Adjustment may grant additional height or may hear appeals of decisions of the DRB regarding height. Additional building height may be granted upon the issuance of a use permit by the Board of Adjustment.
3. Before granting a use permit the Board of Adjustment shall follow standard variance procedures and, in addition, shall find that:
 - a) The proposed plan allows for adequate light, air, and open space to access adjacent properties.
 - b) The proposed plan adequately protects surrounding properties from any adverse effects of the proposal.
 - c) The proposed plan provides for safe traffic and pedestrian movements.

5.2.4 Additional Requirements

All uses allowed in the underlying district are allowed except for the following:

1. Site plan approval shall be required for all development within this district except single-family residential.
2. Traffic impact studies shall not be required for development within this district.

5.3 Major Transportation Corridor (MTC) Overlay

5.3.1 Purpose

The Major Transportation Corridor (MTC) Overlay District is established to enhance the economic and aesthetic appeal and orderly development of properties adjacent to major transportation corridors. Certain arterial streets, parkways and expressways are of critical importance to Durham City and County. Rights-of-way carrying high volumes of traffic are image makers for Durham City and County. They act as entryways for visitors and residents and also serve as an indicator of the quality of life found in the area. Standards are provided to ensure that thoroughfares in this district develop with improved traffic efficiency and safety by reducing visual clutter and avoiding inappropriate site design.

5.3.2 Applicability

The MTC Overlay District is intended for application parallel to the rights-of-way of major thoroughfares for a depth on each side of 1,250 feet. The depth on each side may extend to 2,500 feet at intersections. The district is measured perpendicular to the travel lanes and perpendicular to the right-of-way except at intersections where it may be expanded to allow for exit and entry ramps. The actual boundaries shall be determined at the time of adoption and shown on the Official Zoning Map.

5.3.3 Buffer Requirements

1. Buffers are required parallel to the rights-of-way on properties within the MTC Overlay District. The buffer shall be a minimum of 30 feet up to a maximum of 100 feet in depth. The dimensions shall be determined at time of adoption of the district. In determining the width of the buffer, the Governing Body shall consider the topography of the area, the existing and proposed land uses, the size of the adjacent parcels, the traffic volumes of the corridor, and any additional factors the Governing Body deems reasonable in carrying out the purpose of the ordinance.
2. Within the buffer area, existing vegetation shall be maintained in a natural, undisturbed state. Where site plan approval calls for higher standards, the higher standards shall apply.
3. No development is allowed within the buffer. In approving a site plan or subdivision plat, however, streets or easements may be permitted to cross the buffer when necessary for access. The nature and limits of such intrusions into the buffer shall be shown in detail on the site plan or subdivision plat.

Trails may not intrude laterally into the buffer for distances greater than 50 feet. Trails should meander to avoid natural features and to prevent clear views through the buffer. Selective thinning is allowed; however, no tree over 12 inches in caliper shall be removed for the trail. The maximum trail width is 5 feet. Trails shall be shown on site plans and subdivision plats.

5.3.4 Adjustments to the Buffer Width

The buffer width may be reduced at the time of subdivision or site plan approval by the Board of Adjustment if a property of record is rendered unusable by the buffer. Factors to consider are the topography of the area, traffic volumes, surrounding land uses, and size of the parcel. Where practical, the developer shall insure that an amount of buffer equivalent to the amount that is lost is placed elsewhere on the site.

5.3.5 Nonconforming Structures

Where a property contains a structure within a buffer at the time of adoption of the MTC Overlay District, any change or addition to that structure which requires a site plan or subdivision plat approval shall be required to comply with the requirements of this Overlay District.

5.3.6 Additional Requirements

The requirements of the underlying district shall also apply to new development.

5.4 Downtown Design Overlay

5.4.1 Purpose

The Downtown Design Overlay District (DDO) is established to provide for a transition of uses between the Downtown Historic District and nearby uses, which surround the downtown. It is the intent of the DDO to encourage intense development and pedestrian activity through a mixture of uses appropriate to the downtown area. The standards of the DDO are established to provide for a vital downtown economy that maintains Durham's focus as a commercial, cultural and entertainment hub of the region while increasing livability. The DDO is intended to work in tandem with the Downtown Durham Master Plan adopted May 2000.

5.4.2 Applicability

This Downtown Design Overlay District is intended for properties adjacent to the Downtown Historic District of the City of Durham. The regulations of the overlay district either supplement, or replace, the regulations of the underlying zoning district, as described herein. The regulations in the overlay district are not applicable until a map amendment is passed establishing the actual boundaries of the district. Those boundaries shall be displayed on the Official Zoning Map.

Within its [boundaries](#), the DDO is divided into three areas:

DDO-1. The portion of the DDO generally closest to the Downtown Historic District, where dense urban development is encouraged in a manner consistent with the existing Downtown character.

DDO-2. The portion of the DDO where a sensitive urban transition is desired from the surrounding neighborhoods to the denser city center.

DDO-3 The portion of the DDO adjacent to the surrounding neighborhoods where the scale of downtown development should taper to be compatible with the residential context.

5.4.3 Design Guidelines

One of the goals of the adopted Downtown Durham Master Plan is: To create building and streetscape design standards for development in the area that highlight and accent Durham's existing wealth of historic architecture, spaces, places and views, and are compatible with traditional planning and defensible space concepts.

In support of this goal, all new development in the DDO unless exempted by Section 19 of this ordinance [Nonconforming Lots, Uses, and Buildings] shall be subject to the provisions of this Overlay District and, in addition, to design guidelines established pursuant to this ordinance. The design guidelines shall be adopted and maintained by the Planning Department, after consultation with other affected City Departments, and shall be periodically reviewed and updated as needed. Design guidelines and standards are necessary to achieve the desired goals for the DDO, which requires more attention to design than development in other parts of the City and County. In the DDO there will be an emphasis on architectural detail and human scale design. The focus will be on promoting street level activity by designing multi-modal streets, designing to achieve pedestrian scale, avoiding blank walls, monolithic massing and long expanses of street front parking lots, and providing pedestrian amenities throughout the area such as lighting, seating areas, bike racks, etc. While the design guidelines will not dictate architectural styles, they will suggest a variety of design options for achieving compatibility within the designated boundaries

5.4.4 Design Review

Design review assists in protecting the downtown local architectural heritage and preserving the considerable economic investments that have occurred over the years. The design review process seeks to encourage renovation and new development in a manner that will promote visual harmony, historical integrity and creative design solutions. A Design Review process is established as follows:

1. The Durham Design Review Team (DDRT) shall review all development in the DDO for compliance with the applicable design guidelines.
2. In addition to the standard submittal requirements, elevations (or facade drawings) of the proposed development are required along with photographs documenting the surrounding conditions and buildings on both sides of the street.
3. The DDRT shall be comprised of the following members:
 - A representative from the Property and Facilities Management Department;
 - A representative from the Public Works Department;
 - Two representatives from the Planning Department with expertise in urban design, historic preservation, or design review;
 - A representative from the Office of Economic and Employment Development, or another appointee of the City Manager; and
 - Two citizen appointees, one being a resident within the DDO and the other being either a property or business owner within the DDO, preferably with expertise in a design field such as architecture, landscape architecture, or urban design. Citizen members shall be appointed by the City Council for staggered two-year terms, and may serve a maximum of three terms.

5.4.5 Setback Requirements

The standard setback requirements of the base district shall not apply within the overlay district but shall be determined as follows:

1. The maximum setback shall be 20 feet. The minimum setback shall be 12 feet from the back of curb, without regard to the location of the property line. Above twenty feet in height, buildings may be built to the property line without regard to the setback requirements. Columns may be placed in the portion of

any sidewalk area located on private property to support any building above the 20-foot height, which extends out to the property line. The minimum setback applies to all the street frontages of a building to ensure adequate urban sidewalk space.

2. Setbacks may be increased beyond the maximum by DRB for purposes of pedestrian access or to incorporate public open space or plazas.
3. Buildings shall be sited in accordance with the Downtown Design Guidelines established pursuant to this ordinance.

5.4.6 Height Limitations

The standard height requirements of the base district shall not apply within the overlay district but shall be determined as follows:

1. Residential Density (applicable to mixed-use developments where at least 65 percent of the total floor area is residential):
 - a. In the DDO-1 a residential density of 100 units per acre maximum and 12 units per acre minimum is allowed.
 - b. In the DDO-2 and DDO-3 a residential density of 16 units per acre maximum and 8 units per acre minimum is allowed.
 - c. The City through a SUP may approve additional density in the DDO-1, DDO-2, and DDO-3 areas.
 - d. In some situations these densities may not be appropriate due to environmental conditions (such as site constraints) or existing development patterns (such as proximity to a historic district or established neighborhood). In such cases, the Approving Body may require a reduction in the number of units per acre.
 - e. Residential development in the DDO shall not be required to meet parking or buffer requirements.
 - f. Combinations of commercial or office and residential uses are allowed and shall conform to any additional requirements specified in [Section 4D.1.9](#).
 - g. The Approving Body may grant up to a 25 percent increase in the number of dwelling units allowed when residential uses are combined with commercial or office uses in the same structure.
2. Non-residential Density (applicable to mixed-use developments where at least 35 percent of the total floor area is non-residential):
 - a. Development in the DDO-1 shall provide a minimum floor area ratio (FAR) of 2.5.
 - b. Development in the DDO-2 shall provide a minimum FAR of 1, but not exceed a maximum FAR of 4.
 - c. Development in the DDO-3 shall provide a minimum FAR of 1, but not to exceed a maximum FAR of 2.5.
 - d. In cases where it is contextually appropriate or environmentally prudent, the Approving Body may approve a FAR above the maximum or below the minimum as long as it will not pose any negative effects on the surrounding properties.

5.4.8 Permitted Uses

The Downtown Design Overlay District area should contain a mix of complementary uses. Complementary land uses are those uses that offer goods and services at different times of day, and provide a consolidated "one stop" area for people to live, work, shop and participate in entertainment and community activities in close proximity to one another. Complementary land uses located in a neighborhood that has been designed to accommodate pedestrians, bikes, buses and trains, reduces dependence on the automobile, thereby reducing traffic congestion and the need for additional parking areas. The uses may be mixed within a building or within a site. Supplementary requirements specified in Section 7 of the ordinance are applicable to the uses; however major and minor special use permits are not required. Applicable performance standards of Section 8 also apply. The only uses allowed in the Overlay District 1, 2, and 3 are those allowed in the base districts that also are allowed in either paragraph 1 or 2 below.

- A. Generally Allowed Uses.
 - a. Accessory uses and structures;
 - b. Accessory dwellings;
 - c. Artist galleries and studios;
 - d. Banks and financial institutions;
 - e. Bed and breakfast inns;
 - f. Business incubators;
 - g. Business services;
 - h. Caretakers dwellings;
 - i. Clubs, lodges, and recreation facilities, for use by non-profit organizations;
 - j. Convalescent centers;
 - k. Convenience stores without gasoline sales;
 - l. Convenience stores with gasoline sales with up to four individual fuel pumps;
 - m. Day care facilities;
 - n. Emergency shelters;

- o. Family care homes;
 - p. Funeral homes;
 - q. Furniture showrooms where in excess of 75 percent of the gross square footage is devoted to sales made from sample stocks and deliveries are made to the buyer from a location off site;
 - r. Garden centers;
 - s. Government facilities, including correctional facilities;
 - t. Group homes;
 - u. Health clubs and athletic facilities;
 - v. Home occupations;
 - w. Hospitals;
 - x. Hotels and motels;
 - y. Janitorial services;
 - z. Laboratories without outside operations or storage;
 - aa. Mausoleums, columbaria, memorial gardens, and small cemeteries of less than 3000 square feet;
 - ab. Medical clinics;
 - ac. Mixed residential/commercial;
 - ad. Multifamily dwellings;
 - ae. Museums;
 - af. Offices;
 - ag. Passenger transportation terminals;
 - ah. Personal service establishments;
 - ai. Photographic studios and photographic processing for retail;
 - aj. Places of worship;
 - ak. Public parks and playgrounds;
 - al. Public utility facilities without outdoor storage;
 - am. Recreation facilities, commercial, indoor;
 - an. Repair shops;
 - ao. Research and development without outdoor storage or operations;
 - ap. Restaurants and catering services, without drive up windows;
 - aq. Retail stores and shops;
 - ar. Retirement centers and life care communities;
 - as. Shopping centers;
 - at. Showroom offices;
 - au. Surface parking lots as an independent use;
 - av. Temporary outdoor events subject to Section 14; and
 - aw. Wholesale establishments not involving storage of goods to be wholesaled in excess of 2000 square feet of the gross floor area and without outdoor storage or operations.
- B. The following uses are allowed only when they are not located adjacent to residential properties or mixed-use developments where at least 65 percent of the total floor area is residential:
- a. Auditoriums;
 - b. Farmers markets, when contained within urban public spaces or within buildings, or when combined with another use;
 - c. Food processing, limited to commercial bakeries, bottling plants, canneries, and dairy product processing. At least 20 percent of the floor area must be devoted to a retail shop for the food product;
 - d. Furniture refinishing and repair without outdoor storage or operations;
 - e. Movie theaters, not to include drive-in theaters;
 - f. Night clubs;
 - g. Publishing and printing establishments;
 - h. Radio and television broadcasting studios;
 - i. Retail fabrication businesses;
 - j. Theaters;
 - k. Vehicle sales, rental, and lease; and
 - l. Veterinary clinics, without outdoor runs, kennels, or storage.
- C. Uses Not Listed: Uses similar in nature but not defined in these lists may be allowed upon the determination of the Planning Director.
- D. The applicant may specify additional limitations or details regarding the proposed uses in a rezoning application.
- E. When the use is listed in Section 7 of the Zoning Code, the requirements of Section 7 shall apply.

5.4.9 Buffer and Landscaping Requirements

All requirements of Section 10 shall apply with the exception that:

1. Section 10.2.4, 10.2.5 and 10.11 shall not apply.
2. No minimum parking is required. Parking shall not exceed the minimum number required by the base use (see Section 9.4.1). Exceptions to this requirement may be granted by the Approving Body if the additional parking does not negatively impact the pedestrian flow of the area and additional findings supporting the decision are made. Such findings include but are not limited to a demonstrated need for additional parking, use of traffic demand management techniques to minimize parking, efforts to minimize significant tree cutting and the ability to share parking with other nearby development.
3. Alternate street widths may be approved at the time of site plan approval. The Approving Body shall make its decision using the criteria listed in Section 5.4.10.2.
4. The design of parking lots and structures shall conform to the Downtown Design Guidelines established pursuant to this ordinance.
5. Parking lots and parking structures are not permitted adjacent to single-family residential properties that abut the DDO.

5.4.10 Parking and Streets

Design of parking areas shall be a critical consideration for Site Plans within this Overlay District, and shall be in conformance with the provisions of Section 9 of the Zoning Code.

1. When a Traffic Impact Analysis (TIA) is necessary, a Major Special Use Permit (MSUP) is not required.
2. No minimum parking is required. Parking shall not exceed the minimum number required by the base use (see Section 9.4.1). Exceptions to this requirement may be granted by the Approving Body if the additional parking does not negatively impact the pedestrian flow of the area and additional findings supporting the decision are made. Such findings include but are not limited to a demonstrated need for additional parking, use of traffic demand management techniques to minimize parking, efforts to minimize significant tree cutting and the ability to share parking with other nearby development.
3. Alternate street widths may be approved at the time of site plan approval. The Approving Body shall make its decision using the criteria listed in Section 5.4.10.2.
4. The design of parking lots and structures shall conform to the Downtown Design Guidelines established pursuant to this ordinance.
5. Parking lots and parking structures are not permitted adjacent to single-family residential properties that abut the DDO.

5.4.11 Urban Public Space and Streetscape

The adopted Downtown Durham Master Plan identifies the provision of gathering spaces as one of four elements needed to create and maintain a strong downtown character. The streetscape and its connection to urban public space are critical in providing such gathering opportunities, and shall be incorporated into downtown development.

1. All new development shall be in conformance with the Downtown Streetscape Guidelines established pursuant to this ordinance
2. Urban public space shall be provided as follows:
 - a. All developments shall provide a minimum of 1 percent of the total site area in urban public space. At least 50 percent of the requirement must be publicly accessible and may be located on site or within 1000 feet of the site.
 - b. Urban public space must be provided on private property, whether it is intended for public access or private access.
 - c. A maximum of 30 percent of the required urban public space may be provided in a sheltered or enclosed ground floor level that directly adjoins the outdoor public space. Enclosed urban public spaces shall not include building lobbies, or other functional building spaces, but may include atria, galleries, interior courts, greenhouses, and other similar spaces whose main function is as a gathering space. All of the provisions of Section 5.4.11 shall apply.
 - d. The DRB may reduce these requirements up to a maximum of 25 percent in recognition that some urban public spaces are more costly to provide and are expected to have a greater public impact, yet occupy a smaller land area than other possible provisions. The reduction allows the DRB to determine the appropriate balance so that urban public space suitable to residents and users of the site and area can be achieved. The DRB may grant such a reduction as part of site plan approval. To grant the reduction, the DRB shall find that the proposed open space facilities are 1) appropriate to the project and the DDO, and 2) result in facilities of a particularly high quality or allowing particularly intensive use or otherwise likely to better serve the intended users.

- e. In cases where the Downtown Design Review Team (DDRT) in consultation with the Parks and Recreation Department finds the provision of urban public space unnecessary due to the proximity of other similar spaces or infeasibility based on site and project constraints, the DDRT may require a payment in lieu of the public space. The City shall adopt a schedule of fees for such payments, and payment shall be made prior to the issuance of building permits. Payments shall be maintained in an account used by the City to implement off-site improvements in the overlay district in accordance with the Downtown Streetscape Guidelines, including public art.
 - f. Developer installed sidewalk areas along public right of way or public access easements may count as eligible public access urban space if they are 1) not less than 8 feet wide, 2) wide enough to, and actually do, accommodate seating and/or other pedestrian amenities, and 3) are specifically designed for such multiple uses. Examples may include sidewalk café seating, expanded temporary sidewalk art gallery space, and permitted sidewalk sales.
 - g. Landscaped areas outside of ROW and between public access sidewalks and buildings or parking areas may also count for up to 25 percent of the urban public space requirement, if they are greater than 10 feet wide and are visible and/or accessible from other urban public spaces or sidewalks. Streets, driveways and other service areas shall not be counted toward the open space requirements.
3. Urban public space shall conform to the provisions of the Downtown Design Guidelines, and shall incorporate all applicable elements of the Downtown Streetscape Guidelines.

5.4.12 Signs

The limited setbacks and pedestrian oriented nature of the Overlay District generally eliminates the need for freestanding business signs. In the overlay, signs should be placed on or attached to buildings. Low stature freestanding business signs and menu and sandwich board signs, whose surface area does not exceed 15 square feet and which are pedestrian scaled, may be allowed in the Overlay District subject to review and approval by the DDRT. The DDRT may recommend varying any or all elements of a common signage plan pursuant to Section 12.6.1 on a case by case basis. Informational, traffic and directional, and other governmental freestanding signs are allowed in accordance with Section 12.

5.3.13 Additional Requirements

These additional requirements shall apply:

1. Site plan approval shall be required for all development within this district.
2. A Major Special Use Permit (MSUP) is required for all over-street connections, including but not limited to aerial pedestrian bridges and enclosed building area. The City shall consider the proposal's relationship to the street and street level objectives and activities, and shall find that:
 - a. The proposal shall not pose any negative effects on the surrounding properties; and
 - b. The proposal will be contextually appropriate.
3. Any lot that becomes vacant, for example due to the removal of a structure, shall be planted with ground cover, grass or other appropriate landscaping material and maintained. A berm, wall and/or landscaping with a height of at least 36 inches and not to exceed 48 inches shall be placed along the street side of the property. The screening shall be in conformance with the Downtown Design Guidelines and the Downtown Streetscape Guidelines, and not provide hiding areas that make pedestrians feel unsafe.

5.5 Watershed Protection Districts Overlay

5.5.1 Purpose

The purpose of the Watershed Protection Districts is to preserve the quality of the region's drinking water supplies. In general, water supply watershed protection will be accomplished by establishing and maintaining low intensity land use and development on land near the region's water supply rivers and reservoirs. Where high density development is desired, water supply protection will be accomplished through the use of engineered stormwater controls. The overall objective of these districts is to:

- Reduce the risk of pollution from stormwater running off of paved and other impervious surfaces; and
- Reduce the risk of discharges of hazardous and toxic materials into the natural drainage system tributary to drinking water supplies.

Watershed protection regulations are adopted by the City of Durham and Durham County in accordance with the requirements of the North Carolina Environmental Management Commission, 15A NCAC 2B .0100, .0200 and .0300, (adopted pursuant to NCGS 143-214.5) and in accordance with NCGS 160A-381 through 383, and NCGS 153A-340 through 342.

5.5.2 Application

All development within Watershed Districts shall comply with the requirements of the Section 5.5 Watershed Protection Districts. In addition, all development within Watershed Districts shall comply with the requirements of any underlying zoning district.

5.5.3 Definitions

For the purposes of Section 5.5 Watershed Protection Districts, the following terms and phrases shall be defined as follows:

1. **Cluster Development**A residential subdivision that concentrates development on a portion of a site, leaving the remainder in open space. Cluster developments achieve the land use intensity objectives by virtue of limits to overall density rather than minimum lot sizes.
2. **Development**Any land disturbing activity on improved or unimproved real estate which changes the amount of impervious or partially impervious surfaces on a parcel, or which otherwise decreases the natural infiltration of precipitation into the soil.
3. **Engineered Stormwater Controls**A structural best management practice (BMP) used to reduce non-point source pollution to receiving waters in order to achieve water quality protection.
4. **Hazardous Materials**Materials which pose a physical, environmental or health hazard by virtue of their carcinogenic, corrosive, highly toxic, irritant, sensitizing or toxic properties as defined in 29 CFR 1910.1200. Included in this definition are materials included in EPA's most recent Priority Pollutants List and substances which are regulated, or caused to be regulated, under provisions of the Resource Conservation and Recovery Act (RCRA); the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA); the Superfund Amendments and Reauthorization Act of 1986 (SARA); or any subsequent amendments of these Acts. For the purposes of this Section, hazardous materials shall include hazardous wastes, which are a) the byproducts resulting from the use of hazardous materials, b) materials which have been used to clean up spills of hazardous materials, and c) hazardous materials which have reached their shelf-life or have been used or contaminated. Also included in this definition are hazardous wastes regulated, or caused to be regulated by the Resource Conservation and Recovery Act (40 CFR 261, Subpart C and Subpart B).
5. **High Density Option**One of two approaches available for development in F/J-A, F/J-B and E-B districts. Generally, the high density option relies on density limits and engineered stormwater controls to minimize risk of water pollution.
6. **Impervious Surfaces**A surface composed of any material that impedes or prevents natural infiltration of water into the soil. Impervious surfaces shall include but are not limited to roofs, solid decks, driveways, patios, sidewalks, parking areas, tennis courts, concrete or asphalt streets, or compacted gravel surfaces. Wooden slatted decks and the water area of swimming pools shall be considered to be pervious. Calculation of impervious surfaces for streets shall include the area compacted for pavement or gravel base.
7. **Intermittent Stream**A watercourse that collects surface runoff and is shown as a dashed blue line on the most recent USGS seven and one-half (7 1/2) minute quadrangle topographic maps.
8. **Light Industry**
County Jurisdiction: For the purposes of this Section, Light Industry shall be defined as a use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging, where such manufacture takes place in a totally enclosed building. This definition includes the following uses and SIC groups.

- 22 Textile mill products (except dyeing and finishing textiles, SIC group 226)
- 23 Apparel (except dyeing and finishing textiles, SIC group 226)
- 283 Drugs
- 35 Industrial and commercial machinery and computer equipment
- 36 Electronic and other electrical equipment and components, except computer equipment
- 37 transportation equipment
- 38 Measuring, analyzing and controlling instruments (except photographic equipment and supplies, SIC group 386)
- 39 Miscellaneous manufacturing industries (see below)

When development is proposed for any industry classified as SIC 39 Miscellaneous Manufacturing Industries or for any industry not listed above, the Development Review Board shall recommend whether the proposed use shall be classified as Light Industry. In making this recommendation, the Development Review Board shall consider the consistency of the proposed use with other Light Industrial uses in terms of storage of materials, manufacturing processes, manufacturing by-products and the general risk of release of water pollutants. The Development Review Board shall report its recommendation to the appropriate governing body at the time of site plan approval. The governing board shall decide whether to accept the recommendation of the Development Review Board.

Any new ownership, operation or use of a facility which has been previously developed or occupied shall comply with all requirements of this Section, and the owner shall provide adequate documentation to the Development Review Board so that compliance can be verified. Upon learning of any change of ownership, operation or use not requiring site plan approval, the Development Review Board or any agency represented on the Development Review Board shall so notify the Zoning Enforcement Officer who, in conjunction with the Development Review Board shall then assess compliance with this Section.

Uses that manufacture, distribute or warehouse for distribution nuclear materials or substantial quantities of hazardous materials shall not be classified as Light Industry.

City Jurisdiction: A use engaged in the manufacture, predominantly from previously prepared materials, of finished products or parts, including processing, fabrication, assembly, treatment and packaging. This definition includes the following uses and SIC groups.

- 22 Textile mill products (except dyeing and finishing textiles, SIC group 226)
- 23 Apparel
- 283 Drugs
- 35 Industrial and commercial machinery and computer equipment
- 36 Electronic and other electrical equipment and components, except computer equipment
- 37 Transportation equipment
- 38 Measuring, analyzing and controlling instruments (except photographic equipment and supplies, SIC group 386)
- 39 Miscellaneous manufacturing industries

9. **Low Density Option** One of two approaches available for development in F/J-A, F/J-B and E-B districts. Generally, the low density option relies on non-structural means, specifically density limits, to minimize risk of water pollution.
10. **Nuclear Material** Any natural or man-made material which undergoes radioactive decay, during which process it releases energy in the form of ionizing radiation; this also includes any mixture of materials which contains nuclear material. For the purposes of this Section, nuclear material shall include nuclear waste, which is any material that is a byproduct resulting from the use of radioactive material.
11. **Perennial Stream** A watercourse that collects surface runoff and is shown as a solid blue line on the most recent USGS seven and one-half (7 1/2) minute quadrangle topographic maps.
12. **Reservoir Buffer** A natural or vegetated area adjacent to water supply reservoirs through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for the infiltration of runoff and filtering of pollutants. The reservoir buffer is measured landward from the normal pool elevation of reservoirs.
13. **Stream Buffer** A natural or vegetated area adjacent to watercourses through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for the infiltration of runoff and filtering of pollutants.
14. **Substantial Quantities** An amount of hazardous materials equal to or exceeding the Threshold Planning Quantities listed in the provisions of the Resource Conservation and Recovery Act (RCRA); the Comprehensive Emergency Response, Compensation and Liability Act (CERCLA); the Superfund Amendments and Reauthorization Act (SARA); or any subsequent amendments of these Acts.

County Jurisdiction: Where no Threshold Planning Quantities have been identified for a particular material, the amount considered to be a substantial quantity shall be determined by the Director of Emergency Management and the Durham County Fire Marshall.

City Jurisdiction: Where no Threshold Planning Quantities have been identified for a particular material, the amount considered to be a substantial quantity shall be determined by the Director of Emergency Management.

15. **Urban Growth Area (UGA)**

County Jurisdiction: Those portions of Durham and Orange Counties indicated on Durham County's most up-to-date Comprehensive Plan which are expected to receive urban services and to develop an urban character over the next 20 to 30 years.

City Jurisdiction: Those portions of Durham and Orange Counties indicated on the "Durham 2005 Comprehensive Plan Future Land Use Map" which are expected to receive urban services and to develop an urban character over the next 20 to 30 years.

5.5.4 Establishment of the Districts

Six (6) Watershed Districts listed in the following table are hereby established for lands within the watersheds of public drinking water rivers and reservoirs.

	Designation	General Location
M/LR-A	Lake Michie/Little River District A	<i>County Jurisdiction:</i> One mile from the 341 foot MSL normal pool of Lake Michie and from the 355 foot MSL normal pool of the Little River Reservoir, or to the ridge lines defining their drainage basins, whichever is less. <i>City Jurisdiction:</i> One mile from the normal pool of Lake Michie and the Little River Reservoir, or to the ridge lines defining their drainage basins, whichever is less.
M/LR-B	Lake Michie/Little River District B	The portion of the drainage basins of Lake Michie and the Little River Reservoir not covered by M/LR-A.
F/J-A	Falls District A Jordan District A	<i>County Jurisdiction:</i> One mile from the 251.5 foot MSL normal pool of Falls Reservoir and from the 216 foot MSL normal pool of the Jordan Reservoir, or to the ridge lines defining their drainage basins, whichever is less. The location of the Falls Reservoir normal pool at the Ellerbee Creek tributary shall be established by the survey approved by Durham County on August 14, 2000. <i>City Jurisdiction:</i> One mile from the normal pool of Falls Reservoir and Jordan Reservoir, or to the ridge lines defining their drainage basins, whichever is less. The location of the Falls Reservoir normal pool on the Ellerbee Creek tributary shall be established by the survey approved by Durham County on August 14, 2000.
F/J-B	Falls District B Jordan District B	From the edge of F/J-A District to 5 miles from the normal pool of the Falls Reservoir and the Jordan Reservoir, or to the ridge lines that define their drainage basins, whichever is less. The location of the Falls Reservoir normal pool shall be defined as defined by the NC Environmental Management Commission
E-A	Eno River District A	One mile from and draining to the Eno River water intake.
E-B	Eno River District B	From the edge of E-A to 10 miles from the Eno River water intake, or to the ridge lines that define the drainage area of the intake, whichever is less.

The general boundaries of the Watershed Districts are defined by the distance from the normal pool and ridgeline criteria described above, with rights-of-way and property lines used to determine inclusion or exclusion in the Watershed Districts. The general District boundaries and the parcels included within these boundaries are shown on the map entitled "Watershed Districts Parcels Map", which is included by reference and adopted as part of this Ordinance. Where a general District boundary crosses a parcel, parcels of 1/2 acre or less shall be excluded from the District and parcels of more than 1/2 acre shall be included. Upon adoption of this ordinance, the parcels included in each District and their Watershed District designation shall be shown on the official zoning map.

Upon request by a property owner whose property is bisected by a general boundary line, the Planning Director is authorized to determine administratively the exact boundary of a Watershed District. The Planning Director shall interpolate the general boundary as shown on the Watershed Districts Parcels Map, but may vary it to exclude lots of 1/2 acre or less in a proposed subdivision. In addition, the Planning Director may use identifiable physical features, such as roads, streams or easements, as boundaries if they approximately coincide with the interpolated general District line. All such changes shall be shown on the official zoning map, and shall be reflected on the updated Watershed Districts Parcels Map, which shall be maintained by the Planning Department.

5.5.5 Land Use Restrictions

1. Permitted Uses

The range of uses allowed in residential zones shall be permitted in any Watershed District (including but not limited to places of worship, schools, and public parks). Nonresidential land uses shall be permitted in Watershed Districts in accordance with the following table and Section 5.5.5.2 Nonresidential Performance Standards.

District	Permitted Uses	District
M/LR-A	Industrial uses shall not be permitted. Commercial and office uses shall be permitted, with a	M/LR-A

	<u>Major Special Use Permit</u> . The sale of fuel for motor vehicles shall be prohibited.	
M/LR-B	Industrial uses shall not be permitted. Commercial and office uses shall be permitted, with a <i>Major Special Use Permit</i> .	M/LR-B
F/J-A	<p><i>County Jurisdiction:</i> Inside of the UGA, nonresidential uses shall not be permitted, except that commercial, office, light industrial and research uses shall be permitted on land zoned for such uses as of September 28, 1992, provided that:</p> <ul style="list-style-type: none"> a. The maximum impervious surface shall not exceed forty (40) percent, and proposed development that exceeds 25 (twenty-five) percent impervious surfaces shall require Major Special Use Permit approval; b. A natural vegetated buffer shall be retained within one thousand (1000) feet from the normal pool of the reservoir; c. Land zoned for either commercial, office, light industrial and research uses, as indicated above, may be considered for a change of zoning to any other of these nonresidential uses, except commercial uses; and d. Notice of governing board consideration of any site plan for any development shall be published in a newspaper of general circulation at least 10 days but not more than 25 days prior to the date of the governing board meeting. However, such uses shall not be permitted if they manufacture, distribute or warehouse for distribution nuclear materials or substantial quantities of hazardous materials. If such uses store for on-site use or produce as a waste product nuclear materials or substantial quantities of hazardous materials, those uses shall be subject to the requirements of Section 5.5.5.2 Nonresidential Performance Standards. <p>Outside of the UGA, industrial uses shall not be permitted. Commercial uses allowed in the Neighborhood Commercial (NC) district and office uses allowed in the Office and Institutional (O&I-1 and O&I-2) districts shall be permitted, and a Major Special Use Permit shall be required. The Major Special Use Permit shall satisfy any requirements for a Minor Special Use Permit.</p> <p>The sale of fuel for motor vehicles shall be prohibited.</p>	F/J-A
F/J-A	<p><i>City Jurisdiction:</i> Inside of the UGA, nonresidential uses shall not be permitted, except that commercial, office, light industrial and research uses shall be permitted on land zoned for such uses as of September 28, 1992, provided that:</p> <ul style="list-style-type: none"> a. A <u>Major Special Use</u> Permit is approved; b. The maximum impervious surface shall not exceed forty (40) percent; and c. A natural vegetated buffer shall be retained within one thousand (1000) feet from the normal pool of the reservoir. However, such uses shall not be permitted if they manufacture, distribute or warehouse for distribution nuclear materials or substantial quantities of hazardous materials. If such uses store for on-site use or produce as a waste product nuclear materials or substantial quantities of hazardous materials, those uses shall be subject to the requirements of <i>Section 5.5.5.2</i> Nonresidential Performance Standards. <p>Outside of the UGA, nonresidential uses shall not be permitted. The sale of motor vehicle fuel shall be prohibited.</p>	F/J-A

F/J-B, E-B	Inside the UGA, commercial, office and industrial uses shall be permitted. However, if such uses manufacture, distribute, warehouse for distribution, store for on-site use or produce as a waste product nuclear materials or substantial quantities of hazardous materials, those uses shall be subject to the requirements of <i>Section 5.5.5.2</i> Nonresidential Performance Standards. Outside of the UGA, industrial uses shall not be permitted, but commercial and office uses shall be permitted.	F/J-B, E-B
E-A	Industrial uses shall not be permitted. Commercial and office uses shall be permitted. The sale of fuel for motor vehicles shall be prohibited.	E-A

2. Nonresidential performance Standards

The following requirements shall apply to any commercial, office, industrial and research uses permitted in Section 5.5.5.1 Permitted Uses, above, that manufacture, distribute, warehouse for distribution, store for on-site use or produce as a waste product nuclear materials or substantial quantities of hazardous materials.

- a. *County Jurisdiction:* Prior to site plan approval, an Emergency Contingency Plan shall be prepared and submitted through the Planning Department to the Emergency Services Director, the Durham County Fire Marshall and the City Director of Water Resources for review and approval. The Emergency Contingency Plan shall be prepared accordance with the requirements in the Superfund Amendments and Reauthorization Act (SARA), Title III and shall be updated annually. In addition, the Emergency Contingency Plan shall include i) a plan for the site showing buildings and the locations of points of storage, transfer and use of nuclear and hazardous materials; ii) a list of nuclear and hazardous materials kept on-site in less than substantial as well as substantial quantities, iii) the location of spill control valves on any bridges and causeways, iv) the person responsible for on-site spill control and containment, and the appropriate means of contacting that person on a 24-hour basis.

City Jurisdiction: Prior to site plan approval, an Emergency Contingency Plan shall be prepared and submitted through the Planning Department to the Emergency Services Director and to the City Director of Water Resources for review and approval. The Emergency Contingency Plan shall be prepared accordance with the requirements in the Superfund Amendments and Reauthorization Act (SARA), Title III and shall be updated annually. In addition, the Emergency Contingency Plan shall include i) a plan for the site showing buildings and the locations of points of storage, transfer and use of nuclear and hazardous materials; ii) a list of nuclear and hazardous materials kept on-site in less than substantial as well as substantial quantities, iii) the location of spill control valves on any bridges and causeways, iv) the person responsible for on-site spill control and containment, and the appropriate means of contacting that person on a 24-hour basis.

- b. Any container or tank used to store hazardous materials shall be equipped with leak detection devices and shall be double-walled or have other secondary containment features.
- c. Points of storage, transfer and use of substantial quantities of hazardous materials shall be protected by a dike or comparable containment structure, constructed of a material resistant to hazardous material the dike or structure is designed to contain. The dike or structure shall be sized to handle at least the maximum amount of material to be stored or used and shall be constructed and installed in a manner to exclude rainwater and stormwater runoff.
- d. All floor drains that could collect hazardous materials shall be connected to a corrosion resistant tank or catch basin sized to handle the maximum amount of hazardous material to be stored or used. These floor drains shall not be open to the site's natural drainage system and discharges to the site's storm drainage system or to adjacent surface waters shall be prohibited.
- e. Points of storage, transfer and use of hazardous or nuclear materials shall have roof coverage.
- f. In M/L-A, E-A and F/J-A districts, bridges and causeways associated with new development that are built over perennial and intermittent streams, ponds or other surface waters shall be equipped with spill control and containment features. stalled in a manner to exclude rainwater and stormwater runoff.

County Jurisdiction: Failure to properly maintain and operate the physical features required by this subsection 5.5.5.2 Nonresidential Performance Standards shall constitute a violation of the zoning ordinance, and shall subject the owner to all civil and criminal penalties provided under the law.

City Jurisdiction: Failure to properly maintain and operate the physical features required by this subsection 5.5.5.2 Nonresidential Performance Standards shall constitute a violation of the zoning ordinance.

3. Solid Waste Disposal Facilities

County Jurisdiction: Solid waste disposal facilities, including sanitary landfills and nuclear and hazardous waste facilities, shall be prohibited in any Watershed District. However, recycling drop-off sites, solid waste container sites, solid waste transfer stations and rubble landfills shall be permitted in F/J-B and E-B districts. Recycling drop-off sites and solid waste container sites shall be permitted in M/LR-A and M/LR-B districts.

City Jurisdiction: Except as allowed in this paragraph, solid waste disposal facilities, including sanitary landfills and nuclear and hazardous waste facilities, shall be prohibited in any Watershed District. However, recycling drop-off sites, solid waste container sites, solid waste transfer stations and rubble landfills shall be permitted in F/J-B and E-B districts. Municipal solid waste landfill facilities which are constructed and operated in accordance with North Carolina Administrative Code Title 15A, Chapter 13B, Section 1600 shall be permitted in the F/J-B district. Recycling drop-off sites and solid waste container sites shall be permitted in M/LR-A and M/LR-B districts.

4. Minimum Lot Size

All new subdivisions, whether by plat or by deed, shall be subject to the minimum lot sizes indicated in the following table, except for cluster developments, which shall be subject to the requirements of Section 5.5.10 Cluster Developments. However, in F/J-B and E-B districts inside the Urban Growth Area, developers of single-family subdivisions may elect at the time of preliminary plat approval to not follow these minimum lot size requirements, in which case the impervious surface limits indicated in Section 5.5.6 Impervious Surface Limits, as well as the underlying zoning district requirement, shall control development intensity.

Notwithstanding the following table, where spray irrigation systems are to be used for wastewater treatment, the minimum lot size in any Watershed District shall be five (5) acres.

	Minimum Lot Size
M/LR-A	Two (2) acres.
M/LR-B	Two (2) acres
F/J-A	Within one-half mile of the normal pool, two (2) acres. Between one-half (1/2) and one (1) mile from the normal pool: Inside the UGA, one (1) acre; Outside the UGA, two (2) acres.
F/J-B, E-B	Inside the UGA, twenty thousand (20,000) square feet; outside the UGA, eighty thousand (80,000) square feet.
E-A	Twenty thousand (20,000) square feet.

5.5.6 Impervious Surface Limits

Any development in Watershed Districts shall be subject to limits on the amount of impervious surfaces permitted in accordance with the following table. In all Watershed Districts, preliminary plans, final plat(s), unified development plans and Major Special Use Permit plans shall clearly show the amount of existing and proposed impervious surfaces.

	Low Density Option	High Density Option
M/LR-A	Six (6) percent	Not permitted
M/LR-B	Six (6) percent	Not permitted
F/J-A	Within one-half mile of the normal pool, six (6) percent; between one-half (1/2) and one (1) mile from the normal pool, nine (9) percent.	Not permitted outside the UGA. Not permitted inside the UGA, except as indicated in Section 5.5.5.1 Permitted Uses, where the maximum impervious surfaces shall be forty (40) percent. All nonresidential uses inside the UGA permitted under Section 5.5.5.1 require use of High Density Option stormwater controls
F/J-B, E-B	Inside the UGA, twenty-four (24) percent. Outside the UGA, twelve (12) percent.	Inside the UGA, seventy (70) percent. Not permitted outside the UGA.
E-A	Twenty-four (24) percent	Not permitted

5.5.7 Stormwater Control Requirements

1. High Density Option

Where development in F/J-A, F/J-B and E-B districts uses the High Density Option, engineered stormwater controls shall be used to control stormwater runoff from the first inch of rainfall.

2. Ownership, Design and Maintenance of Engineered Stormwater Controls

Unless otherwise approved, ownership of the engineered stormwater controls shall remain with the property owner or a property owner's association, which shall be responsible for the continued care and maintenance of such controls. Failure to properly maintain such controls in accordance with the agreement in 5.5.7.2.b, below, shall constitute a violation of this ordinance and shall subject the owner to all civil and criminal penalties provided under law. Engineered stormwater controls shall be designed and constructed in accordance with standards and specifications established by the Durham City Engineer. No building permit shall be issued for any structure within a site proposed for development under the High Density Option until the Durham City Engineer has approved plans and specifications for the proposed engineered stormwater controls. No occupancy permit shall be issued for any structure constructed within a site proposed for development under the High Density Option until:

- a. The Durham City Engineer has approved construction of the engineered stormwater controls;
- b. The property owner has entered into an Operation and Maintenance Agreement with the City of Durham or Durham County, as appropriate, in accordance with terms established by the Durham City Engineer; and
- c. The property owner has posted a performance bond or other surety instrument satisfactory to the City of Durham or Durham County, as appropriate, in an amount determined by the Durham City Engineer to assure maintenance, repair or reconstruction necessary for adequate performance of the engineered stormwater controls.

Interpretation: Effective July 21, 1998

Prior to the adoption of the water supply watershed requirements on January 1, 1994, stormwater management facilities were required for certain types of development in areas known as Limited Industrial Areas (LIA). The Public Works Department and the Planning Department have agreed to the following policy concerning the continued existence of LIA stormwater facilities.

I. Inside a Water Supply Watershed

1. If the LIA facility served a site that is located entirely within a present water supply watershed district (WSWS), then the facility may not be abandoned.
2. If the LIA facility serves a site that is partially located in the F/J-A or F/J-B area, it may be abandoned under the following procedure. The owner determines the actual impervious area, including sidewalks, driveways, roof areas, common areas and streets for the portion of the original site served by the facility that is now inside the WSWS district. The analysis with documentation is submitted to the Planning Department for review and approval. If the total impervious area remaining in the WSWS district is less than 24%, the LIA facility may be abandoned using the procedure outlined in Section II below. However, the portion of the original project inside the WSWS district must comply with all other current WSWS requirements (e.g., stream buffers). If the total impervious area is equal to or greater than 24% then either the LIA facility must remain or the site must comply with current WSWS standards.
3. A LIA facility may be relocated on the same site (using the original LIA design standards) if the relocation is not considered by the DRB to be a significant change. If the DRB determines the relocation to be a significant change, then the current WSWS design standards shall apply.

II. Outside a Water Supply Watershed

If the project area served by the LIA facility is located outside a WSWS district, the LIA facility may be abandoned pursuant to the following procedure. The owner submits a revised site plan showing the original site plan with the LIA facility being removed or a revised preliminary plat for the entire development and a revised final plat for the lot in question showing the LIA facility being removed to the Planning Department. The revised site plan or revised preliminary plat and final plat shall subsequently be approved by the Development Review Board (DRB).

5.5.8 Stream Buffers and reservoir Buffers

1. Stream Buffers

Stream buffers shall apply to all perennial and intermittent streams in Watershed Districts. Stream buffer widths apply to each side of the stream measured from the top of the bank.

County Jurisdiction: The width of stream buffers in the Falls Reservoir Watershed Protection Districts shall be the entire width of the 100-year floodplain, as indicated on the most current FEMA flood hazard boundary map, or the widths indicated in the following table, whichever is greater.

District	Perennial Stream Buffer Width	Intermittent Stream Buffer Width
M/LR-A	150 feet	50 feet
M/LR-B	150 feet	50 feet
F/J-A	150 feet	<i>County Jurisdiction:</i> Outside of the UGA, 100 feet; inside of the UGA, 150 feet. <i>City Jurisdiction:</i> 50 feet; inside UGA, 100 feet.
F/J-B, E-B	100 feet	50 feet; with High Density Option, 100 feet
E-A	150 feet	50 feet

2. Stream Buffer use Limitations

To avoid a loss of effectiveness in protecting streams, the stream buffer shall remain in natural undisturbed vegetation, except as provided below. Buildings and other features that require grading and construction shall be set back at least ten (10) feet from the edge of the buffer.

- a. Crossings by streets, driveways, culverts, railroads, recreational features, intakes, docks, utilities, bridges or other facilities shall be allowed provided that they are designed to minimize the amount of intrusion into the buffer. The buffer can serve to meet minimum lot size requirements if there is sufficient buildable area remaining on the lot. Streets and driveways may run generally within and parallel to the stream buffer only where no other access to the property is feasible and when their design minimizes the amount of intrusion of the stream buffer.
- b. Stream buffers can be used for passive recreational activities, such as walking and bicycling trails, provided that service facilities for such activities, including but not limited to parking, picnicking and sanitary facilities, are located outside of the buffer. Water oriented recreational facilities, such as boat or fishing piers, shall require an approved use permit from the Board of Adjustment.
- c. Clearing and re-vegetating the stream buffer for the purposes of improving its pollutant removal efficiency may be permitted based upon a conclusive finding by the Development Review Board that such efficiency will be improved.
- d. Stormwater control structures and temporary erosion control structures shall be considered utilities for the purposes of this section and may be allowed in stream buffers, provided that:
 - i. The property owner or applicant demonstrates to the satisfaction of the City Engineer for stormwater control structures or County Environmental Engineer for erosion control structures that such facilities cannot be practicably located outside of the stream buffer, and that any proposed stormwater control structure is sited and designed to minimize disturbance of the stream and stream buffer. Siting stormwater control structures away from the stream channel is preferable to siting such structures in the stream channel.
 - ii. Alternate methods of stormwater and erosion control shall be considered prior to approval of such structures in stream buffers;
 - iii. A vegetated buffer of a width determined by the City Engineer may be required around the stormwater control structures; and
 - iv. Any land disturbed for these structures be re-vegetated in accordance with Section 5.5.8.2.c, as indicated above.
- e. For development on lots of record created prior to January 1, 1997, septic system drain field repair areas may be allowed in stream buffers, provided that:

- i. The intrusion into the stream buffer is the minimum necessary;
 - ii. The intrusion shall not result in an undisturbed stream buffer less than fifty (50) feet; and
 - iii. The property owner or applicant demonstrates to the satisfaction of the Durham County Health Department that the repair area cannot be located outside of the stream buffer.
- f. Sanitary sewer lines, on an alignment generally parallel to the stream, may be allowed in stream buffers, provided that:
- i. The property owner or applicant demonstrates to the satisfaction of the City Engineer that the sanitary sewer lines cannot be practicably located outside of the stream buffer;
 - ii. Design and construction specifications minimize damage to the stream and the possibility of line leakage;
 - iii. The sewer line is generally located at least fifteen (15) feet from the top of the stream bank; and
 - iv. The stream buffer intrusion and plans for re-vegetating the stream buffer disturbance be approved by the Development Review Board.
- g. Inside the UGA in F/J-B and E-B districts, intermittent and perennial streams may be piped, thereby exempting stream buffer requirements, only under the following conditions:
- i. For intermittent streams, the owner or applicant demonstrates to the satisfaction of the Development Review Board that such piping is necessary to allow reasonable use of the property or for purposes of public safety.
 - ii. For perennial streams, the owner or applicant demonstrates to the satisfaction of the Development Review Board that use of the property without such piping poses an exceptional hardship on the property owner. Failure to realize maximum or full development potential from the property shall not be considered to be an exceptional hardship.
 - iii. Where stream piping is approved by the Development Review Board, a vegetated buffer area or other device approved by the City Engineer be provided at any intake structure.
 - iv. All buffers and physical improvements related to the stream piping are located entirely on the site or on easements adjacent to the site.
 - v. Site Plan approval by the Development Review Board shall be required for any of the stream buffer intrusions described above. When any of the activities described above involves land clearing, the cleared area shall be re-vegetated in a manner described on the site plan. However, where a site plan is not required by any other provision of the Zoning Ordinance, the City Engineer is authorized to approve plans for stream piping and the County Environmental Engineer is authorized to approve plans for erosion control structures in stream buffers.

3. Reservoir Buffer

A two hundred and fifty (250) foot reservoir buffer shall be maintained from the normal pool of all water supply reservoirs, except that the buffer around any reservoir shall not apply to land that does not naturally drain to that reservoir. Reservoir buffers shall remain in natural undisturbed vegetation, except for intrusions allowed below.

At the request of a property owner, the governing body may reduce the reservoir buffer requirements on a case-by-case basis, whenever it determines that:

- a. The reservoir buffer would result in exceptional hardship, depriving the property owner of all reasonable use of the property.
- b. The proposed intrusion into the reservoir buffer is the minimum amount necessary to relieve that exceptional hardship.

In making its determination, the governing body shall consider topography, water quality protection, erosion potential, surrounding uses and the size of the parcel. A site plan shall be required and reasonable conditions may be attached to any modification of the reservoir buffer.

5.5.9 Wastewater Treatment and Facilities

City Jurisdiction:

1. Wastewater Treatment

Publicly owned wastewater treatment facilities and, replacement and expansions of such facilities, shall be allowed in F/J-B and E-B Districts. In all Watershed Districts, the following wastewater treatment facilities shall be prohibited.

- a. New public or private wastewater treatment facilities; and
- b. Community wastewater treatment facilities of any kind.

2. Sewer Services

Inside the UGA, public and private sewer lines, force mains and pump stations shall be permitted within all Watershed Districts. However, public and private pump stations shall be equipped with the following safety features:

- a. Battery-backed alarm systems activated by pump failure or power outage, connected by an automatic dialer to a 24-hour maintenance service approved by the City Engineer.
- b. Provision for connection of a portable generator. The City Engineer shall consider on a case-by-case basis and may require the pump station to be equipped with on-site, stand-by power.

Outside of the UGA, no new public or private sewer lines or outfalls shall be permitted within the Watershed Districts, except that, subject to City Council approval, sewer lines and any necessary force mains and pump stations may be extended to an existing use or structure for which a health hazard has been documented by the Durham County Health Department or the State of North Carolina. In considering such extensions, the City Council shall consider all reasonable alternatives prior to a decision to extend the sewer services. Service connections, installed in accordance with the North Carolina Plumbing Code, shall be permitted only in accordance with Durham City Code, Sections 23-80 through 23-83.

County Jurisdiction:

1. Wastewater Treatment

- a. Publicly owned wastewater treatment facilities and, replacement and expansions of such facilities, shall be allowed in F/J-B and E-B Districts.
- b. Private wastewater treatment facilities may be permitted in the F/J-A overlay through the issuance of a Major Special Use Permit, provided that:
 - 1. The system will serve a development that is designed as a "Conservation Subdivision", meeting the following criteria:
 - i. The gross density is no greater than one unit per two acres; and
 - ii. At least 40% of the site is preserved as open space, with the 100 year floodplain, stream buffers, steep slopes, wetlands, and Durham Inventory sites included in the open space. The open space requirement may be reduced by the approving authority upon a finding that the provision of this extent of open space would constitute an unusual hardship or is not necessary to protect environmentally sensitive areas and encourage clustering of houses. The open space shall be ensured to be permanently protected through the provision of conservation easements and/or restrictive covenants.
 - 2. The facilities are licensed or permitted by the State of North Carolina and the system operator is licensed by the State of North Carolina. The licensed operator inspects the plant daily with the exception of weekends and holidays to determine that the plant is operating adequately;
 - 3. The monthly reports that are sent to the State of North Carolina shall be copied to the Durham Environmental Health Director;
 - 4. The facilities are non-discharge, meet North Carolina reuse standards including but not limited to separating liquids and solids, and have permanent standby power sufficient to ensure normal operation in the event of a power failure;
 - 5. The developer of the system (if a private system) provides a performance bond in an amount at least 50% of the cost of replacement of the private system or \$100,000, whichever is greater, in the event that the operator of the system ceases to provide service or maintenance;
 - 6. The developer (or his successor) shall provide and maintain catastrophic property insurance to cover 100% of the replacement cost of the facility; and
 - 7. The approving authority makes a finding that the wastewater system proposed by the developer provides improved treatment over what would be provided through use of an individual on-site ground absorption system.

To assist the approving authority in making the required findings, the applicant shall provide the approving authority with certifications from the State regarding the treatment of the proposed facility relative to on-site systems. If such certification is not available or cannot be provided in a timely fashion,

the applicant shall pay for a third party expert technical review of the proposed system to ensure that it will meet this requirement.

- c. In all other Watershed Districts, the following wastewater treatment facilities shall be prohibited.
 - i. New public or private wastewater treatment facilities; and
 - ii. Community wastewater treatment facilities of any kind.

However, individual on-site ground absorption systems shall be permitted, subject to the approval of the Durham County Health Department.

- d. In all Watershed Districts, a spray irrigation wastewater treatment system to serve a single-family house shall be permitted, provided that:
 - i. The owner enters into a written agreement with the Durham County Health Department which;
 - ii. Subject to the issuance of a Major Special Use Permit, within the F/J-A or –B district, sewer lines and any necessary force mains and pump stations may be extended to serve a development designed as a “Conservation Subdivision,” as described in Section 5.5.9.1(b)(i), above.

5.5.10 Cluster Developments

Residential cluster developments shall be permitted in all Watershed Districts in accordance with the following provisions. Cluster developments shall conform to any applicable provision of the Merged Subdivision Ordinance, July 1, 1992, as amended. Cluster developments that will be served by individual septic systems must be approved by the Durham County Health Department to ensure that the soils are adequate to support the proposed lot sizes.

The Development Review Board shall not approve plans for a cluster development unless the developer has demonstrated in the plans that the proposed project will not result in pollution from stormwater runoff greater than that which would be expected from a subdivision developed without clustering.

1. Overall Density and Lot Size

The minimum lot size indicated in Section 5.5.5.4 Minimum Lot Size shall not apply to cluster developments. In M/LR-A and M/LR-B districts, the maximum overall density for cluster developments shall be one-half (1/2) units per acre and the minimum lot size shall be one (1) acre. The maximum overall density for cluster developments in all other Watershed Districts shall be no greater than that allowed for a non-cluster development on the same site.

2. Impervious Surface Limits

The limit on impervious surfaces for cluster developments shall be those indicated in the table in subsection 5.5.6 Impervious Surface Limits. However, the impervious surface limit may be exceeded on any individual lot in a cluster development, provided that the impervious surface limit for that phase of the entire cluster development is not exceeded. Any preliminary plan and final plat(s) shall show the maximum impervious surface permitted for each lot.

3. Open Space Preservation

Cluster developments shall preserve a portion of the site for open space. Such open space shall not be a portion of any buildable lot in the cluster development.

- a. To the maximum extent practicable, the open space shall remain in a naturally vegetated state and shall not be cleared or disturbed.
- b. The area of such open space shall be equal to the total land area of the cluster development less the area in road rights-of-way and lots.
- c. The open space to be preserved in a cluster development shall be located and configured to provide greater stream buffers; to buffer parking areas; to preserve ponds, wetlands and minor drainage ways; to preserve slopes over fifteen (15) percent, to preserve wildlife habitat and corridors, and to preserve other environmentally sensitive areas.
- d. Any preliminary plan and final plat for a cluster development shall show the location of any land provided for open space purposes.
- e. The owner or developer shall provide, through legally enforceable means, for the perpetual preservation of the land as open space and for the continued maintenance of the area. Such mechanism shall be approved by the Development Review Board and may include, but shall not be limited to, the recordation of restrictive covenants or the deeding of land to a property owner’s association.

5.5.11 Minimum Lot Size and Stormwater Control Exemptions

Where proposed development projects on lots recorded prior to January 1, 1994 inside the UGA and in F/J-B or E-B districts involve less than one (1) acre of land disturbing activity, the minimum lot sizes indicated in 5.5.5.4

Minimum Lot Size and the stormwater control requirements indicated in Section 5.5.7 Stormwater Control Requirements shall not apply. In these cases, the minimum lot size shall be controlled by the underlying zoning. The Durham County Sedimentation and Erosion Control Officer shall determine how much of any proposed development activity shall constitute land disturbing activity.

5.5.12 Site Plan and Major Special Use Permit Required

County Jurisdiction: Multifamily residential, commercial, office, industrial and research developments in M/LR-A, M/LR-B, F/J-A and E-A districts require site plan approval by the appropriate governing body. Any development utilizing the High Density Option and any cluster development require site plan approval by the appropriate governing body. Site plans for such uses shall conform to the site plan requirements in Section 17 Site Plans. Minor amendments to approved site plans for development in Watershed Districts may be approved by the Development Review Board.

Prior to granting any Site Plan or Major Special Use Permit approval, the governing board shall find that the applicant has demonstrated conclusively that he or she shall comply with all applicable provisions of Section 5.5.5.2 Nonresidential Performance Standards.

City Jurisdiction: Multifamily residential, commercial, office, industrial and research developments in M/LR-A, M/LR-B, F/J-A, E-A and E-B districts require site plan approval by the appropriate governing body. Any development utilizing the High Density Option and any cluster development require site plan approval by the appropriate governing body. Site plans for such uses shall conform to the site plan requirements in Section 17 Site Plans. Minor amendments to approved site plans for development in Watershed Districts may be approved by the Development Review Board.

Any commercial, office, industrial and research development in F/J-A districts requires Major Special Use Permit approval by the governing body. Prior to granting the Major Special Use Permit, the governing board shall find that the applicant has demonstrated conclusively that he or she shall comply with all applicable provisions of Section 5.5.5.2 Nonresidential Performance Standards.

5.5.13 Urban Growth Area Extensions

The City or County shall not extend the Urban Growth Area boundary further into M/LR-A or F/J-A districts.

5.5.14 Application of the Regulations

After December 31, 1993, all development within Watershed Districts shall be subject to the restrictions in this Section 5.5 Watershed Protection Districts, with the following exceptions.

1. Existing Development

For the purposes of this Section, existing development shall be considered to be any impervious surfaces constructed before January 1, 1994. Existing development shall be exempt from the requirements of this Section 5.5 Watershed Protection Districts, except that all new uses and activities and all expansions of previously-existing uses and activities shall conform to Section 5.5.5.1 Permitted Uses and 5.5.5.2 Nonresidential Performance Standards. However, such development shall comply with the watershed protection regulations, if any, in effect at the time a building permit was issued for the development.

Expansions of any existing development and redevelopment shall be subject to the requirements of Section 5.5 Watershed Protection Districts if such expansion or rebuilding activity result in a net increase in the impervious surfaces of the development.

2. Existing Single-Family Lots

New construction and additions to existing residential buildings on legal nonconforming single family residential lots recorded prior to January 1, 1994, shall be exempt from the minimum lot size provisions of this ordinance if one of the exceptions below applies. New construction and additions on such lots shall be constructed in accordance with the watershed protection regulations, if any, in effect at the time the lot was created. A legal nonconforming lots may be developed under previously-applicable watershed provisions if it:

- a. Meets the requirements of 19.5.2.a, and, in addition, is located in a development for which roads, sewer lines, or water lines were required for construction and all such infrastructure serving such lots that was required on approved plans has been completed prior to January 1, 2002; or
- b. Meets the requirements of 19.5.2a, and, in addition, is at least 20,000 square feet in area; or
- c. Obtains a minor special use permit from the Board of Adjustment. In order to grant such a permit, the BOA shall make all generally applicable findings, and in addition shall also find that it would be unreasonable or cause undue economic hardship to not allow development of the subject lot. Factors to be considered include but are not limited to ownership history; prior development approvals regarding the subject lot or surrounding lots; economic investments; and the purposes to be served by requiring compliance with lot size requirements.

3. Valid Building Permit

Development for which a building permit has been issued and remains continuously valid may be constructed

in accordance with the watershed protection restrictions, if any, that were in effect on the date of building permit approval.

4. Vested Rights

Development having an established vested right in accordance with the Durham City-County Zoning Ordinance, Section 18 Vested Rights may be constructed in accordance with the approved vested right site plan.

5. Approved Plans

Development projects:

- a. that have an approved and continuously valid preliminary subdivision plat, final subdivision plat, planting plan, site plan, development plan, Planned Density Residential (PDR) plan, use permit or special use permit; and
- b. for which a substantial expenditure of resources (such as time, labor or money) has been made based on the above-described approved plan may be constructed in accordance with those approved plans.

For the purposes of this Section, substantial expenditure of resources shall be considered to be:

- a. the market value of time and labor; and/or
- b. monetary expenditures equal to or greater than 10 percent of the pre-development assessed value of the land on which the development is proposed.

County Jurisdiction: The Board of County Commissioners, upon recommendation from the Directors of Inspections and Planning, shall examine any evidence of expenditures and assessed value, and shall determine whether it meets the criteria indicated above.

Any additions, expansions or phases that deviate significantly from the approved plans indicated above shall be subject to the regulations in this Section 5.5 Watershed Protection Districts. The Board of County Commissioners, upon recommendation from the Planning Director, shall make the determination as to whether any deviation from one of these previously approved plans shall be considered to be significant.

City Jurisdiction: The City Director of Inspection and the Planning Director shall examine any evidence of expenditures and assessed value, and shall determine whether it meets the criteria indicated above.

Any additions, expansions or phases that deviate significantly from the approved plans indicated above shall be subject to the regulations in this Section 5.5 Watershed Protection Districts. The Planning Director shall make the determination as to whether any deviation from one of these previously approved plans shall be considered to be significant.

5.5.15 Variances in the Watershed Districts

1. Variances in Conflict with State Watershed Protection Requirements

A request for a variance from any requirement of Section 5.5 Watershed Protection Districts that violates any provision in 15 NCAC 2B, Sections .0100, .0200 and .0300, as amended, shall be first heard by the Board of Adjustment in accordance with Section 16 Variances and Interpretations by the Board of Adjustment. A recommendation from the Board of Adjustment for a variance shall constitute a request by the local government for a variance from the North Carolina Environmental Management Commission. Such variances shall be considered "significant variances" in accordance with 15A NCAC .0104).

2. For all variance requests, the local government with jurisdiction shall notify and allow reasonable comment period for all local governments having jurisdiction within the watershed area of the water supply source and the entity using the water supply for consumption
3. The Director of Inspections Services shall keep a record of variances to this Section 5.5 Watershed Districts for their respective jurisdictions. This record shall be submitted to the Supervisor of the Classification and Standards Group, Water Quality Section, Division of Environmental Management, North Carolina Department of Environmental, Health and Natural Resources by January 1st of each year. The record shall provide a description of each project receiving a variance and the reasons for granting a variance.

5.5.16 Severability

Should any section or provision of this ordinance be declared invalid, the remaining sections or provisions shall remain valid.

5.6 Historic Districts and Landmarks Overlay

5.6.1 Purpose

The strength and happiness of a community is measured and preserved by the contributions and commitment of its people to its past, present and future. The purpose and objective of this Section of the Durham Zoning Ordinance is to promote, protect, conserve and preserve one of Durham's most valued and important assets, its historical and architectural heritage. By means of recognizing, designating, and regulating historic landmarks and historic districts, and by means of acquiring and managing selected historic properties where appropriate, Durham County and the City of Durham seek to:

Safeguard their heritage by preserving and protecting any historic buildings, structures, sites, areas and objects that embody their cultural, social, economic, political and architectural history;

Promote the use and conservation of Durham's historic resources for the education, pleasure and enrichment of the residents of the City, County and State as a commemoration and reminder of the early days of their settlement and evolution;

Foster civic beauty through the development and maintenance of historic sites, buildings and landmarks; and

Stabilize and enhance property values throughout their jurisdictions; promote the economy, commerce and industry; and encourage tourism.

By thus preserving and protecting Durham's historic heritage, these measures for recognizing, designating, and regulating historic landmarks and districts enhance and contribute to the general health, safety and welfare of the residents of the City and County. To serve these purposes, the Durham Board of County Commissioners and the Durham City Council have jointly established the Durham Historic Preservation Commission, hereinafter referred to as the "Commission". The Commission has been established to advise elected officials in Durham County and the City of Durham about matters of historic preservation and to perform the quasi-judicial functions described herein.

5.6.2 Applicability

All development within a designated historic district shall comply with the requirements contained in this Section. In addition, all development within a designated historic district shall comply with the requirements of any underlying zoning district.

5.6.3 Permitted Uses

Those uses permitted by the underlying district are allowed in the Historic District.

5.6.4 Historic District Designation

The historic district is hereby established as an overlay zoning district in the zoning jurisdictions of the City of Durham and Durham County. The City Council and the Durham Board of County Commissioners may designate, in their respective jurisdictions, 1 or more geographic areas as historic districts and may indicate the extent and boundaries of any such area on the Official Zoning Map for the City or County.

1. Eligibility for Designating an Area as a Historic District

An area may be considered for designation as a historic district by the Board of County Commissioners or by the Durham City Council, as appropriate, only after the Durham Historic Preservation Commission deems and finds that the area is of special significance in terms of its prehistorical, historical, architectural or cultural importance, and possesses integrity of design, setting, materials, feeling and association.

2. Initiation of Requests for Designating a District

Requests for designating an historic district may be made in any one of the following methods:

- a. By petition to the appropriate Governing Body of more than 25 percent of the property owners in the proposed historic district. (Petition shall be filed with the Durham City-County Planning Department).
- b. By initiative of Durham County for proposed historic districts in the County's zoning jurisdiction.
- c. By initiative of the City of Durham for proposed historic districts in the City's zoning jurisdiction.

3. Procedure for Considering a Request for Designating an Historic District or for Modifying an Existing Historic District's Boundaries

- a. Upon the filing of a petition from a property owner or owners or upon the initiative of City or County, the following steps shall apply to the consideration of the proposed historic district.
- b. The Director of the Durham City-County Planning Department (in this Section referred to as the "Director") shall publish notice that a request has been filed and will be considered by the Commission at a specified date and time.
- c. The Commission shall conduct a preliminary consideration of the request and, at this time, may make the findings indicated in Section 5.6.4.1 Eligibility for Designating an Area as an Historic District, above. The Commission shall report its findings to the Director.

- d. If the Commission finds that the proposed Historic District meets the requirements of Section 5.6.4.1 Eligibility for Designating an Area as an Historic District above, then the Director shall prepare an Historic District Preservation Plan, in accordance with Section 5.6.4.4 Requirements for Historic District Preservation Plan. If the decision of the Commission is negative, the Director shall report the negative recommendation to the City Council or the Board of County Commissioners, as appropriate, as an informational item.
 - e. In accordance with NCGS 160A-400.4(2), the North Carolina Department of Cultural Resources shall make an analysis of and recommendations concerning the investigation and report contained in the Historic District Preservation Plan required in Section 5.6.4.3(c). Failure of the Department of Cultural Resources to submit its written analysis and recommendations within 30 days after a written request for such analysis has been received by the Department shall relieve the Governing Body of any responsibility for awaiting such analysis, and the Governing Body may at any time thereafter take action on the proposed historic district and Historic District Preservation Plan.
 - f. The Director shall publish notice that the designation of an historic district and the adoption of an Historic District Preservation Plan will be considered by the Commission at a specified date and time.
 - g. The Commission shall conduct a public hearing on the proposed historic district designation and the Historic District Preservation Plan. The Commission shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend to the appropriate Governing Body denial of the request or designation of the area.
 - h. The Durham Planning Commission shall conduct a public hearing on the proposed historic district designation and the Historic District Preservation Plan. The Durham Planning Commission shall review the proposed historic district designation and the Historic District Preservation Plan and shall recommend denial or designation of the area.
 - i. The City Council or the Board of County Commissioners, as appropriate, shall set a public hearing and shall notify property owners within the proposed historic district of the public hearing in accordance with the public notification provisions of Section 15.
 - j. The City Council or the Board of County Commissioners, as appropriate, shall hold a public hearing to consider the request to designate the historic district and the adoption of the Historic District Preservation Plan. The protest petition procedures as established by Section 15 shall apply to the designation or amendment of an historic district.
 - k. If the City Council or the Board of County Commissioners, as appropriate, shall deny a request for designating an historic district, property owners may not initiate a new request to designate an historic district for the same area until at least one year after the Governing Body's action to deny the request.
4. **Requirements for Historic District Preservation Plan**
- An Historic District Preservation Plan shall include an investigation and report describing the significance of the buildings, structures, features, sites, or surroundings included in the proposed historic district and a description of the boundaries of the proposed historic district, in accordance with NCGS 160A-400.4(1); principles and design review criteria (guidelines) for Certificates of Appropriateness as required in NCGS 160-400.9(c); and a preservation strategy tailored to the individual needs of the specific area.
- The preservation strategy shall include, but not be limited to the following elements:
- a. The need for the historic district in that area, including the specific reasons why the regulatory provisions of this section should be applied in order to effectively accomplish the preservation of that area;
 - b. The means by which existence of the historic district will be publicized to historic district property owners and to the general public;
 - c. The principles, design guidelines and criteria to be followed in the historic district for exterior activities involving new construction, alteration, restoration, or rehabilitation and which shall be the basis for the Commission's review and action upon an application for a Certificate of Appropriateness;
 - d. The means by which technical assistance will be offered to property owners of the historic district by the Commission, City and County staff, or other groups;
 - e. A description of the various financial incentives that are proposed for use in promoting preservation activities within the historic district, how those incentives would be utilized and how property owners will be made aware of them; and
 - f. A description of what, if any, measures the Commission, the City or County staff, or other groups will take to encourage economic activity and development which will be conducive to preservation activities within the historic district.

5. **Commission Recommendation**

The Commission shall forward its recommendation on historic district designation to the Durham Planning Commission and to the City Council or Board of County Commissioners, as appropriate, with a recommended Historic District Preservation Plan. Consideration of the Historic District Preservation Plan shall be part of the consideration of the historic district designation.

6. **Historic District Preservation Plan as Policy**

When the City Council or Board of County Commissioners, as appropriate, designates an area as an historic district, the Historic District Preservation Plan for the particular historic district shall become City or County policy and all appropriate public bodies or administrative officials cited as having implementation responsibilities shall be directed to use their best efforts to assure the effective implementation of the Plan as it is written.

7. **Interior Changes**

The Commission shall not consider interior changes to buildings and no Certificate of Appropriateness shall be required for interior changes. However, this does not excuse the property owner from obtaining required building permits for interior work.

8. **Repeal of Historic District Designation**

The Board of County Commissioners or the City Council, as appropriate, may repeal an ordinance designating an historic district. The repeal process shall be in accordance with NCGS 160A-400.6. The Governing Body's action to repeal an ordinance of designation shall include the reasons for the repeal and a review by the State Historic Preservation Office. When such a repeal occurs, the Director of the Durham City - County Planning Department shall notify the Commission and the property owners.

5.6.5 Historic Landmarks Designation

A property owner or owners may request that a property be designated as an historic landmark by application to the Durham City-County Planning Department. Requests for designation shall include the specific elements of the property for which historic landmark designation is proposed. Requests for designation shall be made on forms provided by the Durham City-County Planning Department.

1. **Initiation of Requests for Designating an Historic Landmark**

A property owner or owners may request that a property be designated as an historic landmark by application to the Durham City-County Planning Department. Requests for designation shall include the specific elements of the property for which historic landmark designation is proposed. Requests for designation shall be made on forms provided by the Durham City-County Planning Department.

2. **Criteria for Designation**

A building, structure, site, area and object may be considered for designation as an historic landmark only if both of the following criteria are met:

- a. The Commission deems and finds that the building, structure, site, area or object appears individually eligible for listing or is individually listed on the National Register of Historic Places; and
- b. The Commission deems and finds that the property is of special significance in terms of its prehistorical, historical, architectural or cultural importance, and possesses integrity of design, setting, materials, feeling and association.

A property shall be designated as a historic landmark only with the consent of the property owner or owners.

3. **Adoption of an Ordinance of Designation**

Upon compliance with the procedures set out in Section 5.6.5.5 Required Procedures, the City Council or the Board of County Commissioners may, for their respective jurisdictions, adopt and from time to time amend or repeal an ordinance designating one or more historic landmarks. The ordinance shall include the following information:

- a. A description of each property designated by the ordinance, including the tax map reference number for the property. The ordinance shall clearly indicate what elements of the property are designated as an historic landmark. Examples of those elements are a building's interior, its exterior, any specific or all outbuildings, other site elements or the entire site.
- b. The name or names of the owner or owners of the property.
- c. A description of those elements of the landmark that are integral to its educational, cultural, historical, architectural or prehistorical value.
- d. The land area of the property.

- e. A note that, for each building, structure, site, area or object, the waiting period set forth in Section 5.6.6.5 Certificates of Appropriateness for Demolition, Destruction or Relocation of this ordinance shall be observed prior to its demolition.
- f. Any other information the Commission deems necessary.

4. Repeal of Historic Landmark Designation

The Board of County Commissioners or the City Council, as appropriate, may repeal an ordinance designating an historic landmark. The repeal process shall be in accordance with NCGS 160A-400.6. The Governing Body's action to repeal an ordinance of designation shall include the reasons for the repeal and a review by the State Historic Preservation Office. When such a repeal occurs, the Director of the Durham City - County Planning Department shall notify the Commission, the property owner or owners, the Register of Deeds for Durham County and the Durham County Tax Supervisor.

5. Required Procedures

No ordinance designating an historic landmark nor any amendment thereto may be adopted, nor may any historic landmark be accepted or acquired by the City of Durham or Durham County until the following procedural steps have been taken:

- a. The Commission shall adopt Rules of Procedure.
- b. The Commission shall prepare and adopt principles and design review guidelines for altering, restoring, moving or demolishing properties designated as landmarks.
- c. In accordance with NCGS 160A-400.6(2), the Commission shall make or cause to be made an investigation and report on the prehistorical, historical, architectural, educational or cultural significance of each building, structure, site, area or object proposed for designation or acquisition. The investigation and report shall be forwarded to the Division of Archives and History, North Carolina Department of Cultural Resources.
- d. In accordance with NCGS 160A-400.6(3), the North Carolina Department of Cultural Resources shall be given the opportunity to review and comment upon the substance and effect of the designation of any historic landmark. Any comments shall be provided in writing. If the Department of Cultural Resources does not submit its comments within 30 days following receipt by the Department of the investigation and report, the Commission and the Governing Body are relieved of any responsibility to consider such comments.
- e. The Commission shall hold a public hearing on the proposed ordinance of designation. It shall recommend to the Board of County Commissioners or the City Council, as appropriate, denial of designation or approval of designation of the proposed historic landmark.
- f. The Board of County Commissioners or the City Council, as appropriate, shall hold a public hearing on the proposed ordinance of designation. Following the public hearing, the Governing Body may adopt the ordinance of designation as proposed, adopt the ordinance of designation with any amendments it deems necessary, or reject the proposal.
- g. Upon adoption of the ordinance of designation, the following provisions shall apply:
 - 1. The owners and occupants of each designated historic landmark shall be given written notification of such designation by the Director of the Durham City-County Planning Department, insofar as reasonable diligence permits.
 - 2. One copy of the ordinance and each amendment thereto shall be filed by Director of the Durham City-County Planning Department in the office of the Register of Deeds of Durham County. Each historic landmark designated in the ordinance shall be indexed according to the name of the owner of the property in the grantee and grantor indexes in the Register of Deeds office.
 - 3. One copy of the ordinance and each amendment thereto shall be given to the Durham Inspections Department.
 - 4. For historic landmarks in the City, one copy of the ordinance and each amendment thereto shall be kept on file in the office of the Durham City Clerk and made available for public inspection at any reasonable time.
 - 5. The fact that a building, structure, site, area or object has been designated as an historic landmark shall be clearly indicated on all tax maps maintained by Durham County for such period as the designation remains in effect.
 - 6. The Director of the Durham City-County Planning Department shall give notice of the adoption of an ordinance of designation and any amendment thereof to the Durham County Tax Supervisor.

The designation and any recorded restriction upon the property limiting its use for preservation purposes shall be considered by the Tax Supervisor in appraising it for tax purposes.

6. Historic Markers

The ordinance designating the landmark may also provide for suitable markers on the property noting that the landmark has been so designated, including but not limited to signs, plaques or other appropriate indicators. If the owner consents, the sign shall be placed upon the property. If the owner objects, the sign shall be placed on a nearby public right-of-way.

5.6.6 Certificate of Appropriateness

1. Requirements for Certificates of Appropriateness in Historic Districts

From and after the designation of an historic district, no exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, and other appurtenant features) nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished within such historic district until after an application for a Certificate of Appropriateness as to exterior features has been submitted to and approved by the Commission. Applications shall be filed according to the procedure found in Section 5.6.6.7 Required Procedures.

The City of Durham and Durham County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure within an historic district for which a Certificate of Appropriateness has not been approved. A Certificate of Appropriateness shall be required whether or not a building permit is required. Any building permit or other permit not issued in conformity with this Section shall be invalid. A Certificate of Appropriateness may be issued by the Commission subject to reasonable conditions necessary to carry out the purposes of this ordinance.

For the purposes of this Section, the term "exterior features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. In the case of outdoor advertising signs, the term "exterior features" shall be construed to mean the style, material, size and location of all such signs. These "exterior features" may include historic signs and significant landscape, archaeological and natural features of the area.

2. Requirements for Certificates of Appropriateness for Historic Landmarks

From and after the designation of an historic landmark, no designated portion of any building or other structure (including masonry walls, fences, light fixtures, steps, pavement, and other appurtenant features) nor any above-ground utility structure nor any type of outdoor advertising sign shall be erected, altered, restored, moved or demolished on such historic landmark until after an application for a Certificate of Appropriateness has been submitted to and approved by the Commission.

The City of Durham and Durham County shall not grant any building permit or other permit for the purposes of constructing, altering, moving or demolishing any structure designated as an historic landmark for which a Certificate of Appropriateness has not been approved. A Certificate of Appropriateness shall be required whether or not a building permit is required. Any building permit or other permit not issued in conformity with this Section shall be invalid. A Certificate of Appropriateness may be issued by the Commission subject to reasonable conditions necessary to carry out the purposes of this ordinance.

For the purposes of this Section, the term "designated portion" shall mean any portion of an historic landmark that was included in the ordinance designating the landmark, including the main structure or structures, the interior or portions of the interior, any outbuildings or secondary structures, site elements and landscaping.

Where the exterior of a building or structure is designated as an historic landmark, the term "exterior" shall mean the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the kind and texture of the building material, the size and scale of the building, and the type and style of all windows, doors, light fixtures, signs and other appurtenant features. In the case of outdoor advertising signs, the term "exterior" shall be construed to mean the style, material, size and location of all such signs. Such "exterior" features may include but shall not be limited to historic signs, significant landscapes, and archaeological and natural features of the area.

3. Intent of Principles and Review Criteria--for Certificate of Appropriateness for Historic Districts

For historic districts, the intent of these regulations is to insure, insofar as possible, that buildings or structures in the historic district shall be in harmony with other building or structures located therein. However, it is not the intention of these regulations to require the reconstruction or restoration of individual or original buildings or to prohibit the demolition or removal of such buildings or to impose architectural styles from particular historic periods. In considering new construction, the Commission shall encourage contemporary design which is harmonious with the character of the historic district.

In granting a Certificate of Appropriateness, the Commission shall take into account, in accordance with the Principles and Design Review Criteria of the Historic Preservation Plan adopted for the historic district:

- a. The historic or architectural significance of the structure under consideration in relation to the historic value of the district;
- b. The exterior form and appearance of any proposed additions or modifications to that structure; and
- c. The effect of such additions or modifications upon other structures in the vicinity.

4. Intent of Principles and Review Criteria for Certificate of Appropriateness--for Historic Landmarks

In granting a Certificate of Appropriateness, the Commission shall take into account in accordance with the Principles and Design Review Criteria adopted for historic landmarks:

- a. The historic or architectural significance of the structure, site or setting under consideration;
- b. The exterior form and appearance of any proposed additions or modifications to the structure, site or setting.

The intent of these regulations is to insure, insofar as possible, that changes to buildings or structures designated as historic landmarks shall be in harmony with the historic character that was cited as the reasons for designation.

5. Certificate of Appropriateness for Demolition, Destruction and Relocation

An application for a Certificate of Appropriateness authorizing the demolition, destruction or relocation of a structure in a designated historic district or of a designated historic landmark shall not be denied. However, the effective date of such a Certificate of Appropriateness may be delayed for a period of up to 365 days from the date of approval. This maximum period of delay shall be reduced by the Commission when it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such structure or landmark by virtue of the delay. During such period, the Commission may negotiate with the owner and with any other parties in an effort to find a means of preserving the structure or landmark.

If the Commission finds that the structure has no particular significance or value toward maintaining the character of an historic district, it shall waive all or part of such period and authorize earlier demolition or removal.

An application for demolition, destruction and relocation of a building, site or structure determined by the State Historic Preservation Officer as having Statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the Commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return from such structure or landmark by virtue of the denial.

6. Master Certificates of Appropriateness

Work done by the City of Durham, Durham County and by public utility companies within any historic district shall be subject to the provisions of this Section. However, rather than obtaining individual Certificates of Appropriateness for each proposed project in an historic district, the City of Durham, Durham County and public utility companies may instead obtain a Master Certificate of Appropriateness from the Commission. The provisions of this Section that apply to Certificates of Appropriateness shall also apply to Master Certificates of Appropriateness. No Master Certificate of Appropriateness shall be valid for a period greater than 1 year from the date of issuance.

In addition to acquiring a Master Certificate of Appropriateness, the City of Durham, Durham County and any public utility company shall notify the Durham City Manager or Durham County Manager, as appropriate, prior to performing any work within any historic district. In emergency situations, as determined by the Durham Inspections Department, notification by the next work day is acceptable. Such work shall be done in accordance with the principles and design criteria adopted for the historic district as part of the Historic District Preservation Plan. The City Manager or County Manager, as appropriate, may inspect all work done pursuant to a Master Certificate of Appropriateness.

7. Required Procedures

a. Application

A property owner or his or her agent may file an application for a Certificate of Appropriateness with the Durham City-County Planning Department. The Commission shall consider an application for a Certificate of Appropriateness as soon as reasonably possible, but shall consider all applications within at least 60 calendar days of the date of the application unless a deferral is granted in accordance with Section 5.6.6.7(g) Deferral of Application.

b. Content of Application

The Commission shall, by uniform rule in its Rules of Procedure, require such data and information as is reasonably necessary to evaluate the nature of the application. An application for a Certificate of

Appropriateness shall not be considered complete until all required information has been submitted. An applicant may file with the application any additional relevant information bearing on the application.

c. Notification of the Commission

The Director of the Durham City-County Planning Department shall notify the members of the Commission at least 7 calendar days before its regularly scheduled meeting of any pending applications for Certificates of Appropriateness.

d. Notification of Affected Property Owners

Prior to the issuance or denial of a Certificate of Appropriateness, the Director shall take such action as may be reasonable to inform the owner of any property likely to be materially affected by the application.

e. Public Hearing

In cases where the Commission deems it necessary, it may hold a public hearing concerning the application.

f. Commission Action on Applications

The Commission shall take action on the application and in doing so shall apply the principles and design review criteria, referred to in Section 5.6.4.4 Requirements for Historic District Preservation Plan or Section 5.6.5.5 Required Procedures, as appropriate. The Commission shall approve, approve with modifications or conditions, or disapprove an application for a Certificate of Appropriateness or Master Certificate of Appropriateness. The Commission may not deny a Certificate of Appropriateness for demolition (see Section 5.6.6.5 Certificate of Appropriateness for Demolition, Destruction and Relocation).

g. Deferral of Application

An applicant for a Certificate of Appropriateness may request that the Commission's consideration of the application be deferred to a specific date. Upon such request, the Director shall have the authority to grant the deferral. A request for continuance shall be made in writing to the Director at least 10 days prior to the scheduled consideration of the application and shall indicate the date to which the deferral is requested and the reasons for the deferral. Only 1 deferral shall be permitted for each application.

8. Time Limits

If the Commission fails to take final action upon any application within 60 days after the complete application is submitted to the Director, the application shall be deemed to be approved, unless a deferral is granted in accordance with the provisions of Section 5.6.6.7(g) Deferral of Application. If such a deferral is requested, the 60 day time period shall be increased by the amount of time for which a deferral is requested. A Certificate of Appropriateness shall expire if a building permit has not been obtained within 1 year.

9. Submission of New Application

If the Commission denies an application for a Certificate of Appropriateness, a new application affecting the same property may be submitted only if substantial changes are made in plans for the proposed construction, reconstruction, alteration, restoration, moving or demolition, or if conditions related to the historic district or historic landmark or surrounding uses have changed substantially.

10. Local and State Coordination

The Commission shall use all reasonable efforts to expedite any concurrent process with the North Carolina Department of Cultural Resources if such a process is desired by the applicant for the purpose of securing both a Certificate of Appropriateness and a Federal historic preservation tax credit.

11. Appeal of Decision

An appeal of a decision of the Commission in granting or denying any Certificate of Appropriateness may be taken to the Durham Board of Adjustment. Appeals may be taken by any aggrieved party, shall be taken within times prescribed by the Commission in its Rules of Procedure and shall be in the nature of certiorari (only evidence presented at the Commission's meeting shall be considered at the appeal). An appeal from the City or County Board of Adjustment's decision in any case shall be heard by the Durham County Superior Court.

5.6.7 General Provisions

1. Circumstances Not Requiring Certificates of Appropriateness

Nothing in this ordinance shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district or on an historic landmark which does not involve a substantial change in the design, material, or outer appearance thereof, provided that any required building permit is obtained.

Nor shall this ordinance be construed to prevent the construction, reconstruction, alteration, restoration or demolition of any such feature which is determined to be a threat to the public safety. The Durham Inspections Department shall certify in writing to the Commission that such action is required for the public safety because of an unsafe or dangerous condition.

Nothing herein shall be construed to prevent a property owner from making any use of his or her property not prohibited by other statutes, ordinances or regulations.

2. Review of Application by Commission

As part of its review procedure, the Commission may view the premises and seek the advice of the North Carolina Department of Cultural Resources or other expert advice as it may deem necessary under the circumstances.

3. Compliance

Compliance with the terms of a Certificate of Appropriateness shall be enforced by the Durham Inspections Department. Construction or other work which fails to comply with a Certificate of Appropriateness shall be a violation of the Zoning Ordinance. The discontinuance of work for a period of six months shall be considered a failure to comply with a Certificate of Appropriateness.

Nothing contained in this ordinance shall prohibit, impair or limit in any way the power of the City of Durham or Durham County to prevent the construction, reconstruction, alteration, restoration or removal of buildings, structures, appurtenant fixtures or outdoor signs in the historic district in violation of the provisions of this ordinance. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

5.6.8 [This Subsection applies to City Only] Control of Demolition by Neglect of Historic Landmarks and of Certain Structures within Designated Historic Overlay Districts

1. Applicability

In order to promote the purposes of the Historic District and Landmarks Ordinance this subsection requires that owners of certain historic properties maintain their properties and not allow them to fall into disrepair. The requirements of this subsection are applicable only to certain properties, termed "historic properties" in this subsection. That term as used in this subsection is defined to include designated historic landmarks and properties identified as "contributing" or "pivotal" in designated historic districts.

2. Conditions of Neglect Defined and Prohibited

Owners shall maintain or cause to be maintained the exterior and structural features of their historic properties and not allow conditions of neglect to occur on such properties. Conditions of neglect are as defined below. It is a violation of this zoning ordinance to not remedy a condition of neglect within the period of time set by a final administrative determination, as described in subsequent subsections of this ordinance. Conditions of neglect include the following:

- a. Deterioration of exterior walls, foundations, or other vertical support that causes leaning, sagging, splitting, listing, or buckling.
- b. Deterioration of flooring or floor supports, roofs, or other horizontal members that causes leaning, sagging, splitting, listing, or buckling.
- c. Deterioration of external chimneys that causes leaning, sagging, splitting, listing, or buckling.
- d. Ineffective waterproofing of exterior walls, roofs, and foundations, including broken windows or doors.
- e. Defective protection or lack of weather protection for exterior wall and roof coverings, including lack of paint, or weathering due to lack of paint or other protective covering.
- f. Rotting, holes, and other forms of decay.
- g. Deterioration of exterior stairs, porches, handrails, window and door frames, cornices, entablatures, wall facings, and architectural details that causes delamination, instability, loss of shape and form, or crumbling.
- h. Heaving, subsidence, or cracking of sidewalks, steps, or pathways.
- i. Deterioration of fences, gates, and accessory structures.
- j. Deterioration that has a detrimental effect on the surrounding historic district, or on the special character of the historic landmark.
- k. Deterioration that contributes to a hazardous or unsafe condition.

3. Designation of HPC as Planning Agency; Investigation of Conditions of Neglect; Director Determinations and HPC Hearings

- a. Designation of Historic Preservation Commission (HPC) as Planning Agency/BOA. For purposes of this subsection, the HPC is designated a Planning Agency under GS 160A-361 authorized to operate as a Board of Adjustment and make quasi-judicial decisions under GS 160A-388(a) for the administrative determinations described herein. The voting requirements applicable to the Board of Adjustment in

Section 3.3 of this Ordinance shall be used for HPC decisions when the HPC is functioning as a Board of Adjustment under this section.

- b. Director Investigation/Determination.
 1. Initiation by Petition. The initial determination that there is a condition of neglect is made by the Director of Planning after an investigation that is initiated by a petition from any person who is familiar with the subject property, which may include but not be limited to a City or County employee.
 2. Notice of Investigation. On receipt of a petition, the Director or his/her designee shall notify the owners in writing of the allegation and the process for making a decision regarding the petition, including any applicable deadlines. Among other things, the notice shall offer the owner the opportunity to meet in person with the Director, and to present any relevant information. Notice shall be delivered by personal service, or by certified or registered mail, return receipt requested. If certified mail is refused or unclaimed, notice may be delivered by first class mail, and shall be considered effective if such mail is not returned by the post office within 15 days of mailing. In the case of notice by first class mail, notice shall also be posted on the property. Notice of the investigation may also be given to the owners of nearby or adjacent properties or neighborhood associations.
 3. Responsibilities of Director/Designee. The Director or Director's designee shall:
 - investigate the allegation that a condition of neglect exists;
 - hold one or more meetings at a time to be set by the Director in which the owner, other persons who have received notice, or other interested persons may give information;
 - issue a written determination, supported by findings of fact, regarding the allegation within 45 days of the owner's receipt of notice;
 - include within the determination a time period for correcting the condition of neglect, if a condition of neglect has been found;
 - retain all information presented by the owner or other persons;
 - deliver the written determination through any of the means for delivery of notice, as described above;
 - designate the written determination as a final administrative determination with the right of appeal to the HPC; and
 - include information regarding rights to a de novo hearing before the HPC.
 4. Suspension of Process. The above process may be suspended in the event the owner agrees in writing to correct the alleged condition of neglect within a time period determined to be reasonable by the Director. If the condition is not corrected within that time period, the process shall continue where it was suspended.
 5. Issuance of Stay in Event no Hearing is Requested. In the event that the owner and/or other parties in interest do not wish to contest the determination regarding the condition of neglect, but do wish to petition for a claim of undue economic hardship, the Director's order shall be stayed until after the Historic Preservation Commission's determination in accordance with the procedures of Section 5.6.8.3 below.
4. De Novo Quasi-Judicial Hearing Before HPC. If the property owner disagrees with the Director's determination, the owner may appeal and may request a de novo hearing before the HPC. The request must be delivered to the Planning Department, in writing, within 30 days of receipt of the Director's determination. The HPC shall hold a quasi-judicial hearing on the issue of whether demolition by neglect is occurring on the property. Procedures that would be followed by the Board of Adjustment (BOA) in a quasi-judicial proceeding shall be used. The Director's determination shall be considered an administrative determination, which has been appealed to the HPC, as the designated Planning Agency under GS 160A-388, and all procedures applicable to the BOA in GS 160A-388 shall apply to such hearings. The HPC's determination to overturn the administrative determination must be passed by the standards established in Section 3.3 of this Ordinance. The HPC's written decision shall include findings of fact and conclusions regarding demolition by neglect consistent with this subsection. It shall be delivered to the appealing party by certified mail, return receipt requested. Appeal to the Courts may be had by certiorari as is provided for an appeal of a BOA decision. If the decision is not appealed it shall be considered a final decision subject to enforcement with no rights of appeal.

5. Safeguards from undue economic hardship

- a. Process for determining undue economic hardship. The property owner is entitled to make a claim of undue economic hardship if the owner is unable to make needed repairs to the property because it is economically unfeasible. If a claim of undue economic hardship is made, the Director or his designee shall receive all information from the property owners that the HPC is entitled to receive pursuant to this ordinance, make a determination regarding whether there is undue economic hardship, and develop a plan for dealing with such hardship, if it is found to exist. The recommendation and plan shall be sent to the owner, certified mail, return receipt requested, with notice of the owner's rights to appeal to the HPC within 30 days of receipt. If the owner disagrees with the recommendation and plan the owner may request a hearing before the HPC. In the event of such a request, the hearing shall be a quasi-judicial hearing, in the nature of a BOA hearing and the decision shall be in writing, supported by findings and conclusions. The Director's determination as to economic hardship and the plan for dealing with that hardship shall be considered a final administrative determination, and any HPC decision altering such recommendation or plan must be passed consistent with the requirements of Section 3.3 of this Ordinance.
- b. Evidence regarding undue economic hardship. When a claim of undue economic hardship is made owing to the effects of this article, the owner and/or parties in interest shall, where reasonably possible, to provide the evidence below, describing the circumstances of hardship, and any additional evidence requested by the Director or HPC or evidence the owner considers relevant.
 - 1. Nature of ownership (individual, business, or nonprofit) or legal possession, custody, and control.
 - 2. Financial resources of the owner and/or parties in interest.
 - 3. Cost of repairs.
 - 4. Assessed value of the land and improvements.
 - 5. Real estate taxes for the previous two years.
 - 6. Amount paid for the property, date of purchase, and party from whom purchased, including a description of the relationship between the owner and the person from whom the property was purchased, or other means of acquisition of title, such as by gift or inheritance.
 - 7. Annual debt service, if any, for previous two years.
 - 8. Any listing of the property for sale or rent, price asked, and offers received, if any.
 - 9. Annual gross income, if any, from the property for the previous two years.
 - 10. Itemized operating and maintenance expenses for the previous two years, including proof that adequate and competent management procedures were followed.
 - 11. Annual cash flow, if any, for the previous two years.
- c. Plan to relieve economic hardship. A recommended plan to relieve the economic hardship may include, but is not limited to, property tax relief as may be allowed under North Carolina law, loans or grants from the City, the County, or other public, private, or nonprofit sources, acquisition by purchase or eminent domain, changes in applicable zoning regulations, or relaxation of the provisions of this article sufficient to mitigate the undue economic hardship. The Director shall issue an order regarding the time period during which the property should be repaired, taking into account the provisions of the recommended plan.

6. Other City or County powers; City's or County's election of remedies

Nothing contained within this article shall diminish the City's or County's power to declare a building unsafe or in violation of the minimum housing code or any other applicable statute or code. In addition, the procedures described herein are mandatory only for determinations being made solely under the authority of this section. Where other sections of the City or County Code apply, the Governing Body may, in its discretion, choose to process any action regarding the property under such other provisions alone, or under such provisions along with these provisions concurrently, or solely under these provisions. The Governing Body may also suspend the procedures of this section at any time if an action has been initiated under other applicable law.

Penalties and remedies

Enforcement of this article may be by any one or more of the following methods, and the institution of any action under any of these methods shall not relieve any party from any other civil or criminal proceeding prescribed for violations and prohibitions.

- a. Equitable remedy. The Governing Body may apply for any appropriate equitable remedy to enforce the provisions of this article.
- b. Order of abatement. The Governing Body may apply for and the court may enter an order of abatement. An order of abatement may direct that improvements or repairs be made, or that any other action be taken that is necessary to bring the property into compliance with this article. Whenever the party is cited for contempt by the court and the City or County has executed the order of abatement, the City or County shall have a lien on the property for the cost of executing the order of abatement.
- c. Civil penalty. Civil penalties may be assessed for failure to comply with a final administrative determination or an unappealed HPC decision under the provisions and guidelines for assessing such penalties for zoning code violations. Prior to imposing a civil penalty the City-County Planning Department shall deliver a written notice by personal service or by registered mail or by certified mail, return receipt requested, to the person responsible for the violation indicating the nature of the violation and ordering corrective action. Where the violation is the failure to remedy a condition of neglect within the time periods provided by the Director or the HPC no additional time period for compliance need be given. The notice shall include information regarding the possible assessment of civil penalties and other possible enforcement actions. If this notice is appealed to the Board of Adjustment, the Board shall not rehear any issue that was heard by the HPC or could have been so heard had an appeal to the HPC been made. Rather, the BOA shall limit the scope of its review to whether there has been compliance with the Director's determination or the HPC's determination, as applicable.

5.7 Research Park Building Coverage

5.7.1 Purpose

The Research Park Overlay is established to provide limits on building coverage within research parks to assure a campus-like appearance. The district is intended for application in areas where research facilities and related manufacturing activities take place. It is also the intent of this overlay district to encourage land uses which will enhance the property values and maintain the economic viability of research employment areas.

5.7.2 Applicability

This district is intended for use on properties located within research parks, or areas with research related manufacturing plans and businesses. The regulations of the underlying district and any other overlay districts apply in addition to the requirements of this Section. In the event of a conflict in ordinance requirements, the more restrictive requirements shall apply. The actual boundaries of the district shall be displayed on the Official Zoning Map.

5.7.3 Lot Coverage

In order to provide a campus-like setting, building footprints shall occupy a maximum of 15% of the area of each lot.

5.7.4 Design

The design of developments within this overlay district shall provide an attractive setting with unifying design themes. The design schemes shall protect environmental features and shall provide for convenient pedestrian and transit access.

5.8 Interim Transit Oriented Development-Compact Neighborhood [ITOD-CN] Overlay District

The Interim Transit Oriented Development-Compact Neighborhood overlay district [ITOD-CN] is established:

1. to promote new, well-integrated residential, commercial, office, institutional and other employment center development close to future regional transit stations, while protecting and enhancing existing development.
2. to ensure that new development takes advantage of compatible, higher density, transit friendly, design opportunities in close proximity to transit systems in order to provide options for economic development and diversity.
3. to encourage pedestrian orientation and human scale in new development and provide public infrastructure that supports transit use and mixed-use development.
4. to provide incentives to encourage transit oriented development.
5. to establish standards for development within future Compact Neighborhoods prior to the adoption of final Compact Neighborhood development plans and final development regulations.

5.8.2 Application

The ITOD-CN Overlay District will be applied by Durham City or County to an area within a Regional Corridor Study Area designated in the Durham 2020 Comprehensive Plan. The Core Area of the ITOD-CN shall be from the transit station to approximately 1/8 mile away, or generally 35 acres around the station site. The Support Area of the ITOD-CN shall be from the Core Area to approximately 1/2 mile away, or generally 550 acres around the station site. The boundaries of the overlay district shall follow property lines whenever possible.

District expansion may be considered for contiguous properties upon a request by an applicant.

The ITOD-CN Overlay District will be applied in accordance with the requirements in Section 15. *Amendments* of the Durham Zoning Ordinance.

The term *Base District* when used in this Section, refers to the underlying zoning district and any other overlay districts which exist on the property.

5.8.3 Permitted Uses

The ITOD/CN area should contain a mix of complementary uses. Complementary land uses are those that offer goods and services at different times of day, and provide a consolidated "one stop" area for people to live, work, shop and participate in entertainment and community activities in close proximity to one another. Complementary land uses located in a neighborhood that has been designed to accommodate pedestrians, bikes, buses and trains, reduces dependence on the automobile, thereby reducing traffic congestion and the need for additional parking areas.

1. The Overlay District shall not allow uses which are prohibited in the base district.
2. The applicant may specify additional limitations or details regarding the proposed uses in a rezoning application.
3. Those uses not prohibited below which require a major or minor special use permit in the base district shall be allowed without such a permit when located in the ITOD-CN Overlay.
4. The following uses are prohibited even if allowed in the base district in order to encourage compact development, to facilitate pedestrian activities and to minimize land expansive use: storage yards, boat and/or vehicle sales, car washes, cemeteries, emergency shelters, freight terminals, gasoline sales, golf courses, heavy equipment sales and service, manufactured home sales, salvage yards, service stations, storage yards, surface parking lots as independent use (unless such lots are held temporarily for planned development or are to be used for transit purposes), transfer stations, warehouses, wholesale establishments, and agricultural uses. With the exception of financial institutions, existing drive-up services [e.g.: restaurants, cleaners, etc.] shall not be allowed to expand the drive-up component of the business and new drive-up services are prohibited. Financial institutions may include, add or expand drive-up components as long as the drive-up area is not directly on any street side of the building.
5. Where the base zone is a Mixed Use District (MU), the requirements for percentage of mix found in Section 4B.2 of the Zoning Ordinance shall apply.

5.8.4 Design Standards

Design standards are necessary to achieve the desired goals for Transit Station areas. These areas therefore require more attention to design than development in other parts of the City and County. In the ITOD/CN there will be an emphasis on architectural detail and human scale design. The focus will be on promoting street level activity by designing multi-modal streets, designing to achieve pedestrian scale, avoiding blank walls and monolithic massing, and providing pedestrian amenities throughout the area such as lighting, seating areas, bike racks, etc. Pedestrian and bicycle routes in this area should include an extensive sidewalk system on both sides of the street where possible. There should be numerous connections to the transit station. Public and private parks and plazas should be well-integrated into the area.

1. Unifying architectural features and/or themes compatible with existing nearby significant and historical development shall be incorporated into new structures. These features may include but are not limited to: building styles, spacing and massing; architectural details; fenestration, colors, materials and landscaping.
2. New development located in an area which already possesses design guidelines [eg: a local historic district] shall be compatible with those design guidelines.
3. All utilities shall be placed underground for new development.
4. Continuous, street level pedestrian and bicycle circulation routes shall be coordinated throughout new development and be connected to adjacent off-site properties.
5. At least 50 percent of the first floor square footage and 50 percent of the street frontage in commercial base districts shall be retail; with the exception of parking decks.
6. Nonresidential building walls for new development at street level shall contain windows and/or transparent doors for at least 50 percent of the surface area adjacent to pedestrian walkways, sidewalks and parks.
7. Solid mirrored-glass walls will be discouraged.
8. Facades over fifty feet long shall be divided into shorter segments by means of facade modulation, repeating window patterns, change in materials, canopies, varying roof lines and/or other architectural detailing.
9. All buildings facing public or private streets shall have at least one street entrance to encourage pedestrian access to nearby transit stops and adjacent parks and plazas.

10. Street trees shall be provided in accordance with the landscaping requirements found in Section 10 of the Zoning Ordinance.
11. Surface parking lots shall be located on the non-street side of the building when possible. Surface parking lots located on public or private streets shall be partially screened from the street with a berm, wall, and/or landscaping with a height of at least 36 inches and not to exceed 48 inches. The screening shall not provide hiding areas that make pedestrians feel unsafe.
12. Any lot which becomes vacant due to the removal of a structure shall be planted with ground cover, grass or other appropriate landscaping material and maintained. A berm, wall and/or landscaping with a height of at least 36 inches and not to exceed 48 inches shall be placed along the street side of the property. The screening shall not provide hiding areas that make pedestrians feel unsafe.

5.8.5 Density and Scale Advantages Of The Overlay District

The ITOD-CN Overlay District eliminates the underlying minimum setback requirements. They are replaced with maximum setback requirements. Another feature is the potential for an increase in density of residential development over the underlying residential zone.

1. Standards For All Proposals

- a. The standard dimensional requirements of the base district, such as height and setback, shall not apply within the overlay district but shall be determined by the Development Plan. The current minimum setbacks shall be replaced by maximum residential setbacks of 20 feet and a maximum nonresidential setback of 15 feet.
- b. The impervious surface requirements of Section 5.5 (Watershed Overlay) shall apply where such watershed overlay coexists with the TOD-CN Overlay.
- c. The Buffer width and Landscaping amounts of the base zone (see Section 10.2.4 & 10.2.5 Buffer and Landscaping Requirements) shall be reduced by 50 percent. Trees and other plantings shall be required in conformance with the Design Standards of this section.
- d. Open Space requirements may be reduced by 50 percent within the ITOD-CN Overlay provided the development includes a street level, pedestrian walkway system - including seating and other pedestrian amenities - that shall connect the proposed land uses with the transit system and adjacent public or private parks, plazas, and open space.

2. Density Standards For Development In A Residential Base Zone

- a. The minimum residential density within the Core Area (1/8 mile from a transit station) is 15 units per acre. In the Support Area (1/2 mile from a transit station) the minimum residential density shall be 7 units per acre.
- b. In some situations this density may not be appropriate due to existing development patterns (historic districts, stream buffers, etc.). In such cases, the Approving Body may allow a reduction in the number of units per acre.

5.8.6 Parking and Streets

Design of parking areas shall be a critical consideration for Site Plans within this Overlay District. Plans may be rejected for failing to conform with the stated purpose of this Overlay District. The potential for reduced parking requirements and the elimination of the Major Special Use Permit for Traffic Impact Analysis (TIA) are also included in this section.

1. When a Traffic Impact Analysis (TIA) is necessary, a Major Special Use Permit (MSUP) is not required.
2. Parking requirements of the Base District may be reduced at the time of Development Plan or Site Plan approval,
3. Parking shall not exceed the minimum number required by the Base use. Exceptions to this requirement may be granted by the Governing Body if the additional parking does not negatively impact the pedestrian flow of the area and the decision is based on relevant findings such as: a demonstrated need for additional parking, use of adjacent traffic demand management techniques to minimize parking, efforts to minimize significant tree cutting and the ability to share parking with other nearby development.
4. Required parking may be reduced up to 50 percent by the approving body if it is found that the nature of the proposed uses, the timing of vehicle trips, and the provisions for nearby transit service warrant the reduction.
5. Parking in nonresidential base zones shall have less than 20 percent of the parking on the transit route side of the buildings and where possible all new driveways shall be shared drives.
6. Traffic calming amenities (bump outs, narrower streets, change in paving patterns where walkways cross streets, traffic circles, etc.) shall be encouraged.

7. Alternate street widths may be approved at the time of site plan approval. The approving body shall make its decision using the same criteria listed above for determining parking reductions.
8. On-street parking should be encouraged and required where appropriate.
9. Parking structures in commercial districts shall devote at least 25 percent of the square footage of all facades at the street level to commercial, retail or office uses.

5.8.7 Signs

The limited setbacks and pedestrian oriented nature of the Overlay District eliminates the need for freestanding business signs. In the overlay, these signs should be placed on or attached to buildings. Freestanding business signs are allowed in the Overlay District with the issuance of a Minor Special Use Permit. Informational, traffic and directional freestanding signs are allowed in accordance with the Sign Ordinance.

5.8.8 Considerations and Procedure

As a part of the approval of the Site Plan, the Approving Body shall give primary consideration to the following.

1. The ability of the development proposal to promote and utilize transit.
2. The provisions in the development proposal to provide safe and convenient pedestrian connections with transit facilities.
3. The stated purpose of the District.
4. The adherence to the Design Standards above.
5. The development proposal's compatibility with the architectural character of the area.