

Section 8 Performance Standards

8.1 Performance Standards for All Development

8.1.1 Sight Clearances

On any corner lot, a sight triangle shall be maintained. The sight triangle shall be a triangle formed by extending lines from the intersections of two streets to points 25 feet from the corner of the intersecting streets and then connecting the two points. Within the sight triangle, no materials which would impede traffic visibility shall be allowed. Generally, structures, fences, and plant materials that are more than 3 feet high shall not be allowed within the vision triangle,

8.1.2 Height Limitations

The height limitations of the zoning districts shall not apply to steeples, decorative features, air conditioning units, utility poles, mechanical features, lighting rods, antennas, water towers, clock towers, or other towers which are not used for transmitting and receiving electronic signals,. Wireless communication facilities shall be required to meet the height requirements found in Section 7 of this ordinance. Parapet walls less than 4 feet high shall be exempt from height limitations. Building height shall be determined in conformance with the definition for height found in Section 2. In approving a site plan or construction drawing containing such features, consideration shall be given to whether the addition or feature is architecturally harmonious in such aspects as materials, height, proportion, bulk, scale and design with the building or complex of which it is a part, and if a stand-alone structure, whether such structure is harmonious with the surrounding area. The Inspections Department, after reviewing a construction drawing, may wish to consult with the Development Review Board [DRB] regarding the standards of this provision.

8.1.3 Forestry

Forestry activities shall be permitted in all districts. Forestry activities shall be conducted in conformance with a Forest Management Plan which uses the current best management practices set out in "Forest Practice Guidelines Related to Water Quality," as adopted by the North Carolina Department of Environment and Natural Resources.

8.1.4 Yards and Setback Requirements

1. That yard and setback spaces shall be unobstructed by objects constructed or erected in a fixed location on the ground, buildings or structures, unless allowed by standards found elsewhere in this ordinance. [for example, standards for fences].
2. All yard spaces and setbacks for one building or lot cannot be considered as providing yard space for another building or lot.
3. All yard spaces and setbacks shall be calculated from the adjoining property lines and street rights of way. If a new right-of way width has been established by the adoption of an official thoroughfare planning document, then the yard requirement shall be measured from the proposed right of way line, unless the property would be rendered unusable.
4. Required off street parking and off street loading areas shall be allowed within yard and setback spaces.
5. Single family residential parking: Single family residential uses may devote yard space to designated driveways and, within the front yard, driveways shall not exceed 20 feet in width unless shown on an approved site plan. Single family driveways shall be surfaced with an all weather material. Except for these driveways, no additional curb cuts or vehicle access points are permitted. No portion of the yard space other than the designated driveways shall be used for the parking of vehicles. Parked vehicles shall not block pedestrian walkways.
6. Street side setback reductions for new residential structures: In the following circumstances, a new residential structure may not be required to conform to the minimum setback requirements of the zoning district:
 - a. Where 50% or more of the residential lots on the same linear block [defined term] as the lot in question are developed with less than the required street side setbacks, the average setback of the developed residential lots on the block with less than the required street side setback shall be observed as the minimum setback for a new residential structure.
 - b. Where the lot on which the new residential structure is proposed is between two adjacent existing developed residential lots with less than the required street side setback, the average setback of both adjacent residential lots shall be observed as the minimum street side setback.

7. Street Side Setback Reductions For Nonresidential Structures:

- a. **Purpose:** It is understood that it is some times in the best interests to the community to promote an attractive and pedestrian oriented street facade. Placing buildings closer to the street may increase the number of pedestrians and encourage economic vitality. Therefore, in certain circumstances, reductions of building setbacks may warranted. The following standards specify when a non-residential structure may not be required to conform to the minimum setbacks of the zoning district.
- b. **Process:** The Development Review Board [DRB] may reduce the street side setbacks of a non-residential structure in situations where the criteria specified in Subsection (c) below are met. The amount of reduction in setback shall conform to the limitations specified in Subsection (d). below. Exceptions to these regulations are found in Subsection (e).
- c. **Criteria for Consideration**
 1. The subject lot is within an Urban Neighborhood as defined by the Durham 2020 Plan.
 2. All parking is located in the rear or side of the structure.
 3. The street side receiving the reduced setback has a sidewalk parallel to the right of way or the property developer guarantees to install a sidewalk that meets or exceeds the sidewalk standards found elsewhere in this ordinance.
 4. A primary entrance [generally considered an entrance with a lobby] to the structure will face the street side having the reduced setback and the entrance will have a direct connection to the sidewalk provided along the street.
 5. The street frontage shall have street trees at 40 foot interval or the property developer guarantees to install street trees meeting this standard.
 6. The street level facade of the structure shall be enhanced with architectural details, landscaping, street furniture art work or similar treatments designed to add visual interest to the façade.
 7. The street is not identified for future widening on an officially adopted plan.
 8. The street side proposed for a setback reduction is not located across the street from a residential use or zone.
- d. **Amount of reduction to be Allowed:**
 1. Where 50% or more of the non-residential lots on the same linear block(defined term) or opposing block as the lot in question are developed with less than the required street side setbacks, the average setback of the developed non-residential lots on the block with less than the required street side setback shall be observed as the minimum setback for a new non-residential structure.
 2. Where the lot on which the new non-residential structure is proposed is between two adjacent existing developed non-residential lots with less than the required street side setback, the average setback of both adjacent non-residential lots shall be observed as the minimum street side setback.
 3. Where the non-residential lot has an existing structure(s) that does not meet the minimum zoning district setbacks but may meet the standards of number 1 and 2 above.
 4. Where a linear block of less than 500 feet is split into more than one zoning district, the zoning district with the most frontage shall determine the minimum street setback. However, this provision shall not apply if the street right of way is less than 50 feet wide and there is property on the opposite side of the street is residentially used or zoned.
- e. **Exceptions:**

The setback reductions shall not be allowed for the following uses: drive-up services, outdoor storage areas, outdoor sales, vehicle sales and service areas, and loading bays or loading areas. However, outdoor eating spaces may be allowed a reduced setback.

8.1.5 Encroachments into Yards

The following encroachment standards shall apply to yard spaces:

1. Chimneys, pre-fab chimneys, flues, or smokestacks may extend into yard spaces but may not occupy more than 30 square feet of yard space.
2. Sills and ornamental features may project up to 2 feet into any yard space.
3. Fire escapes may project up to 5 feet into any required yard spaces. Fire escapes in the CBD district may extend beyond the property line with the approval of the DRB.

4. Cornices and eaves may extend up to 5 feet into required yard spaces, but must remain at least 2 feet within the property line.
5. Marquee signs and awnings may extend into yard spaces in conformance with standards found in the Sign Section of this ordinance (Section 12).
6. Pedestrian bridges, breezeways, building connections, and supports of these structures may extend into required yards upon findings by the approving body that the connecting feature is necessary to provide safe pedestrian access or to improve transit access.
7. Security gates and guard stations may be located within required yards.
8. Piers and docks may be located in any yard spaces covered by water.
9. At grade patios, decks or uncovered terraces may extend up to 4 feet into any required side yard, or up to 8 feet into any required front yard, or within 4 feet of a rear property line. Uncovered steps and handicapped access ramps shall be exempt from this calculation.
10. No more than 50% of the rear yard area may be devoted to the construction of improvements such as: above grade porches, decks, tennis courts, pools, greenhouses, covered patios, or other similar features. Building separations as specified in this ordinance shall be maintained. Uncovered steps and handicapped access ramps shall be exempt from this calculation.
11. Mechanical equipment for residences may extend into required side yards but shall remain at least 6 feet within the property line.
12. Bay windows, entrances, balconies, and similar features which are less than 10 feet wide may extend up to 1.5 feet into required yard spaces but must remain at least 6 feet within the property line.
13. Yard requirements may be reduced by the Governing Body at time of site plan approval in order to provide for better access to transit facilities.

8.1.6 Retaining Walls

Retaining walls may be located within yard spaces.

8.1.7 Reserved

8.1.8 Fences and Walls

Retaining walls may be located within yard spaces.

1. Fences and walls in residential, office, and neighborhood commercial (NC) zones: Fences and walls not exceeding 8 feet in height, shall be permitted within side and rear yards or along side yard and rear yard property lines. Opaque fences on rear yards with street frontages exceeding 4 feet in height, [for example, a stockade fence between a rear yard and a street.] shall have a vegetative cover along the street side of the fence. The vegetation at maturity, shall cover 75% of the fence. Fences and walls within any portion of the front yard extending across the full width of the lot and lying between the street frontage of the lot and the building front, shall not exceed 4 feet in height, unless a use permit is obtained from the Board of Adjustment. For corner lots, fences and walls located directly between the primary structure and the side street shall not exceed 4 feet in height along a side yard which is adjacent to a street unless a use permit is obtained from the Board of Adjustment. An exception shall be granted for lots of 2 acres or more where fences may exceed the 4 foot height limit up to 8 feet without Board of Adjustment approval if the fence is located at least 50 feet from the right of way and is made of a material which allows public view through the fence; for example, a rail fence or a chain link fence. In cases where the Board of Adjustment is asked to rule on a request for a higher fence, the Board shall consider among other things, the size and location of the lot, the dimensions of setbacks on adjacent lots, whether the fence or wall will be detrimental to nearby properties or will affect the health and welfare of the citizens. Fences or walls existing as of August 10, 1998, shall be considered nonconforming and must meet existing regulations if damaged more than 50% of replacement value and rebuilt. In addition, fences and walls required to be higher by other provisions of this ordinance shall be allowed. Higher fences or walls shown and approved on a development plan or site plan are also allowed. Adjustments to the height limits may be permitted by staff due to field conditions or in order to accommodate decorative features on the fence or wall.
2. Fences and walls in the remaining zones: Fences and walls shall not exceed 4 feet in height in street yards except when required to screen junkyards or vehicle repair shops within land with a light industrial (I-2) or heavy industrial (I-3) designation. If fences or walls are made of see-through construction, they may exceed the 4 foot height limit and may be allowed up to 8 feet in height. Fences and walls shall not exceed 8 feet in

height elsewhere on the property unless a higher fence is specifically required or allowed by the provisions of this ordinance, or has been shown and approved on a development plan or a site plan. Adjustments to the height limits may be permitted by staff due to field conditions, or in order to accommodate decorative features on the fence or wall.

3. The Board of Adjustment may allow fences or walls to exceed the height limits if the following findings are made.
 - a. That the fence or wall does not impede the natural light from reaching the subject or surrounding properties to their detriment.
 - b. That normal circulation of air is not unreasonably impeded by the fence or wall for the subject or surrounding properties.
 - c. That the fence or wall will not hinder access to the subject or surrounding properties for emergency services.
 - d. That the fence or wall shall be reasonably compatible with the surrounding properties in that it will not adversely affect property values.
 - e. That vision clearances for pedestrian and vehicular traffic will not be impeded.

8.1.9 Swimming Pools

Additional requirements for swimming pools are found in Section 7.

8.1.10 Clustering Standards

A single family development made up of reduced individual lot areas may be permitted within those residential districts whose primary purpose is to provide for single family detached dwellings. These developments, called cluster developments, are permitted subject to the following:

1. The tract of land devoted to a cluster development shall be 4 contiguous acres or larger.
2. The cluster development may not exceed the maximum single family detached density allowed in the zoning district.
3. The development shall contain permanent open space which shall be equivalent to the reduction of the standard lot areas. No more than 50% of the open space shall be covered by water or floodway. This percentage may be increased by the Governing Body in order to promote wetland protection or to enhance unique water features. Streets shall not be computed as open spaces. The open space shall be identified by metes and bounds on a recorded plat. A mechanism for permanent maintenance of the open space shall also be recorded. Open space on the perimeter of the clustered development which is not devoted to water shall meet the requirements for 50 foot buffers found elsewhere in this ordinance.
4. Lot area: Lots in the cluster development which are adjacent to unclustered single family lots may not be reduced in area unless the approving authority determines a reduction will not adversely affect adjacent property. In no case shall these lots be reduced more than 20% in area. Clustered lots interior to the project may not be reduced more than 50% in area below the standard lot requirements for the zoning district.
5. Setbacks: Lots in the cluster development which are adjacent to single family lots not part of a cluster development, may not reduce the required setbacks unless the approving authority determines that a reduction will not adversely affect adjacent unclustered lots. Setback requirements of clustered perimeter lots or lots interior to the project may not be reduced more than 50%. At least 15 feet must be maintained between principal buildings and a public street and between principal buildings.
6. Parking requirements shall be as specified in Section 9 of this ordinance.

8.1.11 Zero Lot Line Development

Zero lot line dwellings are allowed where the subdivision has been designated as a zero lot line subdivision on the plat at the time of approval. A zero lot line development or subdivision shall require that adjacent interior lots on the block face be developed as zero lot line dwellings. In a zero lot line development or subdivision, the side yard requirement may be eliminated on one side of each lot. The remaining side yard shall maintain the minimum side yard dimension of the zoning district. Each lot shall meet the minimum area requirements of the zoning district. Easement agreements shall be recorded which allow maintenance and access for that side of the dwelling adjacent to the property line. When the minimum side yard is used, a privacy fence at least 6 feet high is required between buildings.

Zero Lot Line Houses

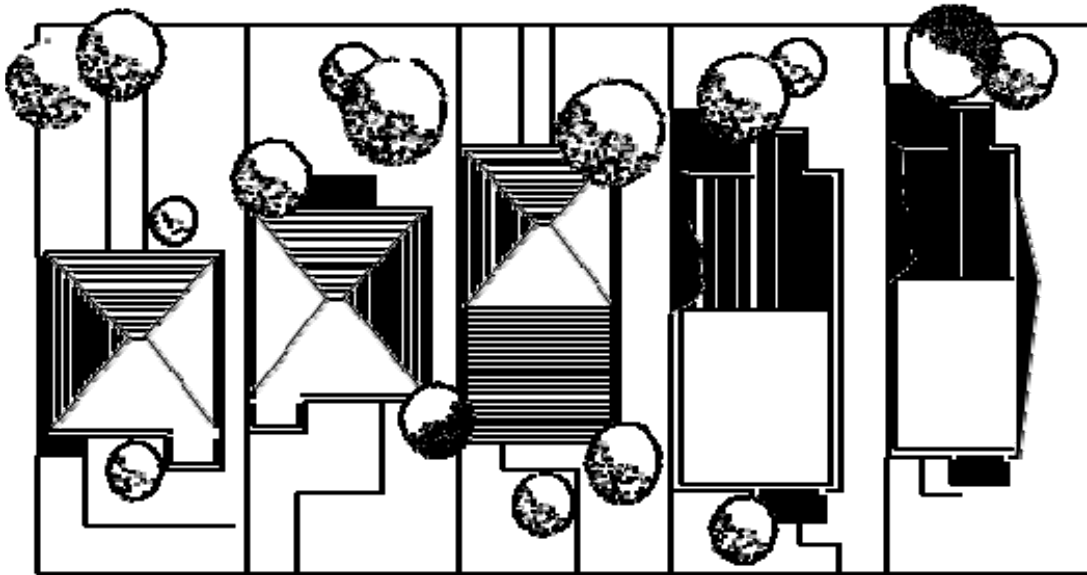


Diagram 5

8.1.12 Vehicle Sales and Manufactured Home Storage

City Jurisdiction

The following accessory uses shall be prohibited within a residential zone or on property devoted to a residential use:

1. Vehicle repair as a business. Up to two vehicles may be repaired simultaneously on a residential property if the vehicles are registered to an occupant of the residence.
2. Storage of one or more junk vehicles. For the purpose of this section, the term junk vehicle is defined as a vehicle which does not lawfully display a current license plate and which is partially dismantled or wrecked, or

cannot operate under its own power. Vehicles owned by an occupant of the dwelling and stored within an enclosed building and which are not visible outside the building are exempt from this provision.

3. Vehicle sales. The sale of a private vehicle registered to the occupant(s) of the residence shall be exempt from this provision. No more than one such vehicle shall be displayed at a time.
4. Storage of a manufactured home unless the manufactured home is lawfully permitted under provisions found elsewhere in this ordinance.
5. Use of a travel trailer or recreational vehicle [RV] as a temporary residence or accessory dwelling. Excluded from this provision is the use of a travel trailer or RV during temporary visits of 2 weeks or less.

County Jurisdiction

1. Unlicensed and inoperable vehicles in residential areas shall be screened so that they may not be viewed off site.
2. The following accessory uses shall be **prohibited** within a residential zone or on property devoted to a residential use:
 - a. Vehicle sales. The sale of a private vehicle registered to the occupant(s) of the residence shall be exempt from this provision. No more than one such vehicle shall be displayed at a time.
 - b. Storage of a manufactured home unless the manufactured home is lawfully permitted under provisions found elsewhere in this ordinance.
 - c. Use of a travel trailer or recreational vehicle [RV] as a temporary residence or accessory dwelling.
Excluded from this provision is the use of a travel trailer or RV during temporary visits of 2 weeks or less.

8.1.13 Ingress and Egress Requirements

1. *Dedicated and Publicly Maintained Streets*: Shall be required for development in all zones except as described in 2. below. An unlimited number of building permits may be issued for land parcels adjoining a public street that is not maintained by either the City or the North Carolina Department of Transportation [NCDOT]. However, no occupancy permits shall be issued unless the street has been accepted for maintenance by the City or NCDOT [whichever appropriate], or the construction has been certified to be acceptable for maintenance by the City or NCDOT [whichever appropriate], or a surety instrument has been posted in an amount adequate to complete construction to the satisfaction of the City Engineer. Streets outside the corporate limits must request NCDOT maintenance as soon as the NCDOT occupancy requirement is met and not more than twice the minimum number of units required for maintenance by NCDOT may be occupied prior to acceptance for maintenance by NCDOT.
2. *Other Forms of Access*: No building shall be erected or enlarged on a parcel in any district unless such parcel abuts upon or has access to a publicly accepted and maintained street except in the following circumstances:
Permanently Private Streets and Roads: Shall be permitted in the following circumstances. These streets shall be designed, constructed, and maintained according to Engineering Department standards.
 - a. *Permanently Private Streets and Roads*: Shall be permitted in the following circumstances. These streets shall be designed, constructed, and maintained according to Engineering Department standards.
 1. Residential:
 - a. for up to 6 single family detached, duplex and triplex lots;
 - b. for multifamily developments;
 - c. for those portions of PDR development which do not contain single family dwellings. Any single family dwellings in a PDR shall be required to be accessed by publicly maintained roads unless it can be demonstrated to the approving body that unique circumstances exist which will warrant private roads.
 2. *Nonresidential*: for any nonresidential development in a nonresidential zone.
 - b. *Ingress/Egress Easements*: Shall be permitted in the following circumstances:
 1. *Inside the Urban Growth Area [UGA]*: Lots with ingress/egress easements of record as of the effective date of this amendment [9/16/96] may continue.
 2. *Outside the UGA*: Easements are allowed for 1 single family parcel. The parcel shall not be subdivided after the effective date of this amendment [9/16/96].
 - c. *Dedicated Public Street - No Public Maintenance*: Shall be permitted outside the UGA if the street accesses 6 parcels or less. No design or construction standards shall be applicable to this situation however, the

right of way dedication shall comply with minimum design requirements for public and private residential streets within Durham City and County.

8.1.14 Drive-up Windows

All business providing drive-up service shall identify the drive-up area on the site plan. The approving authority shall determine that pedestrian safety, the welfare of the adjacent neighborhood, and maintenance of traffic circulation have been adequately addressed before approving the drive-up window. Each drive-up lane shall be a separate lane from the circulation lanes needed for access and parking. Any speaker systems associated with the drive up window shall be designed and located so as to not adversely affect adjacent uses. Planting requirements for the drive up window and access lanes, when applicable, shall be the same as those required for Parking Area Landscaping in Section 10 of this ordinance.

8.1.15 Glare and Exterior Light Standards

1. Adequate lighting shall be provided in nonresidential and multifamily developments conforming with accepted engineering standards. Parking areas, sidewalks, and building entrances shall be lighted in order to contribute to the security of property and to facilitate the safe passage of persons using the roads, sidewalks, and parking lots after dark. However, measures shall be provided to prevent light spillover onto adjacent properties and glare toward motor vehicle operators. The purpose of these standards is to assure that exterior lights shall be shielded so that they do not cast direct light beyond the property line. In accordance with these standards:
 - a. The maximum illumination at the edge of the property line adjacent to residential zoning - 1/2 foot candles.
 - b. The maximum illumination at the edge of the property line adjacent to nonresidential zoning - 5 foot candles.
 - c. The maximum illumination at the edge of the property line adjacent to a street - 5 foot candles.
 - d. The maximum height for directional lighting fixtures, which are defined as fixtures designed to insure that no light is emitted above a horizontal line parallel to the ground, shall be - 25 feet.
 - e. The maximum height for nondirectional lighting fixtures, which are defined as fixtures designed to allow light to be emitted above a horizontal line parallel to the ground, shall be 12 feet. Nondirectional lighting fixtures must be translucent or have baffles to prevent views of the light source. Nondirectional lighting fixtures are not recommended for lighting sidewalks, streets, or parking areas. The upward direction of light provided by nondirectional lighting may be found to be unacceptable by the approving body because the off site effects may be incompatible with the surrounding neighborhood.
 - f. The approving authority may adjust the standards for the maximum illumination at the edge of a property adjacent to another nonresidential use if the approving authority determines that the design and nature of the adjacent use creates a need to either reduce or increase the maximum illumination.
 - g. *County Jurisdiction:* Blinking or flashing lights shall be prohibited.
2. Existing fixtures: Lighting fixtures existing at the time of approval of the SubSection (5/15/2000 City) (6/12/2000 County) may remain, and shall be considered nonconforming structures. Modifications, replacement or expansions, shall conform with the standards of this ordinance.
3. The following shall be exempt from these provisions:
 - a. Outdoor lights used for a temporary event. A temporary use permit shall have been obtained for the event.
 - b. Outdoor lights used exclusively for public recreational activities, concerts, plays or other outdoor events which are open to the public, provided that the event or function meet all other applicable zoning requirements.
 - c. *City Jurisdiction:* Outdoor lighting used in connection with these categories shall only be illuminated while the activity takes place.
County Jurisdiction: Outdoor lighting used in connection with these categories shall only be illuminated while the activity takes place and during high traffic periods before and after the event.

8.1.16 Air Pollution

Any activity which releases smoke, particulate matter, gases or contaminants into the atmosphere shall comply with all appropriate federal and state regulations.

8.1.17 Fire, Explosion and Flammable Materials

All activities shall comply with the Fire Codes of the appropriate jurisdiction.

8.1.18 Hazardous Materials and Wastes

All activities shall comply at a minimum with all state and federal regulations as well as the appropriate County Health Department regulations and City and County fire department regulations for hazardous materials and wastes.

8.1.19 Electromagnetic Transmissions

All activities shall control electromagnetic frequencies so that there is no interference in the operation of equipment off-site and no adverse affects to persons off-site.

8.1.20 Waste Products

Any activity which discharges material or liquids into sanitary sewers or storm sewers shall conform with all federal, state and local discharge and release regulations. City and County sanitation ordinances may also apply. All storage areas, waste disposal areas, and trash handling facilities shall be designed to prohibit wind blown debris from leaving the site. The drainage (other than through appropriate sewers) of waste or stored materials onto adjacent properties or directly into creeks and watercourses is prohibited.

8.1.21 Radiation

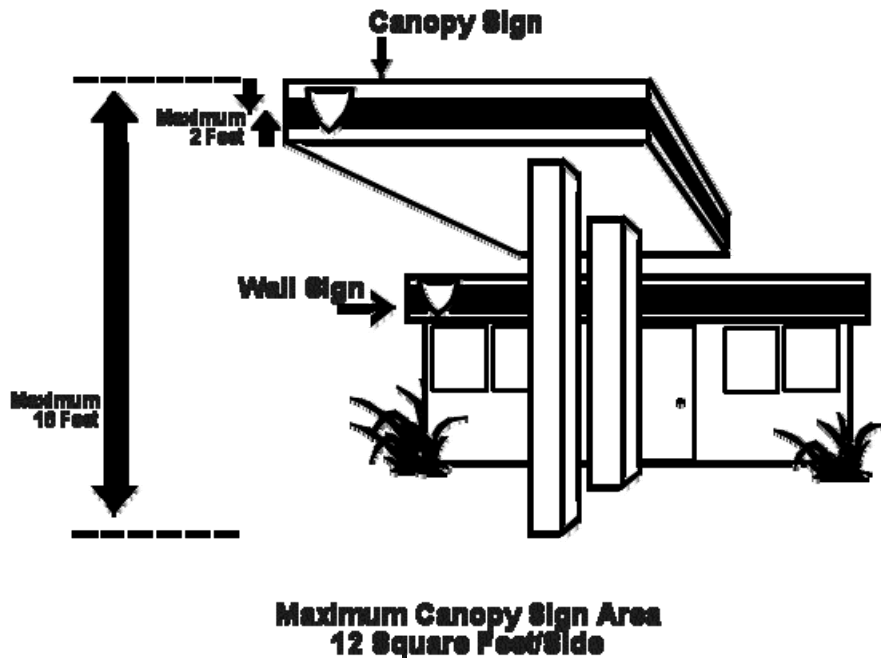
All activities shall comply with all federal and state regulations which apply to the handling, storage, and disposal of nuclear material.

8.1.22 Noise

Noise shall not exceed levels allowed by Chapter 11 (Health and Sanitation) of the Durham City Code. A copy shall be included in the appendix of this ordinance.

8.1.23 Canopies

Signe for Canopies



Standards for Canopies:

1. Fuel Canopies: For fuel canopies, the maximum distance to the highest point on the fascia shall be 19.5 feet as measured from the highest point of the highest grade under the canopy. No variance may be granted for additional height, except when specialized design characteristics associated with architectural features of the neighborhood would warrant some modification to this standard.

2. All Canopies, including fuel canopies:
 - a. Canopies in nonresidential zones may extend into yard spaces but shall be at least 5 feet from the property lines.
 - b. Display or storage shall not be permitted as the primary use under the canopy unless outdoor displays and outdoor storage are allowed in the zoning district. For example, soft drinks may be displayed in association with fuel pumps, but storage of boats under the canopy cannot be the primary use unless outdoor storage is allowed in the district.
 - c. Lighting: Any submittal of a site plan including a canopy shall indicate the location and type of lighting for the canopy area and parking area.
3. Certificate of Compliance:
 - a. maximum illumination under the canopy – 80 foot candles average lighting with all fixtures baffled or shielded to prevent glare. All fixtures on the edge of the canopy shall have cut off shields or diffusers to prevent spillover lighting.
 - b. maximum illumination at the edge of the property line adjacent to residential zoning– ½ foot candle.
 - c. maximum illumination at the edge of the property line adjacent to nonresidential zoning – 5 foot candles.
 - d. maximum illumination at the edge of the property line adjacent to a street – 5 foot candles.
 - e. The approving authority may adjust the standards for the maximum illumination at the edge of a nonresidential use adjacent to another nonresidential use if the approving authority determines that the design and nature of the adjacent use creates a need to either reduce or increase the maximum illumination.
 - f. The measures used to prevent the spillover of light and glare shall be indicated on the site plan.
 - g. *County Jurisdiction:* Blinking or flashing lights are prohibited.

8.1.24 Concealed Communication Towers

Communication towers and associated equipment which are totally concealed within a building or structure so that they are architecturally indiscernible shall not be considered towers for transmitting and receiving electronic signals. They may be permitted in all zoning districts but shall be subject to the approval of the Development Review Board (DRB). For additions to existing structures and for architectural features that are exempt from the height requirements of Section 8.1.2, the DRB shall only consider, whether the addition or feature containing the antenna is architecturally harmonious in such aspects as material, height, bulk, scale and design with the building or complex of which it is a part, and if a stand-alone structure, whether such structure is harmonious with the surrounding area. If the DRB denies approval of a concealed tower, the applicant may appeal the decision to the Board of Adjustment [BOA] as an appeal of an administrative decision as specified in BOA "Power and Duties", Section 3.3. A BOA review shall only consider the architectural aspects of DRB decisions listed above. In addition, such structures and associated communication antennas and equipment shall:

1. meet all other applicable requirements of this ordinance (Durham Zoning Ordinance).
2. not interfere with normal radio and television reception in the vicinity.
3. have lighting which consists of a red light at night and strobes in daylight, when lighting is required by the Federal Aviation Administration (FAA). The light shall be oriented so as not to project directly onto surrounding residential property. The owner shall submit documentation from the FAA that the lighting is the minimum lighting required by the FAA.
4. be constructed and maintained in conformance with all applicable building requirements.
5. not exceeded federally approved power density levels or American National Standards Institute (ANSI) standards for power density, whichever provides the stricter requirements. The owner shall submit documentation that such power density levels will not be exceeded.

8.1.25 Preservation of Railroad Corridors

To minimize the loss of existing or former railroad corridors which may have public value as corridors for other forms of transportation, railroad corridors designated for preservation on a plan adopted by the Governing Body must be identified on zoning development plans [D rezonings], site plans and subdivision plats. The rail bed and original right of way shall be designated for the purpose of dedication or reservation in accordance with requirements for dedication and reservation of recreation and open space in Sections 5M and 7D of the Merged Durham Subdivision Ordinance. No additional at-grade crossings of the corridor by streets or drives shall be allowed. However, the approving authority may allow such crossing(s) where documentation shows that extreme hardship would result to the property owner from lack of access, or from design constraints severely limiting the development capability of the property. Application materials and other documentation before the approving body shall address the nature and urgency of the hardship. Crossing of the railroad right-of-way is permitted for major and minor thoroughfares designated on an adopted thoroughfare plan.

8.1.26 Stormwater Controls Offsite

City Jurisdiction

Properties and waterways downstream from land development sites may be adversely impacted from increases in volume, velocity, and peak flow rates. Any land-disturbing activity which results in an increase of impervious area may be required to provide stormwater management facilities or make other improvements to the existing drainage system to address water quantity concerns, water quality concerns, or both if the proposed development will increase potential flood damages to existing properties or significantly increase pollutant levels in downstream receiving waters.

The owner of the property proposed for development shall submit a stormwater impact analysis that complies with the requirements of the City Engineer and which determines the impact of the increased stormwater runoff on downstream stormwater facilities and properties whenever the peak runoff rate from either the 2-year storm or the 10-year storm increases by more than 10 percent as a result of the proposed development. The need for stormwater management facilities to address offsite impacts shall be determined by the City Engineer. Stormwater management facilities shall be designed and maintained in accordance with Section 5.5.7.2 of the Durham Zoning Ordinance.

County Jurisdiction

Properties and waterways downstream from land development sites may be adversely impacted from increases in volume, velocity, and peak flow rates. Any land-disturbing activity which results in an increase of impervious area may be required to provide stormwater management facilities or make other improvements to the existing drainage system to address water quantity concerns, water quality concerns, or both if the proposed development will increase potential flood damages to existing properties or significantly increase pollutant levels in downstream receiving waters.

Prior to the approval of any subdivision or site plan or the issuance of a building permit for any structure other than a single-family residence, the owner of the property proposed for development shall submit a stormwater impact analysis that complies with the requirements of the City Engineer and which determines the impact of the increased stormwater runoff on downstream stormwater facilities and properties whenever the peak runoff rate from either the 2-year storm or the 10-year storm increases by more than 10 percent as a result of the proposed development. The need for stormwater management facilities to address offsite impacts shall be determined by the City Engineer. Stormwater management facilities shall be designed and maintained in accordance with Section 5.5.7.2 of the Durham Zoning Ordinance.

8.1.27 Flagpoles and Flags

City Jurisdiction

1. The term flag in this subsection shall mean a piece of fabric or other flexible material solely containing distinctive colors, patterns, standards, words, or emblems used as a symbol of an organization or entity, including but not limited to political jurisdictions, such as the United States. References to flagpole height in this subsection refer to vertical flagpoles. References to the number of flags and flag poles and flag dimensions refer to both vertical flagpoles and mast arm flagpoles [for example, staffs extending at an angle from a building].
2. Except as otherwise provided herein, or as allowed by Section 12 of the Zoning Code, flags shall be displayed on flag poles. Such poles in nonresidential zoning districts shall not exceed the allowed height of the zoning district or 70 feet whichever is less. Flagpoles may not be placed on top of buildings unless they are located in the CBD district or downtown design overlay district. Variations from this ordinance regarding the height of poles located on top of buildings may be granted by the Board of Adjustment, through application for a special use permit. Flagpoles in residential districts shall not exceed 25 feet unless a special use permit is granted by the Board of Adjustment. A fee shall not be charged for a use permit request for a residential flag.
3. The maximum dimensions of any flag shall be proportional to the flag pole height. The hoist side of the flag shall not exceed 20% of the vertical height of the pole. In addition, flags are subject to the following dimensional limitations:

Pole Height [ft]	Maximum Flag Size [total square ft]
Up to 25 ft.	24 sq. ft.
25 to 39 ft.	40 sq. ft.
40 to 49 ft.	60 sq. ft.
50 to 59 ft.	96 sq. ft.
60 to 69 ft.	150 sq. ft.
70 ft.	216 sq. ft.

4. Each property shall be allowed a maximum of 3 flag poles unless a special use permit is granted by the Board of Adjustment.
5. A maximum of 2 flags shall be allowed per flag pole.
6. Flags displaying a logo, message, statement, or expression relating to commercial interests, and banners not meeting the definition for a flag contained in paragraph 1 of this subsection must also conform with all sign regulations under Section 12 of the Zoning Code.

7. A vertical flag pole must be set back from all property boundaries a distance which is at least equal to the height of the pole.
8. The flag and flag poles shall be maintained in good repair. Flag poles with broken halyards shall not be used and flags which are torn or frayed shall not be displayed.
9. On United States and North Carolina holidays, there shall be no maximum flag size or number or other limitations on manner of display.
10. This subsection shall not be interpreted to restrict the right to display eligible flags as banners or noncommercial signage under Section 12 of the Zoning Code.

County Jurisdiction

1. The term flag in this subsection shall mean the flag of the United States or a political jurisdiction. All other flags shall conform to the standards found in the Sign section [Section 12] of the zoning ordinance. The flags referenced in this subsection shall be flown in conformance with adopted Congressional protocol. References to flagpole height in this subsection refer to vertical flagpoles. References to the number of flag poles and flags refer to both vertical flagpoles and mast arm flagpoles [for example, staffs extending at an angle from a building].
2. Flagpoles in nonresidential zoning districts shall not exceed the allowed height of the zoning district or 75 feet whichever is less. Flagpoles in residential districts shall not exceed 25 feet unless a special use permit is granted by the Board of Adjustment. No fee shall be required for this particular special use permit request.
3. The maximum dimensions of any flag shall be proportional to the flag pole height, in accordance with congressional protocol. The specific standards for vertical poles are as follows:

Pole Height [ft]	Maximum Flag Size [ft]
20	4x6
25	4x6
30	4x8
35	5x8
40	6x10
50	8x12
60	10x15
70	12x18

For flag sizes or vertical flagpole heights not found on this chart, the following standard shall be used: the hoist side of the flag shall not exceed 20% of the vertical height of the flag pole.

4. Each property shall be allowed a maximum of 3 flag poles unless a special use permit is granted by the Board of Adjustment.
5. A maximum of 2 flags shall be allowed per flag pole.
6. A vertical flag pole must be set back from all property boundaries a distance which is at least equal to the height of the pole.
7. The flag and flag poles shall be maintained in good repair. Flag poles with broken halyards shall not be used and flags which are torn or frayed shall not be displayed.
8. There shall be no maximum flag size on North Carolina and United States holidays.

8.1.28 Affordable Housing density Bonus

In order to encourage the development of affordable housing throughout the community, a zoning density bonus is available for developments that include a residential component. Density bonuses can be applied to a proposed development with a residential component, subject to the following requirements:

1. This program may be applied as part of the site plan or subdivision approval process for projects in any zoning district where residences are permitted, except as noted below.
2. A project must propose a minimum of 20 new units to be eligible, either on a new site or as an addition to an existing development.
3. At least 15% of the units shall have payments affordable to persons and families with annual incomes at or below 60% of the area median family income by family size, according to target income limits set by HUD for Durham. A developer could receive up to a 20% density bonus if providing units for persons with incomes below 50% of the median family income and could receive up to a 15% density bonus for assisting persons between 50% and 60% of the median family income.
4. The required affordability limits shall be adhered to for a minimum of 15 years. The housing developer shall be required to submit an annual report during this time to the Housing and Community Development Director (in the City) or to the County Manager or his designee (in the County) to verify incomes of persons residing in and

rents being charged in, or initial sale price of, the affordable units are within the established limits. Compliance measures include but are not limited to: contracts, restrictive covenants, deed restrictions and stipulated penalties.

5. All affordable units shall be incorporated throughout the project, using similar or compatible physical and design characteristics. These units shall not be physically grouped together nor otherwise separated from other units.
6. In determining the application of the density bonus, the following considerations shall be applied:
 - a. For multifamily developments, the maximum permitted density on the property may be increased by up to 15% or 20% (see Section 3 above). Neither lot sizes nor setbacks of buildings from exterior property lines may be reduced.
 - b. For single-family developments, the percentage increase in density and corresponding decrease in allowable lot size and/or setbacks for internal lots shall be up to 15% or 20% (see Section 3 above). No reductions in setbacks for exterior lots shall be permitted.
7. Units added through application of the affordable housing density bonus shall not be used to require an increase in the amount of open space otherwise required for a project.
8. This provision may not be used by projects meeting any of the following criteria:
 - a. Projects proposed in any area of the City or County designated in the Comprehensive Plan as having a concentration of subsidized housing or poverty greater than that of the City or County as a whole;
 - b. Projects zoned with an adopted development plan that specifies the number of units or maximum units per acre [for example, a PDR, zone] to be allowed on the site;
 - c. Projects located within the Downtown Design Overlay;
 - d. Projects within a designated historic district; or,
 - e. Projects that are 100% affordable.

8.1.29 Land Disturbance

The objective of land disturbance standards is to protect land from unnecessary erosion and watercourses from sedimentation, and to minimize the off site visual impact of extensive land disturbance. Land disturbing activity is defined as any use of land by any person in residential, industrial, educational, institutional or commercial development and in highway and road construction and maintenance that results in a change in the natural cover or topography and that may cause or contribute to sedimentation. This includes borrow and waste disposal activity not regulated by the provisions of the Mining Act of 1971 or the Department of Human Resources, Division of Health Services. Forestry activities shall be conducted in conformance with Section 8.1.3, Forestry.

Land disturbing activity of one (1) acre or more where no other site improvements are proposed shall require perimeter buffers and re-vegetation as indicated below. Buffers required by Section 8.1.29, Land Disturbance shall not be required upon approval of a site plan for structural improvements on the tract, although buffers may be required by other provisions of the Durham Zoning Ordinance. The requirements of Section 8.1.29, Land Disturbance shall not apply to land disturbing activity associated with construction in street and utility rights-of-way or easements.

1. **Perimeter Buffers.** The intent of perimeter buffers is to visually screen views of graded tracts from surrounding properties and from adjacent streets. Perimeter buffers shall be provided on the development tract at all exterior property lines. However, perimeter buffers shall not be required along common internal boundaries of multiple parcels that make up a development project. Perimeter buffers shall be provided that achieve the standards of Buffer Intensity Class 4 through landscaping or preserving existing vegetation in accordance with the requirements of Section 10.2.5, Landscaping Requirements for Buffer Areas. Perimeter buffers shall be in place before other site improvements begin. The preservation of existing vegetation to achieve the intent of this section is strongly encouraged. The perimeter buffers required by Section 8.1.29.1, Perimeter Buffers shall no longer be required when a site plan for other structural improvements is approved, although buffers may be required by other provisions of the Durham Zoning Ordinance.

Buffers shall also be provided along all public rights-of-way and shall be achieved by any of the following:

- a. A thirty (30) foot strip of preserved vegetation provided along the public right-of-way frontage; or
 - b. A six (6) foot high berm which achieves the standards of Buffer Intensity Class 3 through landscaping or preserving existing vegetation in accordance with the requirements of Section 10.2.5, Landscaping Requirements for Buffer Areas; or
 - c. Larger groupings of preserved vegetation comparable in total square feet to that which would have been provided by the thirty (30) foot strip of preserved right-of-way vegetation, provided that a minimum of fifty (50) percent of the public right-of-way frontage is screened; or
 - d. Alternate designs proposed by the owner or developer, provided that such designs are determined by the Development Review Board to be comparable in screening effect.
2. **Re-vegetation Plan**
 - a. From the date that a site plan is approved for land disturbing activity of one (1) acre or more where no other tract improvements are proposed, the owner shall within two (2) years either to secure site plan approval for

development of the tract or to re-vegetate the site. Failure to secure site plan approval for structural improvements on the tract or to re-vegetate the tract shall constitute a violation of the Durham Zoning Ordinance.

- b. Re-vegetation of a tract shall create a biological community composed of a mixed and variable assemblage of native vegetation which is appropriate for the existing site conditions, including canopy trees, understory trees, tall and low shrubs and herbaceous plants. The re-vegetation shall result in a tree density of at least two hundred (200) living trees per acre, with at least fifty (50) percent of those trees having the potential of attaining a two and one half (2 1/2) inch or greater diameter measured at a point four and one half (4 1/2) feet above the ground within seven (7) years. At least three (3) different species of trees native to the region shall be represented in the re-vegetation.
- c. A performance bond shall be required in order to ensure that such re-vegetation is accomplished in a timely manner. The performance bond shall be posted prior to site plan approval and shall be in an amount determined by the Director of Planning or his designee.

8.1.20 Standards for the Development of Property Adjacent to Interstate 540

1. **Application:**The standards shall apply to all new development approvals and subdivisions which are adjacent to Interstate 540 and adjacent to I-540 interchanges back to the established point where controlled access begins.
2. **Requirement:**All new development and subdivisions shall provide a buffer strip of natural vegetation at least 50 feet wide measured perpendicular to the right of way. No development shall be allowed within the buffer strip and all existing vegetation shall be maintained in a natural and undisturbed state. Where the existing vegetation is not adequate to meet the "Landscape Screen Standards" of Section 10 of this ordinance, the applicant shall install adequate vegetation to meet these standards
3. **Adjustments to the Buffer Width:**The buffer width and amount of landscape materials may be reduced by the Governing Body, taking into consideration the topography of the area, traffic volumes, surrounding land uses, and the size of the parcel of record. The Governing Body may allow areas covered by water or wetlands, to be credited toward meeting these requirements. Expansive lawns which are permanently restricted from development may also be credited toward meeting these requirements by the Governing Body . The Board of Adjustment shall not grant a variance which modifies the width of the buffer. Streets and easements through the buffer may be allowed by the approving body at the time of site plan or subdivision approval upon the finding that such a crossing is necessary for safe ingress or for utility service to the property. Any crossings should be designed to minimize clear views through the buffer.
4. **Coordination with the MTC Overlay District:-** Properties located within the MTC Overlay District shall be exempt from these standards but shall conform to the standards of the MTC Overlay Zone.
5. **Nonconforming Structures and Uses:**Structures and uses located within the buffer at the time of the adoption of this ordinance [date] may remain. Any changes shall be in conformance with the Nonconformities requirements found elsewhere in the Zoning Ordinance