



TOWN OF MAIDEN UNIFIED DEVELOPMENT ORDINANCE

As amended on January 19, 2015

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ARTICLE 1| General

1.1 SHORT TITLE.

This chapter shall be known as “The Unified Development Ordinance of the Town of Maiden, North Carolina,” and the map referred to which is identified by the title “Official Zoning Map, Maiden, North Carolina,” shall be known as the Zoning Map.
(Ord. of 4-11-70, Art. II; Code 1976, § 12.21)

1.2 PURPOSE.

This chapter is enacted pursuant to authority granted by the General Assembly of North Carolina in General Statutes, Chapter 160A, Article 19 and such other statutes as are specifically referenced herein, for the purpose of promoting the public health, safety, morals and general welfare; promoting the orderly development of the community; lessening congestion in the streets; securing safety from fire, panic, and other dangers; providing adequate light and air; preventing the overcrowding of land; avoiding undue concentration of population; and facilitating the adequate provision of transportation, water, sewerage, schools, parks and other public requirements all in accordance with a well considered comprehensive plan.
(Ord. of 4-11-70, Art. I; Code 1976, § 12.20)

1.3 TERRITORIAL APPLICATION.

Except as otherwise provided herein, the provisions of this chapter shall apply to all lands within the corporate limits of the Town and all that land located within the extraterritorial jurisdiction of the Town, as now or hereafter described on the Town's official zoning map and as recorded in the records of the Town in the office of the Town clerk.
(Ord. of 4-11-70, Art. III, § 30; Code 1976, § 12.22; Ord. No. 1-79, 2-5-79)

1.4 AUTHORITY

This Unified Development Ordinance is adopted and may be amended from time to time in accordance with the powers granted and limitations imposed by the following:

1.4.1 the Charter of the Town of Maiden;

1.4.2 the following provisions of North Carolina General Statutes:

- A. Chapter 39, Article 5 and 5A;
- B. G.S. § 47-30 through 47-32;
- C. Chapter 69 (Fire Protection);
- D. Chapter 95 (Department of Labor and Labor Relations);
- E. Chapter 106 (Agricultural);
- F. Chapter 113A, Article 4 (Sedimentation Pollution Control);
- G. Chapter 119 (Gasoline and Oil Inspection Regulations);
- H. Chapter 130A (Public Health);
- I. Chapter 133 (Public Works);

- J. Chapter 136 (Transportation), Article 3A;
- K. Chapter 143 (State Departments, Institutions and Commissions), Article 21, Part 1 and Part 6;
- L. Chapter 157 (Housing Authorities);
- M. Chapter 160A (Cities and Towns), Article 15;
- N. Chapter 160A (Cities and Towns), Article 19, Parts 1, 2, 3, 3C, 6 and 8; and
- O. Chapter 168 (Handicapped Persons).

This list of legal authorities is for reference purposes only and is not intended to be exhaustive. Nor shall it be construed to bind or otherwise limit the authority of the Town.

1.5 BONA FIDE FARMS EXEMPT FROM EXTRATERRITORIAL AUTHORITY.

In accordance with G.S. § 160A-360(k), property that is located in the geographic area of the Town's extraterritorial jurisdiction and that is used for bona fide farm purposes is exempt from the exercise of the Town's extraterritorial authority.
(Ord. of 4-11-70, Art. III, § 31; Code 1976, § 12.23)

1.6 EFFECTIVE DATE

The effective date of this ordinance is October 17, 2011.

1.7 SEVERABILITY

- A. If any Court of competent jurisdiction rules any provision of this Unified Development Ordinance invalid, that ruling shall not affect any Unified Development Ordinance provision that is not specifically included in the judgment.
- B. If any Court of competent jurisdiction rules invalid the application of any provision of this Unified Development Ordinance to a particular property, building, or other structure, or use, that ruling shall not affect the application of the Unified Development Ordinance provisions to any property, building, other structure, or use not specifically included in the judgment.

ARTICLE 2| Development Review Procedures and Applications

2.1 GENERAL APPLICATION REQUIREMENTS

2.1.1 Authority to File Applications

- A. Unless otherwise expressly stated elsewhere in this article, any zoning map amendment may be filed by the Planning Board, Town Council or the owner of the property that is the subject of the application, and any zoning text amendment may be filed by the Planning Board, Town Council or any resident or property owner in the Town. For the purposes of this ordinance, the “property owner” includes the owner, the owner’s authorized agent any other persons having legal authority to take action based on the approval sought. When the Planning Board or Town Council initiates an application it does so without prejudice toward the outcome.
- B. In the cases of planned developments; zoning, special use and conditional use permits; and subdivision plats, only property owners, their authorized agents and other persons having legal authority to take action in accordance with a permit or other approval may submit an application.
- C. By way of illustration, in general “persons having legal authority to take action” means that applications should be made by the owners or lessees of property, or their agents, or persons who have contracted to purchase property contingent upon their ability to acquire the necessary permits and other approvals under this chapter, or the agents of such persons (who may make application in the name of such owners, lessees, or contract vendees). Except when the applicant is a decision-making body acting pursuant to subsection 2.1.1.A, when the applicant does not own the property at issue, the Planning Director shall require the applicant to submit written evidence of his or her authority to submit the application.

2.1.2 Pre-application Conference

Each applicant for development approval is encouraged to arrange a pre-application conference with the Planning Director. The Planning Director shall provide assistance to applicants and ensure that the appropriate city staff members are involved in any such meeting.

2.1.3 Form of Application

Applications required under this Unified Development Ordinance must be submitted in a form and in such numbers as noted on the application as required by the official responsible for accepting the application. Application forms and checklists of required submittal information are available from the Town.

2.1.4 Application Filing Fees

- A. Applications must be accompanied by the required fee amount as established by the Maiden Annual Fee Schedule adopted by the Town Council. Fees are not required with applications initiated by the Planning Board or the Town Council. Unless otherwise expressly stated in this Unified Development Ordinance, application fees are nonrefundable.

B. Additional Application Fees

1. Any additional costs made necessary by unusual circumstances and more than ordinary review and other services being provided by the Town personnel. This may, at the option of the Town, include the cost of an inspection engineer.

2.1.5 Application Completeness

An application will be considered complete if it is submitted in the required number and form, includes all requested information and is accompanied by the applicable fee. A determination of application completeness shall be made within 30 days of application filing. If an application is determined to be incomplete, the official responsible for accepting the application shall provide written notice to the applicant along with an explanation of the application's deficiencies. No further processing of the application shall occur until the deficiencies are corrected. If the deficiencies are not corrected by the applicant within 60 days, the application shall be considered withdrawn.

2.1.6 Action By Decision-Making Bodies

- A. Unless otherwise expressly stated in this Unified Development Ordinance, decision-making bodies may, in the case of a quasi-judicial decision, approve an application, approve the application with modifications or conditions or deny the application.
- B. With regard to zoning text and map amendments, if the Town Council wishes to adopt a final ordinance with alterations substantially different (i.e. amounting to a new proposal) from the proposal originally advertised and considered during the public hearing, the matter must be remanded to the Planning Board for an additional recommendation, and new notice and public hearing must be provided. However, no remand to the Planning Board or further notice and hearing is required after a properly advertised and properly conducted public hearing when the alteration of the initial proposal is insubstantial or the proposed changes are favorable to the complaining parties. Examples of insubstantial changes include, but are not limited to, minor alignments in map boundary lines and minor changes in landscaping or screening requirements. Examples of favorable changes include, but are not limited to, the removal of land, dwelling units or commercial square footage from a proposal.

2.1.7 Burden of Proof or Persuasion

In all cases, the applicant shall have the burden of establishing that an application complies with applicable review or approval criteria of this Unified Development Ordinance.

2.1.8 Public Notice

A. Notice of Planning Board Meeting

When the Planning Board meets to consider a zoning map or text amendment or the drafting and/or amending the comprehensive plan, notice of those agenda items shall be advertised in a local newspaper and shall describe the request and appear at least 10 days prior to the meeting. Except as required by G.S. § Chpt. 143, Art.

33C, no additional notice of Planning Board meetings or agenda items shall be required.

B. Notice of Quasi-judicial Hearing

For quasi-judicial decisions, notice of such public hearing shall be posted on the property for which the permit or approval is sought and mailed to property owners within one hundred (100) feet of the property for which the permit or approval is sought at least ten (10) days prior to the public hearing. Notice shall also be advertised in a local newspaper which shall describe the request and appear at least once weekly for two (2) consecutive weeks prior to the public hearing.

C. Public Legislative Hearing

The Town Council shall hold a public hearing for all proposed zoning map amendments and text amendments to this ordinance. Notice of the public hearing shall be given once a week for two successive calendar weeks in a newspaper having general circulation in the area. The notice shall be published the first time not less than 10 days nor more than 25 days before the date fixed for the hearing. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

Additionally, notice for public hearings on proposed zoning map amendments shall also be advertised as follows:

- (a) Written notice of the public hearing shall be prominently posted on the site proposed for rezoning or in an adjacent right-of-way. When multiple parcels are included in a zoning map amendment, a sufficient number of written notices shall be posted to provide reasonable notice to interested persons;
- (b) Owners of all parcels within the proposed rezoning and within one hundred (100) feet of the subject property, excluding rights-of-way, shall be mailed a notice of the public hearing on the proposed amendment by first class mail to the last address listed for such owners on the county tax abstracts. The notice must be deposited in the mail at least ten (10) but not more than twenty-five (25) days prior to the date of the hearing. In the event that a proposed zoning map amendment directly affects more than fifty (50) properties owned by a total of at least fifty (50) property owners, the Town may elect to publish notice of the hearing as required by G.S. § 160A-364 instead, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed shall on the most recent property tax listing for the affected property, shall be notified according to the mailed-notice requirements of this subsection and the provisions of G.S. § 160A-384(a).

D. Notice of Decision

Within 10 days after a written decision is rendered or an action is otherwise taken on an application, copies of the decision shall be mailed to the applicant and filed

in the office of the Planning Director, where it shall be available for public inspection during regular office hours.

2.1.9 Withdrawal of Application

An applicant may withdraw the application at any time by written notice to the Planning Director. Any withdrawal of an application after the giving of the first public hearing notice shall be considered a denial of the application.

2.1.10 Successive Applications

When the Town Council denies an application for a zoning map amendment or the applicant withdraws an application for a zoning map amendment after the first public hearing notice has been published in the newspaper, the Town Council shall not consider another application for the same or similar amendment affecting the same property or a portion of it until the expiration of a one-year period, extending from the date of denial by the Town Council or withdrawal by the applicant.

2.1.11 Appeals

A. Applicants or any other person aggrieved may appeal any decision by the Planning Director, Planning Board, Board of Adjustment or Town Council.

B. Appeals of Decisions Made by the Planning Director or Administrator

1. The Board of Adjustment shall hear and decide appeals from and review any order, requirement, decision, or determination made by an administrative official charged with the enforcement of this Unified Development Ordinance, consistent with Section 3.2.2 C.

2. An appeal may be taken by any person aggrieved or by an officer, department, board, or bureau of the city. Appeals shall be taken within times prescribed by the Board of Adjustment by general rule, by filing a notice of appeal with the Town Code Enforcement Officer, which shall also constitute the filing of a notice of appeal with the Board of Adjustment. The notice of appeal shall specify the grounds for the appeal. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the Board of Adjustment, after notice of appeal has been filed with him, that because of facts stated in the certificate a stay would, in his opinion, cause imminent peril to life or property or that because the violation charged is transitory in nature a stay would seriously interfere with enforcement of the ordinance. In that case proceedings shall not be stayed except by a restraining order, which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The Board of Adjustment shall fix a reasonable time for the hearing of the appeal, give due notice thereof to the parties, and decide it within a reasonable time. The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the order, requirement, decision, or determination appealed from, and shall make any order, requirement, decision, or determination that in its opinion ought to be made in

the premises. To this end the board shall have all the powers of the officer from whom the appeal is taken.

C. Appeals of Decisions Made by the Board of Adjustment

Every decision of the board shall be subject to review by the superior court of the county where the property at issue is located by proceedings in the nature of certiorari. Any petition for review by the superior court shall be filed with the clerk of superior court within 30 days after the decision of the board is filed in the office of the Planning Director, or after a written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the secretary or chairman of the board at the time of its hearing of the case, whichever is later. The decision of the board may be delivered to the aggrieved party either by personal service or by registered mail or certified mail return receipt requested.

D. Appeals of Decisions Made by the Town Council

Every quasi-judicial decision of the Council shall be subject to review by the superior court by proceedings in the nature of certiorari in accordance with the requirements of the general statutes. Legislative decisions of the Council may be challenged by filing suit in Superior Court pursuant to G.S. § Chpt. 1, Art. 26, the North Carolina Declaratory Judgment Act.

2.2 ZONING MAP AND TEXT AMENDMENTS

2.2.1 Applicability

This section sets out the procedure for the processing of amendments to the Zoning Map and Zoning Text amendments. The zoning amendment procedures of this section shall not be used to vary or waive the standards of this Land Development Code.

2.2.2 Initiation and Application Filing

Zoning text amendment applications shall be submitted to the Planning Director and may be initiated by the Planning Board, City Council or the owner of the property that is the subject of the application. Zoning map amendments may be submitted shall be submitted to the Planning Director and may be initiated by the Planning Board, City Council or any resident or property owner of the Town.

A. Property owners proposing zoning map amendments shall submit applications to the Planning Director on forms available in the Planning Department.

B. Residents or property owners proposing a zoning text amendment shall work with staff to develop the proposed amendment to ensure conformity with laws and current code.

2.2.3 Staff Review/Report

A. The Planning Director shall review each proposed zoning ordinance or zoning map amendment for consistency with the Maiden Unified Development Ordinance and other state and local laws. The Planning Director may distribute the application to other agencies and reviewers. The Planning Director shall provide comments on the proposed amendment to the Planning Board and Town Council.

- B. The Planning Director shall provide copies of all applications for zoning ordinance and zoning map amendments to the Director of Catawba and Lincoln County Planning and Community Development Departments, the Catawba and Lincoln County School Superintendents and the Maiden School Superintendent when such project is proposed to occur within their respective jurisdiction for their review and comment.

2.2.4 Planning Board- Review and Recommendation

- A. The Planning Board shall review each proposed zoning map or text amendment and shall advise and comment on whether the proposed amendment is consistent Maiden Unified Development Ordinance and any other officially adopted plan that is applicable.
- B. The Planning Board shall provide a written recommendation to the Town Council that addresses consistency and other matters as deemed appropriate by the Planning Board; however, a comment by the Planning Board that a proposed amendment is inconsistent shall not preclude consideration or approval of the proposed amendment by the Town Council. The recommendation to Town Council shall include a statement recommending approval, approval with modifications, or denial.
- C. The Planning Board has 30 days to make its recommendation on a zoning amendment. If the zoning amendment request is a controversial item that may require multiple Planning Board meetings, the Planning Board may request more time from the applicant or Town Council. Failure of the Planning Board to make recommendation for a period of thirty (30) days after the amendment has been referred to it shall permit the Town Council to proceed with its consideration of the amendment without the Planning Board report.

2.2.5 Town Council Hearing and Decision

- A. After receiving the Planning Board's recommendation or after having allowed the time required for the Planning Board's consideration, the Town Council shall hold at least one public hearing on the proposed zoning amendment. Following the public hearing (at the same or subsequent meeting), the Town Council shall take action to approve, approve with conditions, or deny the proposed zoning text or zoning map amendment. If a protest, in accordance with 2.2.7 was made a vote of at least 3/4 of the total membership, shall be needed to take action.
- B. Prior to approving or denying any proposed zoning amendment, the Town Council shall adopt a statement describing whether its action is consistent with any adopted relevant plans and explain why the Council considers the action taken to be reasonable and in the public interest.
- C. A notice of the Town Council's decision shall be made consistent with section 2.1.8 of this Article.

2.2.6 Review Criteria

In reviewing and making recommendations on proposed zoning amendments, review bodies shall consider the following factors:

- A. The proposed amendment is consistent with the intent and goals of the Maiden Comprehensive plan and meets the requirements and intent of the Maiden Unified Development Ordinance and the Maiden Code of Ordinances.
- B. The proposed amendment is consistent with applicable federal and state laws and regulations.
- C. The Town and other responsible agencies will be able to supply the development resulting from the amended ordinance with adequate roads and streets for access and circulation, water supply, storm drainage, sanitary sewage disposal, emergency services, and environmental protection.
- D. The amendment is beneficial to the public health, safety, and welfare, and is in the public interest.

2.2.7 Protest against amendment.

- A. **Applicability.** In the case of a qualified protest against a proposed map amendment, as defined in subsection (B), such amendment shall not become effective except by favorable vote of three-fourths (3/4) of the Town Council. For purposes of this subsection, vacant positions on the Town Council and members who are excused from voting shall not be considered for calculation of the required three-fourths (3/4) majority. Protest petitions shall not be applicable to any amendment which initially zones property added as a result of annexation or increased extraterritorial jurisdiction.
- B. **Qualifying area.** To qualify as a protest under this section, the petition must be signed by the owners of at least twenty (20) percent of the area included in the proposed change or five (5) percent of a one-hundred-foot-wide buffer extending along the entire boundary of each discrete area proposed to be rezoned. A street right-of-way shall not be considered in computing the buffer unless that right-of-way is more than one hundred (100) feet wide. When less than an entire parcel land is proposed for rezoning, the buffer shall be measured from the property line of that parcel.
- C. **Petition verification.** No protest against any amendment shall be valid unless it is in the form of a written petition bearing the actual signatures of the required number of property owners and stating that the signers do protest the proposed amendment.. The protest petition must be received Town Clerk at least two (2) normal working days before the date established for a public hearing on the proposed amendment. A person who has signed a protest petition may withdraw his or her name from the petition at any time prior to the vote on the proposed amendment.

(Ord. of 4-11-70, Art. XII, § 121; Code 1976, § 12.64; Ord. No. 19-2006, § (1) 8-21-06)

2.3 **SPECIAL AND CONDITIONAL USE PERMITS**

2.3.1 Applicability

Special Uses and Conditional Uses are those uses that require, because of their inherent nature, intensity, and external effects, special care in the control of their location, site design and methods

of operation. The procedures of this section shall not be used to permit a use in a zoning district that is not otherwise allowed in that district, nor shall the procedures of this section be used to vary or waive other standards associated with conditional uses under the various use districts identified in this Unified Development Ordinance.

2.3.2 Initiation of Application Filing

Special Use and Conditional Use applications shall be submitted to the Planning Director on forms available in the Planning Department. Only property owners or authorized agents may submit an application for a Special or Conditional Use permit.

2.3.3 Staff Review/Report

The Planning Director shall review each proposed Special Use or Conditional Use permit application for consistency with the Maiden Unified Development Ordinance and other state and local laws. The Planning Director may distribute the application to other agencies and reviewers to obtain comments on the application. The Planning Director shall provide a report on the proposed special use or conditional use to the Planning Board within a minimum of 15 days and a maximum of 45 days of the acceptance of a complete application.

2.3.4 Planning Board-Review and Recommendation

- A. The Planning Board shall review each proposed special use or conditional use application.
- B. The Planning Board shall provide a written recommendation to the Town Council that addresses consistency and other matters as deemed appropriate by the Planning Board; however, a recommendation by the Planning Board that a proposed special use or conditional use permit should be denied does not preclude consideration or approval of the permit amendment by the Town Council. The recommendation to Town Council shall include a statement recommending approval, approval with modifications and/or conditions, or denial.
- C. The Planning Board has 30 days to make its recommendation on a special use or conditional use permit application. If the request is a controversial item that may require multiple Planning Board meetings, the Planning Board may request more time from the applicant or Town Council. Failure of the Planning Board to make recommendation for a period of thirty (30) days after the application has been referred to it shall permit the Town Council to proceed with its consideration of the amendment without the Planning Board report.

2.3.5 Town Council Hearing and Decision

- A. After receiving the Planning Board's recommendation or after thirty (30) days from the Planning Board's consideration of the application, the Town Council shall hold a public hearing on the proposed special use or conditional use permit. Following the public hearing (at the same or subsequent meeting), the Town Council shall take action to approve, approve with modifications and/or conditions or deny the proposed special use or conditional use permit. Only those conditions mutually approved by the Town and the petitioner may be incorporated into the permit requirements.
- B. The public hearing before the Town Council shall be quasi-judicial hearing consistent with section 3.2.2 B of this Unified Development Ordinance.
- C. A notice of the Town Council's decision shall be made consistent with section 2.1.8 of this Article.

2.3.6 Review Criteria

The following criteria may be considered during the review and discussion of conditions of a special use or a conditional use permit to address the impacts of the proposed development on:

- A. A written application for a special use or conditional use permit is submitted to the Planning Director indicating the section of this article under which the special use permit is sought.

B. The Town Council finds that in the particular case in question the use for which the special use or conditional use permit is sought will not adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use and will not be detrimental to the public welfare or injurious to property or public improvements in the neighborhood. In granting such a permit the Town Council may designate such conditions in connection therewith as will, in its opinion, assure that the proposed use will conform to the requirements and spirit of this ordinance.

C. If at any time after a special use or conditional use permit has been issued, the Town Council finds that the conditions imposed and agreements made have not been or are not being fulfilled by the holder of a special use or conditional use permit, the permit shall be terminated and the operation of such a use discontinued. If a special use or conditional use permit is terminated for any reason, it may be reinstated only after a public hearing is held.

2.4 VARIANCES

2.4.1 Applicability

This section sets out the procedure for gaining approval of variances from the zoning-related standards of this Unified Development Ordinance. Variances are intended to address practical difficulties or unnecessary hardships resulting from strict application of zoning standards such as setbacks, lot area, or similar dimensional standards. The variance procedures of this section shall not be used to permit a use in a zoning district that is not otherwise allowed in that district, nor shall the procedures of this section be used to vary or waive the subdivision standards of this Unified Development Ordinance.

2.4.2 Initiation of Application Filing

Variance applications shall be submitted to the Planning Director on forms available in the Planning Department. Only property owners or authorized agents may submit an application for a Variance permit.

2.4.3 Staff Review/Report

The Planning Director shall review each proposed variance application for consistency with the Maiden Unified Development Ordinance and other state and local laws. The Planning Director may distribute the application to other agencies and reviewers to obtain comments on the application. Planning Director shall provide comments on the requested variance to the Board of Adjustment within a minimum of 15 days and a maximum of 45 days of the acceptance of a complete application.

2.4.4 Board of Adjustment's Review and Decision

- A. The Board of Adjustment shall hold at least one public hearing on the proposed zoning variance. Following the hearing (at the same or subsequent meeting), the Board of Adjustment shall take action to approve, approve with modifications or deny the proposed zoning variance. An affirmative vote of a least 4/5 of the total membership of the Board of Adjustment shall be required to approve any zoning variance.
- B. The public hearing at the Board of Adjustment shall be quasi-judicial hearing consistent with section 3.2.2 B of this Unified Development Ordinance.
- C. A notice of the Board of Adjustment's decision shall be made consistent with section 2.1.8 of this Article.

2.4.5 Approval Criteria

Zoning variances may be approved only when the Board of Adjustment finds substantial evidence in the official record of the application to support the criteria identified in A - G below. Each item shall be voted on individually before a final decision is rendered. For information on variances regarding subdivisions see Sec. 13.1.8; for procedures relating to variances in Flood Hazard Zones see Article. 17.1.20.

- A. There are extraordinary and exceptional conditions pertaining to the particular piece of property in question because of its size, shape or topography that are not applicable to other lands or structures in the same district;
- B. Granting the variance requested will not confer upon the applicant any special privileges that are denied to other residents in the district in which the property is located;
- C. A literal interpretation of the provisions of this article would deprive the applicant of rights commonly enjoyed by other residents of the district in which the property is located;
- D. The requested variance will be in harmony with the purpose and intent of this article and will not be injurious to the neighborhood or to the general welfare;
- E. The special circumstances are not the result of the actions of the applicant;
- F. The variance requested is the minimum variance that will make possible the legal use of the land, building or structure;
- G. The variance is not a request to permit a use of land, building or structure which is not permitted by right or by special or conditional use permit in the district involved.

2.5 ZONING PERMIT AND CERTIFICATE OF OCCUPANCY

2.5.1 Applicability

- A. This section sets out the procedure for gaining issuance of a zoning permit. Zoning permits are required prior to any building, sign, or other structure being erected, moved, added to or structurally altered. Zoning permits are also required before the principal use of any property may be changed. The zoning permit procedures of this section shall not be used to permit structures that fail to conform to the provision of the Maiden Unified Development Ordinance, except in accordance with Article 14, “Nonconformities.” A certificate of occupancy shall not be issued unless the proposed use of a building or land conforms to the applicable provisions of this article.
- B. This section additional sets out the procedure for gaining issuance of a Certificate of Occupancy. A Certificate of Occupancy is required in advance of (i) the occupancy or use of a building hereafter erected, altered or moved and (ii) the change of use of any building or land. A record of all certificates shall be kept on file in the office of the Planning Director.

2.5.2 Initiation of Application Filing

All applications for a zoning permit shall be accompanied by one set plans in hardcopy format and one in electronic format, additional hardcopies of plans may be requested by the Planning Director, showing the dimensions and shape of the parcel to be built upon; the exact sizes, uses and locations on the parcel of buildings already existing, if any, and the location and dimensions of the proposed building or alteration. Also, the plan shall show information including utilities, parking, buffering, signage, topography, flood hazards and percent built upon in a watershed. All plans shall be designed at a scale of one (1) inch to one hundred (100) feet or larger. The application shall include such other information as may be necessary to determine conformance with and provide for the enforcement of this article. Also, the Planning Director may require less than all items set forth in this subsection if such items are not necessary to issue the zoning permit. If the Town Council directs the issuance of Zoning Permit then no permit fee is charged.

2.5.3 Staff Review/Report and Decision

The Planning Department shall review each proposed zoning permit application for consistency with the Maiden's Unified Development Ordinance and other State and local law and approve or deny the zoning permit.

- A. New businesses must obtain a safety inspection and, if necessary, any other required inspections and a certificate of occupancy from the Catawba County Building Services Department.
- B. If the project requires Phase II Stormwater approval, then an applicant shall submit a stormwater application to the Catawba County Erosion Control Division ("CCEC"). Once (i) all work has been completed in conformity with the North Carolina Phase II Stormwater Administrative Manual and required best management practices, (ii) all required inspections have been performed by the County staff, and (iii) all other applicable requirements of this ordinance have been satisfied, the Planning Department shall issue a zoning permit.
- C. A notice of the Planning Department's decision shall be made consistent with section 2.1.8 of this Article.

2.5.4 Appeals

- A. **Appeal of Planning Director's Decision**
Any person aggrieved by a zoning permit application decision of the Planning Director may appeal the decision as per Article 2.1.11 of this Unified Development Ordinance.
- B. **Stormwater Appeal**
Any person who is directly affected by a Stormwater decision may appeal the decision to the North Carolina Department of Water Quality (Raleigh office).
- C. **Appeal of Catawba County Building Services Decision**
Any person who is directly affected by a decision of Catawba County Building Services may appeal that decision consistent with the Catawba County provisions for appeals.

2.6 GENERAL DEVELOPMENT PLAN

2.6.1 Applicability

This section sets out the procedure for the approval of General Development Plans (“GDP”) required before development of land in the 321-ED District. This section also identifies the procedure for the approval of changes and modifications to previously approved GDP.

2.6.2 Pre-Design Meeting

- A. Before submitting a GDP application for development of land in the 321-ED District, the applicant shall confer with the Planning Department to discuss the proposal and applicable regulations. The purpose of the Pre-Design Meeting is for the applicant to become familiar with applicable General Development Plan procedures and standards and to discuss the project needs. The applicant is encouraged to submit a Sketch Plan prior to or as part of the Pre-design Meeting showing the general location and extent of the proposal. No review fee shall be required for Pre-Design Meeting.

2.6.3 Initiation of Application Filing

Application, site plan, detailed proposal, and other documents indicated in section 2.1.3 required to make a determination of conformance shall be submitted to the Planning Department on forms available in or approved by the Planning Department.

2.6.4 Staff Review/Report and Decision

- A. The Planning Department, engineering and other relevant agency staff or officials shall review the proposal for conformity with applicable state and local regulations.
- B. If a GDP application is less than five (5) less, then the GDP may be approved by the Planning Director.
- C. If a GDP application is five (5) acres or more, the Planning Director shall prepare a report summarizing the Planning Department, engineering and other relevant staff comments and the project’s conformity with the adopted zoning and other applicable state and local regulations

2.6.5 Planning Board Review and Recommendation

- A. The Planning Board shall review all GDP consisting of five (5) acres or more and shall advise and comment on whether the proposed GDP is consistent Maiden Unified Development Ordinance and any other officially adopted plans that are applicable.
- B. The Planning Board shall provide a written recommendation to the Town Council that addresses consistency and other matters as deemed appropriate by the Planning Board; however, a comment by the Planning Board that a proposed amendment is inconsistent shall not preclude consideration or approval of the proposed amendment by the Town Council. The recommendation to Town Council shall include a statement recommending approval, approval with modifications, or denial.

- C. If the Town Council has called for a public hearing, the Planning Board has 30 days to make its recommendation on GDP. The Planning Board may request more time from the applicant or Town Council in order to refine a GDP proposal.

2.6.6 Town Council Hearing and Decision

- A. After receiving the Planning Board's recommendation or after having allowed the time required for the Planning Board's consideration, the Town Council shall hold a public quasi-judicial hearing on the proposed GDP. Following the public hearing (at the same or subsequent meeting), the Town Council, by an affirmative majority vote shall take action to approve, approve with conditions or deny the proposed GDP.
- B. The Town Council may deny a proposed GDP only if it finds that either (i) the application is incomplete; (ii) the GDP does not satisfy the applicable regulations of this Unified Development Ordinance; or (iii) if it finds that there is substantial, competent and material evidence in the record that the GDP, as proposed, will adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use or will be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.
- C. In approving a GDP, the Town Council may designate such conditions in connection therewith as will, in its opinion, assure that the proposed development will conform to the requirements and spirit of this ordinance.
- D. A notice of the Town Council's decision shall be made consistent with section 2.1.8 of this Article.

2.7 GENERAL DEVELOPMENT PLAN CHANGES/MODIFICATIONS

2.7.1 Applicability

This section sets out the procedure for the approval of changes to previously approved General Development Plans ("GDP"). A revised plan shall be required when approved GDPs are changed.

2.7.2 Pre-Design Meeting

- A. Before submitting a GDP application for development of land in the 321-ED District, the applicant shall confer with the Planning Department to discuss the proposal and applicable regulations. The purpose of the Pre-Design Conference is for the applicant to become familiar with applicable General Development Plan procedures and standards and to discuss the project needs. The applicant is encouraged to submit a Sketch Plan prior to or as part of the Pre-design Meeting showing the general location and extent of the proposal. No review fee shall be required for Pre-Design Meeting.

2.7.3 Initiation of Application Filing

Application, site plan, detailed proposal, and other documents indicated in section 4.3.7(A)(B)) required to make a determination of conformance shall be submitted to the Planning Department on forms available in or approved by the Planning Department.

2.7.4 Staff Review/Report and Decision

- A. The Planning Department, engineering and other relevant agency staff or officials shall review the proposal for conformity with the applicable state and local regulations.
- B. If changes in the approved GDP are under the thresholds specified in 4.14.8 A-E, the modified/changed GDP may be permitted by the Planning Director on application by the original applicant or successors in interest.
- C. If the changes or modification of a GDP application do not meet the threshold in 4.14.8 A-E, the Planning Director shall prepare a report summarizing the Planning Department, engineering and other relevant staff comments and the project's conformity with the adopted zoning and other applicable state and local regulations

2.7.5 Planning Board Review and Recommendation

- A. The Planning Board shall review all changes or modification to a GDP that are not under the threshold in 4.14.8 A-E and shall advise and comment on whether the proposed GDP is consistent Maiden Unified Development Ordinance and any other officially adopted plans that are applicable.
- B. The Planning Board shall provide a written recommendation to the Town Council that addresses consistency and other matters as deemed appropriate by the Planning Board; however, a comment by the Planning Board that a proposed amendment is inconsistent shall not preclude consideration or approval of the proposed amendment by the Town Council. The recommendation to Town Council shall include a statement recommending approval, approval with modifications, or denial.
- C. If the Town Council has called for a public hearing, the Planning Board has 30 days to make its recommendation on GDP. The Planning Board may request more time from the applicant or Town Council in order to refine a GDP proposal.

2.7.6 Town Council Hearing and Decision

- A. After receiving the Planning Board's recommendation or after having allowed the time required for the Planning Board's consideration, the Town Council shall hold a public quasi-judicial hearing on the proposed GDP. Following the public hearing (at the same or subsequent meeting), the Town Council, by an affirmative majority vote shall take action to approve, approve with conditions or deny the proposed GDP.
- B. The Town Council may deny a proposed GDP only if it finds that either (i) the application is incomplete; (ii) the GDP does not satisfy the applicable regulations of this Unified Development Ordinance; or (iii) if it finds that there is substantial, competent and material evidence in the record that the GDP, as proposed, will adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use or will be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.

- C. In approving a GDP, the Town Council may designate such conditions in connection therewith as will, in its opinion, assure that the proposed development will conform to the requirements and spirit of this ordinance.
- D. A notice of the Town Council's decision shall be made consistent with section 2.1.8 of this Article.

2.8 PLANNED UNIT DEVELOPMENTS (STANDARD, MIXED-USE, MULTIPLE USE)

2.8.1 Applicability

This section sets out the procedure for the approval of a Planned Unit Development (PUD). Planned Unit Developments are intended to offer developers the possibility of more efficient and flexible methods for developing property. The PUD procedures of this section shall not be used to permit intensities or uses not authorized by the underlying zoning or use regulations.

2.8.2 Pre-Design Meeting

- A. Before submitting a PUD application for development, the applicant shall confer with the Planning Department to discuss the proposal and applicable regulations. The purpose of the Pre-design Meeting is for the applicant to become familiar with applicable PUD procedures and standards and to discuss the project needs. The applicant is encouraged to submit a Sketch Plan prior to or as part of the Pre-design Meeting showing the general location, extent, and intensity of the proposal. No review fee shall be required for Pre-Design Meeting.

2.8.3 Initiation of Application Filing

Application, preliminary PUD plans and other documents required to make a determination of plan conformity shall be submitted to the Planning Department on forms available in or approved by the Planning Department. The preliminary PUD shall at minimum contain the following: approximate size of the property, the tentative street layout, proposed lot sizes, watercourses and the location of the property in relation to existing streets and surrounding areas

2.8.4 Staff Review/Report and Decision

- A. The Planning Department, engineering and other relevant agency staff or officials shall review the proposal for conformity with the applicable state and local regulations.
- B. If a PUD application is for 5 units or less, then the PUD may be approved by the Planning Director.
- C. If a PUD application is more than 5 units, the Planning Director shall prepare a report summarizing the Planning Department, engineering and other relevant agency staff or officials' comments and the project's conformity with the adopted zoning and other applicable state and local regulations

2.8.5 Planning Board Review and Recommendation

- A. The Planning Board shall review all PUD larger than 5 units and shall advise and comment on whether the proposed PUD is consistent Maiden Unified Development Ordinance and any other officially adopted plans that are applicable.

- B. The Planning Board shall review the PUD and shall advise and comment on whether the proposed amendment is consistent Maiden Unified Development Ordinance and any other officially adopted plan that is applicable.
- C. The Planning Board shall provide a written recommendation to the Town Council that addresses consistency and other matters as deemed appropriate by the Planning Board; however, a comment by the Planning Board that a proposed amendment is inconsistent shall not preclude consideration or approval of the proposed amendment by the Town Council. The recommendation to Town Council shall include a statement recommending approval, approval with modifications, or denial.
- D. The Planning Board has 30 days to make its recommendation on a PUD. If the PUD request is a controversial item that may require multiple Planning Board meetings, the Planning Board may request more time from the applicant or Town Council. Failure of the Planning Board to make recommendation for a period of thirty (30) days, unless controversial or additional time has be provided, after the PUD has been referred to it shall permit the Town Council to proceed with its consideration of the amendment without the Planning Board report.

2.8.6 Town Council Hearing and Decision

- A. After receiving the Planning Board’s recommendation or after having allowed the time required for the Planning Board’s consideration, the Town Council shall hold at least one public quasi-judicial hearing on the proposed PUD. Following the public hearing (at the same or subsequent meeting), the Town Council shall take action to approve, approve with conditions or deny the PUD.
- B. The Town Council may deny a proposed PUD only if it finds that either (i) the application is incomplete; (ii) the PUD does not satisfy the applicable regulations of this Unified Development Ordinance; or (iii) if it finds that there is substantial, competent and material evidence in the record that the PUD, as proposed, will adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use or will be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.
- C. In approving a PUD, the Town Council may designate such conditions in connection therewith as will, in its opinion, assure that the proposed development will conform to the requirements and spirit of this ordinance.
- D. A notice of the Town Council’s decision shall be made consistent with section 2.1.8 of this Article.

2.9 **CHANGES/MODIFICATIONS TO A PLANNED UNIT DEVELOPMENT**

Changes and modifications to a previously approved PUD shall be processed in accordance with the PUD provisions in section 2.8 above.

2.10 **MINOR SUBDIVISIONS**

2.10.1 Applicability

This section sets out the procedure for the approval of Minor Subdivisions. Minor Subdivisions are defined in Article 13.2. The procedures for approval of minor subdivisions are intended provide minimal delay and expense to the sub-divider while being adequate to protect the public interest.

2.10.2 Initiation of Application Filing

Applications for “Minor Subdivisions” shall be submitted to the Planning Department on forms available in the Planning Department. Additionally, Phase II Stormwater documents and a sketch design plan shall be submitted as part of the application. The sketch design plan shall depict or contain the information required in Sec. 13.2.3.

2.10.3 Staff Review and Decision

- A. The Planning Director shall review the proposed Minor Subdivision Application, Phase II Stormwater Documents for general compliance with the requirements of Article 13.2 and Article 17.2 and shall approve or deny the minor subdivision.
- B. Approved minor subdivisions shall be recorded by the Planning Department.
- C. The property owner shall record relevant Phase II Stormwater permit documents and return originals to the Planning Department.
- D. A notice of the Planning Department’s decision shall be made consistent with section 2.1.8 of this Article.

2.10.4 Appeals

- A. Any person aggrieved by a decision approving or denying a minor subdivision may seek to have the decision reviewed by filing an action in superior court seeking appropriate declaratory or equitable relief. Such an action must be filed within the time frame specified in G.S. § 160A-381(c) for petitions in the nature of certiorari.
- B. Stormwater Appeal

Any person who is directly affected by a Stormwater decision may appeal the decision to the North Carolina Department of Water Quality (Raleigh office).

2.11 MAJOR/GENERAL SUBDIVISION

2.11.1 Applicability

This section sets out the procedure for the approval of Major Subdivisions. Major Subdivisions, also known as General Subdivisions, are subdivisions of land that do not meet the limitation of Minor Subdivisions as defined in Article 13.2. The procedures for approval of major subdivisions are intended to protect the public interest.

2.11.2 Pre-Design Meeting

Before submitting a Preliminary Plat for a proposed subdivision, the applicant shall confer with the Planning Director to discuss the proposal and applicable regulations that pertain to the proposed subdivision application. The purpose of the Pre-Design Meeting is for the applicant to become familiar with applicable subdivision procedures and standards.

2.11.3 Pre-Application Conference

Prior to submitting a preliminary plat, subdividers are encouraged to prepare and submit to the Planning Director a sketch design plan of a proposed subdivision. The sketch design plan should contain the information identified in 13.3.1 of the Unified Development Ordinance. The Planning Director and other administrative officials shall review the Sketch Plan. Following their review, the reviewing officials shall confer with the applicant to discuss any matters that will assist the applicant in preparing a Preliminary Plat. No review fee shall be required for Pre-Design Conferences.

2.11.4 Staff Review/Report

- A. After determining general compliance with requirements of Article 13 Subdivisions, the Planning Director shall distribute the application to other agencies and reviewers including but not limited to the county health department, erosion control section, relevant school district superintendent(s), soil and water conservation district and inspection division for their comments and reports.
- B. The Planning Director shall review each major subdivision for consistency with all applicable state and local laws and comments received from other agencies. The Planning Director shall provide comments on the proposed amendment to the Planning Board and Town Council.

2.11.5 Planning Board- Review and Recommendation

- A. The Planning Board shall review each major subdivision and shall advise and comment on whether the proposed amendment is consistent Maiden Unified Development Ordinance and any other officially adopted plan that is applicable.
- B. The Planning Board shall provide a written recommendation to the Town Council that addresses consistency and other matters as deemed appropriate by the Planning Board; however, a comment by the Planning Board that a proposed amendment is inconsistent shall not preclude consideration or approval of the proposed amendment by the Town Council. The recommendation to Town Council shall include a statement recommending approval, approval with modifications, or denial.
- C. The Planning Board has 30 days to make its recommendation on a major subdivision. If the major subdivision request is a controversial item that may require multiple Planning Board meetings, the Planning Board may request more time from the applicant or Town Council. Failure of the Planning Board to make recommendation for a period of thirty (30) days after the amendment has been referred to it by the Planning Director shall permit the Town Council to proceed with its consideration of the amendment without the Planning Board report.

2.11.6 Town Council Hearing and Decision

- A. After receiving the Planning Board's recommendation or after having allowed the time required for the Planning Board's consideration, the Town Council shall hold at least one quasi-judicial public hearing on the proposed major subdivision. Following the public hearing (at the same or subsequent meeting), the Town Council, by an affirmative vote of a simple majority of the total membership, shall

take action to approve, approve with conditions or deny the proposed major subdivision.

- B. The Town Council may deny a proposed major subdivision plat only if it finds that either (i) the application is incomplete; (ii) the PUD does not satisfy the applicable regulations of this Unified Development Ordinance; or (iii) if it finds that there is substantial, competent and material evidence in the record that the plat, as proposed, will adversely affect the health or safety of persons residing or working in the neighborhood of the proposed use or will be detrimental to the public welfare or injurious to property or public improvements in the neighborhood.
- C. In approving a major subdivision plat, the Town Council may designate such conditions in connection therewith as will, in its opinion, assure that the proposed development will conform to the requirements and spirit of this ordinance.
- D. A notice of the Town Council's decision shall be made consistent with section 2.1.8 of this Article.

2.11.7 Appeals

- A. Any person aggrieved by the decision to approve or deny a major subdivision plat may appeal the decision to Superior Court by proceedings in the nature of certiorari. The provisions of G.S. § 160A-381(c), 160A-388(e2), and 160A-393 shall apply to these appeals.
- B. **Stormwater Appeal**
Any person who is directly affected by a Stormwater decision may appeal the decision to the North Carolina Department of Water Quality (Raleigh office).

2.12 **FLOODPLAIN DEVELOPMENT PERMIT**

A Floodplain Development Permit shall be obtained prior to beginning any development activities located within special flood hazard areas consistent with Article 17.1.17. The Floodplain Development Permit may be in addition to and supplement any other land use permits.

2.13 **VESTED RIGHTS**

The purpose of this section is to implement the provisions of G.S. § 160A-385.1 pursuant to which a statutory zoning vested right is established upon approval of a site specific development plan.

2.13.1 Definitions.

- A. **Approval authority.** The Town Council shall be the approval authority for vested rights.
- B. **Site specific development plan.** A document that describes with reasonable certainty the type and intensity for a specified parcel of property. A plan of land development submitted to the Town of Maiden for purposes of obtaining one of the following zoning or land use permits or approvals:
 - 1. Zoning permits, as provided by section 2.5 of this chapter;

2. Special use permit or conditional use permit, as provided by section 2.3 of this chapter;
 3. Minor subdivision approval, as provided by section 2.10 of this chapter; and
 4. Major subdivision approval, as provided by section 2.11 of this chapter..
- C. Zoning vested right. A right pursuant to G.S. § 160A-385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan.

2.13.2 Establishment of a zoning vested right.

- A. A zoning vested right shall be deemed established upon the approval of a site specific development plan and the granting of vested rights by the Town Council. The Council shall grant vested rights only after review by the Town staff and Planning Board and a quasi-judicial hearing held by the Council. Notice of the hearing shall be in accordance with G.S. § 160A-364.
- B. Upon determination by the Council that a site-specific development plan or a phased development plan, as that term is defined in G.S. § 160A-385.1, has been approved in accordance with the requirements of this ordinance, vested rights shall be deemed established. The Council shall authorize vested rights upon such terms and conditions as may reasonably be necessary to protect the public health, safety, and welfare.
- C. Notwithstanding subsections A. and B. above, approval of a site specific development plan with the condition that a variance be obtained shall not confer a zoning vested right unless and until the necessary variance is obtained
- D. A site specific development plan shall be deemed approved upon the effective date of the approval authority's action or ordinance relating thereto.
- E. The establishment of a zoning vested right shall not preclude the application of overlay zoning that imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations that are general in nature and are applicable to all property subject to land use regulation by the Town, including, but not limited to, building, fire, plumbing, electrical, and mechanical codes. Otherwise applicable new or amended regulations shall become effective with respect to property that is subject to a site specific development upon the expiration or termination of the vested right in accordance with section 4.11.5.
- F. A zoning vested right is not a personal right, but shall attach to and run with the applicable property. After approval of a site specific development plan, all successors to the original landowner shall be entitled to exercise such right while applicable.

2.13.3 Approval procedures and approval authority.

- A. Except as otherwise provided in this section, an application for a site specific development plan approval shall be processed in accordance with the procedures established by ordinance and shall be considered by the designated approval

authority for the specific type of zoning or land use permit or approval for which application is made.

- B. In order for a zoning vested right to be established upon approval of a site specific development plan, the applicant must indicate at the time of application, on a form to be provided by the Town, that a zoning vested right is being sought.
- C. Following approval or conditional approval of a site specific development plan, nothing in this section shall exempt such a plan from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approval.
- D. Nothing in this section shall prohibit the revocation of the original approval or other remedies for failure to comply with applicable terms and conditions of the approval or the zoning ordinance.

2.13.4 Duration.

- A. A zoning right that has been vested as provided in this section shall remain vested for a period of two (2) years, but the Council may grant vested rights for up to five (5) years. This vesting shall not be extended by any amendments or modifications to a site specific development plan unless expressly provided by the approval authority at the time the amendment or modification is approved.
- B. Upon issuance of a building permit, the expiration provisions of G.S. § 160A-418 and the revocation provisions of G.S. § 160A-422 shall apply, except that a building permit shall not expire or be revoked because of the running of time while a zoning vested right under this section is outstanding.

2.13.5 Termination.

- A. A zoning vested right that has been vested as provided in this section shall terminate if one of the following occurs:
 - 1. At the end of the applicable vesting period with respect to buildings and uses for which no valid building permit applications have been filed;
 - 2. With the written consent of the affected landowner;
 - 3. Upon findings by the Board of Adjustment, after notice and a public hearing, that natural or manmade hazards on or in the immediate vicinity of the property, if uncorrected, would pose a serious threat to the public health, safety, and welfare if the project were to proceed as contemplated in the site specific development plan for which the zoning vested right was granted;
 - 4. Upon payment to the affected landowner of compensation for all costs, expenses, and other losses incurred by the landowner, including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and other consultant's fees incurred after approval by the Town, together with interest thereon at the legal rate until paid. Compensation shall not include any diminution in the value of the property which is caused by such action;

5. Upon findings by the Board of Adjustment, after notice and a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the approval authority of the site specific development plan;
6. Upon the enactment or promulgation of a state or federal law or regulation that precludes development as contemplated in the site specific development plan, in which case the approval authority may modify the affected provisions, upon a finding that the change in state or federal law has a fundamental effect on the plan, by ordinance after notice and public hearing.

2.13.6 Voluntary annexation.

A petition for annexation filed with the Town of Maiden G.S. § 160A-31 or G.S. § 160A-58.1 shall contain a signed statement declaring whether or not any zoning vested right with respect to the properties subject to the petition has been established under G.S. § 160A-385.1 or G.S. § 153A-344.1. A statement that declares that no zoning vested right has been established under G.S. § 160A-385.1 or G.S. § 153A344.1, or the failure to sign a statement declaring whether or not a zoning vested right has been established, shall be binding on the landowner and any such zoning vested right shall be terminated.

2.13.7 Limitations.

Nothing in this chapter is intended or shall be deemed to create any vested right other than those established pursuant to G.S. § 160A-385.1.

2.13.8 Repealer.

In the event that G.S. § 160A-385.1 is repealed, this section of the Unified Land Development Ordinance shall be deemed repealed and the provisions hereof no longer effective. Notwithstanding this provision, sites previously vested under this ordinance shall not lose their vested status as a result of a statutory change or revision.

2.13.9 Effective date.

This section shall only apply to site specific development plans approved on or after October 7, 1991.

(Ord. No. 9-91, 10-7-91; Ord. No. 18-2009, 07-20-09)

ARTICLE 3 | Administrative Mechanisms

3.1 PLANNING BOARD

3.1.1 Created.

Pursuant to G.S. § sections 160A-146 and 160A-387, there is hereby created a Planning Board of the Town, to perform the functions and the duties prescribed in this article.

(Ord. No. 6-74, § 1; Code 1976, § 12.1)

3.1.2 Membership, vacancies; attendance.

A. Members. The membership of the Planning Board shall be as follows;

1. The Planning Board shall consist of five (5) members. Three (3) members shall be citizens and residents of the Town and shall be appointed by the Town Council; two (2) members shall be citizens of the county who reside outside the Town but within the extraterritorial jurisdiction of the Town and shall be appointed by the county board of commissioners after due recommendation according to statute by the Town Council. Additional representatives from the extraterritorial jurisdiction shall be appointed as necessary to satisfy the proportionality requirement of G.S. § 160A-362.
2. Two (2) alternate members shall be appointed to serve on the board in the absence of any regular member. One (1) alternate member shall be a citizen and resident of the Town and shall be appointed by the Town Council; one (1) alternate member shall be a citizen of the county who resides outside the Town but within the extraterritorial jurisdiction of the Town and shall be appointed by the county board of commissioners after due recommendation according to statute by the Town Council.
3. Members shall serve without pay but may be reimbursed for any prior approved expenses incurred while representing the Planning Board. Members may be removed for cause by the Town Council upon written charges and after a public hearing.

B. Terms. The members of the Planning Board as hereinabove set out shall be appointed to terms of membership as follows:

1. SCHEDULE A (TOWN RESIDENTS)

Term	<i>No. of Members</i>	
	Regular	Alternate
1	1	0
2	1	0
3	1	2
TOTAL	3	2

2. SCHEDULE B (EXTRATERRITORIAL JURISDICTION RESIDENTS)

No. of Members

Term	Regular	Alternate
1	0	0
2	1	0
3	1	1
TOTAL	2	1

- C. Vacancies; attendance. All vacancies occurring for reasons other than expiration of term shall be filled as they occur for the remainder of such term by either the Town Council or the county board of commissioners as hereinabove set out with the terms other than the original term being terms of three (3) years. Faithful attendance at the meetings of the board is to be considered a prerequisite to continued membership and the Town Council shall replace any members absent from three (3) or more meetings in a fiscal year without valid excuse.

(Ord. No. 6-74, § 2; Code 1976, § 12.2; Ord. No. 20-80, 11-3-80; Ord. No. 20-92, 9-21-92)

State law reference-Extraterritorial representation, G.S. § 160A-362.

3.1.3 Organization, rules, meetings and records.

- A. The Planning Board shall elect a chairman and create and fill such other offices as it may determine are necessary. The term of the chairman and other officers shall be one (1) year, with eligibility for reelection.
- B. The board shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record.
- C. The board shall hold at least one (1) meeting monthly, and all of its meetings shall be open to the public.

(Ord. No. 6-74, § 5; Code 1976, § 12.5; Ord. No. 20-80, 11-3-80; Ord. No. 20-92, 9-21-92)

3.1.4 Jurisdiction and voting.

- A. For the purpose of this chapter and article, the planning jurisdiction of the Town shall include all the land within the corporate limits of the Town and all that land located within the Town's extraterritorial jurisdiction as now or hereafter described in a written metes and bounds description which is filed in the office of the Town clerk.
- B. All members appointed to the Planning Board by the county commissioners or the Town Council shall have equal rights, privileges and duties in all matters pertaining to the regulations of both the extraterritorial jurisdiction and the area within the corporate limits, provided that a majority of the board or commission are present.
- C. No Planning Board member shall vote on a proposed amendment to the zoning ordinance or zoning map where the outcome of the matter being considered is reasonably likely to have a direct, substantial and readily identifiable financial impact on the member.

(Ord. No. 6-74, § 4; Code 1976, § 12.4; Ord. No. 1-79, 2-5-79; Ord. No. 19-2006, § (1), 8-21-06)

3.1.5 Powers and duties.

It shall be the duty of the Planning Board, in general:

- A. To acquire and maintain in current form such basic information and materials as are necessary to an understanding of past trends, present conditions and forces at work to cause changes in those conditions;
- B. To prepare and from time to time amend and revise a comprehensive and coordinated plan for the physical development of the area;
- C. To establish principles and policies for guiding action in the development of the area;
- D. To prepare and recommend to the Town Council ordinances providing orderly development along the lines indicated in the comprehensive plan;
- E. To determine whether specific proposed developments conform to the principles and requirements of the comprehensive plan for the growth and improvement of the area;
- F. To keep the Town Council and the general public informed and advised as to those matters;
- G. To perform any other duties which may lawfully be assigned to it.
(Ord. No. 6-74, § 3; Code 1976, § 12.3; Ord. No. 20-92, 9-21-92)

H. Basic studies.

- 1. As background for its comprehensive plan and any ordinances it may prepare, the Planning Board may gather maps and aerial photographs of manmade and natural physical features of the area, statistics on past trends and present conditions with respect to population, property values, the economic base of the community, land use and such other information as is important or likely to be important in determining the amount, direction and kind of development to be expected in the area and its various parts.
- 2. In addition, the Planning Board may make, cause to be made or obtain special studies on the location, condition and adequacy of specific facilities which may include but are not limited to studies of housing, commercial and industrial facilities, parks, playgrounds, and recreational facilities, public and private utilities, and traffic, transportation and parking facilities.
- 3. All officials of the Town shall, upon request, furnish to the Planning Board such available records or information as it may require in its work.

(Ord. No. 6-74, § 6; Code 1976, § 12.6)

I. Zoning Amendments

The Planning Board may initiate from time to time proposals for amendment of the zoning ordinance and map, based upon its studies and comprehensive plan. In addition, it shall review and make recommendations to the Town Council

concerning all proposed amendments to the zoning ordinance and map. This recommendation shall include a statement as to whether the proposed zoning amendment is consistent with any comprehensive plan that has been adopted by the Town Council and any other applicable officially adopted plan.

(Ord. No. 6-74, § 8; Code 1976, § 12.8)

Cross reference-Land use and zoning, § 17-301 et seq.

J. Subdivision regulations.

1. The Planning Board shall review, from time to time, the existing regulations for the control of land subdivision in the area and submit to the Town Council its recommendations, if any, for the revision of such regulations.

2. The Planning Board shall review and make recommendations to the Town Council concerning all proposed plats of land subdivision.

(Ord. No. 6-74, § 9; Code 1976, § 12.9)

Cross reference-Subdivision control, § 17-501 et seq

K. Public facilities.

The Planning Board shall review with the Town Manager and other Town officials and report its recommendations to the Town Council the extent, location and design of all public structures and facilities, on the acquisition and disposal of public properties, on the establishment of building lines, mapped street lines and proposals to change existing street lines. However, whether or not there is a recommendation from the Planning Board, the Town Council may, if it deems wise, take final action on any such matter at any time. The Planning Board shall have responsibility for reviewing and making recommendations to the Town Council upon proposals for naming and changing the names of streets as provided in article V and section 19-501 et seq.

(Ord. No. 6-74, § 10; Code 1976, § 12.10; Ord. No. 9-84, § II(1), 10-1-84)

3.1.6 Miscellaneous powers and duties.

A. The Planning Board may conduct such public hearings as may be required to gather information necessary for the drafting, establishment and maintenance of the comprehensive plan. Before adopting any such plan it shall hold at least one (1) public hearing thereon.

B. The Planning Board shall have power to promote public interest in and an understanding of its recommendations, and to that end it may publish and distribute copies of its recommendations and may employ such other means of publicity and education as it may determine.

(Ord. No. 6-74, § 11; Code 1976, § 12.11)

3.1.7 Annual report, analysis of expenditures and budget request.

The Planning Board shall, in May of each year, submit in writing to the Town Manager a report of its activities from the previous year.

(Ord. No. 6-74, § 12; Code 1976, § 12.12)

3.2 **BOARD OF ADJUSTMENT**

3.2.1 Creation of Board of Adjustment.

- A. Created. There shall be and is hereby created a Board of Adjustment as provided in section G.S. § 160A-388. Said board shall consist of five (5) members. Two (2) members shall be citizens and residents of the Town and shall be appointed by the Town Council; three (3) members shall be citizens of the county who reside outside the Town but within the extraterritorial jurisdiction of the Town and shall be appointed by the county board of commissioners after due recommendation by the Town Council. Additional representatives from the extraterritorial jurisdiction shall be appointed as necessary to satisfy the proportionality requirement of G.S. § 160A-362.
- B. Alternate members. Two (2) alternate members shall be appointed to serve on the board in the absence or temporary disqualification of any regular member. One (1) alternate member shall be a citizen and resident of the Town and shall be appointed by the Town Council; one (1) alternate member shall be a citizen of the county who resides outside the Town but within the extraterritorial jurisdiction of the Town and shall be appointed by the county board of commissioners after due recommendation by the Town Council.
- C. Compensation. Members shall serve without pay but may be reimbursed for any prior approved expenses incurred while representing the Board of Adjustment. Members may be removed for cause by the Town Council upon written charges and after a public hearing.
- D. Terms. The members of the Board of Adjustment as hereinabove set out shall be appointed to the terms of membership as follows:

1. SCHEDULE A (TOWN RESIDENTS)

Term	Regular	<i>No. of Members</i>	
		Regular	Alternate
1	0		1
2	0		1
3	1		1
TOTAL	1		2

2. SCHEDULE B (PERIMETER RESIDENTS)

Term	Regular	<i>No. of Members</i>	
		Regular	Alternate
1	0		0
2	0		1
3	1		1
TOTAL	1		3

- E. Vacancies; attendance. All vacancies occurring for reasons other than expiration of term shall be filled as they occur for the remainder of such term by either the Town Council or the county board of commissioners as hereinabove set out with the terms other than the original term being of three (3) years. Faithful attendance at the meetings of the board is to be considered a prerequisite to continued

membership and the Town Council may replace any members absent from three (3) or more meetings in a fiscal year without valid excuse. Vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered for calculation of the required supermajority if no qualified alternates are available.

(Ord. of 4-11-70, Art. XI, § 110; Code 1976, § 12.57; Ord. No. 20-80, 11-3-80; Ord. No. 20-92, 9-21-92; Ord. No. 21-92, 9-21-92; Ord. No. 19-2006, § (1), 8-21-06)

3.2.2 Powers and duties of board.

- A. The board shall have the powers enumerated below. The concurring vote of four-fifths (4/5) of the members of the board shall be necessary to reverse any order, requirement, decision or determination of the administrator; to decide in favor of the applicant any matter upon which it is required to pass under this article; or to effect any variance authorized by this article.
1. To hear and decide appeals where it is alleged that there is error in any order, requirement, decision or determination made by the administrator of this Unified Development Ordinance;
 2. To hear and decide applications for decisions on special use permits;
 3. To authorize upon appeal in specific cases such variance from the terms of this article as will not be contrary to the public interest, where, owing to special conditions, a literal enforcement of the provisions of this article will result in undue hardship and so that the spirit of this article will be observed and substantial justice done.
- B. A public hearing shall be required before an application for a special use permit or variance can be considered. Notice of such public hearing shall be posted on the property for which the special use permit or variance is sought and mailed to property owners within one hundred (100) feet of the property for which the special use permit or variance is sought at least ten (10) days prior to the public hearing. Notice shall also be advertised in a local newspaper which shall describe the request and appear at least once weekly for two (2) consecutive weeks prior to the public hearing. A filing fee as set out in the fee schedule is required to defray the cost of processing the application. The Planning Director, upon receipt of a petition, shall proceed to schedule a hearing and proceed with the advertising as set forth above. In order to be placed on the next scheduled meeting agenda, the application shall be filed no less than twenty (20) days prior to the meeting.
- C. When considering appeals, special use permits and variance cases, the Board of Adjustment shall follow quasi-judicial procedures. A member of the board shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change; undisclosed ex parte communications; a close familial, business, or other associational relationship with an affected person; or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does

not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

(Ord. of 4-11-76, Art.XI; Ord. of 10-4-76; Code 1976, § 12.59; Ord. No. 22-90, 12-17-90; Ord. No. 19-2006, § (1), 8-21-06)

3.3 CODE ENFORCEMENT OFFICER

3.3.1 Code enforcement officer.

- A. The Town Manager shall appoint the Planning Director or another appropriate Town employee to serve as the Code Enforcement Officer responsible for enforcing the provisions of this ordinance.
- B. If the code enforcement officer finds that any of the provisions of this article are being violated, he or she shall notify in writing the person responsible for such violations, indicating the nature of the violation and ordering the action necessary to correct it. He shall order discontinuance of the illegal use of land, buildings or structures; removal of illegal structural changes thereto; discontinuance of any illegal work being done; or shall take other lawful action to ensure compliance with or to prevent violation of this ordinance.
- C. If a ruling of the code enforcement officer is questioned, the aggrieved party or parties may appeal such ruling to the Board of Adjustment.

(Ord. of 4-11-70, Art. X, § 100; Code 1976, § 12.52)

3.4 TOWN COUNCIL (RESERVED)

3.5 APPEALS, INTERPRETATIONS AND VARIANCES

3.5.1 Procedure for appeal to Board of Adjustment.

- A. An appeal from the decision of the code enforcement officer may be taken to the Board of Adjustment by any person aggrieved or by any officer, department, board or bureau of the Town affected by such decision. Such appeal shall be taken within a reasonable time as provided by the rules of the Board of Adjustment, and the appeal shall specify the grounds thereof. The office from which the appeal is taken shall forthwith transmit to the board all papers constituting the record upon which the action appealed from was taken.
- B. An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board after the notice of appeal has been filed with him, that by reason of facts stated in the certificate, a stay would in his or her opinion cause imminent peril to life or property. In such case, proceedings shall not be stayed otherwise than by a restraining order which may be granted by the Board of Adjustment or by a court of record on application, on notice to the officer from whom the appeal is taken and on due cause shown. The board shall fix a reasonable time for hearing the appeal and give notice thereof to the parties and shall decide the same within a reasonable time. At the hearing, any individual person may appear in person, by agent or by attorney.

(Ord. of 4-11-70, Art. XI; Ord. of 10-4-76; Code 1976, § 12.58)

3.5.2 Appeals from decision of Board of Adjustment.

Any person aggrieved by any decision of the Board of Adjustment, or any officer, department, board or bureau of the Town may, within thirty (30) days after the filing of the decision of the board, but not thereafter, present to a court of competent jurisdiction a petition for a writ of certiorari, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of illegality. Thereupon such decision of the board shall be subject to review as provided by law.

(Ord. of 4-11-70, Art. XI; Code 1976, § 12.62; Ord. of 10-4-76)

Stat law reference – G.S. § 160A-388(e2), Appeals from the board of adjustment; G.S. § 160A-393, Appeals in the nature of certiorari.

ARTICLE 4| **Zoning Districts***

4.1 **GENERAL**

4.1.1 Zoning affects every building and use.

No building or land shall be used and no building or part thereof shall be erected, moved or altered except in conformity with the regulations herein specified for the district in which it is located.

(Ord. of 4-11-70, Art. VI, § 60; Code 1976, § 12.30)

4.1.2 Relationship of building to lot.

Every building erected, moved or structurally altered shall be located on a lot and in no case shall there be more than one (1) principal building and its customary accessory buildings on any lot, except in the case of a specially designed group development of institutional, residential, commercial or industrial buildings in an appropriate zoning district, i.e., school campus, cluster housing, multi-family dwelling unit complexes, shopping center, industrial park and so forth.

(Ord. of 4-11-70, Art. VI, § 62; Code 1976, § 12.32)

4.1.3 Use requirements by district.

Within the districts indicated on the zoning map, no building or land shall be used, and no building shall be erected or altered which is intended or designed to be used in whole or in part, for any use other than those listed as permitted for that district in this ordinance.

(Ord. of 4-11-70, Art. VIII; Code 1976, § 12.38)

4.1.4 Interpretation, purpose and conflict

In interpreting and applying the provisions of this article, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this article to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided, however, that where this article imposes a greater restriction upon the use of buildings or premises or upon the height of buildings or requires larger open spaces than are imposed or required by other ordinances, rules, regulations or by easements, covenants or agreements, the provisions of this article shall govern.

(Ord. of 4-11-70, Art XIII, § 130; Code 1976, § 12.66)

4.1.5 Base Zoning Districts named.

For the purpose of this article, the Town is hereby divided into eleven (11) use districts with the designations and purposes as listed below:

R-20 Residential District

* **Cross references**-Any zoning ordinance saved from repeal, § 1-107; pig pens prohibited within one hundred and fifty feet of dwelling, § 4-502; planning board may initiate zoning amendments, § 17-208.

R-15	Residential District
R-15SF	Residential Single Family District
R-11	Residential District
R-8	Residential District High Density
C-1	Central Commercial District
C-2	Highway Commercial District
321-ED(MX)	321-Economic Development District (Mixed Use)
321-ED(I)	321-Economic Development District (Industrial)
O & I	Office and Institutional District
M-1	Industrial District

(Code 1976, § 12.26; Ord. of 4-11-70, Art. VI, § 50; Ord. No. 16-96, 7-22-96)

4.1.6 District boundaries shown on zoning map.

The boundaries of each zoning district are shown on the map accompanying this article and made a part hereof entitled "Official Zoning Map, Maiden, North Carolina." The zoning map and all the notations, reference and amendments thereof, and other information shown therein, are hereby made a part of this article the same as if such information set forth on the map were fully described and set out herein. The adopted Official Zoning Map is posted at the Town hall and is available for inspection by the public.

(Ord. of 4-11-70, Art. V, § 51; Code 1976, § 12.27; Ord. No. 10-80, 5-19-80)

4.1.7 Due consideration given to district boundaries.

In the creation, by this article, of the respective districts, careful consideration is given to the suitability of each and every district for the particular uses and regulations applied thereto, and the necessary and proper grouping and arrangement of various uses and densities of population in accordance with a well considered comprehensive plan for the physical development of the community.

(Ord. of 4-11-70, Art. V, § 52; Code 1976, § 12.28)

4.1.8 Rules governing interpretation of district boundaries.

Where uncertainty exists as to the boundaries of any of the aforesaid districts as shown on the zoning map, the following rules shall apply:

- A. Where district boundaries are indicated as approximately following street, alley or highway lines, the centerlines of such rights-of-way shall be construed to be such boundaries.
- B. Where district boundaries are so indicated that they approximately follow lot lines such lot lines shall be construed to be such boundaries.
- C. Where district boundaries are so indicated that they are approximately parallel to the centerline of streets, alleys or highways, or the rights-of-way of same, such district boundaries shall be construed as being parallel thereto and at such distance there from as indicated on the zoning map.
- D. Where a district boundary line divides a lot or tract in single ownership, the district requirements for the least restricted portion of such lot or tract shall be deemed to apply to the whole thereof, provided such extensions shall not include any part of a

lot or tract more than thirty-five (35) feet beyond the district boundary line. The term "least restricted" shall refer to zoning restriction, not lot or tract sizes.

- E. At the request of the Planning Director or of an aggrieved party, the Board of Adjustment shall interpret the Official Zoning Map and pass upon disputed questions of lot lines or district boundaries and similar questions as they arise in the administration of this ordinance.

(Ord. of 4-11-70, Art. V. § 53; Code 1976, § 12.29)

4.2 ZONING DISTRICTS SPECIFICALLY

4.2.1 R-20 Residential District.

The R-20 residential district is established as a district in which the principal use of the land is for low density residential and agricultural purposes, and to provide and protect low density residential areas for those desiring that type of environment. These districts are intended to ensure that residential development not having access to public water supplies and dependent upon septic tanks for sewage disposal will occur at a sufficiently low density to provide a healthful environment.

- A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

- B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.2 R-15 Residential District.

The R-15 Residential District is established as a district in which the principal use of land is for medium density single-family purposes along with limited home occupations and public and private community uses. It is expected that all dwellings in such a district will have access to municipal water supplies or municipal sewage disposal facilities or a reasonable expectation of such service in the near future. On lots 20,000 square feet or larger, wells and septic tanks are allowed provided sewer and water are not available.

- A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

- B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.3 R-15 Single-Family Residential District.

The R-15 Single-Family Residential District is established as a district in which the principal use of land is for medium-density single-family purposes exclusively along with limited home occupations and public and private community uses. It is expected that all dwellings in such a district will have access to municipal water supplies or municipal sewage disposal facilities or a reasonable expectation of such service in the

near future. On lots 20,000 square feet or larger, wells and septic tanks are allowed provided sewer and water are not available.

A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.4 R-11 Residential District.

The R-11 Residential District is established as a district in which the principal use of land is for medium density single-family purposes along with limited home occupations and public and private community uses. Municipal water and sewerage facilities shall be available to each lot in the R-11 District.

A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.5 R-8 Residential District.

The R-8 Residential District is established as a district in which the principal use of land is for single-family, two-family and multifamily residences. The regulations of this district are intended to provide areas in the community for those persons desiring small residences and multifamily structures in relatively high-density neighborhoods. The regulations are intended to prohibit any use, which, because of its character, would interfere with the residential nature of this district. Municipal water and sewerage facilities shall be available to each lot in R-8 District.

A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.6 C-1 Central Commercial District.

The C-1 Central Commercial District is established as the centrally located trade and commercial service area of the community. The regulations of this district are designed to encourage the continued use of land for community trade and commercial service uses and to permit a concentrated development of permitted uses while maintaining a substantial relationship between the intensity of land uses and the capacity of utilities and streets.

A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.7 C-2 General Business District.

The purpose of the C-2 General Business District is to encourage the establishment of areas for general business which do not require a central location. Activities in this district are often large space users and are intended to provide for offices, personal services and the retailing of convenience and necessity type goods for the community.

A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.8 O-I Office-Institutional District.

The Office-Institutional District is designed to provide a wide range of professional and economical office space, as well as space for public and quasi-public uses.

A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.2.9 M-1 Industrial District.

The M-1 Industrial (manufacturing) District is established for those areas of the community where the principal use of land is for industrial and warehousing uses. These uses, by their nature, may create some nuisance and are not properly associated with residential, commercial or service establishments. These uses normally seek outlying locations on large tracts of land where the operations involved do not detract from the development potential of nearby undeveloped properties.

A. Allowed Uses

Uses allowed are in accordance with the use regulations in Article 5.

B. Intensity and Dimensional Standards

All development shall be subject to the Intensity and Dimensional Standards of Article 7 and any additional standards set forth in this UDO.

4.3 **US 321 CORRIDOR DISTRICT ZONING DISTRICT**

Note: This zoning district possesses a lot of unique characteristics and standards; subsequently, the characteristics and standards are defined in this section rather than in the Article 7.

4.3.1 Statement of intent.

- A. The adopted US 321 Corridor District Plan represents formal policy statements by the Town of Maiden concerning land use and land development within the Corridor. The 321-Economic Development District (321-ED) is designed to implement these policy statements and achieve the desired goals for the 321 Corridor. Specifically, the 321-ED District will accomplish the following:
1. Promote a sensitive conversion of farmland and vacant land to more urban uses;
 2. Support development that is compatible with and, whenever possible, enhances the visual attractiveness of the land;
 3. Promote well-planned, economically viable development of all types;
 4. Ensure safe and efficient traffic flow along the US 321 Corridor District roadways;
 5. Protect the environment by providing clean air, clean water and an appropriate mix of natural vegetation and wildlife;
 6. Encourage orderly and sensitive planned development, especially at the interchanges;
 7. Avoid uncoordinated, strip development patterns;
 8. Promote flexibility in individual site design including diversification in the location of structures, parking areas and other components;
 9. Encourage the efficient use of land to facilitate an economical arrangement of buildings, traffic circulation systems, land uses and utilities;
 10. Provide for more usable and suitably located recreation facilities and other public and common facilities than would not otherwise be provided under conventional land development procedures;
 11. Encourage high quality development;
 12. Ensure that adequate traffic capacity is available to serve proposed projects;
 13. Create an environment that supports opportunities for alternative residential development that consists of well-planned, affordable housing;
 14. Encourage cooperation between local governments concerning municipal growth and service extensions;
 15. Support mixed-use projects that enhance opportunities to work, shop, entertain and recreate on the same or adjacent sites;
 16. Enhance the economic, tax and employment base for the county and each municipality.
- B. It is the intent of the 321- ED District to implement these strategies as well as the specific policies contained in the US 321 Corridor District Plan. More specifically, the district is designed to combine the general characteristics and provisions of one or more existing zoning districts and incorporate the policies of the US 321 Corridor District Plan. Similar to planned development districts, the 321-ED

District will promote high-quality development through well-planned, well-designed development.

(Ord. No. 3-98, 2-16-98)

4.3.2 321-ED District boundaries.

- A. The boundaries of the 321-ED District are shown on the Official Zoning Map and the 321-ED District is the only zoning classification allowed in the US 321 Corridor. The US 321 Corridor is defined in the adopted 321 Corridor District Plan. Because of the unique nature of the 321-ED District, requests to rezone land to the 321-ED District shall only be allowed within the 321 Corridor District boundaries, set forth in the adopted 321 Corridor District Plan and corresponding maps.

(Ord. No. 3-98, 2-16-98)

4.3.3 Applicability.

- A. Persons, partnerships, corporations and other legal entities wishing to develop property of any size, type or density within the 321-ED District shall comply with the following standards in addition to the applicable zoning ordinance requirements. More specifically, no building, or structure shall be erected or altered for any purpose except in accordance with the requirements herein.
- B. Existing single-family, site-built or manufactured homes and duplexes are exempt from the requirements of the 321-ED District as long as the property is being used for residential purposes. Additions to said structures or accessory uses are permitted subject to the zoning requirements of the district in effect prior to the time the property was rezoned to the 321- ED District. Notwithstanding Article 14, “Nonconformities,” existing single-family, site-built or manufactured homes and duplexes shall be deemed lawful nonconforming uses and may be rebuilt or repaired as a matter of right when partially or fully destroyed. Churches and existing commercial/office institutional/industrial uses or properties are exempt from the provisions of the 321-ED District; however, they shall be subject to requirements of the zoning district in effect prior to their inclusion in the Corridor.
- C. The provisions of this plan shall not be applicable to Town public facilities.
- D. The 321-ED District regulations which follow shall apply generally to the development of land through the review process contained herein. Where there are conflicts between the special regulations herein and general zoning, subdivision, or other regulations or requirements, the more restrictive requirement shall apply in 321-ED Districts, unless the planner finds, in the particular case, that provisions herein do not serve public purposes to a degree at least equivalent to such general zoning, subdivision, or other regulations or requirements.
- E. Except as indicated above, notwithstanding procedures and requirements generally in effect, procedures and requirements set forth herein shall apply in 321-ED Districts, to any amendments creating such districts, and to issuance of all required permits therein.

(Ord. No. 3-98, 2-16-98)

4.3.4 Appeals.

Appeals shall follow the procedures set forth in section 3.5 of this ordinance.
(Ord. No. 3-98, 2-16-98)

4.3.5 Definitions.

The definitions found in Article 17 shall apply to the 321-ED District. In addition, for purposes of the 321-ED District, in determining whether the minimum five-acre requirement for a general development plan (“GDP”) is met, five (5) acres shall be defined as any parcel having, a combined total acreage of greater than or equal to four and one-half (4.5) acres.
(Ord. No. 3-98, 2-16-98)

4.3.6 Permitted principal and accessory uses and structures.

A. Generally, the 321-ED District shall include two (2) distinct use elements:

1. 321-ED(MX): Any combination of retail commercial, office/institutional and residential components but never exclusively large lot-single-family homes.
2. 321-ED(I): Primarily industrial/warehousing/distribution with an accessory office / institutional component.

One of these two (2) elements shall be indicated on all rezoning applications and shall be delineated on the official zoning map. More specifically, the following principal and accessory uses and structures may be permitted in the 321-ED Districts, subject to the limitations and requirements set forth. The listings are intended to be illustrative (except where limitations are set forth) rather than rigidly inclusive. Uses which are not expressly listed shall be permitted in the district where similar uses are permitted.

B. 321-ED(MX) Districts. The following uses are permitted:

1. Retail stores, except those dealing primarily in secondhand merchandise (other than antiques), including:
 - (a) Bakeries, confectioneries, delicatessens, fish markets, meat markets, and the with products processed or prepared on the premises sold only at retail on the premises;
 - (b) Clothing stores, shoe stores;
 - (c) Drugstores, newsstands, tobacco shops;
 - (d) Florists, gift: shops, jewelry stores; stationery stores, specialty shops;
 - (e) Groceries, supermarkets;
 - (f) Hardware, sporting goods, garden supply stores;
 - (g) Variety stores.
2. Service stations, but not repair garages, provided that no more than two (2) service stations shall be permitted in any GDP, and that no service station site shall consist of more than twenty-five thousand (25,000) square feet of the GDP

site, and that total area in service station use shall not exceed five (5) percent of the area of the GDP site.

3. Theaters.
4. Personal service establishments, including but not limited to the following:
Barber shops, beauty shops; Cleaning and laundry agencies; cleaning and laundry establishments not employing more than ten persons in cleaning and/or laundry operations, and processing only goods delivered to and picked up from the premises by individual customers; coin-operated laundry and dry-cleaning facilities.
5. Bowling alleys and similar commercial recreation establishments.
6. Offices including clinics; studios; laboratories; and business, professional, labor, civic, social, and fraternal offices.
7. Funeral homes.
8. Banks, savings and loan associations, and similar financial institutions.
9. Hospitals.
10. Schools.
11. Hotels / motels.
12. Child care nurseries; day care centers; pre-kindergarten, kindergarten, play and other special schools, or day care facilities for young children.
13. Adult care centers.
14. Libraries, museums, and galleries.
15. Auditoriums and their accessory facilities.
16. Social, recreational, and cultural facilities such as neighborhood or community centers, game-rooms, libraries, golf courses, swimming pools, tennis courts, and the like.
17. Eating and drinking establishments.
18. Structures and uses required for operation of a public utility or performance of a governmental function, except uses involving extensive storage, or with storage as the principal purpose. Utilities substations other than individual transformers shall be screened as set forth herein.
19. Dwellings, single-family (large-lot, zero-lot-line and cluster), two-family, and multiple-family, provided that they are part of a mixed use GDP where a wide range of residential densities and options exist, and in some instances may include land devoted to retail and/or office uses intended to serve the on-site residential development.
20. Uses and structures which are customarily accessory and clearly incidental to permitted principal uses and structures.

21. Animal hospitals and veterinary clinics, provided that all activities are conducted within an enclosed building with the exception of animal exercise yards. Buildings housing animal hospitals or veterinary clinics shall be located a minimum of one hundred (100) feet from any residential dwelling unit on the same property or an adjacent property. Exercise yards shall be located a minimum of two hundred (200) feet from any residential dwelling unit on the same property or an adjacent property.
- C. 321-ED(I) Districts. Permitted principal and accessory uses and structures shall be according the corresponding M-1 zoning district. Business and professional service offices are also permitted uses.
- D. Prohibited uses. For the purposes of maintaining visual attractiveness of the 321 Corridor, the following uses are not permitted in any 321-ED District:
 1. Mining of earth products.
 2. Above ground pipelines.
 3. Open conveyor belts.
 4. Wrecking, junkyards or recycling facilities.
 5. Drive-in theaters.
 6. Auto sales, storage or salvage yards.
 7. Solid waste disposal sites
 8. Asphalt products processing.
 9. Flea markets (outdoor).
 10. Lumberyards.
 11. Tire recapping shops.
 12. Open storage.
 13. Drag strips or race tracks.
 14. Manufactured and modular home sales.
 15. Auto repair or auto service shops.

(Ord. No. 3-98, 2-16-98; Ord. No. 10-2007, 4-10-07)

4.3.7 General development plan (“GDP”) requirement.

- A. Any person, partnership or corporation wishing to develop land in the 321-ED District shall submit a general development plan for approval. The following general provisions shall apply to all GDPs. The proposal must include the following: (1) the use of extraordinary screening and buffering from roadways and adjacent sites that virtually eliminates views from all directions; (2) provisions that indicate that the majority of storage will occur in an enclosed building; (3) provisions to significantly contain noise, odors, smoke and dust and light on site; and (4) a financial guarantee, which can be a letter of credit, cash or any other financial instrument approved by the Town Council, that public roadways that are

damaged by the movement of heavy equipment or earthen materials during construction of the project shall be repaired at no cost to the public:

1. Minimum parcel size. Except as otherwise provided in this section, the minimum parcel size for submitting a GDP for review shall be five (5) acres of contiguous property. All projects involving five (5) acres or more of contiguous property shall be subject to quasi-judicial approval by the Town Council. Property may be subdivided into lots less than five (5) acres subject to the requirements of subsection (b). The property may include more than one owner and more than one recorded lot, provided that the total property equals or exceeds five (5) acres and the submitted GDP includes development plans for the entire project site. Rezoning to the 321-ED District for property less than five (5) acres may be requested provided that any proposed GDP site will equal five (5) acres or more. A GDP for a parcel or combined parcels of less than five (5) acres, but greater than one (1) acre, may be approved provided the overall policies and goals contained within the Highway 321 Corridor Plan will not be compromised. General development plans pertaining to a parcel or combined parcels of less than five (5) acres will be considered subject to the following criteria being met:
 - (a) Where a GDP of less than five (5) acres also provides for coordinated development with adjoining developments, including connected roads and shared driveways, such a plan may be approved provided the new development will not have independent driveway access onto a major/minor thoroughfare. The interior roads and driveways must be designed and built to connect to existing roads in the adjoining development. All projects involving less than five (5) acres of contiguous property shall be subject to review and administrative approval by the Town staff.
 - (b) The remaining standards of the 321-ED zoning district are met.
- B. Subdivisions. Subdivisions of land shall be allowed in the 321-ED District only through review and approval of a GDP so as not to compromise the integrity of the GDP regulations and to avoid interference with the assemblage of smaller parcels for more appropriate development. Land that is subdivided as part of a GDP project shall conform to the following regulations in addition to the Town's subdivision ordinance and any other applicable Town regulations:
 1. Parcel size. Individual lot sizes shall be as indicated by the table in section 4.3.9C.3 of the 321-ED District ordinance.
 2. Road designs. All roads shall conform to the most recent design standards set forth by the NCDOT.
 3. Applicable site design standards. All applicable site design and improvement standards included herein shall be adhered to upon plan submittal. The planner shall determine what requirements apply.
 4. Future development of subdivided lots. All future development of individual parcels in the subdivision shall submit a GDP and adhere to all applicable site design and improvement standards included herein.

- C. Residential provisions. The following shall apply to all residential development in the 321-ED district.
1. New site-built homes in 32I-ED District. So as to not interfere with the assemblage of smaller parcels for more appropriate nonresidential uses, site-built single-family homes shall be prohibited in any 321-ED(I) District. However, the permanent or temporary placement of one single- or multi-section manufactured home on an existing lot of record shall be permitted as a use-by-right in any 321-ED(I) District, subject to the dimensional, appearance and setup requirements in Article 8.
 2. New site-built homes in 32I-ED(MX). Site-built single-family homes shall be permitted in the 321-ED(MX) District only as a portion of a mixed-use project. The 321-ED(MX) District is intended to encourage a mixture of development types including a range of residential types and densities. All applicable standards and procedures included herein shall be adhered to for all residential development projects in the 321-ED(MX) district.
 3. Existing residential uses and structures in 321-ED District. Existing single-family, site-built or manufactured homes and duplexes are exempt from the requirements of the 321-ED District as long as the property is being, used for residential purposes. Additions to said structures or accessory uses are permitted subject to the zoning requirements of the district prior to the time the property was rezoned to the 321-ED District. Existing single-family site-built or manufactured homes and duplexes which are partially or fully destroyed may be rebuilt or repaired as a matter of right.

(Ord. No. 3-98, 2-16-98)

4.3.8 General development plan (“GDP”) review.

- A. Review process. The following review process shall apply to all general development plan projects in the 321-ED District:
1. Initial contact with zoning enforcement officer.
 2. Pre-application conference. The conference will be a relatively informal meeting between developers and local government staff from each Town department or outside agency that will likely have a role in the project (e.g. planning, engineering, fire marshal, sheriff’s department, NCDOT District engineer, NC Division of Environmental Management, US Army Corps of Engineers). As much information as possible (preferably including sketch plans) should be presented to the local government staff by the developer(s). The developer may waive this meeting and submit the application for general development plan review.
 3. Application filing and staff review. The developer shall submit a GDP. On receipt of the GDP application, site plan, and detailed proposals as indicated herein, the Planning Director shall cause a study to be made by the planning and zoning department, the Town Engineer and such other agencies or officials as appear appropriate in the circumstances of the case, to determine conformity with the adopted land use plan, zoning and other regulations applicable in the case. Staff comments and concerns will be compiled by the planning staff who,

in turn, will assist the developer in making any necessary adjustments to the plans. Following such review, unless complete conformity is found, the applicant shall be notified in writing by the planning staff of discrepancies. The planning staff will then work with the applicant in bringing the material submitted into conformity with requirements of this ordinance. At such time as further changes appear unnecessary, the planning staff shall review the GDP to ascertain whether the GDP meets the requirements of the 321-ED District. The planning staff shall approve the GDP, conditioned on specific modifications to make the GDP conform to the requirements of this ordinance, or disapprove, with recorded reasons thereof. After a GDP has been approved, zoning watershed and building permits shall be issued in the same manner as for building permits generally, provided that any requirements concerning the order and location in which building permits are to be issued in the particular GDP shall be observed. Except as provided below, final plans and reports approval shall be binding on the applicants and any successors in title, so long as 321-ED zoning applies to the land. GDP approval is an administrative action unless it is required to be approved by the Town Council based on the size of the parcel as indicated with section 4.3.7A.1. No public notice or hearing is required in connection with the approval of final plans by Town staff. For the subdivision of land, the developer shall follow the Town's subdivision ordinance. For nonresidential development, close coordination with the economic development commission (EDC) will be encouraged.

4. Changes in plans. Changes in approved plans under the thresholds in (a) - (e) below may be permitted by the Town Planning Director or Town Council, whichever body approved the initial GDP, on application by the original applicant or successors in interest. A revised plan shall be required when the following occurs:
 - (a) Any increase in intensity of use. An increase in intensity of use shall be considered to be an increase in usable floor area, an increase in the number of dwelling or lodging units, or an increase in outside land area devoted to sales, displays or demonstrations.
 - (b) Any change in parking resulting in an increase or reduction of five (5) percent or more in the number of spaces approved.
 - (c) Any reduction in the amount of open space, resulting in a decrease of more than five (5) percent or any substantial change in the location or characteristics of open space.
 - (d) Any change in use.
 - (e) Substantial changes in pedestrian or vehicular access or circulation.

The planner shall review the revised GDP to ascertain whether it meets the requirements of the current 321-ED District.

- B. General development plan submittal requirements. Material submitted with the application, or on subsequent request by the planning staff, shall include all plans, maps, studies and reports which are required to make the determinations called for in the particular case, with sufficient copies for necessary referrals and records.

More specifically, all of the following shall be required before the application shall be considered filed for processing:

1. Written report and agreement. The applicant shall submit a report identifying all property ownerships and legal interests in the land within the boundaries of the proposed GDP and giving evidence of unified control of its entire area. The report shall state that all present owners and holders of legal interests in the property within the boundaries of the proposed GDP consent to the property being subject to the regulations and limitations of the GDP, and the report shall include a signature of each property owner and holder of a legal interest attesting to this fact.
2. Site survey. A survey of the proposed GDP site showing property lines and ownerships; and existing features, including streets, alleys, easements, utility lines, existing land use, general topography and physical features.
3. Site plan requirements. A site plan for the GDP, drawn no smaller than 1"=200' scale, shown graphically. The site plan and all accompanying maps must be a minimum of 18"x 24". Twenty (20) copies of the site plan and accompanying maps shall be submitted to the planner. Photos, diagrams and other visual aids may be used as support documentation. The site plan and accompanying information shall, where applicable, include:
 - (a) The name of the proposed development, and the names of the developer(s) and professional planner(s).
 - (b) Scale, date, north arrow.
 - (c) Existing site conditions including floodplains, wetlands, watershed designations, forest and vegetative cover, unique natural features, topographic contours, slopes over fifteen (15) percent and other site conditions listed herein.
 - (d) General plans for grading and site preparation (this may be submitted as a statement if more appropriate).
 - (e) Quantitative data including acreage of tract(s) to be included in the project (including any proposed lot lines), building densities, parcel size, open space calculations, market analysis and other calculations required by the Town.
 - (f) Location, height, floor area, and use of existing structures, if any, and approximate location, orientation, height, floor area and use of proposed structures or portions of structures.
 - (g) Location, dimensions and proposed general uses (retail, office, etc.) of all buildings including all required setback and buffer area boundaries as required herein.
 - (h) Planned street circulation system including all ingress and egress points, loading/service areas and pedestrian walkways (including crosswalks). Traffic flow shall be delineated by directional arrows and all directional and/or motorist aids shall be indicated.

- (i) Location, character and scale of parking and service facilities, such as area and number of spaces in parking lots, character of structural parking and the like.
 - (j) Location of all service, maintenance, mechanical and trash/refuse areas and manner of screening as provided for herein.
 - (k) Identification of surrounding land uses, streets and zoning, relation of abutting land uses and zoning districts, including, where view protection is an objective, location of principal public viewpoints into or through the site.
 - (l) General schematic landscape plan providing for the requirements herein. The type, number, location and size (current and projected) of all plantings must be shown.
 - (m) Proposed treatment of the perimeter of the development including fences, vegetative screens / buffers and walls.
 - (n) Existing lots and blocks, if any, and general pattern of proposed lots and blocks, if any.
 - (o) Location and acreage of existing or proposed public and quasi-public facilities for pedestrian use or common enjoyment (excluding automotive uses); scale of such systems; indication of open air and internal components.
 - (p) Location of all existing and proposed lighting standards complete with routing of electrical supply and the circumference area that will be lighted by each standard.
 - (q) Location, type, size and capacity of all existing and proposed utility systems.
 - (r) Location, type and dimensions of all existing and proposed signs, including electrical routing and required setbacks. Detailed drawings and any technical data for the proposed signs shall be included.
 - (s) The site plan is required for determination as to internal relationships between or among uses and activities proposed and their supporting systems and facilities, and relation to surrounding uses, activities, systems and facilities. With respect to site plans, it is the intent of these regulations that such plans shall include all data necessary for determining whether the proposed development meets the specific requirements and limitations, and the intent, concerning development in the 321-ED District. Therefore, information in addition to that specified above may be requested in connection with the Site Plan when necessary to make such determinations with respect to a particular GDP. Such information shall be provided, where necessary, to make such determinations before processing proceeds.
4. Special surveys or reports. Special surveys, approvals or reports required by law in the circumstances of a particular GDP proposal are required where development of a major element of the proposal or the entire proposal is dependent upon such special surveys, approvals or reports.

5. Phasing plans. Where a GDP is to be constructed in stages, the infrastructure and improvements must be in place for all preceding phases before subsequent phases are developed.
6. Restrictive covenants. The application shall include a description of any restrictive covenants to be recorded with respect to property included in the 321-ED District. Where compliance with this ordinance cannot be determined by a description of the covenants alone, a draft of the covenants will be required.
7. Additional requirements. The following additional maps, renderings and/or documentation shall also be submitted:
 - (a) Storm water controls and watershed regulations must be addressed early in the general development plan project review process. This must include compliance with water supply watershed ordinance(s). Watershed permits shall be issued with the GDP approval;
 - (b) Manner of disposing of solid waste;
 - (c) Provisions for placing all utilities underground;
 - (d) Potential historical or cultural sites as identified in the US 321 Corridor District Plan or those listed on state or federal historic preservation lists and cultural resources inventories and means to protect them from the encroachment of incompatible uses.
8. Driveway permit application. The North Carolina Department of Transportation (NCDOT) issues driveway permits for new driveway connections to the state highway system. Indication that a driveway permit has been applied for from NCDOT must be submitted.
9. Site access study. A “site access study” (commonly referred to as a traffic impact analysis or traffic impact statement) shall be prepared and submitted for the general development plan when recommended by the NCDOT District Engineer. The site access study may also be prepared by the applicant to refute the necessity of one or more required traffic improvements. This study shall be completed by a professional engineer licensed in the State of North Carolina and familiar with the standard practice of site access analysis. A formal recommendation by the NC District Engineer concerning a refuted requirement may be substituted for the study. The site access study will be used to determine and describe how traffic generated by new or altered land uses will be served by the existing relevant road network and what adjustments must be made to maintain the same or similar level of service. The following information must be prepared as part of the site access study:
 - (a) Peak hour trip generation for the proposed land use(s). Trip generation rates shall be obtained from Trip Generation, an ITE publication.
 - (b) Trip distribution to attractors and surrounding areas.
 - (c) Capacity analysis of adjacent intersections and all proposed access points in accordance with the latest FHWA Highway Capacity Manual.

- (d) Alternative analysis for a number of access points and any alternatives proposed by the developer or the local government.
- (e) Recommendations for the necessary number and location of access points in accordance with calculated capacity and alternative analysis.
- (f) An appendix which shall include all calculations, technical data, visual diagrams and other applicable information.
- (g) A traffic mitigation plan that suggests alternative improvements aimed at correcting any adverse impacts, or decreases in the levels of service, caused by the new development.
- (h) The existing relevant traffic network includes all of the major and minor thoroughfares and collectors from the point of origin at the proposed development up to and including intersections with secondary roads. The study must show the impact of the proposed development on the level of service of the relevant streets in the traffic network. "Level of service" refers to the categories A through F set forth in the US 321 Corridor District Plan. The Town, with assistance from the NCDOT District Engineer, will review the site access study for compliance with these requirements. Projected traffic demands and necessary improvements created by a proposed General Development Plan project will be evaluated by the Town and the NCDOT District Engineer. The results of the corresponding impacts shall be evaluated relative to the computed levels of service at various time frames and durations as defined in the Highway Capacity Manual. A plan for mitigating any adverse impacts shall be proposed by the developer and approved by the Town prior to the issuance of any building permits. The traffic mitigation plan shall be based on the results of the traffic impact study and shall include proposed improvements, a cost estimate, a construction schedule and the extent of participation by the proposed development. If adequate facilities cannot be provided by the Town or the NCDOT, the Town may require that:
 - (a) the developer of the project provide the necessary improvements to overcome the deficiency, or
 - (b) the development be delayed until the public sector makes the improvements, or
 - (c) the development be staged to coincide with staged improvements to ensure that roadways facilities are available concurrent with development.

(Ord. No. 3-98, 2-16-98)

4.3.9 US 321-ED District site design and improvement standards.

- A. The following standards and regulations shall be adhered to for all development and related activities within the 321-ED District:
 - 1. General provisions. The following general provisions shall apply:
 - (a) Other regulations. The site design shall conform to all local, state and federal regulations through the GDP review process.
 - (b) Long-range plans. It shall also conform to all long-range plans concerning such issues as road building and utility extensions.

- (c) General site design. In general, the site design shall attempt to reduce cut and fill; protect ground water resources; avoid unnecessary paved surfaces; provide adequate access; promote visual attractiveness, and mitigate adverse impacts of noise, odor, traffic, drainage and utilities on adjacent properties.
 - (d) Suitable sites. The site shall be suitable for development in the manner proposed without hazards to persons or property, on or off the site, free from the probability of flooding, erosion, subsidence or slipping of the soil, or other dangers. Conditions of soil, ground water level, drainage and topography shall all be appropriate to both the kind and pattern of use intended.
 - (e) Unified site planning. If appropriate to the form of development, lands to be included in 321-ED Districts may be divided by streets, alleys, rights-of-way or easements, but shall be so located, dimensioned and arranged as to permit unified planning and development and to meet all requirements in connection therewith, as well as to provide necessary protection against adverse relationships between uses in the district and uses in surrounding areas.
- B. Preservation. Protecting environmentally sensitive land and historical sites should be given high priority in site design. More specifically the following shall be preserved whenever feasible:
- 1. Wetlands. Wetlands as defined through field inspection by the U.S. Army Corps of Engineers;
 - 2. Floodplains. Lands in the floodplain as identified on Federal Emergency Management Agency flood hazard maps;
 - 3. Steep slopes. Slopes in excess of twenty (20) percent over intervals of ten (10) feet or more;
 - 4. Historic or cultural sites.
- C. Dimensional requirements. The following dimensional requirements shall be adhered to:
- 1. Permitted building height. Buildings up to seventy-five (75) feet shall be allowed in the 321-ED District subject to the setback requirements set forth herein. Additional building heights shall be allowed subject to an increase in building setbacks of one (1) foot for each additional one (1) foot in building height.
 - 2. Building setbacks. The minimum building setback (required yard) from the edge of all street rights-of-way, planned street rights-of-way and property lines for the outer boundaries of the development shall be as follows:

Setback From	Minimum Setback (Feet)
US 321 Freeway right-of-way	100
Major and minor thoroughfare rights-of-way	75
All other road rights-of-way (public or private)	50
Nonresidential property lines	50
Residential property lines	75

3. General subdivision lot requirements. In subdivisions approved through the GDP process, design of interior individual lots shall adhere to the following, dimensional requirements (except for requirements included in subsection (J)(5) & (6):

	Minimum Lot Size (sq. feet)	Minimum Lot Width (feet)	Minimum Front Yard (feet)	Minimum Side Yard (feet)	Minimum Rear Yard (feet)
321- ED(MX)	20,000	100	30	20	30
321-ED(I)	40,000	100	30	25	35

4. Street-line preservation. Where a major and minor thoroughfare is planned to be built or widened and initial roadway design and right-of-way locations have been completed, all building setbacks shall account for these improvements. In cases where a future road or road improvement is shown on the Maiden thoroughfare plan, the developer shall take possible road improvements into account in the site design.
5. Nonresidential densities. To encourage land assemblage, floor area ratios (FARs) shall be permitted on a sliding scale as identified below. To determine the allowed gross floor area of all buildings or structures allowed on the site, the FAR listed below is multiplied by the lot area of the project site. *For example, if you have a 10 acre project site (435,600 square feet) you may have up to 1,306,800 of square feet of floor area. In cases where the FAR is greater than 1, multi-story buildings will be required to achieve allowed densities.*

Project Size (Acres)	Maximum FAR
5.00 to 24.99	3
25.00 to 49.99	2.75
50.00 to 74.99	2.5
75.00 to 99.99	2.25
100.00 to 199.99	2
200.00 and greater	1.75

- D. Circulation system design. The following circulation system requirements shall apply to all development in the 321-ED district:
 1. General provisions. 321-ED Districts shall be so located with respect to expressways, arterial and collector streets, and shall be so designed as to provide direct access to and from such districts without creating traffic along minor streets in residential neighborhoods outside the district.
 2. Access to major roads. All GDPs shall have access to at least one major or minor thoroughfare unless it is less than the minimum parcel size requirement as noted in section 17-707(1).
 3. Access points permitted. One (1) access point shall be allowed on any property with less than four hundred (400) feet of frontage on a major or minor

thoroughfare. Two (2) access points shall be allowed on a major and minor thoroughfare if the property has frontage that equals or exceeds four hundred (400) feet on a major or minor thoroughfare and the results of a site access study or a recommendation from the NCDOT indicate the need for a second access point. Three (3) access points shall be allowed if the property has frontage that equals or exceeds eight hundred (800) feet on a major or minor thoroughfare and the results of a site access study or a recommendation from the NCDOT indicate the need for a third access point. Three (3) access points shall be the maximum number of access points allowed for a single project on any major or minor thoroughfare.

4. Location of access points. The location of access points shall be in conformance with NCDOT's policies for street and driveway connections.
5. Off-site traffic improvements. Transition tapers and deceleration lanes shall be required for all general development plan projects where a site access study requires or a recommendation from the NCDOT indicates that such improvements are necessary. The costs of deceleration lanes and transition tapers shall be the responsibility of the owner or developer of the property.
6. Shared access. Mutual shared access agreements shall be required between adjacent property owners with frontage on major or minor thoroughfares when site plans are submitted concurrently. When access is to be shared, easements, liability arrangements and a maintenance agreement must be submitted to the local government prior to occupancy. Where no mutual shared access is feasible due to topographical or other physical or legal constraints, access shall be in conformance with NCDOT's policies for street and driveway connections.
7. Connected interior driveways / parking. Adjacent commercial developments with access to a major or minor thoroughfare shall connect interior parking and driveways. Where adjacent commercial property is vacant, sufficient provisions to connect to the properties shall be submitted. Parcels with frontage on major or minor thoroughfares shall also be required to provide (or reserve) sufficient access to any adjacent properties with poor or nonexistent access (see subsection (D)(6)). When a GDP is submitted for a tract that is located immediately adjacent to properties less than five (5) acres that front along a common public street, the plan shall include the provision of reasonable access to the adjacent properties by one (1) of the following ways:
 - (a) Building layout shall be shown with a break or open space to allow for construction of a future road serving the adjoining property. The plan shall locate such future road site at a location where, according to sound engineering practices, actual construction of the road would be practical; or
 - (b) The internal road circulation pattern on the site plan shall show a roadway that will be constructed as part of the GDP which connects to the adjoining property.
8. Channelization. Channelization (the separation of conflicting traffic movements into well-defined paths of travel by traffic islands or significant pavement markings) improvements shall be considered where a site access study indicates

- the possible existence of significant turning conflicts involved with the new development.
9. Signalization. Only after all other traffic improvements have been explored shall signalizations be installed. Traffic signals will reduce turning conflicts but may significantly disrupt traffic flow.
 10. Street design. All streets shall be designed and paved to meet NCDOT standards.
- E. Landscaping, buffering and screening. The following landscaping, requirements shall apply to all development in the 321-ED District:
1. Construction clean-up. All dead or dying trees, stumps, litter, brush, weeds or other debris shall be removed from the site at the time of occupancy.
 2. Maintenance provisions. All landscaping and screening shall be maintained so as to continue their effectiveness and to preserve minimum number and type of plantings required by this ordinance.
 3. Landscaping of disturbed land. Landscaping of all cuts and fills shall be sufficient to prevent erosion. All roadway slopes shall also be landscaped.
 4. Interior street landscaping. For multitenant, multiparcel or multibuilding developments, shade trees shall be planted along both sides of all interior access streets (excluding streets not typically used by the public). Typical plantings must include as a minimum fourteen (14) shade trees per one thousand (1,000) linear feet which are at least eight (8) feet tall at planting and will be twenty (20) feet tall at maturation are similar in size and shape.
 5. Entranceways. Multitenant, or multiparcel or multibuilding developments must provide for the installation of a median-type entranceway at all entrances on major or minor thoroughfares. The median shall be grassed and landscaped.
 6. Use of existing topography. Developments shall utilize existing topography such as hills, ridges and berms to screen parking and maintenance areas to the maximum extent possible.
 7. Highway 321 buffer. A fifty-foot "landscaped buffer area" shall be required for the portion of all development adjacent to the US 321 right-of-way. The buffer shall include the following improvements:
 - (a) One (1) tree (eight (8) feet tall in three (3) years) per fifty (50) linear feet of frontage; and
 - (b) One (1) tree (smaller ornamental tree) per fifty (50) feet of linear feet of frontage; and
 - (c) One (1) shrub or similar planting per fifteen (15) linear feet of frontage.
 - (d) The remaining area shall include a ground cover of seeded grass, sod, or rock, brick, or wood mulch or any combination of these items.
 - (e) The developer may substitute existing vegetation for some or all of these requirements when practical. Buildings or parking areas shall be prohibited in

the buffer areas. The buffer areas shall extend along the entire length of the lot.

8. Residential buffers. When a 321-ED District directly abuts a residential zoning district, all of the structures for the nonresidential uses shall be set back seventy-five (75) feet from the residential property liners). This area shall be labeled on the GDP as the "natural buffer area." No buildings, signs or parking are allowed in this area. The buffer must include a row of evergreen trees placed not more than five (5) feet apart which would form a continuous hedge of at least eight (8) feet tall at planting. Low-growing evergreen shrubs shall fill in all gaps between the trees. Opaque fencing (six (6) feet tall), existing topography and/or existing vegetation may be used in-lieu of planted vegetative screening for all or part of the natural buffer area if the same or better screening will result. The intent of this requirement is to heavily screen the development from the residential district.
9. Water body buffers. An undisturbed natural buffer, the width of which shall be determined by applicable State and federal law, shall be provided along all rivers, streams, creeks and other natural bodies of water which: (a) are identified as perennial waters on the U.S.G.S. quadrangle topographic maps; and (b) qualify as environmentally sensitive areas (i.e., floodplains as delineated by the Federal Emergency Management Agency, and wetlands, as identified by the U.S. Army Corps of Engineers through field inspection). Where such resources are present, no design shall be approved unless it complies with the requirements of all applicable federal state and local laws and regulations pertaining to these resources. These laws and regulations include, but are not limited to, section 404 of the Clean Water Act and its implementing regulations, Article 18.1 (Flood Damage Prevention), Article 9.2 (Watershed Protection Ordinance), and Article 18.2 (Phase II Stormwater). Existing undesirable vegetation may be cleared and the buffer revegetated or landscaped within a reasonable time period to minimize sedimentation and erosion. Man-made bodies of water such as retention ponds or aesthetic water attractions are not subject to this requirement. These areas may be used to calculate required open space as provided for herein.
10. Parking area landscaping. Where parking facilities are located in the front of the development the following landscaping standards are required:
 - (a) The standard for all parking areas shall be one (1) shade tree (at least four (4) feet tall at planting and eight (8) feet within three (3) years) per two thousand (2,000) square feet of space dedicated as parking. The trees shall be evenly spaced throughout the parking area. Five (5) percent of the parking areas shall be landscaped with plantings (bushes, shrubs, flower beds). The perimeter landscaping standards shall not be combined with the parking area requirements. No more than fifteen (15) spaces may be in a continuous row without being interrupted by landscaping and at least one (1) shade tree.
 - (b) A thirty-five-foot wide landscape buffer area shall be required along all roads which shall include as a minimum one (1) of the following:

- (i) One (1) tree (eight (8) feet tall in three (3) years) per fifty (50) linear feet of frontage; and one (1) tree (smaller ornamental tree) per fifty (50) feet of linear feet of frontage; and one (1) shrub or similar planting per fifteen (15) linear feet of frontage. The remaining area shall include a groundcover of seeded grass, sod, or rock, brick, or wood mulch or any combination of these items; or
 - (ii) A continuous row of shrubbery, a landscaped, stabilized earthen berm of at least four (4) feet above parking lot grade level or a wall. Attention shall be given to ensure that traffic safety measures are adhered to (including site distance triangles).
 - (c) It is the intention of this requirement to create a more pedestrian-friendly environment, reduce urban heat, reduce wind and air turbulence, reduce noise, reduce the glare of automobile lights, reduce stormwater drainage problems and protect and preserve the appearance, character and value of adjacent properties. It is not the intention of this requirement to decrease visibility or to unreasonably screen buildings or signs.
 - (d) No interior buffers are required between individual parcels or buildings in multi-parcel or multitenant developments such as shopping centers and industrial office parks. This requirement is intended to provide a natural edge to an increasingly urban environment. If significant existing topography or other natural barriers provide a sufficient natural edge, the landscaped buffer areas may be waived.
11. Maintenance area screening. All loading, shipping, storage, maintenance, trash/refuse and mechanical areas shall be heavily landscaped with mature trees (at least six (6) feet tall) or other screening (also six (6) feet tall) while providing sufficient space for ingress and egress of vehicles. Mechanical areas on the tops of buildings shall be screened.
12. Entrance landscaping. Landscaping shall be provided at site entrances, in public recreation/open space areas and adjacent to buildings.
- F. Pedestrian design. The following pedestrian design requirements shall apply to all development in the 321-ED District:
- 1. General provisions. In general, the plan shall provide a unified and well-organized arrangement of buildings, service areas, parking, pedestrian and landscaped common areas providing for maximum comfort and convenience of visitors and employees. Commercial buildings shall be so grouped in relation to parking areas that, after visitors arriving by automobile enter the walkway system, establishments can be visited conveniently with a minimum of conflicts with vehicles.
 - 2. Pedestrian design. For multitenant/building/parcel projects, the site plan shall include provisions for pedestrian-scale amenities which may include benches, picnic tables, courtyards, plazas, water attractions and trash receptacles. These enhancements are essential to creating an efficient and functional environment as well as promoting a “sense of place.” An area shall be reserved for pedestrian use and/or open space, and shall be improved and maintained accordingly. Such

area(s) may include covered malls for general pedestrian use, exterior walkways, outdoor seating areas and the like where the facilities are available for common use by employees and visitors. Required buffer areas and setback yards as well as improved deck and roof areas may be used to meet this requirement.

3. Heavy traffic generators. Service stations, fast food restaurants and similar uses, if provided, shall be so located that operations do not interrupt pedestrian or traffic flows in other parts of the development.
 4. Location of loading zones and maintenance areas. Loading zones where customers pick up goods shall be so located and arranged as to prevent interference with pedestrian movement within the development. Facilities and access routes for shopping center deliveries, servicing, and maintenance shall be so located and arranged as to prevent interference with pedestrian traffic in the center.
 5. Pedestrian travel. All buildings or building clusters within the development shall be connected with linkages other than roads (sidewalks, bikeways and walking paths). When feasible, these linkages shall be provided between adjacent sites. Pedestrian access may be provided at any suitable locations within the district, but shall, where practicable, be separated from vehicular access points in order to reduce congestion, marginal friction and hazards, except where signalization is used in such a manner as to control pedestrian and vehicular movements safely.
 6. Natural areas. Protecting environmentally sensitive areas for use as open space in the development should be given a high priority in site design. The GDP shall identify these environmentally sensitive areas (i.e., floodplains as delineated by the Federal Emergency Management Agency; wetlands, as identified by the U.S. Army Corps of Engineers through field inspection; and steep slopes, which are defined to be slopes in excess of twenty (20) percent over intervals of ten (10) feet or more). Where such resources are present, no design shall be approved unless it complies with the requirements of all applicable federal, state and local laws and regulations pertaining to these resources. These laws and regulations include, but are not limited to, section 404 of the Clean Water Act and its implementing regulations, Article 9.1 (Flood Damage Prevention) and Article 9.2 (Watershed Protection Ordinance) of this chapter.
- G. Parking. The following requirements shall apply to all parking, in the 321-ED District:
1. General provisions. Off-street parking shall be provided as required by the off-street parking and loading section of the zoning ordinance. Off-street loading shall be provided with area location and design appropriate to the needs of occupants of the district and protection of adjacent properties from adverse effects. No space designated as required off-street parking space for the general public shall be used as off-street loading space or maneuvering room for vehicles being loaded or unloaded.

2. Interior parking encouraged. Parking lots shall be kept separate and shall be located in the interior sections of multiple-building developments when possible. In single building developments, parking areas shall be located in the rear of the site when practical. If parking must be located in the front of buildings, the parking area landscaping requirements listed in subsection (E)(10) shall be adhered to.
 3. Parking setbacks. Where parking is located in the front, all parking areas shall be located behind the landscaped buffer areas and set back a minimum of eight (8) feet from all buildings. This separation shall be grassed and landscaped and may include sidewalks.
 4. Connection parking areas. All parking areas should be linked to parking on adjacent project sites. When adjacent property is zoned 321-ED, provisions shall be made to allow for this parking connection when the property develops.
- H. Signs. The following requirements shall apply to all signage in the 321-ED District:
1. General provisions. All signs for the general development plan project shall conform to the requirements in Article 12 of the zoning ordinance except where the requirements included herein are more restrictive. Additionally, the following general provisions shall apply:
 - (a) No on-site sign larger than six (6) square feet may be located closer than one hundred (100) feet from another similar or larger sign.
 - (b) All signs shall be located in such a manner to avoid impeding the view of motorists or pedestrians.
 - (c) No signs shall be located in any street right-of-way. Signs may be placed in the landscaped buffer areas.
 2. Prohibited signs. The following signs shall be prohibited on any land zoned 321-ED:
 - (a) Off-site outdoor advertising (billboards);
 - (b) Portable signs;
 - (c) Roof signs;
 - (d) Mechanical movement signs;
 - (e) Posters, streamers, or similar devices used to attract attention;
 - (f) Windblown signs (banners, balloons, streamers, etc.);
 - (g) Electronic changeable copy signs except for time and temperature signs not exceeding fifteen (15) square feet;
 3. Permitted signs. The following signs shall be permitted:
 - (a) One (1) on-site sign structure for multitenant/building/parcel development, having not more than two (2) sign surface areas, may be erected to identify the center along each section of road frontage on a major or minor thoroughfare from which there is a median entranceway to the center. Such

signs may not exceed one hundred (100) square feet in total sign area; may not be over twelve (12) feet in height; may identify the center, as a whole, and the establishments' activities and facilities within the center but shall not include other advertising; or

- (b) One (1) on-site sign structure for single-tenant/building/parcel development, having not more than two (2) sign surface areas, may be erected to identify the site along each section of road frontage on a major or minor thoroughfare from which there is a median entranceway to the site. The following height and area requirements shall apply, based on the type of road that the establishment fronts on:

Sign Requirements for Individual Establishments

Lanes	Speeds (mph)	Area (sq. ft.)	Height (feet)
2	15-25	10	5
2	30-40	20	6
2	45-55	50	12
4	15-25	15	6
4	30-40	35	11
4	45-55	80	18
6	15-25	20	14
6	30-40	40	16
6	45-55	100	20
Freeway	55+	150	28

- (c) Source: Street Graphics and the Law, Mandelker and Ewald, 1988 One (1) wall sign shall be permitted for individual establishments or buildings within the project for each wall exposed to adjoining streets, mounted on the building and not extending above its lower roofline. Such sign shall not exceed ten (10) percent of the area of the wall involved, provided that a sign area of one hundred (100) square feet shall not be exceeded; or
- (d) Signs directing traffic shall be permitted but shall not exceed five (5) square feet per side.

I. Site appearance.

1. High quality design. Building designs in the 321-ED District shall promote a diversity in style while striving to define a distinct character and maintain a high quality development standard.
2. Underground utilities. All on-site utilities (electrical, telephone, etc.) shall be located underground unless technical restrictions exist for doing so. Provisions shall be made to significantly reduce the visual blight of any above ground utilities.
3. Lighting. Lighting shall be provided at intersections, along walkways, in parking lots, between buildings and at development entrances. All lighting shall be arranged to reflect the light away from adjacent properties and roadways.

The maximum height shall be twenty-five (25) feet for all lighting standards. Spacing of the standards shall be four (4) times the height of the standard. Alternative lighting design may be approved which meets or exceeds the above required lighting pattern. The lighting plans shall be endorsed by the utility provider.

4. Paving materials. Design and choice of paving materials in pedestrian areas (including crosswalks and sidewalks) shall include brick, concrete (aggregate exposed finish), cement pavers, brick pavers or similar materials.
- J. Mixed use development provisions (32I-ED(MX) district only).
1. Intent. The mixed use development concept intends to:
 - (a) Permit a flexible mixture of various residential development types which may include certain commercial/office/civic establishments primarily serving the residents living in the development.
 - (b) Encourage commercial and office uses that do not attract large volumes of traffic and continuous consumer turnover.
 - (c) Provide for an alternative to strip-style, highway-oriented commercial uses.
 - (d) Permit uses that promote the construction of new buildings (and the conversion of existing buildings) that maintain the visual character and architectural scale of other uses in the same project.
 - (e) Minimize the visual and functional conflicts between residential and nonresidential uses within and surrounding the development.
 - (f) Create relatively self-contained residential neighborhoods that provide many services on-site that would otherwise require frequent automobile use.
 2. Permitted uses. The following uses shall be permitted in mixed use developments provided that the use compatibility criteria in subsection (3) are adhered to for each proposed use:
 - (a) Residential uses including multifamily (including townhouses), duplexes, zero lot-line single-family homes, and typical large lot single-family detached homes.
 - (b) Retail specialty shops including the sale of gifts, antiques, flowers, books, jewelry, wearing apparel, craft shops and other similar uses.
 - (c) Personal service shops including tailors, beauty salons, barbers, shoe repair, dressmaking and other similar uses.
 - (d) Business offices including financial services (excluding drive in windows), real estate sales, travel agencies, insurance sales, advertising, mailing services and other similar uses.
 - (e) Studios for dance, art, music, photography or similar uses.
 - (f) Professional offices for doctors, lawyers, dentists, chiropractors, engineers, architects and other similar uses.

- (g) Mixed-uses structures containing one or more dwelling units and other nonresidential uses permitted herein.
 - (h) Government buildings or structures necessary to serve the residents of the development including but not limited to schools, libraries, post offices, utility maintenance buildings.
 - (i) Accessory buildings and uses.
3. Use compatibility criteria. The uses listed in subsection (2) must adhere to all of the following compatibility criteria to be permitted:
- (a) There is a clear relationship between nonresidential and residential uses on any one site or adjacent sites.
 - (b) For project involving five (5) acres or more, the use will not cause a roadway serving the project to operate at a level of service (“LOS”) D. For projects involving less than five (5) acres, there shall be no more than three hundred (300) vehicle trips per day estimated to be generated by the project or the project shall not cause a roadway serving the project to operate at a level of service (“LOS”) D. For projects involving less than five (5) acres, the applicant may choose which traffic standard it will satisfy.
 - (c) Minimum visual and functional conflict will be created between the proposed uses or nearby uses.
 - (d) Anticipated noise and congestion created by the use will be insignificant, especially in the evenings.
 - (e) The bulk, height and scale of the building(s) will be compatible with surrounding (or proposed) residential development.
4. Mixed use development standards. In addition to the applicable 321-ED district requirements listed herein, all mixed use developments must conform to the following standards:
- (a) Project design. Without limiting the inventiveness and creativity of the developer, the following general design guidelines shall be adhered to:
 - (i) All building sites and/or buildings shall be accessed on interior streets, not on thoroughfares or arterials or collectors.
 - (ii) The placement of all buildings shall take into consideration topography, privacy, building height, orientation, drainage and aesthetics.
 - (iii) The commercial development on the site shall preferably be located at the development entranceways at major or minor thoroughfares unless significantly reliant on pedestrian customers. Higher density residential development shall be located along major interior roads between or at intersections.
 - (iv) Common, accessible open space shall be required for all mixed use developments. The open space shall be pedestrian-oriented and include such amenities as park benches, walking trails and gazebos. Parking or vehicular access within these areas shall be prohibited. The open space must comprise at least twenty (20) percent of the gross project area and

may be more when the reduced lot sizes are used or transfer-of-development rights are granted.

- (v) The site shall be divided into “clusters” or “mini-neighborhoods” that separate the different development types. This must be done while maintaining the interconnectivity and accessibility of all uses. The number of units per cluster shall be between four (4) and twenty (20). The use of curving cul-de-sacs off interior collector roads is recommended to achieve the clusters.
 - (vi) There must be one central “focus area” to the project. The focus may be a recreation or common open space area (playground, tennis courts, golf course), an entertainment facility (clubhouse, meeting facility, amphitheater) or a pedestrian-oriented commercial area needing little or no parking.
 - (vii) There shall be several small “pocket parks” that serve as convenient passive open space and/or recreation areas for those directly adjacent residents.
 - (viii) Five-foot sidewalks shall be included with all interior access street and parking area designs. Sidewalks may be constructed at the time of development or may be phased in over a period of several years as demand warrants. Each sidewalk must be built at the same time as the adjoining road. All sidewalks between residential, open space and commercial sections shall be safe and lead to storefronts, not service areas.
5. Residential provisions. Standard, large lot residential developments, exclusive of any other residential type are not permitted in the 321-ED District. However, large, single-family lots shall be permitted in conjunction with other residential types including the following:
- (a) Clustered single-family and duplexes.
 - (i) Minimum lot size: twenty thousand (20,000) square feet; however, lots may be reduced by up to fifty (50) percent of the minimum required lot size provided that at least seventy-five (75) percent of the balance of the original lot size must be preserved as common open space, accessible by all reduced building sites. Up to fifty (50) percent of the common open space may be located in a designated floodplain or may be reserved for a public use (school, library, community building, etc.).
 - (ii) Minimum lot width, fifty (50) feet (sixty (60) feet for duplexes). Add ten (10) feet on corner lots.
 - (iii) Minimum front yard, fifteen (15) feet (twenty-five (25) feet where the lot abuts a dedicated street or a large-lot single-family home site).
 - (iv) Minimum side yards, ten (10) feet.
 - (v) Minimum rear yards: twenty (20) feet.
 - (vi) Maximum height: thirty-five (35) feet or two and one-half (2½) stories.

- (vii) Accessory buildings shall be located in the rear yard no closer than five (5) feet from the principal dwelling or five (5) feet from any property line and no more than ten (10) feet in height.
- (b) Zero-lot-line. Zero lot line development allows the construction of single-family dwellings on individual recorded lots without the side yard requirement on one (1) side. This concept permits the better use of the entire lot by compacting the front, rear and side yards into one (1) or more internal gardens which may be completely walled or screened. This type of development is an affordable alternative to standard large lot single-family dwelling units and apartments, condominiums or townhouses which usually share common walls.
 - (i) Minimum lot size, twenty thousand (20,000) square feet, however, lots may be reduced by up to seventy-five (75) percent of the minimum required lot size provided that at least seventy-five (75) percent of the balance of the original lot size must be preserved as common open space, accessible by all reduced building, sites. Up to fifty (50) percent of the common open space may be located in a designated floodplain or may be reserved for a public use (school, library, community building, etc.).
 - (ii) Minimum lot width: forty (40) feet (fifty (50) feet on comer lots).
 - (iii) Minimum front yard: ten (10) feet (twenty-five (25) feet where the lot abuts a dedicated street or a large-lot single-family home site).
 - (iv) Minimum side yards: ten (10) feet on one side, zero (0) feet on the opposite; however, in no case shall a zero-lot-line dwelling be closer than ten (10) feet to the lot line of a large-lot single-family home site or a dedicated street.
 - (v) Minimum rear yards: twenty (20) feet.
 - (vi) Maximum height: thirty-five (35) feet or two and one-half (2½) stories.
 - (vii) Dwellings shall be constructed against one (1) side lot line and no windows, doors or other openings shall be permitted on this side. The developer must provide for an unobstructed wall maintenance easement of five (5) feet on the adjacent property.
 - (viii) Accessory buildings shall be located in the rear yard no closer than five (5) feet from principal dwelling or five (5) feet from any property line and no more than ten (10) feet in height.
- (c) Multifamily.
 - (i) To encourage land assemblage, densities for all multifamily projects shall be administered on the sliding scale as follows (these provisions are based on the acreage of the project):

Project Acreage Allocated for Residential Uses	Dwelling Units Per Acre
<5	Not permitted
5-9.99	10

10-14.99	12
15-19.99	14
>20	16

- (ii) In no case shall there be more than four (4) multifamily units in one (1) linear designed building. Where the design is non-linear, the planner shall determine the number of attached units that are appropriate, provided that no more than eight (8) units shall be allowed in a single building.
 - (iii) Minimum front yard: fifteen (15) feet (twenty-five (25) feet where the lot abuts a dedicated street or a large-lot single-family home site).
 - (iv) Minimum side yards: ten (10) feet.
 - (v) Minimum rear yards: twenty (20) feet.
 - (vi) Maximum height: thirty-five (35) feet or two and one-half (2½) stories.
 - (viii) Minimum front yard: ten (10) feet (twenty-five (25) feet where the lot abuts a dedicated street or a large-lot single-family home site).
6. Nonresidential provisions. The permitted commercial uses listed in subsection (2) are allowed in the 321-ED(MX) zoning district through the general development plan (“GDP”) review process. These uses shall comply with the following standards:
- (a) The permitted uses listed in subsection (2) must comply with the use compatibility criteria listed in subsection (3).
 - (b) The following site design and dimensional standards shall apply for all nonresidential components of a mixed use development:
 - (i) Minimum lot size: ten thousand (10,000) square feet.
 - (ii) Minimum lot width: fifty (50) feet (sixty (60) feet for duplexes). Add ten (10) feet on corner lots.
 - (iii) Maximum height: thirty-five (35) feet or two and one-half (2½) stories.
 - (iv) Accessory buildings shall be located in rear yard no closer than five (5) feet from principal dwelling or five (5) feet from any property line and no more than ten (10) feet in height.
7. Parking requirements. The following parking requirements shall apply to multifamily and nonresidential components of all mixed-use developments:
- (a) The minimum number of off-street parking spaces shall comply with the requirements of the off-street parking and loading requirements of the zoning ordinance.
 - (b) The parking area locational criteria and design standards of subsections 4.3.9.G shall be adhered to for all mixed-use developments.
 - (c) On-street parking (provided by the developer) may be allocated by the planner as a portion of the required on-site parking requirements until the allocation of these spaces is completed. To be allocated, the parking space may be no further than two hundred (200) feet from an establishment's main entrance.

(Ord. No. 3-98, 2-16-98; Ord. No. 24-2002, 8-5-02)

4.4 OVERLAY ZONING DISTRICTS

4.4.1 Reservoir Protection Overlay

The regulations of the Reservoir Protection District shall be considered as an overlay district on whatever district regulations are imposed by other portions of this ordinance. An overlay district overlaps and overlays existing zoning districts and has the effect of modifying requirements, regulations and procedures applying in existing districts. Where the requirements of the overlay district and underlying base district conflict, the stricter standard shall control. The purpose of the Reservoir Protection District is to protect the water quality of the Maiden Reservoir.

A. Permitted uses.

The following uses are permitted within the Reservoir Protection District:

1. All uses permitted in the underlying zoning districts.
2. Residential structures on lots not meeting the minimum lot size requirements of subsection (C) below, existing prior to the adoption of this ordinance, which are partially or fully destroyed after the adoption of this ordinance, may be rebuilt or repaired and are not subject to the requirements of the Reservoir Protection District.
3. Low-level and/or hazardous waste facilities are not permitted within the Reservoir Protection District.

B. Conditional uses.

The following uses are permitted with a conditional use permit within the Reservoir Protection District:

1. Conditional uses allowed in the underlying zoning districts.
2. A nonresidential nonconforming use, rendered so by the imposition of the Reservoir Protection District, may increase the usable floor area of the nonconforming use fifty (50) percent beyond that used as of the date it became nonconforming.
3. Commercial and industrial facilities existing prior to adoption of this ordinance which are partially or fully destroyed may be rebuilt or repaired and are not subject to the requirements of the Reservoir Protection District.

C. Required minimum lot size. The required minimum lot sizes shall be as follows:

1. For permitted single-family residential uses in the Reservoir Protection District, the minimum lot size shall be eighty thousand (80,000) square feet per dwelling unit, except for lots that were created prior to this ordinance. The minimum lot size for duplexes shall be one hundred twenty thousand (120,000) square feet (eighty thousand (80,000) square feet for the first unit and forty thousand (40,000) square feet for the second unit).
2. For nonresidential uses, the minimum required lot size shall be the same as is required in the underlying district.

D. Maximum permitted impervious area for nonresidential lots.

1. The maximum permitted impervious area for nonresidential lots in the Reservoir Protection District shall be twelve (12) percent of the area of the lot.
2. Impervious area of the lot shall include all areas by structures, plus all areas with pavement, gravel, concrete or similar material. Where private streets are used, one-half the paved area of the private street easement shall be used in calculating the impervious area of the adjacent lot.
3. No structures within the Reservoir Protection District shall be constructed within two hundred (200) feet of the high water elevation of the impoundment or the raw water intake.
4. All new septic tanks and nitrification fields, within the Reservoir Protection District, shall be a minimum of one hundred (100) feet from the high water elevation of the impoundment or the raw water intake.
5. Any properties that are included in the Reservoir Protection Overlay District as identified by the Official Maiden Zoning Map, that do not drain into the Town of Maiden Reservoir, will not be regulated by the Reservoir Protection Overlay District. The burden of proof concerning drainage shall fall on the property owner and shall be certified by a registered engineer or registered surveyor.

[\(Ord. No. 4-93, 3-15-93\)](#)

4.4.2 Floodplain Management Overlay

The regulations and standards for the Floodplain Management Overlay are found in 8.1.

4.4.3 Single Family (“SF”) Overlay

- A. The intent of the SF overlay district is to restrict the allowance of multi-family structures within low to high density residential zoning districts. All properties located in an SF overlay district may be used only for single family uses. Developers and property owners may petition the Town Council to apply the SF overlay district to allow for increased zoning restrictions to protect the uniformity of their property and neighborhood. The owners of properties located within the following zoning districts may petition to have the SF overlay district applied to their properties: R-8, R-11, R-15, R-20 and 321-ED(MX) zoning districts.

B. Definitions

1. A “single family use” in this zoning district is defined as: Any development where: (A) no building contains more than one (1) dwelling unit; (B) every dwelling unit is on a separate lot; and (C) where no lot contains more than one (1) dwelling unit. See definitions in Article 17
2. For the purposes of this zoning district a multi family structure is defined as a building arranged or designed to be occupied by two (2) or more families living independently of each other. Multifamily structures include but are not limited to apartment houses, apartment hotels and group housing projects, a duplex, triplex, quadplex, apartments, townhouses and/or other attached or detached multifamily structures.

C. Exceptions;

Accessory Dwelling Units as defined by Article 7.1 shall be permitted, provided a conditional use permit is obtained and all other regulations stipulated in this ordinance are followed.

ARTICLE 5| **Use Regulations**

5.1 **USE TABLE GENERALLY**

5.1.1 [C] Conditional Use A “C” indicates that a use is permitted only after receiving a conditional use permit for the specific use applied for. The use must meet all requirements of the conditional use permit, all other regulations required under the specific zoning district and all other applicable regulations of the Town of Maiden

5.1.2 Code of Ordinances [P] Permitted Uses

A “P” indicates that a use is permitted by right in the respective zoning district subject to compliance with all other applicable regulations of this Unified Development Code.

5.1.3 [S] Special Uses

An “S” indicates that a use is permitted only after receiving a special use permit for the specific use applied for. The use must meet all requirements of the special use permit, all other regulations required under the specific zoning district and all other applicable regulations of the Town of Maiden Code of Ordinances.

5.1.4 [AC] Accessory Uses

The abbreviation “AC” indicates that a use is allowed only as an accessory use in the respective zoning district.

5.1.5 Uses Not Allowed

A blank cell (one that doesn’t contain an “S,” “C,” “P” or “AC”) indicates that the listed use is not allowed in the respective zoning district, unless it is otherwise expressly allowed by other regulations of this Unified Development Code.

5.1.6 Unlisted Uses

If an application is submitted for a use type that is not listed in the use table, the planning director shall approve or deny the proposed use in accordance with section 5.2.1(C) of this code.

5.1.7 Standards and Conditions

Some uses in some zoning districts are subject to special use-specific conditions and standards. These standards and conditions are indicated by bracketed letters “[A]”. The paragraphs listed below the table refer to the bracketed letters. Additional standards may apply.

5.1.8 Existing Uses

Uses that were lawfully established prior to the date when the town began requiring certificates of occupancy or business licenses shall not be considered nonconforming uses solely because they have never been issued certificates of occupancy or business licenses. Uses lawfully established as of the date of the adoption of this code (October 17, 2011) that do not comply with other requirements of this code (for example, setback requirements) shall be deemed nonconforming uses.

5.2 CLASSIFICATION OF USES

5.2.1 Considerations.

- A. Uses are assigned to the category whose description most closely describes the nature of the primary use. The “Characteristics” subsection of each use category describes the characteristics of each use category. Developments may have more than one primary use. Developments may also have one or more accessory uses. Developments with more than one primary use are addressed in subsection (D) of this section. Accessory uses are addressed in subsection (E) of this section.
- B. The following items are considered to determine what use category the use is in, and whether the activities constitute primary uses or accessory uses:
1. The description of the activity(ies) in relationship to the characteristics of each use category.
 2. The relative amount of site or floor space and equipment devoted to the activity.
 3. The relative amounts of sales from each activity.
 4. The customer type for each activity.
 5. The relative number of employees in each activity.
 6. Hours of operation.
 7. Building and site arrangement.
 8. Vehicles used with the activity.
 9. The relative number of vehicle trips generated by the activity.
 10. Signs.
 11. How the use advertises itself; and
 12. Whether the activity would be likely to be found independent of the other activities on the site.
 13. Adverse effects on other properties such as odor, noise or traffic generated.
- C. Uses Not Listed.
- If a use is not listed but the planning director determines that a proposed use is substantially similar to another use permitted in a zoning district, the planning director shall be authorized to classify the new or unlisted use type within the existing land use category that most closely fits the new or unlisted use. If the Planning Director determines that the proposed use is not substantially similar to any use permitted in any zoning district, the proposed use shall be denied and the person applying for the use may apply for text amendment to allow the use under section 4.2 of this code.
- D. Developments with Multiple Primary Uses.
- When all of the primary uses of a development fall within one use category, then the development is assigned to that use category. For example, a development that contains a retail bakery and a café would be classified in the Retail Sales and

Service category because all the primary uses are in that category. When the primary uses of a development fall within different use categories, each primary use is classified in the applicable category and is subject to the standards for that category.

E. Accessory Uses.

Accessory uses are allowed by right in conjunction with the primary use, unless stated otherwise in the standards. Also, unless otherwise stated, they are subject to the same standards as the primary use. Common accessory uses are listed as examples with the categories, but the list of accessory uses provided for each use category shall not be deemed exhaustive.

F. Use of Examples.

The “Examples” subsection of each use category provides a list of examples of uses that are included in the use category. The names of uses on the lists are generic. They are based on the common meaning of the terms and not on what a specific use may call itself. For example, a use whose business name is “Wholesale Liquidation” but that sells mostly to consumers would be included in the Retail Sales and Service category rather than the Wholesale Sales category. This is because the actual activity on the site matches the description of the Retail Sales and Service category.

G. Change of Use

Any change in use shall apply for a new Certificate of Occupancy or Zoning Permit prior to the beginning of the new use. The applicant for the change of use shall provide in the application a description of expected characteristics of the new use and how the new use meets the standards of this code. False or intentionally misleading applications for new businesses or a failure to notify the town when an existing use has changed are punishable as zoning violations in accordance with Chapter 17 of the Maiden Code of Ordinances.

5.2.2 Residential Categories

A. Group Living

1. Characteristics

Group Living is characterized by the residential occupancy of a structure by a group of people who do not meet the definition of Residential Household Living. Group living facilities include but are not be limited to “adult care homes,” as that term is used in G.S. Chpt. 131D, Art. 1, and “family care homes,” as that term is used in G.S. Chpt. 168, Art. 3. The size of the group will be larger than the average size of a household. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories). Generally, Group Living structures have a common eating area for residents. The residents may or may not receive any combination of care, training or treatment, as long as they also reside at the site. Where provisions of

this code pertaining to Group Living conflict with G.S. Chpt. 131D or Chpt. 168, Art. 3, the general statues shall govern.

2. Accessory Uses.

Accessory uses commonly found are recreational facilities, automobile parking for the occupants and staff, and parking of vehicles for the facility. Wind turbines and active and passive solar technologies are also allowed as accessory uses, provided the following standards are met:

- (i) Only a single wind turbine is permitted and the blade radii must be four (4) feet or less;
- (ii) Solar collection systems requiring a tower are permitted, provided that no more than one tower per dwelling is permitted, and the tower must be twenty (20) feet or less in height;
- (iii) The use must be located in either the side or rear yard;
- (iv) The use must be setback the minimum distance required for accessory uses or a sufficient distance from all property lines so that the fall zone for a tower shall not cross over the property lines of any adjoining properties, whichever is greater. For example, a solar collection system with a twenty-foot tower must be setback twenty feet from all property lines.

3. Examples.

Examples include dormitories, communes, fraternities and sororities, monasteries and convents, nursing and convalescent homes, assisted living facilities, confidential shelters, congregate residences, residential care facility for adults or youth, and alternative or post incarceration facilities.

4. Exceptions.

- (a) Residential structures occupied by persons with disabilities requiring reasonable accommodations pursuant to federal law are included in the Residential Household Living category.
- (b) Lodging where tenancy may be arranged for periods less than one month is considered a hotel or motel use and is classified in the Retail Sales and Service category. However, in certain situations, lodging where tenancy may be arranged for periods less than one month may be classified as a Community Service use such as short-term housing or mass shelters.
- (c) Lodging where the residents meet the definition of “family” and where tenancy is arranged on a month-to-month basis, or for a longer period is classified as Residential Household Living.
- (d) Facilities for people who are under judicial detainment and are under the supervision of detention/incarceration officers are included in the Detention Facilities category.

B. Residential Household Living

1. Characteristics.

Residential Household Living is characterized by the residential occupancy of a dwelling unit by a household. Tenancy is arranged on a month-to-month basis, or for a longer period. Uses where tenancy may be arranged for a shorter period are not considered residential. They are considered to be a form of transient lodging (see the Retail Sales and Service and Community Service categories). Apartment complexes that have accessory services that are not open to the public, such as food service, dining rooms and housekeeping, are included as Residential Household Living. Residential structures occupied by persons with disabilities requiring reasonable accommodations pursuant to the federal law are included in the Residential Household Living category.

2. Accessory Uses.

Accessory uses commonly found are recreational activities, hobbies, and parking of the occupants' vehicles. Home occupations, accessory dwelling units, and bed and breakfast facilities are accessory uses that are subject to additional development standards of this code. Wind turbines and active and passive solar technologies are also allowed as accessory uses, provided the following standards are met:

- (a) Only a single wind turbine is permitted and the blade radii must be four (4) feet or less;
- (b) Solar collection systems requiring a tower are permitted, provided that no more than one tower per dwelling is permitted, and the tower must be twenty (20) feet or less in height;
- (c) The use must be located in either the side or rear yard;
- (d) The use must be setback the minimum distance required for accessory uses or a sufficient distance from all property lines so that the fall zone for a tower shall not cross over the property lines of any adjoining properties, whichever is greater. For example, a solar collection system with a twenty-foot tower must be setback twenty feet from all property lines.

3. Examples.

Uses include single-family residences, duplexes, apartments, condominiums, retirement center apartments, manufactured housing and other structures with self-contained dwelling units.

4. Exceptions.

Dwellings or buildings that contain programs that include common dining are classified as Group Living.

5.2.3 Commercial Categories

A. Sexually Oriented Businesses

1. Characteristics.

Sexually oriented businesses are defined in section 6.10 of this ordinance.

2. Accessory Uses.

Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, and parking.

3. Examples.
Examples include adult book stores, arcades, adult motion picture theaters and any other establishment that sells adult-oriented merchandise, which is defined in section 6.10 of this ordinance.

4. Exceptions.
A hotel or motel providing overnight accommodations is not considered an adult entertainment establishment merely because it provides adult closed circuit television programming in its rooms for its registered overnight guests.

B. Commercial Outdoor Recreation

1. Characteristics.
Commercial Outdoor Recreation uses are large, generally commercial uses that provide continuous recreation or entertainment-oriented activities. They generally take place outdoors. They may take place in a number of structures that are arranged together in an outdoor setting.

2. Accessory Uses.
Accessory uses may include concessions, restaurants, parking, caretaker's quarters, and maintenance facilities.

3. Examples.
Examples include amusement parks, theme parks, golf driving ranges, miniature golf facilities and zoos.

4. Exceptions.
(a) Golf courses are classified as Parks and Open Space.
(b) Uses which draw large numbers of people to periodic events, rather than on a continuous basis, are classified as Major Event Entertainment.

C. Commercial Parking

1. Characteristics.
Commercial Parking facilities provide parking that is not accessory to a specific use. A fee may or may not be charged. A facility that provides both accessory parking for a specific use and regular fee parking for people not connected to the use is also classified as a Commercial Parking facility.

2. Accessory Uses.
In a parking lot or structure, accessory uses may include security check points, payment centers and bus stops.

3. Examples.
Examples include short- and long-term fee parking facilities, commercial district shared parking lots, commercial shuttle parking and mixed parking lots (partially for a specific use, partly for rent to others).

4. Exceptions.
(a) Parking facilities that are accessory to a use, but which charge the public to park for occasional events nearby, are not considered Commercial Parking facilities.

- (b) Parking facilities that are accessory to a primary use are not considered Commercial Parking uses, even if the operator leases the facility to the primary use or charges a fee to the individuals who park in the facility.
- (c) Public transit park-and-ride facilities are classified as Basic Utilities.

D. Drive-through Facility

- 1. Characteristics.
Drive-through Facilities provide direct services for people in motor vehicles where the driver waits in the car before and while the service is performed.
- 2. Accessory Uses.
Drive-up windows, menu boards, order boards or boxes, speakers and stacking lanes.
- 3. Examples.
Drive-through banks, drive-through coffee stands, drive-through windows associated with a restaurant, public facility, or other retail or service use.
- 4. Exceptions.
Car wash facilities, gas pump islands, and other vehicle service or repair uses that are considered Quick Vehicle Servicing or Vehicle Repair.

E. Major Event Entertainment

- 1. Characteristics.
Major Event Entertainment uses are characterized by activities and structures that draw large numbers of people to specific events or shows. Activities are generally of a spectator nature.
- 2. Accessory Uses.
Accessory uses may include restaurants, bars, concessions, parking and maintenance facilities.
- 3. Examples.
Examples include stadiums, sports arenas, coliseums, race tracks (auto, horse, dog, etc.), auditoriums, exhibition and meeting areas, church revivals, and fairgrounds.
- 4. Exceptions.
 - (a) Exhibition and meeting areas with less than twenty thousand square feet of total event area are classified as Retail Sales and Service.
 - (b) Banquet halls that are part of hotels or restaurants are accessory to those uses, which are included in the Retail Sales and Service category.
 - (c) Theaters, including drive-in theaters, are classified as Retail Sales and Service.

F. Office

- 1. Characteristics

Office uses are characterized by activities conducted in an office setting and generally focusing on business, government, professional, medical, or financial services.

2. Accessory Uses

Accessory uses may include medical product dispensing; in addition, cafeterias, health facilities, parking or other amenities primarily for the use of employees in the firm or building may be provided.

3. Examples.

Examples include professional services such as lawyers, accountants, engineers or architects; financial businesses such as lenders, brokerage houses, bank headquarters, branch banks or real estate agents; data processing; sales offices; government offices, post office and public utility offices; TV and radio studios; interior decorator studio; art or photographic studios; hair, tanning and personal care services; emergency medical care; medical and dental clinics, medical and dental labs; and blood-collection facilities.

4. Exceptions.

- (a) Offices that are part of and are located with a firm in another category are considered accessory to the firm's primary activity. Headquarters offices, when in conjunction with or adjacent to a primary use in another category, are considered part of the other category.
- (b) Contractors and others who perform services off-site are included in the Office category if equipment, materials, and vehicles used in conjunction with the business are not stored on the site and fabrication, services or similar work is not carried on at the site.

G. Quick Vehicle Servicing

1. Characteristics.

Quick Vehicle Servicing uses provide facilities designed for the rapid servicing of vehicles, where the drivers may or may not remain in their vehicles, but where the drivers usually either perform the service for themselves, or wait on the site for the service to be rendered.

2. Accessory Uses.

Accessory uses may include auto repair and tire sales.

3. Examples.

Examples include gas pump islands; unattended card key stations; car wash facilities; auto service facilities, such as air compressor, water and windshield washing stations; quick-lube or quick-oil change facilities.

4. Exceptions.

- (a) Truck stops are classified as Industrial Service.
- (b) Refueling facilities for the vehicles that belong to a specific use (fleet vehicles) which are on the site where the vehicles are kept are accessory to the use.

H. Retail Sales and Service

1. Characteristics.
Retail Sales and Service firms are involved in the sale, lease or rent of new or used products to the general public. They may also provide personal services or entertainment, or provide product repair or services for consumer and business goods.
2. Accessory Uses.
Accessory uses may include offices, storage of goods, manufacture or repackaging of goods for on-site sale, and parking.
3. Examples.
Examples include uses from the four subgroups listed below:
 - (a) Sales-oriented:
Stores selling, leasing or renting consumer, home and business goods including art, art supplies, bicycles, clothing, dry goods, hair, tanning and personal care services electronic equipment, fabric, furniture, garden supplies, gifts, groceries, hardware, home improvement products, household products, jewelry, pets, pet food, pharmaceuticals, plants, printed material, stationary and videos; food sales, and sales or leasing of consumer vehicles including passenger vehicles, motorcycles, light and medium trucks and other recreational vehicles.
 - (b) Personal service-oriented:
Laundromats and dry-cleaning; photocopy and blueprint services; business, martial arts and other trade schools; dance or music classes; taxidermists; mortuaries; veterinarians; kennels limited to keeping of animals under observation, with no breeding, so long as the kennel is contained entirely within a soundproof building; and animal grooming.
 - (c) Entertainment-oriented:
Restaurants, cafes, delicatessens, taverns and bars; indoor or outdoor continuous entertainment activities such as bowling alleys, ice rinks and game arcades; pool halls; indoor firing ranges; theaters, health clubs, gyms, membership clubs and lodges; hotels, motels, recreational vehicle parks and other temporary lodging with an average length of stay of less than thirty days.
 - (d) Repair/Service-oriented:
Repair of TVs and electronics, bicycles, clocks, watches, shoes, guns, appliances and office equipment; photo or laundry drop-off; quick printing; recycling drop-off; tailor; locksmith; and upholsterer.
4. Exceptions.
 - (a) Lumber yards and other building material sales that sell primarily to contractors and do not have a retail orientation are classified as Wholesale Sales.

- (b) Bulk outdoor sales of landscape materials, including bark chips and compost, is classified as Industrial Service.
- (c) Repair and service of consumer motor vehicles, motorcycles, and light and medium trucks are classified as Vehicle Repair. Repair and service of industrial vehicles and equipment, and heavy trucks is classified as Industrial Service.
- (d) Sales, rental or leasing of heavy trucks and equipment is classified as Wholesale Sales.
- (e) Hotels, restaurants and other services that are part of a truck stop are considered accessory to the truck stop, which is classified as Industrial Service.
- (f) In certain situations, hotels and motels may be classified as a Community Service use, such as short-term housing or mass shelter. See Community Services.
- (g) Except as described in subsection H(3)(b) above, kennels or other animal boarding places are classified as an Industrial use.

I. Mini-storage Facilities

- 1. Characteristics.
Mini-storage Facilities uses provide separate storage areas for individual or business uses. The storage areas are designed to allow private access by the tenant for storing or removing personal property.
- 2. Accessory Uses.
Accessory uses may include security and leasing offices and truck rentals. Living quarters for one resident manager and his or her family per site in the Industrial zones are allowed. Other living quarters are subject to the standards for residential uses in the base zones. Use of the storage areas for sales, service and repair operations, or manufacturing is not considered accessory to the Mini-storage Facilities use.
- 3. Examples.
Examples include single-story and multistory facilities that provide individual storage areas for rent. These uses are also called mini warehouses or mini-storage facilities.
- 4. Exceptions.
A transfer and storage business where there are no individual storage areas or where employees are the primary movers of the goods to be stored or transferred is in the Warehouse and Freight Movement category.

J. Vehicle Repair

- 1. Characteristics.
Businesses servicing passenger vehicles, light and medium trucks and other consumer motor vehicles such as motorcycles, boats and recreational vehicles. Generally, the customer does not wait at the site while the service or repair is being performed.

2. Accessory Uses.
Accessory uses may include offices, sales of parts and vehicle storage.
3. Examples.
Examples include vehicle repair, transmission or muffler shop, auto body shop with paint booth, alignment shop, auto upholstery shop, auto detailing and tire sales and mounting.
4. Exceptions.
Repair and service of industrial vehicles and equipment and of heavy trucks; are classified as Industrial Service.

K. Internet Café and Sweepstakes

1. Characteristics.
A business establishment or accessory establishment that provides computers and or internet access for the purposes of internet gaming, sweepstakes, web access and similar services.
2. Accessory Uses.
Accessory uses may include office, sales, and parking lots.
3. Examples.
(a) Internet café, sweepstakes, computers, fiber converters, WIFI equipment and similar computer connection equipment.
4. Exceptions.
Establishments that violate North Carolina gaming laws and NCGS 14-306.4

L. Beach Bingo

1. Characteristics.
A business establishment or accessory establishment that provides beach bingo gaming opportunities.
2. Accessory Uses.
Accessory uses may include offices and parking lots.
3. Exceptions.
Establishments that violate NCGS 14 Subchapter XI, Article 37 or NCGS 18B-308.
(Ordinance 1-2015)

5.2.4 Industrial Categories

- A. High Impact Use
 1. Characteristics.

A business establishment that is considered to be dangerous and/or noxious due to the probability and/or magnitude of its effects on the environment and/or has the potential for causing major community or health impacts, including but not limited to nuisance, odors, noise and/or vibrations and/or is so chemically intensive as to preclude site selection without careful assessment of potential impacts and impact mitigation.

2. Accessory Uses.

Accessory uses may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, rail spur or lead lines, docks, electrical sub stations, water towers, repair facilities, truck fleets (parking areas, fuel islands, routine maintenance area).

3. Examples.

Repair, storage, metal and building materials; heavy truck servicing and repair; tire retreading or recapping; exterminators; recycling operations; fuel oil distributors; solid fuel yards; slaughter houses and meat packing; rendering plant; feed lots and animal dipping; lumber mills, pulp and paper mills, and other wood products manufacturing; production of chemical, rubber, leather, clay, bone, plastic, stone or glass materials or products; concrete batching and asphalt mixing; production or fabrication of metals or metal products including enameling and galvanizing; production of prefabricated structures, including mobile homes; and the production of energy (including coal; nuclear; gas turbines; wind turbines of any height and with any blade radii; photovoltaic cells; and other active or passive solar technology, including solar farms with one or more towers of any height).

4. Supplemental Standards

Wind turbine towers and any towers associated with photovoltaic cells or other active or passive solar technologies shall be set back a sufficient distance from all property lines so that the fall zone for every tower shall not cross over the property lines of any adjoining properties.

B. Industrial Service

1. Characteristics.

Industrial Service firms are engaged in the repair or servicing of industrial, business or consumer machinery, equipment, products or by-products. Firms that service consumer goods do so by mainly providing centralized services for separate retail outlets. Contractors and building maintenance services and similar uses perform services off-site. Few customers, especially the general public, come to the site. Uses that have significant off-site impacts are regulated as High Impact Uses.

2. Accessory Uses.

Accessory uses may include offices, parking, storage, rail spur or lead lines, guard shacks, backup power generation, truck fleets (parking areas, fuel islands, routine maintenance area), and docks.

3. Examples.

Examples include data processing facilities, call centers, data centers, welding shops; machine shops; tool repair; electric motor repair; repair of scientific or professional instruments; building, heating, plumbing or electrical contractors; printing, publishing and lithography; janitorial and building maintenance services; research and development laboratories; laundry, dry-cleaning and carpet cleaning plants (this use does not include retail laundry and dry-cleaning operations); photo finishing laboratories; truck stop; towing and vehicle storage; wind turbines with blade radii four (4) feet or less; photovoltaic cells; and other active or passive solar technology, including solar farms with one or more towers each twenty (20) feet or less in height.

4. Exceptions.

- (a) Contractors and others who perform services off-site are included in the Office category, if equipment and materials are not stored at the site, and fabrication, or similar work is not carried on at the site.
- (b) Hotels, restaurants and other services that are part of a truck stop are considered accessory to the truck stop.

C. Manufacturing and Production

1. Characteristics.

Manufacturing and Production firms are involved in the manufacturing, processing, fabrication, packaging or assembly of goods. Natural, manmade, raw, secondary or partially completed materials may be used. Products may be finished or semi-finished and are generally made for the wholesale market, for transfer to other plants, or to order for firms or consumers. Goods are generally not displayed or sold on site, but if so, they are a subordinate part of sales. Relatively few customers come to the manufacturing site. Uses that have significant off-site impacts are regulated as High Impact Uses.

2. Accessory Uses.

Accessory uses may include offices, cafeterias, parking, employee recreational facilities, warehouses, storage yards, rail spur or lead lines, docks, guard shacks, backup power generation, repair facilities or truck fleets. Living quarters are subject to the standards for residential uses in the base zones.

3. Examples.

Examples include processing of food and related products; breweries, distilleries and wineries; weaving or production of textiles or apparel; woodworking, including cabinet makers; production of pottery and ceramics, including commercial kilns; movie production facilities; data processing facilities; manufacture or assembly of machinery, equipment, instruments, including musical instruments, vehicles, appliances, precision items and other electrical items; production of artwork and toys; sign making; and wind turbines with blade radii four (4) feet or less; photovoltaic cells; and other active or passive solar technology, including solar farms with one or more towers each twenty (20) feet or less in height.

4. Exceptions.

- (a) Manufacturing of goods to be sold primarily on-site and to the general public are classified as Retail Sales and Service.
- (b) Manufacture and production of goods from composting organic material is classified as Waste-Related uses.

D. Railroad Yards

- 1. Characteristics.
Railroad Yards are areas that contain multiple railroad tracks used for rail car switching, assembling of trains and transshipment of goods from other transportation modes to or from trains.
- 2. Accessory Uses.
Accessory uses include offices, employee facilities, storage areas and rail car maintenance and repair facilities.

E. Warehouse and Freight Movement

- 1. Characteristics.
Warehouse and Freight Movement firms are involved in the storage, or movement of goods for themselves or other firms. Goods are generally delivered to other firms or the final consumer, except for some will-call pickups. There is little on-site sales activity with the customer present.
- 2. Accessory Uses.
Accessory uses may include offices, truck fleet parking and maintenance areas, rail spur or lead lines, guard shacks, photo voltaic cells/farms, fuel terminal (no public sales), docks and repackaging of goods.
- 3. Examples.
Examples include separate warehouses used by retail stores such as furniture and appliance stores; household moving and general freight storage; cold storage plants, including frozen food lockers; storage of weapons and ammunition; major wholesale distribution centers; truck or air freight terminals; bus barns; parcel services; major post offices; grain terminals; and the stockpiling of sand, gravel or other aggregate materials; wind turbines with blade radii four (4) feet or less; photovoltaic cells; and other active or passive solar technology, including solar farms with one or more towers each twenty (20) feet or less in height.
- 4. Exceptions.
 - (a) Uses that involve the transfer or storage of solid or liquid wastes are classified as Waste-Related uses.
 - (b) Mini-warehouses are classified as Mini-Storage Facilities uses.

F. Waste-related

- 1. Characteristics.
Waste-related uses are characterized by uses that receive solid or liquid wastes from others for disposal on the site or for transfer to another location, uses which collect sanitary wastes, or uses that manufacture or produce goods or

energy from the biological decomposition of organic material. Waste-related uses also include uses which receive hazardous wastes from others and which are subject to state hazardous waste standards.

2. Accessory Uses.
Accessory uses may include recycling of materials, offices and repackaging and transshipment of by-products.
3. Examples.
Examples include sanitary landfills, incinerator, limited use landfills, waste composting, energy recovery plants, sewer treatment plants, portable sanitary collection equipment storage and pumping, and hazardous waste collection sites.
4. Exceptions.
 - (a) Disposal of inert debris strictly limited to concrete, brick, concrete block, uncontaminated soil, rock and gravel is considered beneficial fill that does not have to be disposed of in a landfill. (**State law reference-15A N.C.A.C. 13B .0562**)
 - (b) Sewer pipes that serve a development are considered a Basic Utility.

G. Wholesale Sales

1. Characteristics.
Wholesale Sales firms are involved in the sale, lease or rent of products primarily intended for industrial, institutional or commercial businesses. The uses emphasize on-site sales or order-taking and often include display areas. Businesses may or may not be open to the general public, but sales to the general public are limited. Products may be picked up on site or delivered to the customer.
2. Accessory Uses.
Accessory uses may include offices, product repair, warehouses, parking, guard shacks, photo voltaic cells/farms, fuel terminal (no public sales), minor fabrication services and repackaging of goods.
3. Examples.
Examples include sale or rental of machinery, equipment, heavy trucks, building materials, special trade tools, welding supplies, machine parts, electrical supplies, janitorial supplies, restaurant equipment and store fixtures; mail order houses; and wholesalers of food, clothing, auto parts, building hardware; wind turbines with blade radii four (4) feet or less; photovoltaic cells; and other active or passive solar technology, including solar farms with one or more towers each twenty (20) feet or less in height.
4. Exceptions.
 - (a) Firms that engage primarily in sales to the general public or on a membership basis are classified as Retail Sales and Service.
 - (b) Firms that are primarily storing goods with little on-site business activity are classified as Warehouse and Freight Movement.

5.2.5 Institutional Categories

A. Basic Utilities

1. Characteristics.
Basic Utilities are infrastructure services that need to be located in or near the area where the service is provided. Basic Utility uses generally do not have regular employees at the site. Services may be public or privately provided. All public safety facilities are Basic Utilities.
2. Accessory Uses.
Accessory uses may include parking; control, monitoring, data or transmission equipment; and holding cells within a police station.
3. Examples.
Examples include water and sewer pump stations; sewage disposal and conveyance systems; electrical substations; photo voltaic cells/farms; hydro electric; water towers and reservoirs; water quality and flow control facilities; water conveyance systems; stormwater facilities and conveyance systems; telephone exchanges; mass transit stops or turnarounds, transit centers, park-and-ride facilities for mass transit; and public safety facilities, including fire and police stations and emergency communication broadcast facilities; wind turbines with blade radii four (4) feet or less; photovoltaic cells; and other active or passive solar technology, including solar farms with one or more towers each twenty (20) feet or less in height.
4. Exceptions.
 - (a) Services where people are generally present, other than mass transit stops or turnarounds, transit centers, park-and-ride facilities for mass transit; and public safety facilities, are classified as Community Services or Offices.
 - (b) Utility offices where employees or customers are generally present are classified as Offices.
 - (c) Bus storage facility/areas are classified as Warehouse and Freight Movement.
 - (d) Public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals or other similar services on a regional level are classified as Rail Lines and Utility Corridors.

B. Colleges

1. Characteristics.
This category includes colleges and other institutions of higher learning, which offer courses of general or specialized study leading to a degree. They are generally certified by a recognized accrediting agency. Colleges tend to be in campus-like settings or on multiple blocks.
2. Accessory Uses.
Accessory uses include offices, housing for students, food service, laboratories, health and sports facilities, theaters, meeting areas, parking, maintenance facilities and bookstores.

3. Examples.
Examples include universities, liberal arts colleges, community colleges, nursing and medical schools not accessory to a hospital and seminaries.
4. Exceptions.
Trade schools are classified as Retail Sales and Service.

C. Community Services

1. Characteristics.
Community Services are uses of a public, nonprofit or charitable nature generally providing a local service to people of the community. Generally, they provide the service on the site or have employees at the site on a regular basis. The service is ongoing, not just for special events. Community centers or facilities that have membership provisions are open to the general public to join at any time, (for instance, any senior citizen could join a senior center). The use may provide mass shelter or short-term housing where tenancy may be arranged for periods of less than one month when operated by a public or nonprofit agency. The use may also provide special counseling, education or training of a public, nonprofit or charitable nature.
2. Accessory Uses.
Accessory uses may include offices; meeting areas; food preparation areas; parking, health and therapy areas; daycare uses; and athletic facilities.
3. Examples.
Examples include libraries, museums, senior centers, community centers, publicly owned swimming pools, youth club facilities, hospices, ambulance stations, drug and alcohol centers, social service facilities, mass shelters or short-term housing when operated by a public or nonprofit agency, vocational training for the physically or mentally disabled, crematoriums, columbariums, mausoleums, soup kitchens and surplus food distribution centers.
4. Exceptions.
 - (a) Private lodges, clubs and private or commercial athletic or health clubs are classified as Retail Sales and Service. Commercial museums (such as a wax museum) or zoos are also classified as Retail Sales and Service.
 - (b) Parks are in Parks and Open Areas.
 - (c) Uses where tenancy is arranged on a month-to-month basis, or for a longer period are residential, and are classified as Residential Household or Group Living.
 - (d) Public safety facilities are classified as Basic Utilities.

D. Daycare

1. Characteristics.
Daycare use includes day or evening care for three or more children outside of the children's homes for a fee. Daycare uses also include the daytime care of teenagers or adults who need assistance or supervision and includes child care facilities in G.S. Chpt. 110, Art. 7.

2. Accessory Uses.
Accessory uses include offices, play areas and parking.
3. Examples.
Examples include preschools, nursery schools, latch key programs and adult daycare programs.
4. Exceptions.
Daycare use does not include care given by the parents, guardians or relatives of the children or by babysitters. Daycare use also does not include care given by a "family daycare" if the care is given to five or fewer children at any one time including the children of the provider. Family daycare is care regularly given in the family living quarters of the provider's home and is classified as an accessory use to Residential Living.

E. Medical Centers

1. Characteristics.
Medical Centers includes uses providing medical or surgical care to patients and offering overnight care. Medical Centers tend to be on multiple blocks or in campus settings.
2. Accessory Uses.
Accessory uses include outpatient clinics, offices, laboratories, teaching facilities, meeting areas, cafeterias, parking, maintenance facilities and housing facilities for staff or trainees.
3. Examples.
Examples include hospitals and medical complexes that include hospitals.
4. Exceptions.
 - (a) Uses that provide exclusive care and planned treatment or training for psychiatric, alcohol or drug problems, where patients are residents of the program, are classified in the Group Living category.
 - (b) Medical clinics that provide care where patients are generally not kept overnight are classified as Office.
 - (c) Emergency medical care clinics are classified as Retail Sales and Service.

F. Parks and Open Areas

1. Characteristics.
Parks and Open Areas are uses of land focusing on natural areas, large areas consisting mostly of vegetative landscaping or outdoor recreation, community gardens or public squares. Lands tend to have few structures.
2. Accessory Uses.
Accessory uses may include club houses, maintenance facilities, concessions, caretaker's quarters, campgrounds and parking.
3. Examples.

Examples include parks, golf courses, cemeteries, public squares, plazas, recreational trails, botanical gardens, nature preserves and land used for grazing that is not part of a farm or ranch.

G. Religious Institutions

1. Characteristics.
Religious Institutions are intended to primarily provide meeting areas for religious activities.
2. Accessory Uses.
Accessory uses include religious education school facilities, parking, parsonage housing.
3. Examples.
Examples include churches, temples, synagogues and mosques.

H. Schools

1. Characteristics.
This category includes public, private schools, and church sponsored schools, at the primary, elementary, middle, junior high or high school level that provide state mandated basic education.
2. Accessory Uses.
Accessory uses include play areas, cafeterias, recreational and sport facilities, auditoriums, parking, adult day care, and before- or after-school daycare.
3. Examples.
Examples include public and private daytime schools, boarding schools and military academies.
4. Exceptions.
 - (a) Preschools are classified as Daycare uses.
 - (b) Trade schools are classified as Retail Sales and Service.

5.2.6 Other Categories

A. Agriculture

1. Characteristics.
Agriculture includes activities that raise, produce or keep plants or animals.
2. Accessory Uses.
Accessory uses include dwellings for proprietors and employees of the use and animal training.
3. Examples.
Examples include breeding or raising of fowl or other animals; dairy farms; stables; riding academies; or other animal boarding places; farming, gardening, forestry, tree farming; and wholesale plant nurseries.
4. Exceptions.

- (a) Processing of animal or plant products, including milk, and feed lots are classified as Manufacturing and Production.
- (b) Livestock auctions are classified as Wholesale Sales.
- (c) Sale of products produced on site is permitted; provided, that structures for this purpose are limited to five hundred square feet of total floor area per site.
- (d) Plant nurseries that are oriented to retail sales are classified as Retail Sales and Service.

B. Aviation and Surface Passenger Terminals

- 1. Characteristics.
Aviation and Surface Passenger Terminals includes facilities for the landing and takeoff of flying vehicles, including loading and unloading areas. Aviation facilities may be improved or unimproved. Aviation facilities may be for commercial carriers or for shared use by private aircraft. Aviation and Surface Passenger Terminals also includes passenger terminals for aircraft, regional bus service and regional rail service.
- 2. Accessory Uses.
Accessory uses include freight handling areas, concessions, offices, parking, maintenance and fueling facilities, and aircraft sales areas.
- 3. Examples.
Examples include airports, heliports, bus passenger terminals for regional bus service, railroad passenger stations for regional rail service, airstrips and helicopter landing facilities.
- 4. Exceptions.
Bus and rail passenger stations for sub-regional service such as mass transit stops and park-and-ride facilities are classified as Basic Utilities.

C. Detention Facilities

- 1. Characteristics.
Detention Facilities includes facilities for the judicially required detention or incarceration of people. Inmates and detainees are under twenty-four-hour supervision by detention/incarceration officers, except when on an approved leave.
- 2. Accessory Uses.
Accessory uses include offices, recreational and health facilities, therapy facilities, maintenance facilities, and hobby and manufacturing activities.
- 3. Examples.
Examples include prisons, jails, probation centers, secure community transition facilities and juvenile detention homes.
- 4. Exceptions.
Programs that provide care and training or treatment for psychiatric, alcohol, or drug problems, where patients are residents of the program, but where patients are not supervised by detention/incarceration officers are classified as Group

Living. Programs that provide transitional living experience for former offenders, such as halfway houses, where residents are not supervised by detention/incarceration officers, are also classified as Group Living.

D. Mining

1. Characteristics.
Mining includes mining or extraction of mineral or aggregate resources from the ground for off-site use.
2. Accessory Uses.
Accessory uses include storage, sorting, stockpiling or transfer off-site of the mined material.
3. Examples.
Examples include quarrying or dredging for sand, gravel or other aggregate materials; mining; and oil, gas or geothermal drilling.

E. Wireless Communication Facilities

1. Characteristics.
Wireless Communication Facilities are the set of equipment and network components, including the underlying support structure or tower, including antennas, transmitters, receivers base stations, power supplies, cabling, and associated equipment necessary to provide wireless data and telecommunications services to a discrete geographic area.
2. Accessory Uses.
Accessory uses may include transmitter facility buildings.
3. Examples.
Examples include broadcast towers, communication towers and point-to-point microwave towers.
4. Exceptions.
 - (a) Receive-only antennas are not included in this category.
 - (b) Radio and television studios are classified in the Office category.
 - (c) Wireless Communication Facilities that are public safety facilities are classified as Basic Utilities.

F. Rail Lines and Utility Corridors

1. Characteristics.
This category includes railroad tracks and lines for the movement of trains. The land may be owned or leased by the railroad. The category also includes public or private passageways, including easements, for the express purpose of transmitting or transporting electricity, gas, oil, water, sewage, communication signals or other similar services on a regional level.
2. Examples.
Examples include rail trunk and feeder lines, regional electrical transmission lines, fiber optic lines, and regional gas and oil pipelines.

3. Exceptions.

- (a) Railroad lead and spur lines for delivery of rail cars to sites or for unloading of rail cars on specific sites are classified as accessory to the primary use of the site.
- (b) Rail lines and utility corridors that are located within motor vehicle rights-of-way are not included.
- (c) Railroad yards are classified in the Railroad Yards category.

5.3 RESIDENTIAL ZONES USE TABLE

P = Permitted, C = Conditional Use Permit Required, Blank Boxes = Use Not Permitted

	R-20	R-15	R-15SF	R-11	R-8	Standards
Residential Categories						
Group Living	P	P	P	P	P	5.4.1.D
Residential Household Living						
Single-family Residence	P	P	P	P	P	
Attached Single-family Residence (apartments/townhouses)		P		P	P	
Accessory Dwelling Unit (ADU)	C	C	C	C	C	
Duplexes		P		P	P	
Manufactured Home	P					5.4.1.B
Manufactured or Mobile Home Park						
Commercial Categories						
Adult Business						
Commercial Outdoor Recreation	P					
Commercial Parking						
Drive-through Facility						
Major Event Entertainment						
Office						
Quick Vehicle Servicing						
Retail Sales and Service						
Mini-storage Facilities						
Vehicle Repair						
Industrial Categories						
High Impact Use						
Industrial Service						
Manufacturing and Production						
Railroad Yards						
Warehouse and Freight Movement						
Waste-related						
Wholesale Sales						
Institutional Categories						
Basic Utilities	P	P	P	P	P	

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	R-20	R-15	R-15SF	R-11	R-8	Standards
Colleges						
Community Service	P	P	P	P	P	
Daycare	P					[5.4.1C]
Medical Centers						
Parks and Open Areas	P	P	P	P	P	
Religious Institutions	P	P	P	P	P	[5.4.1.E]
Schools	P	P	P	P	P	
Other Categories						
Agriculture	P					[5.4.1.Y]
Aviation and Surface Passenger Terminals						
Detention Facilities						
Essential Public Facilities	P	P	P	P	P	
Mining						
Rail Lines and Utility Corridors	C	C	C	C	C	
Wireless Communication Facilities	C	C	C	C	C	5.4.1.A

5.4 NON-RESIDENTIAL ZONES USE TABLE

P = Permitted, C = Conditional Use Permit Required, Blank Boxes = Use Not Permitted

	C-1	C-2	O-I	M-1	ED(MX)	ED(I)	Standards
Residential Categories							
Group Living	P	P			P		[D]
Residential Household Living							
Single-family Residence	P	P	P [P]		P [Y]		
Attached Single-family Residence	P	P					
Accessory Dwelling Unit (ADU)	C	C					
Duplexes	P	P			P [Y]		
Manufactured Home	P	P					
Manufactured or Mobile Home Park				C		C	[F]
Multi-family	P	P			P [Y]		

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	C-1	C-2	O-I	M-1	ED(MX)	ED(I)	Standards
Structure							
Commercial Categories							
Sexually Oriented Businesses		P [T]					
Commercial Outdoor Recreation		P		P			
Commercial Parking	P	P		P		P	
Beach Bingo	P	P					
Drive-through Facility	P	P	P		P	P	
Internet Café and Sweepstakes	C [Z]	C [Z]			C [Z]		
Major Event Entertainment		P			P		
Office	P	P	P [Q]	P	P	P	
Quick Vehicle Servicing	P [L, N]	P		P [V]	P [W]	P	
Retail Sales and Service	P [U, K, M, J, I, O, R, M, L]	P [U, K, J, V]		P [V, S]	P [Y, V]	P	
Mini-storage Facilities		P		P		P	
Vehicle Repair				P		P	
Industrial Categories							
High Impact Use				C[L]		C[L]	
Industrial Service		P [V]		P[L]		P[L]	
Manufacturing and Production	C [O]	P [G]		P[L]		P[L]	
Railroad Yards							
Warehouse and Freight Movement	P	P		P[L]		P[L]	
Waste-related; Recycling Facilities							
Wholesale Sales		P [X]		P [X]		P	
Institutional Categories							
Basic Utilities	P	P	P	P	P	P	
Colleges	C	C	C	C	C	C	
Community Service	P	P	P		P		
Daycare	P	P	P		P		[C]
Medical Centers				P		P	
Parks and Open Areas	P	P			P		

	C-1	C-2	O-I	M-1	ED(MX)	ED(I)	Standards
Religious Institutions	P	P	P	P	P	P	[H]
Schools	P	P	P	P	P	P	
Other Categories							
Agriculture				P	P	P	
Aviation and Surface Passenger Terminals	P	P		P		P	
Detention Facilities				C		C	
Essential Public Facilities	P	P	P	P	P	P	
Mining				C			
Wireless Communication Facilities	C	C	C	C	C	C	[A]

5.4.1 Limited Use Standards

The subsections below contain the limitations and correspond with the bracketed [] footnote letters from the Zoning Use Tables 5.3 and 5.4 above.

- A. Wireless telecommunications facilities, subject to the conditions listed under The Maiden Town Code of Ordinances Chapter 17.
- B. Manufactured homes, classes A, B and C, provided they are treated as principal uses and meet the same lot size and yard requirements as non-manufactured dwelling units. Manufactured homes within floodway and floodway fringe zones are further subjected to the requirements of The Maiden Town Code of Ordinances Chapter 17;
- C. Child care nurseries; day care centers; pre-kindergarten, kindergarten, play and other special schools, or day care facilities for young children provided that play space is provided in accordance with state law and the regulations of the North Carolina Department of Health and Human Services;
- D. Group Homes/ Family care homes and group homes for developmentally disabled adults, as defined in The Maiden Town Code of Ordinances Chapter 17.
 - 1. All applicable requirements and standards of the North Carolina Department of Health and Human Services have been and continue to be meet.
 - 2. No external evidence of such use, distinguishing the group living facility from a regular dwelling, shall be visible from adjacent public or private property.
 - 3. Family care homes and group homes as defined in Article 16 shall not be within a one-half mile radius of an existing family care home or group home as measured from property line to property line.
- E. Religious institutions and their customary related uses including cemeteries, provided that all buildings and graves shall be set back at least twenty (20) feet from any property line;
- F. Manufactured home parks, subject to the conditions listed The Maiden Town Code of Ordinances Chapter 17;

- G. Principal activity is conducted within an enclosed building and is devoted to retail sales and services;
- H. Religious institutions and similar religious institutions their customary accessory uses, but excluding cemeteries;
- I. Dry cleaning and laundry pick-up stations and dry cleaning plants having not more than two thousand (2,000) square feet;
- J. Retail food stores and meat markets only, excludes the killing or dressing of any flesh or fowl;
- K. Restaurants, including drive-in restaurants, provided such drive-in restaurants are fenced on all sides which abut residential districts. Fences shall be solid from the ground to a height of six (6) feet, except that no fence shall be required to the extent that it would interfere with a driver's site line or the installation or continued use and maintenance of utilities; Fences shall not be built within the front yard setback.
- L. Service stations, provided that all gasoline pumps and other stationary equipment shall be located at least twelve (12) feet behind the property line;, provided further, that on all sides where such stations abut residential districts, a six-foot high solid fence and suitable landscaping shall be provided;
- M. Mixed uses, i.e., building erected for both dwelling and business purposes.
- N. Car wash establishments, shall submit as part of their applications for a zoning permit; building permits, if any; and certificate of occupancy a site plan and conceptual drawings that address the following:
 - 1. nature of surrounding land use;
 - 2. traffic access;
 - 3. Phase II requirements of the NPDES stormwater program, including any required stormwater and other water runoff capture requirements;
 - 4. trash facilities;
 - 5. lot size.
- O. The assembly and packaging of articles or merchandise from the following previously prepared materials: aluminum, glass, leather, paper, plastics and other materials that can be assembled and packaged in a relatively clean and quiet manner.
- P. O&I Single-family residences provided they meet the setback requirements of the R-8 zoning district;
- Q. No drive-ins
- R. Animal hospitals or kennels subject to Animal Keeping standards in section 7.1.3, provided no outdoor pens or kennels are located closer than forty (40) feet to any property line;
- S. Retail storage and sales of gasoline and oil products, including bottled gas and oxygen. Storage tanks for gases such as propane shall not exceed a capacity of one

thousand (1,000) gallons or an equivalent measurement and storage tanks for gasoline and oil products shall not exceed a capacity of twenty thousand (20,000) gallons or an equivalent measurement. Storage tanks shall meet all standards specified by the National Fire Protection Association and of the North Carolina Fire Prevention Code;

- T. Sexually oriented businesses. Provided however;
1. No more than one (1) sexually oriented business can be located within a two thousand (2,000) foot radius (determined by a straight line and not street distance from the front entrance door of the sexually oriented business) from any other sexually oriented business.
 2. No sexually oriented business can be located within a one thousand five hundred (1,500) foot radius (determined by a straight line and not street distance) of the closest boundary line of any residential district within the town's zoning jurisdiction, and any church, school, day care, public park or playground within or outside the town's zoning jurisdiction.
 3. For every new sexually oriented business, all owners and employees of said business shall have a background check completed in accordance with Chapter 18 of the Maiden Code of Ordinances prior to the opening of the establishment. For existing sexually oriented businesses, any new owner or employee shall have a background check completed in accordance with Chapter 18 of the Maiden Code of Ordinances by no later than sixty (60) days after acquiring an ownership interest in the business or beginning work at the business.
 4. All sexually oriented businesses shall be subject to the provisions in section 6.10. (**State law reference**-regulation of sexually oriented business, G.S. 160A-181.1.)
- U. Mixed uses, i.e., buildings erected for both dwelling and business purposes, shall be permitted provided such buildings shall be furnished with side yards on each side of the building measuring not less than eight (8) feet in width; provided, however, that this regulation shall not apply to the street side of a corner lot;
- V. Service stations, including major repair work, provided that all gasoline pumps and fuel storage tanks shall be located at least twelve (12) feet behind the property line;
- W. Service stations, but not repair garages, provided that no more than two (2) service stations shall be permitted in any GDP, and that no service station site shall consist of more than twenty-five thousand (25,000) square feet of the GDP site, and that the total area in service station use shall not exceed five (5) percent of the area of the GDP site.
- X. Bulk wholesale storage and sales of gasoline and oil products, including bottled gas and oxygen. Storage tank shall not exceed a capacity of thirty thousand (30,000) gallons or an equivalent measurement and shall meet all standards specified by the National Fire Protection Association and the North Carolina Fire Prevention Code;

- Y. Provided part of a mixed use GDP where a wide range of residential densities and options exist and in some instances may include land devoted to retail and/or office uses intended to serve the on-site residential development.
- Z. Requires conditional use permit, in compliance with and all other requirements in Article 6.14

ARTICLE 6 | **SUPPLEMENTARY USE REGULATIONS**

6.1 ACCESSORY USES

6.1.1 Accessory Structures; General Regulations

- A. All accessory structures listed in 6.1.2, 6.1.3, and 6.1.4, shall obtain a zoning permit or, if required by this ordinance, a conditional use permit prior to construction.
- B. Accessory structures shall be subject to all applicable regulations of this Unified Development Ordinance unless otherwise expressly stated herein.
- C. Accessory structures shall not be erected in any required street or front setback, provided that fences up to 4 feet in height shall be allowed within required street setbacks.
- D. Accessory structures shall be subject to the required setbacks identified in Article 6.
- E. Fences
 - 1. A fence may be placed along a surveyed property line
 - 2. No fence may exceed eight (8) feet in height.
 - 3. Fences must be constructed outside of all road and utility right of ways and sight view triangles.
- F. Accessory structures may be erected in rear yard setbacks subject to the following conditions: Accessory structures may occupy up to 30 percent of the required rear setback, provided that such structures shall be set back at least 5 feet from any side lot line and 3 feet from any rear lot line.
- G. Accessory structures shall not exceed height standards for accessory structures in Article 8.
- H. Mechanical structures such as heat pumps, air conditioners, emergency generators, and water pumps are not allowed in front setbacks. They may be allowed in side and rear setbacks if less than 48 inches high.
- I. The combined building coverage of detached accessory structures shall not exceed 15 percent of the total deeded land area and when combined with all structures on the site shall not exceed the maximum building coverage allowed in the zoning district.

6.1.2 Accessory Dwelling Units

- A. Accessory dwelling units shall be located on a lot that complies with the minimum area and width requirements of the zoning district in which it is located.
- B. Accessory dwelling units shall have a separate means of access that meets State Building Code requirements from outside the building.
- C. An accessory dwelling unit shall be no more than 750 square feet in size.

- D. The accessory dwelling unit shall be attached to the principal residence.
- E. One accessory dwelling unit per lot shall be permitted as an accessory use in conjunction with a single-family residence.

6.1.3 Accessory Storage Structures, Portable

Portable accessory structures are items such as greenhouses, storage buildings (not for motor vehicles), and sheds. Portable accessory storage structures may be located within the required rear setback in all residential districts provided the following standards are met:

- A. The structure shall be of the portable type, used exclusively for storage, and no mechanical equipment such as, but not limited to, heating, air conditioning, ventilating or similar equipment, power tools and similar mechanical installations, shall be operated within or attached thereto.
- B. Only one portable storage structure shall be allowed within the rear setback per zoning lot.
- C. Such structure may have a horizontal dimension not exceeding 12 feet and shall have no other dimension exceeding 8 by 10 feet.
- D. The structure shall be properly anchored in accordance with the Sate Building Code.
- E. "Portable" shall mean a building or structure without a permanent foundation and capable of being moved intact.

6.1.4 Accessory Structures, Open Metal (Aluminum or Steel) primarys.

- A. Placement and Design Guidelines – Front Yard.

The following requirements only apply to carports placed in the front yard of single-family dwellings:

1. Carports placed in the front yard shall meet the side yard setback requirement for principal buildings or be located no closer to the side property line than the principal building. The carport shall be no closer than twenty (20) feet to the front property line or right-of-way.
2. Only one (1) carport shall be allowed in the front yard for each principal building. Carports placed inside or rear yards shall follow the requirements for accessory structures in the zoning district in which it is located.
3. The overhang on open carports placed in the front yard shall not exceed twenty-four (24) inches. No additional sheeting or panels shall be allowed on any side of the carport.
4. The carport may have gables if it has a pitched roof.
5. Single carports designed for one (1) vehicle shall not exceed three hundred twelve (312) square feet in size.

6. Double carports designed for two (2) vehicles shall not exceed five hundred seventy-two (572) square feet in size.

B. Uses Regulations.

1. Permitted uses.

Only licensed passenger vehicles (cars, trucks, vans, motorcycles, boats on trailers, recreational vehicles, and trailers) shall be allowed to park under the carport. The vehicle must be operable, licensed and properly registered and meet any additional requirements referred to in Maiden Code of Ordinances Chpt. 20, Art. XII, "Abandoned, Nuisance and Junked Motor Vehicles." At no time shall junk or other items be left on licensed vehicles as this will be considered a violation of the Community Appearance Standards, Chapter 14 Article 3 of the Town of Maiden Code of Ordinances

2. Prohibited uses.

Carports shall not be used to store items other than licensed passenger vehicles. Examples of items prohibited under carports include, but are not limited to, lawnmowers, boats off trailers, appliances, furniture, scrap metal, firewood, and construction materials.

3. Carports shall comply with all applicable additional requirements of the Community Appearance Standards, Chapter 14 Article 3 of the Town of Maiden Code of Ordinances.

4. A zoning permit is required for a carport, unless the carport is permitted as part of or in conjunction with a larger principle structure (for example, as part of a residential or commercial structure). All carports shall comply with the applicable requirements of the North Carolina State Building Code.

6.1.5 Home occupations.

- A. A home occupation is a permitted accessory to any dwelling unit and must obtain a zoning permit as provided in Article 2.5 and in accordance with the following requirements:

1. The home occupation must be clearly incidental to the residential use of the dwelling and must not change the essential residential character of the dwelling.
2. A home occupation conducted in an accessory structure shall be housed only in a garage or other accessory structure typically associated with a dwelling.
3. The use shall employ no more than one person who is not a resident of the dwelling.
4. A home occupation housed within the dwelling shall occupy no more than 25 percent of the total floor area of the dwelling.
5. There shall be no visible outside display of stock in trade which is sold on the premises.
6. There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, excepting equipment or materials of a type and quantity that could reasonably be associated with the principal residential use.

7. Operation of the home occupation shall not be visible from any dwelling on an adjacent lot, nor from a street.
8. Only vehicles used primarily as passenger vehicles will be permitted in connection with the conduct of the home occupation.
9. The home occupation shall not utilize mechanical, electrical, or other equipment which produces noise, electrical or magnetic interference, vibration, heat, glare, or other nuisances outside the dwelling or accessory structure housing the home occupation.
10. Business identification or advertising signs are permitted according to Article 12.
11. All home occupations shall require a zoning permit: Permits are not transferable from person to person or from address to address.
12. Hobbies shall not be subject to the requirements of this section unless such hobby generates a gross yearly income of one thousand dollars (\$1,000.00) or more and engages in the activity by completing a sale or providing a service more than once a month.
13. There may be one (1) annual inspection by the Town staff to ensure the home occupation is operating within the requirements specified by this ordinance. The Town staff shall have the right at any time, upon reasonable request, to enter and inspect the premises covered by the zoning permit for safety and compliance purposes.
14. In no case shall a home occupation be open to the public at times earlier than 8:00 a.m. nor later than 9:00 p.m.
15. No more than one (1) home occupation shall be permitted within any single dwelling unit.
16. There are no deliveries or shipments to or from the premises of such quantities or frequency as would suggest a need for a customer parking area.
17. No home occupation shall cause an increase in the use of any public utilities or services (water, sewer, garbage collection, etc.) so that the combined total use for dwelling unit and home occupation purposes exceeds the average for residences in the neighborhood. Bakeries and other such home occupations must complete a training course for good housekeeping techniques taught by the Waste Water Treatment Plant Operator in Responsible Charge ("ORC"). If required by the Waste Water Treatment Plant ORC, inline pretreatment shall be required.
18. Home occupations shall comply with all local, state, and federal regulations pertinent to the activity pursued, and the requirements of or permission granted by this section shall not be construed as an exemption from such regulations.
19. Any nonconforming home occupation shall be discontinued or comply with all applicable provisions of this section within sixty (60) days after the home occupation first became nonconforming.

20. Any preexisting (prior to the date of adoption of this section and approved by zoning permit) home occupation, made nonconforming by this section, may be continued for a period of two (2) years after adoption of this section or the discovery of the nonconforming use.
21. Up to one equipment vehicle and trailer for transporting equipment may be on-site. For the purposes of this section, business vehicles such as pick-up trucks, even when used to haul or transport materials, are not considered an equipment vehicle.

B. Permitted home occupations.

The Planning Department shall review all home occupations to ensure that the home occupation meets the requirements of 6.1.5.A (1-21) above. Permitted home occupations include the following: accounting services; architectural services; bakery; drafting and graphic services; art restoration; art/photography studio; beauty salon; chiropractic services; consulting office; contracting office; data processing and computer programming; dressmaking, sewing, and tailoring; electronic assembly and repair; engineering services; financial planning and investment services; flower arranging; gardening and landscaping services; home crafts; house cleaning services; insurance sales broker; interior design or specialized antiques; jewelry making and repair; locksmith; mail order (not including retail sales from the site); music instruction; real estate sales broker; general sales representative; tutoring; and furniture upholstery.

C. Prohibited home occupations.

All home occupations not listed in 6.1.5 B. are prohibited. The Town Council may consider, but is not required to add, additional home occupations through the zoning text amendment process. Examples of prohibited home occupations include, but are not limited to, the following: appliance and small engine repair; auto repair; auto painting; carpentry/cabinet making; dance studios; furniture construction; machine shops; rental businesses; tow truck services; welding shops; and contractor material storage areas.

6.1.6 Parking of Commercial and Recreational Vehicle

A. Recreational Vehicles

An owner of a recreational vehicle or trailer may park or store such vehicles on their private residential property subject to the following limitations:

1. Guests may park and/or occupy a recreational vehicle while visiting the occupants of a dwelling unit located on the same lot for not more than 30 days consecutive days. The intent is to accommodate visiting guests and not to allow the recreational vehicle to be used as a dwelling unit.
2. Parking is permitted anywhere on a lot for loading and unloading purposes for a period not exceeding 24 hours. When not loading or unloading, such vehicles shall not be parked in a front or street corner yard.
3. At no time shall such vehicles be permanently connected to any utility service.

4. At no time shall there be more than three (3) such vehicles stored on the property at any one time for a period longer than thirty (30) days.
5. The vehicle must be operable, licensed and properly registered and meet any additional requirements referred to in Maiden Code of Ordinances Chpt. 20, Art. XII, "Abandoned, Nuisance and Junked Motor Vehicles."
6. A property owner or principal renter of a property may store a recreational vehicle anywhere on his or her property, provided it does not block sight triangles, public access ways or utility rights-of-ways. The parking of recreational vehicles not owned by the property owner or principal property renter is prohibited.
7. Recreational vehicles may be used as a temporary dwelling unit for a period not to exceed three (3) months during the construction or renovation of a permanent residential structure. Such vehicle shall have an approved water supply and sewer connection. A conditional use permit may be applied for if an individual property owner needs to utilize a recreational vehicle for more than three (3) months for a period not to exceed nine (9) months.

B. Commercial Vehicles

The parking of any commercial vehicle with a tag rating of and or a gross weight of greater than 26,000 pounds or length greater than 25 feet shall not be permitted on any lot in any residential district except where such vehicles are located within an entirely enclosed structure that complies with the regulatory requirements for the applicable zoning district. This requirement shall not be interpreted to prohibit vehicles from loading and unloading in any residential district.

6.1.7 Private Communication antennas.

- A. Communication antennas shall be considered an accessory structure and shall require a zoning permit and may be located in any district subject to the following conditions:
 1. No designs or advertising shall be affixed or painted on the antenna except the manufacturer's name, safety information, logo or trademark.
 2. Communication antennas shall not be located upon or encroach upon existing rights-of-way or required setbacks.
 3. On corner lots communication antennas, guy wires, or structural supports shall not be located within the "sight triangle."
 4. For residential use, communication antennas shall be permitted in the side and rear yards of the lot provided the location of the dish is in compliance with all other provisions of this section and is no taller than seven feet.
 5. Antennas taller than seven feet shall be located so that the entire fall zone of the structure, plus an additional two feet occurs within the property on which the antenna is located.
- B. For residential use, communication antennas may be located in the front yard of the principal structure if the following conditions are met:

1. The property owner petitions the Board of Adjustment for a variance;
 2. The petitioner must prove that he cannot get clear reception by locating the antenna in the rear or side yards of his lot; and
 3. That the location of the antenna will otherwise be in compliance with all other provisions of this section.
- C. Pre-existing Structures.

Communication antennas which are in place on June 16, 1986, and which are not in compliance with the terms of this section shall be removed or brought into compliance with this section within ninety (90) days after June 16, 1986, except that the owner of the property or occupier of the premises may first apply for and obtain a variance or a special use permit, as appropriate, from the board of adjustment. The board of adjustment may issue variances and special use permits upon such terms and conditions as it may deem appropriate and sufficient to preserve the purpose and intent of this section.

(Ord. No. 9-86, § 2, 6-16-86)

6.2 ANIMAL KEEPING

6.2.1 Purpose and Definitions.

- A. The purpose of this section is to regulate the keeping of horse, mules, cattle, fowl and other birds that are not part of a bona fide farming operation. The ordinance applies to properties located within the corporate limits of the Town and to properties located within the Town's extraterritorial jurisdiction. In accordance with G.S. § 160A-360, however, this section shall not apply to any bona fide farming operation located in the Town's extraterritorial jurisdiction.
- B. "Fowl" and "birds" include the following: chickens, game hens, ducks, swans, geese and other birds typically used as food. This definition for the purpose of animal keeping does not include parrots, parakeets, and other non-food birds. See, Article 17.

6.2.2 Prohibitions.

Horses, mules, cattle, all other types of livestock, fowl and other birds shall not be permitted within the Town limits or within the extraterritorial jurisdiction of the Town except in compliance with this section.

6.2.3 Conditional use permit required – pre-existing activity.

- A. Horses, mules and cattle.
 1. All horses, mules and cattle, regardless of whether they are being kept lawfully or unlawfully, must be registered with the Planning Department within ninety (90) days of the effective date of this section. The offspring of all horses, mules and cattle must also be registered with the Planning Department within ninety (90) days of each animal's birth.
 2. No conditional use permit is required for horses, mules or cattle lawfully kept as of the effective date of this section, and all such animals shall be allowed to remain, including those animals that otherwise cannot not be lawfully kept in

compliance with the requirements of this section. The offspring from all such preexisting animals shall only be permitted in compliance this section.

3. No horse, mule or cow may be replaced or substituted for except in compliance with this section. At least ninety (90) days prior to making any additions or substitutions, the property owner shall either provide to the Planning Director written proof that no permit is required pursuant to this section, or the property owner shall apply for the required conditional use permit.

B. Fowl and other birds.

1. All fowl and other bird(s), regardless of whether they are being kept lawfully or unlawfully, must be registered with the Planning Department within ninety (90) days of the effective date of this section. The offspring of all fowl and other birds must also be registered with the Planning Department within ninety (90) days of each animal's birth.
2. All existing fowl and other bird(s) lawfully kept on a property prior to the effective date of this section but that cannot now be kept lawfully in accordance with this section may remain on the property for a period of two (2) years. The offspring from all such preexisting animals shall only be permitted in compliance this section.
3. No fowl or other birds may be replaced or substituted for except in compliance with this section. At least ninety (90) days prior to making any additions or substitutions, the property owner shall either provide to the Planning Director written proof that no permit is required pursuant to this section, or the property owner shall apply for a zoning permit or conditional use permit, as required by this section.

6.2.4 Horses, mules, and cattle.

The keeping of horses, mules, and cattle is permitted in the R-20, R-15, C-2, M-1, 321ED-(MX) and 321ED-(I) districts, provided the following conditions are met:

A. Conditional use permit required; exemption; prohibition.

1. On property five (5) acres or more in size, the keeping of horses, mules, or cattle is permitted without a zoning permit or conditional use permit, provided that the requirements of this section are met. Animals may be replaced and the use may be expanded in compliance with this section. Prior to replacing animals or expanding the use, the animal owner shall confirm with the Planning Department that the use complies with this section.
2. Properties one (1) acre or more but less than five (5) may have horses, mules and cattle, provided that the owner of the animals must obtain a conditional use permit for each animal kept on the property. For example, four (4) conditional use permits would be required to keep four (4) horses. The conditional use permit(s) shall be issued if the Town Council finds that the requirements of this section and the other applicable provisions of the Unified Development Ordinance will be met and subject to any additional conditions that the Council deems necessary to protect the health, safety and welfare of the citizens of Maiden and the extraterritorial jurisdiction of the Town.

3. Properties less than one (1) acre or zoned C-1, R-8 or R-11 are not permitted to have horses, mules or cattle.
- B. A maximum of one (1) animal per acre is allowed on non-irrigated land. A maximum of two (2) horses, mules or cattle per acre are allowed on irrigated land.
- C. Horses, mules or cattle may not be allowed to graze or be tied on any lot within two hundred (200) feet of any dwelling, excluding the owner's home, or street, except that such animals shall be permitted to graze within a fenced area or pasture of not less than one acre for every two (2) animals.
- D. No stable shall be located closer than three hundred (300) feet to any residence or place of business other than that of the stable owner.
- E. Stables shall be kept clean and sanitary.
- F. Manure accumulation shall be removed, by the owner, from the property at intervals of not longer than five (5) days.

6.2.5 Fowl and other birds.

The keeping of fowl and other birds is permitted in the R-8, R-11, R-15, R-20, C-1, C-2, M-1, 321ED-(MX) and 321ED-(I) districts, provided the following conditions are met:

- A. Zoning and conditional use permits required; exemption; prohibition.
 1. An operation located on property four (4) acres or more in size may have up to ninety-nine (99) fowl and/or other birds without a zoning or conditional use permit, provided that all the conditions of this section are met. Prior to replacing animals or expanding the use, the animal owner shall confirm with the Planning Department that the use complies with this section.
 2. An operation located on four (4) or more acres of land may have one hundred (100) or more fowl and/or other birds with a zoning permit. The application for the zoning permit shall demonstrate to Town staff how the operation will meet all the requirements of this section and other applicable provisions of the Unified Development Ordinance.
 3. An operation located on property one half (1/2) acre or more but less than four (4) acres in size may have up to ninety-nine (99) fowl and/or other birds. However, the operation must obtain a conditional use permit listing the maximum number of fowl allowed on the property at any given time. This maximum number includes all chicks and adolescent birds. For example, one (1) conditional use permits would state that a maximum of 10 fowl may be present at any time. The conditional use permit shall be issued if the Town Council finds that the requirements of this section and other applicable provisions of the Unified Development Ordinance will be met and subject to any additional conditions that the Council deems necessary to protect the health, safety and welfare of the citizens of Maiden and the extraterritorial jurisdiction of the Town.

4. Fowl and other birds are not permitted on properties less than one half (1/2) acre in size.
 - B. Coops and pens must be completely fenced so as to insure that no fowl/bird may escape. Fowl and other birds roaming at large shall not be permitted.
 - C. No coop may be located closer than one hundred and eighty (180) feet to any residence or place of business other than that of the coop owner. Pens may not be closer than one hundred and eighty (180) feet of any dwelling, other than the coop/pen owner, or street right-of-way. Pens shall maintain a setback of fifty (50) feet from all property lines.
 - D. No individual fowl or other bird that weighs over twenty-five (25) pounds may be kept.
 - E. One animal per ten (10) sq-ft of pen area.
 - F. Due to noise concerns and disturbance to the general public at no time shall it be permitted for more than one rooster to be present per acre. Roosters on less than one (1) acre shall not be permitted.
 - G. Coops and pens shall be kept clean and sanitary.
 - H. Manure/droppings shall be removed, by the owner, from the property at intervals not exceeding five (5) days.
 - I. Existing pens built on or before adoption of this ordinance shall be relocated in conformity with this ordinance within the two (2) year amortization period.
 - J. Pens and coops shall not be permitted within the front yard of a property.

6.2.6 Standards for Animal Hospitals and Kennels.

- A. Animal hospitals, kennels and outside runs or areas, when allowed, shall be more than two hundred feet from any dwelling (other than the dwelling of the owner) and shall be more than forty (40) feet from any property line.
- B. Exercise areas shall observe a 100-foot setback from all lot lines.
- C. The disposal methods for wastes generated shall be reviewed and approved by the appropriate Department of Health.
- D. No noise levels above surrounding ambient levels shall be detectable by a reasonable person having an average sense of hearing at the zoning lot boundaries of the lot containing the animal hospital or kennel.
- E. No odors greater than ambient odors shall be detectable by a reasonable person having an average sense of smell at the zoning lot boundaries of the lot containing the animal hospital or kennel.

6.3 CONDOMINIUM DEVELOPMENT

6.3.1 Use and Development Requirements

- A. Condominium structures shall conform to normal use and development requirements of this chapter for the district within which the structure is located. The standards of group projects, group housing developments or planned unit developments shall be met if the condominium project is developed as such.
- B. Condominium units shall also be permitted in existing structures with no minimum lot size required provided the dimensional requirements of the district in which the development is located are met.

6.3.2 Unit Ownership

Unit ownership may be created by an owner or the co-owners of a building by an express declaration of their intention to submit such property to the provisions of the "Unit Ownership Act of North Carolina," which declaration shall be prepared in strict compliance with the Unit Ownership Act, reviewed and approved by the planning commission and recorded in the office of the county register of deeds.

(Code 1976, § 12.51.2; Ord. No. 2-83, 2-7-83)

6.4 MANUFACTURED HOMES: APPEARANCE CRITERIA.

6.4.1 Design Standards

A. Structure/Unit.

All Class A and Class B homes must measure at least one thousand one hundred and fifty (1,150) square feet of enclosed and heated living area when located on a single lot.

B. Exceptions.

Class A and Class B homes measuring at least nine hundred (900) square feet of enclosed and heated living area are allowed, provided that such units are located within a manufactured home park (mobile home park) located within the M-1 zoning district that was approved prior to February 1, 2010.

C. Permitted Units.

Only multi-section class A and class B homes shall be permitted.

D. Roof design.

1. Pitch.

The pitch of the roof of the dwelling for all manufactured homes shall have a minimum vertical rise of at least three (3) feet for each twelve (12) feet of horizontal run, and the roof shall be finished with a type of shingle or vertical seamed metal roof that is commonly used in standard residential construction. Such roof shall be the original roof of the structure as installed by the manufacturer.

2. Eaves.

All roof structures shall provide an eave projection of no less than six (6) inches, which may include a gutter.

E. Foundation requirements.

All manufactured homes shall be permanently placed on a brick, concrete, block, stone or other masonry foundation: Foundations must be un-pierced except for required ventilation and access.

1. Footings.

Footings shall meet requirements set forth by the North Carolina Building Code.

2. Vapor barrier.

The foundation shall be protected with a polyvapor barrier. Installation shall include a positive water drainage away from the home.

The zoning enforcement officer may allow up to a ninety-day extension to complete the foundation on all individual manufactured homes or skirting on manufactured homes in existing parks after final inspection and approval by the county.

F. Siding.

The exterior siding for all manufactured homes shall consist predominantly of vinyl or aluminum horizontal lap siding (whose reflectivity does not exceed that of gloss white paint), wood or hardboard, comparable in composition, appearance and durability to the exterior siding commonly used in standard residential construction.

G. Moving Hitch.

The moving hitch, wheels and axles and transporting lights shall be removed.

H. Decks and Porches.

1. All manufactured homes shall have either a deck or porch with steps at all entrances to the manufactured home and for which shall be attached firmly to the primary structure and anchored securely to the ground. Steps, decks and porches shall be installed and constructed in accordance with the standards set by the State Building Code. Steps, decks and porches must also meet the Town's minimum housing code.

2. Minimum Size. The minimum area for such decks or porches shall be thirty-six (36) square feet.

(Ord. No. 2-90, 1-15-90; Ord. No. 12-90, 3-19-90; Ord. No. 18-95, 5-15-95; Ord. No. 16-96, 7-22-96; Ord. No. 22-96, 8-5-96; Ord. No. 23-98, 7-20-98; Ord. No. 12-99, 6-7-99)

6.5 MANUFACTURED/MOBILE HOME PARKS.

6.5.1 Regulatory Compliance.

Manufactured homes shall be on individual lots, and must comply with all the requirements for the zoning district in which they are located. The subdivision of lots for mobile homes must comply with all requirements set forth in Article V, Subdivision Control, of this chapter.

6.5.2 Pre-Existing Parks.

Parks existing at the time this ordinance is adopted shall be allowed to remain. Any manufactured homes brought into an existing park must meet the requirements, except for (E), of the appearance criteria set forth in section 7.5. Class C homes shall be permitted to have a prefabricated skirting kit in place of the masonry foundation, as approved by the zoning enforcement officer. The zoning enforcement officer may allow up to a ninety-day extension to complete the foundation or skirting after final inspection and approval by the county.

6.5.3 Tenant roster required.

The operator of all manufactured home parks shall be required to maintain an up-to-date tenant roster of all tenants. This roster shall contain the name and address of each tenant residing in the manufactured home park.

6.5.4 Special requirements.

Special requirements for manufactured homes located within the floodway and floodway fringe zones include the following:

A. Floodway zone requirements:

The construction of any portion of a new manufactured home park, the expansion of an existing manufactured home park, or the placement of any manufactured home not in a manufactured home park is prohibited in a floodway zone.

If a manufactured home location or relocation is not deemed to constitute the expansion of an existing manufactured home park, the location or relocation shall be allowed provided that:

1. Any manufactured home site rental or leasing agreement or any contract for and deed of sale clearly state that the land in question has been designated as part of a floodway district and may be subject to flooding.
2. Any manufactured home moved into or relocated within an existing manufactured home park shall be anchored in accordance with the tie down requirements of this subsection.
3. Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and located so as to prevent water from entering or accumulating within the components during conditions of flooding.

B. Floodway fringe zone requirements:

The construction of a new manufactured home park, the expansion of an existing manufactured home park, the placement of a new manufactured home not in a manufactured home park, or the substantial improvement of any of the above in a floodway fringe zone shall be allowed only if the following criteria are met:

1. Ground anchors for tie downs are provided (see tie down requirements below);
 - (a) Over-the-top ties are required at each of the four (4) corners of the manufactured home, with one (1) additional tie per side at an intermediate location, for manufactured homes less than fifty (50) feet long. Two (2)

additional ties per side are required for manufactured homes more than fifty (50) feet long.

- (b) Frame ties are required in conjunctions with each over-the-top tie.
 - (c) All components of the anchoring must be capable of carrying a force of four thousand eight hundred (4,800) pounds.
2. Lots or pads are elevated on compacted fill or by any other method approved by the Planning Director so that the lowest habitable floor of the manufactured home is at or above the regulatory flood level;
 3. Adequate surface drainage and easy access for a manufactured home hauler are provided; and
 4. Load-bearing foundation supports such as pier or pilings must be placed on stable soil or concrete footings no more than ten (10) feet apart, and if the support height is greater than seventy-two (72) inches, the support must contain steel reinforcement.

If a manufactured home location or relocation is not deemed to constitute the expansion of an existing manufactured home park, the location or relocation shall be allowed provided that any manufactured home moved into or relocated within an existing manufactured home park shall be anchored in accordance with the provisions of the tie-down requirements above and:

5. Electrical, heating, ventilation, plumbing and air conditioning equipment and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding.
6. All new manufactured home parks or subdivisions greater than fifty (50) lots or five acres shall include within the proposal base flood elevation data.

6.6 **MINING -EXCAVATION OF LAND AND/OR EARTH PRODUCTS.**

The excavation of land and/or earth products shall be a conditional use which, subject to the provisions of this section, may be permitted in a mixed use planned unit development.

6.6.1 Conditional use – Permit required.

The conditional use of excavation of land and/or products shall be subject to and governed by, the below provisions and procedures for special uses of the Maiden Town Code.

6.6.2 Conditional use – Application submission.

In addition to the information required for mixed use planned unit developments, the following shall be submitted as part of the application for a conditional use permit for the excavation of land and/or products:

- A. Three (3) copies of site plan, prepared by a North Carolina Registered Land Surveyor or Engineer, which shall contain the following:
 1. North Point, scale and date.

2. Extent of area to be excavated or mined.
 3. Locations, width and elevation of all easements and rights-of-way within or adjacent to the extraction site.
 4. Location of all existing or proposed structures on site.
 5. Location of all areas on the site subject to flood hazard or inundation as shown on flood maps or soils map.
 6. Location of all water courses on the site, including direction of flow and normal fluctuation of flow.
 7. Existing topography at a contour interval of five (5) feet based on mean sea level datum.
 8. Proposed handling and storage areas for overburden, byproducts and excavated materials.
 9. Proposed fencing, screening and gates, parking, service and other areas.
 10. Any areas proposed for ponding.
 11. Access roads to the site, as well as on-site roads, with indication of surface treatment to limit dust. Sight distances on all roads used for access to the site shall be shown.
- B. An operations plan, which shall include:
1. The date proposed to commence operations and their expected duration.
 2. Proposed hours and days of operations.
 3. Estimated type and volume of extraction.
 4. Description of method of operation, including the disposition of topsoil, overburden and byproducts.
 5. Description of equipment to be used in the extraction process.
 6. Any phasing of the operation and the relationship among the various phases.
 7. Operating practices which will be followed to comply with the performance standards applicable to the operation.
- C. A rehabilitation plan, which shall include:
1. A statement of planned rehabilitation of the excavated land, including detailed methods of accomplishment and planned future use of the rehabilitated land.
 2. A map showing the final topography, after rehabilitation, to the same scale as the site plan; it shall also depict any water areas and methods for preventing stagnation and pollution thereof, landscaping and ground cover proposed to be installed and the amount and type of backfill to be employed, if any.
 3. A phasing and timing plan, related to the phasing and timing portion of the operations plan, showing the progression of the rehabilitation and the date when it will be complete.

4. The method of disposing of all equipment, structures, dikes and spoil piles associated with the operations.
 5. The name, address and signatures of land owners and applicants.
- D. A survey and written legal description of the property, prepared by a North Carolina registered land surveyor.

6.6.3 Conditional Use – Permit application evaluation process.

The following standards shall be used in evaluating an application for a permit to conduct extraction of earth products:

A. Performance standards.

All operations associated with extraction shall conform to the following performance standards:

1. Direct illumination.
Direct illumination resulting from the operation shall not fall upon any land not covered by the application.
2. Sound levels.
Equivalent sound levels at the boundaries of the extraction site shall not exceed the following standards: Between 7:00 a.m. and 7:00 p.m. - 63dBA; between 7:00 p.m. and 7:00 a.m. 58dBA.
3. Vibration levels.
Vibration levels at the boundaries of the extraction site shall not exceed the following standards: Maximum Peak Particle Velocity: Steady state 1.0 inches/second. Impact 2.0 inches/second.

NOTE: The maximum particle velocity shall be the product of two (2) times the frequency in cycles per second times the sum of three (3) mutually perpendicular displacement components recorded simultaneously. For purposes of this ordinance steady state vibrations or vibrations which are continuous, or vibrations in discrete impulses* more frequent than sixty (60) per minute.

*Discrete impulses which do not exceed sixty (60) per minute shall be considered impact vibrations. Maximum air blast vibration, measured at the lot lines of the lot containing the extractive use, shall be 125 decibels on the linear scale.

4. Rehabilitation plan.
The rehabilitation plan shall be referred to the appropriate county Soil and Water Conservation District for review and recommendation, which shall not be binding upon the Town Council, in particular regarding the landscape material specified, the planting and maintenance proposed to insure continuous growth and development, and the acceptability of the proposals for the handling of lakes, ponds, etc.
5. Permanent roads.

The permanent roads, defined as those to be used in excess of one year, within the excavation site shall be surfaced with a dust-free material such as soil cement, bituminous concrete or portland cement concrete from the nearest public road to the yard area. Also, all permanent roads located within three hundred (300) feet of residentially zoned land shall be treated the same.

6. Roads other than permanent roads.
Roads other than permanent roads shall be treated with dust inhibitors, to be specified in the operations plan, which will reduce to a minimum the generation of dust from the road surfaces as a result of wind or vehicular action. Properly operated water wagons shall be an acceptable method of dust inhibition.
7. Location of extraction.
Where the proposed extraction shall take place within three hundred (300) feet of a dwelling, school, church, hospital, commercial or industrial building, public building, or public land, a security fence at least six (6) feet high shall be installed.
8. Extraction debris.
Spoil piles and other accumulations of byproducts shall not be created to a height more than forty (40) feet above the original contour and shall be so graded that the vertical slope shall not exceed the material's natural angle of repose.

6.6.4 Conditional use – Additional requirements.

The developer shall provide the following information, in addition to the general information required in subsection 7.6.10:

- A. The haul routes and points of access to the property.
- B. The proposed date that the land alteration will commence and the projected date of completion.
- C. Evidence that all requirements of the State of North Carolina and the United States have been met (or will be met by the time the operations begins) and shall continue to be met.
- D. An explanation of the volume of waste to be received, expressed in cubic yards per day or tons per day.
- E. An explanation of the type of landfill requested and type of wastes to be received.
- F. A statement specifying the hours of operation.
- G. Procedures for review and approval shall be as provided in subsection 7.6.11.

(Ord. No. 27-92, 12-7-92)

6.7 **PLANNED UNIT DEVELOPMENT.**

The planned unit development concept offers developers the possibility of more efficient and flexible methods for developing property and provides residents of the project with larger open spaces for recreation and other activities properly related to residential uses.

6.7.1 Development Approval.

The following requirements shall apply to Planned Unit Developments:

- A. Such project is an integrated plan designed for the primary purpose of residential use;
- B. The site for the total project is at least one (1) acre and at least two (2) principal buildings are included in the plans;
- C. The total parcel of land is under single, corporation, firm, partnership, or association ownership or control and there is reasonable assurance that the project can be successfully completed and maintained, including care and maintenance of all common open space, recreation space and other common land area; and
- D. Revisions and/or amendments. No phase or section of an approved planned unit development shall be revised, enlarged or amended without first resubmitting that phase or section to the Planning Board and the Town Council as provided for in this section.

6.7.2 Plan Submission Process.

A. Initial Submission.

The required plats for the proposed planned unit development shall first be submitted to the Planning Board for its review and recommendation to the Town Council: Such recommendations may include, but shall not be limited to, provisions for additional utilities, drainage, landscaping, lighting, and streets and access ways.

B. Resubmission.

- C. The applicant must resubmit the plan to the Planning Board if substantial changes were recommended ~~changes were substantial recommended by the~~ Town Council. The same process shall be used to determine whether a change is “substantial” as that set forth in subsection 2.1.6. Plan rejection and right to appeal.

Because plan approval is quasi-judicial, if the plan is rejected by the Town Council, it cannot be considered again. Only a new or qualitatively different proposal may be considered. If the plan is rejected, the applicant may appeal to Superior Court in accordance with the manner set forth in G.S. § 160A-388.

6.7.3 Design Requirements.

- A. All principal buildings and accessory buildings or uses abutting the property lines of the project must meet the minimum yard requirements of the district where the project is located for all yards abutting such property lines. All height requirements shall be met for the district where the project is located.
- B. The overall use of the area for buildings shall be no more than twenty-five (25) percent of the total land area.
- C. Off-street parking shall be provided at a ratio of two (2) spaces per dwelling unit.
- D. All streets and parking areas shall be constructed and paved according to the standards of the Town.

- E. An approved project must be started within twelve (12) months after final approval. An approved project shall be completed within twenty-four (24) months after final approval, unless the Town Council specifies a different date by which the project must be completed. Prior to the time to complete a project expires, an applicant may petition the Town Council for an extension of one year to complete the project. Further, The Town Council may, but is not required to, grant subsequent one-year extensions.

(Code 1976, § 12.51.1; Ord. No. 2-83, 2-7-83)

6.8 PLANNED UNIT DEVELOPMENT-MIXED-USE.

6.8.1 Purpose and intent.

Mixed-use planned unit developments, as defined in this section, are recognized as being desirable in the Town in order that the public health, safety, morals and general welfare be furthered.

6.8.2 Definition.

Mixed-use planned unit development is defined as a planned unit development including any combination of residential, industrial, manufacturing and commercial uses.

6.8.3 Minimum area required.

Mixed-use planned unit developments shall include at least twenty (20) acres.

6.8.4 Permitted and Conditionally Permitted Uses

- A. A mixed-use planned unit development may contain any uses permitted by the existing Town ordinance.
- B. Subject to the provisions of this section, a planned unit development may contain any conditional or special use authorized by this ordinance and as determined and approved by the Town Council

6.8.5 Density limitations.

The residential density in a mixed-use planned unit development shall not exceed ten (10) dwelling units per gross acre. Mixed-use planned unit developments shall reserve not less than twenty (20) percent of the gross acreage as open space.

6.8.6 Buffers.

It is intended and shall be considered as part of the design concept that compatible uses be used around the perimeter and adjacent to the existing land uses; however, where such consideration is not reasonable, the mixed-use planned unit development shall provide a fifty-foot minimum buffer where proposed non-residential uses are adjacent to residential zoning.

6.8.7 Utilities and annexation.

Mixed-use planned unit developments shall be served by public water and sewer approved by the Town. The owner(s) submitting a master land use plan for property located outside the corporate limits of the Town shall submit a petition requesting annexation of the entire property into the Town.

6.8.8 Parking and traffic.

A. Lighting.

All parking areas shall be adequately lighted and in accordance with Town specifications. All such lighting shall be so arranged to direct the light away from adjoining residences.

B. Vehicular circulation.

Both internal and external vehicular traffic circulation systems must be considered in the design and development of a mixed-use planned unit development. The following conditions shall be incorporated with the approval of the mixed-use planned unit development:

1. Principal vehicular access points shall be designed to permit smooth traffic flow and minimum hazards to vehicular or pedestrian traffic.
2. Standards of design and construction for streets within a mixed use-planned unit development shall be in accordance with those established in the Town code.
3. The proposed planned unit development is so located with regard to major thoroughfares and uses outside the mixed-use planned unit development that traffic congestion will not be created by the proposed development or will be obviated by presently projected improvements and that uses adjacent to such thoroughfares will not be adversely affected.
4. Sites without adequate access to collector and primary streets may be approved with a lower density than sites with such access. The number of dwelling units, number of streets to which access is available, number and spacing of access points, types of streets, and general site considerations must all be taken into account in determining the quality of access.
5. All nonresidential land uses within a planned unit development and a nonresidential mixed-use planned unit development should have direct access to a collector or primary street, especially where large parking areas are included.
6. The Town may approve a planned unit development in phases to coordinate the improvement of thoroughfares and intersections that are not directly related to the development of the mixed-use planned unit development but would be directly influenced by traffic generated by the mixed-use planned unit development.

6.8.9 Application Process.

A. Master land use plan.

All applications for approval of a mixed-use planned unit development shall be accompanied by a master land use plan which shall include, but not be limited to:

1. The types of uses and zoning proposed, along with a map showing locations of the same within the development.
 2. The numbers and types of residential dwelling units.
 3. Planned primary and secondary traffic circulation patterns including an analysis of anticipated traffic volumes.
 4. Planned parks, playgrounds and open areas to be developed or preserved in accordance with this article, or to be dedicated pursuant to the subdivision ordinance.
 5. Planned means of providing for the organizational arrangements for the ownership, maintenance and preservation of common open spaces.
 6. Relationship of the mixed-use planned unit development to the surrounding land uses and within the planned unit development.
 7. Plans for water and wastewater systems to be constructed in accordance with Town standards.
 8. Plans for the access of firefighting and refuse disposal equipment, which shall include the method of refuse disposal such as compactors, dumpsters, etc.
 9. Plans for all utilities to be installed underground, except for Town Council approved electric feeder lines.
 10. Plans for an adequate storm drainage system to be constructed in accordance with town standards.
 11. The delineation of areas to be constructed in phases or sections and the sequential order intended to be followed in development, including a written statement from the applicant indicating the date for beginning each phase of construction and the estimated date of completion.
 12. Drafts of any covenants which create a homeowners association for the maintenance of all privately owned common areas including, but not limited to, streets parking areas, easements, and the like.
 13. Drafts of any proposed declarations to be recorded pursuant to the North Carolina Unit Ownership Act (G.S. Chpt. 47A)
 14. Soils map prepared according to the United States Cooperative Soil Survey standards.
 15. Supporting market analysis justifying the proposed land uses with the planned unit development along with a schedule indicating the dates construction will begin and be completed in such areas.
- B. Detailed site plan and construction drawings.
- After approval of the master land use plan, the developer shall submit the following:
1. Detailed engineering and construction plans of all necessary on-site and off-site improvements in accordance with site plan and subdivision requirements of the Town, which may be submitted in phases as approved by the Town Council.

2. Final copies of all necessary covenants and declarations.
3. Detailed plans that specify the types of wind and water erosion and sedimentation control practices which are to be employed during all phases of construction.

C. Soil engineering usages.

In areas where the soil types and slope are such that the Town staff, Planning Board or Town Council deems it advisable, the developer or owner of a planned unit development may be required to submit detailed plans of soils engineering usages, including but not limited to, plasticity indices, percolation rates where applicable and the coefficient of linear expansibility.

6.8.10 Review and Approval Procedures.

A. Review by Planning Board.

1. The master land use plan and the detailed engineering and construction drawings shall be submitted to and reviewed by the Planning Board and forwarded to the Town Council with any necessary recommendations.
2. The Planning Board should consult with the consulting engineer, Town fire marshal, planning consultants or other persons, boards or commissions in order to form recommendations for the Town Council.

B. Approval by Town Council.

Final approval of mixed use planned unit development shall be by the Town Council, after public hearing. No permit for construction of any onsite or offsite improvements in a mixed use planned unit development shall be granted prior to final approval by the Town Council.

6.8.11 Requirements not to be waived.

The Board of Adjustment shall have no power to waive any requirements contained in this article.

6.8.12 Revisions and/or amendments.

No phase or section of an approved planned unit development shall be revised, enlarged or amended without first resubmitting that phase or section to the Planning Board and the Town Council as provided for in this section.

6.9 **PLANNED UNIT DEVELOPMENT - MULTIPLE PRIMARY USES**

Requirements of this section apply in the case of two (2) or more buildings to be constructed on a plot of ground of at least two (2) acres not subdivided into the customary streets and lots and which will not be so subdivided.

6.9.1 Applicability.

- A. Multiple primary uses are only permitted in the R8, M1, C1, C2, 321-ED(MX), and 321-ED(I) zones.
- B. The application of the terms of this article may be varied by the Town Council in a manner that will be in harmony with the character of the neighborhood, provided:

1. Such uses are limited to those permitted within the zoning district in which the project is located. In no case shall the Board of Adjustment authorize a use prohibited in the district in which the project is to be located;
2. The overall intensity of land use is no higher and the standard of open space is no lower than that permitted in the district in which the project is located;
3. The distance of every building from the nearest property line shall meet the front yard and side yard requirements of the district in which the project is located;
4. The building heights do not exceed the height limits permitted in the district in which the project is located; and
5. A proposed project must be designed by a licensed architect.

6.9.2 Approval process.

The procedure for approval of the multiple primary use development shall consist of the submission of a design plan to the Planning Board showing how the requirements of subsections (1) through (4) in 7.9.1 will be met, for study and recommendation prior to final approval by the Town Council. Furthermore, an approved project must be started within twelve (12) months after its approval and shall be completed within twenty-four (24) months after final approval, unless the Town Council specifies a different date by which the project must be completed. Prior to the time to complete a project expires, an applicant may petition the Town Council for an extension of one year to complete the project. Further, The Town Council may, but is not required to, grant subsequent one-year extensions.

(Ord. of 4-11-70, Art. IX, § 95; Code 1976, § 12.51)

6.10 SEXUALLY ORIENTED BUSINESSES

6.10.1 Purpose and findings.

The Town Council is committed to protecting the general welfare of the Town through the enforcement of laws prohibiting obscenity, indecency, and sexual offenses. It seeks to reduce and eliminate the deleterious effects of sexually oriented businesses while preserving constitutionally protected forms of expression.

The Town Council finds that sexually oriented businesses in certain locations contribute to neighborhood deterioration and blight through an increase in crime and diminution of property values, among other adverse secondary impacts, and finds that such effects are contrary to the general welfare of the Town. The Town Council recognizes that important and substantial government interests provide a constitutional basis for reasonable regulation of the time, place and manner under which sexually oriented businesses operate; and that, therefore, the Town Council has determined that persons seeking to operate sexually oriented businesses shall be required to observe specific location requirements before they commence business, as provided for in this ordinance. The Town Council finds that the licensing of sexually oriented businesses is necessary to ensure compliance with the location and zoning requirements of such businesses. The Town Council finds that sexually oriented businesses in other communities have been used for unlawful sexual activities, including prostitution, and

sexual encounters of a casual nature. The concern over sexually transmitted diseases is a legitimate health concern of the Town.

The provisions of this section shall not be construed as permitting any use, activity or structure that is otherwise prohibited, illegal or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that are subject to constitutional protection.

(Ord. No. 19-94, 9-19-94)

6.10.2 Definitions.

For the purposes of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Adult arcade (also known as “peep show”). Any place to which the public is permitted or invited wherein coin-operated or slug-operated or electronically, electrically, or mechanically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe “specified sexual activities” or “specified anatomical areas.”

Adult bookstore or adult video store. A commercial establishment:

1. Which receives a majority of its gross income during any calendar month from the sale of or rental of anyone or more of the following: (i) books, magazines, periodicals or other printed matter, or photographs, DVDs and other digital media, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe “specified sexual activities” or “specified anatomical areas”; or (ii) instruments, devices, or paraphernalia that are designed for use in connection with “specified sexual activities”; or
2. Having as a preponderance of its books, magazines, periodicals or other printed matter, or photographs, DVDs and other digital media, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe “specified sexual activities” or “specified anatomical areas.”

Adult cabaret. A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits or displays as one of its principal business purposes:

1. Persons who appear nude or semi-nude;
2. Live performances which are characterized by the exposure of “specified anatomical areas” or by “specified sexual activities;”
3. Films, motion pictures, DVDs or other digital media, video cassettes, slides, or other photographic reproductions which depict or describe “specified sexual

	activities” or “specified anatomical areas.”
Adult motel.	A hotel, motel or similar commercial establishment that: Offers accommodations to the public for any form of consideration, provides patrons with closed-circuit television transmissions, films, motion pictures, DVDs or other digital media, video cassettes, slides, or other photographic reproductions that depict or describe “specified sexual activities” or “specified anatomical areas” as one of its principal business purposes; Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or Allows a tenant or occupant of a sleeping room to sub-rent the room for a period of time that is less than ten (10) hours.
Adult-oriented merchandise	Any goods, products, commodities, or other wares, including but not limited to, videos, CD ROMs, DVDs, computer disks or other storage devices, magazines, books, pamphlets, posters, cards, periodicals or non-clothing novelties which depict, describe or simulate specified anatomical areas, as defined, or specified sexual activities, as defined.
Adult motion picture theater.	A commercial establishment where, for any form of consideration, films, motion pictures, DVDs or other digital media, video cassettes, slides, or similar photographic reproductions are regularly shown as one of its principal business purposes that depict or describe “specified sexual activities” or “specified anatomical areas.”
Adult theater.	A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits or displays, as one of its principal business purposes, persons who appear in a state of nudity or semi-nude, or live performances that expose or depict “specified anatomical areas” or “specified sexual activities.”
Applicant.	The person who will operate the sexually oriented business, and shall include each of the following persons associated with that business: <ol style="list-style-type: none"> 1. The owner of a sole proprietorship. 2. Each member of a firm, association, general partnership, or limited liability company. 3. Each general partner in a limited partnership. 4. Each officer, director and owner of more than ten (10) percent of the stock of a corporation. 5. The manager of an establishment operated by a corporation or other business entity. 6. Any manager or other person who has been empowered as attorney-in-fact for a nonresident individual or partnership.
Employ, employee and employment.	These terms describe and pertain to any person who performs any service on the premises of a sexually oriented business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or

otherwise. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Escort	A person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.
Escort agency	A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or other consideration.
Establishment.	<p>Establishment means and includes any of the following:</p> <ol style="list-style-type: none"> 1. The opening or commencement of any sexually oriented business as a new business; 2. The conversion of an existing business, whether or not a sexually oriented business, to any sexually oriented business; 3. The addition of any sexually oriented business to any other existing sexually oriented business; or 4. The relocation of any sexually oriented business.
Licensee.	Person(s) in whose name a license to operate a sexually oriented business has been issued.
Nude model studio.	<p>Any place where a person who appears semi-nude, in a state of nudity, or who displays “specified anatomical areas” is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any form of consideration. “Nude model studios” shall not include a proprietary school licensed by the State of North Carolina or a college, junior college or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation; or in a structure:</p> <ol style="list-style-type: none"> 1. That has no sign visible from the exterior of the structure and no other advertising that indicates a nude or semi-nude person is available for viewing; 2. Where in order to participate in a class a student must enroll at least three (3) days in advance of the class; and 3. Where no more than one nude or semi-nude model is on the premises at any one time.
Nudity or a state of nudity.	<p>These terms mean:</p> <ol style="list-style-type: none"> 1. The appearance of a human anus, male genitals, or female genitals; or 2. A state of dress which fails to opaquely cover a human anus, male genitals, or female genitals.
Operates or causes to be operated.	To cause to function or to put or keep in operation. A person may be found to be operating or causing to be operated a sexually

	oriented business whether or not that person is an owner, part owner, or licensee of the business.
Person.	An individual, proprietorship, partnership, corporation, association, limited liability company, or other legal entity.
Semi-nude.	A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.
Sexual encounter center.	A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.
Sexually oriented business.	An adult arcade, adult bookstore or adult video store, adult cabaret, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing.
Specified anatomical areas.	Human genitals in a state of sexual arousal.
Specified sexual activities.	Specified sexual activities means and includes any of the following: <ol style="list-style-type: none"> 1. The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; 2. Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation, or sodomy; 3. Masturbation, actual or simulated; or 4. Excretory functions as part of or in connection with any of the activities set forth in (1) through (3) above.
Town clerk.	The Maiden Town Clerk
Town manager	The Maiden Town Manager or designee.
Transfer of ownership or control.	Transfer of ownership or control of a sexually oriented business means and includes any of the following: <ol style="list-style-type: none"> 1. The sale, lease, or sublease of the business 2. Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of applicant; except that a mere substitution of a person as manager of an establishment shall only require filing with the Town Manager as provided in section 6.10.12.C 3. The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

6.10.3 Business Classification.

Sexually oriented businesses are classified as follows: (1) Adult arcades; (2) Adult bookstores or adult video stores; (3) Adult cabarets; (4) Adult motels; (5) Adult motion picture theaters; (6) Adult theaters; (7) Escort agencies; (8) Nude model studios; and (9) Sexual encounter centers.

(Ord. No. 19-94, 9-19-94)

6.10.4 License required.

- A. It is unlawful for any person to operate a sexually oriented business without a valid sexually oriented business license issued by the Town Manager, or his or her designee, pursuant to this section.

6.10.5 Application for License.

- A. An application for a license must be made on a form prescribed by the Town Manager and such application shall be made under oath and contain the following information:
 - 1. If the applicant is a person, the name and residence address of the person. If the applicant is partnership, corporation, limited liability company, or association, the name and residence address of all persons having any legal or beneficial interest in such application.
 - 2. The name of the manager(s) of the establishment along with their residence address.
 - 3. The address of the premises where the establishment shall be located.
 - 4. A complete statement of all convictions of any persons whose name is required to be given in subsection (A) above for any felony or prostitution or any violation of any law relative to prostitution.
 - 5. A complete statement of any conviction of any person whose name is required to be given in subsection (A) above for violation of any statute, law, article, or regulation of any government concerning sexually oriented businesses.
 - 6. The name and address of any sexually oriented business or other establishment owned or operated by any person whose name is required to be given in subsection (A) above.
 - 7. A description of any other business to be operated on the same premises or on adjoining premises owned or controlled by the applicant.
 - 8. An application must be accompanied by a sketch or diagram showing the configuration of the premises, including a statement of total floor space occupied by the business. The sketch or diagram need not be professionally prepared but must be drawn to a designated scale with marked dimensions of the interior of the premises. For reference see section 7.14.17 for additional requirements for businesses with viewing or other rooms.
- B. The application may request and the applicant shall provide such information as to enable the Town Manager to determine whether each applicant meets the qualifications established in this ordinance.

- C. Each applicant must be qualified under the section and each applicant shall be considered a licensee if a license is granted.
- D. The Town Manager shall transmit a copy of the application to the Town Police Department for an investigative report, to the Town Planning Department to determine compliance with all zoning and building regulations and articles, and to the Town Fire Department to determine compliance with any law relating to fire protection. The Police and Fire Departments and the Planning Department shall within a reasonable time report the results of their examinations to the Town Manager.
- E. No license shall be issued for any sexually oriented business to operate at any building, premises, structure, or other facility that contains any other kind of sexually oriented business

(Ord. No. 19-94, 9-19-94)

6.10.6 Issuance of license.

- A. Within thirty (30) days after receipt of a completed application, the Town Manager will approve or deny the issuance of a license to an applicant for a sexually oriented business license. The Town Manager will approve the issuance of a license to an applicant unless the Town Manager finds one or more of the following to be true:
 - 1. An applicant is under eighteen (18) years of age.
 - 2. The license fee required by this section has not been paid.
 - 3. An applicant has failed to provide information required in order to determine the qualifications of the applicant under this section for issuance of the license, or has falsely answered a question or request for information on the application form.
 - 4. An applicant or the proposed establishment is in violation of or is not in compliance with this section or other provisions of the Town Code, including local zoning requirements.
 - 5. An applicant has been convicted of a violation of a provision of this section, other than the offense of operating a sexually oriented business without a license, within two (2) years immediately preceding the application. The fact that a conviction is being appealed shall have no effect.
 - 6. An applicant has been convicted of a crime involving:
 - (a) Any offense described in Articles 7A, 26, 26A, 27, 37, or 39 of Chapter 14 of the North Carolina General Statutes; or any similar offenses to those described above under the criminal or penal code of North Carolina, other states, Maiden, other cities, or other countries; or facilitation, attempt, conspiracy, or solicitation to commit any of the foregoing offenses for which:
 - (i) Less than two (2) years have elapsed since the date of conviction or the date of release from confinement imposed for the conviction, whichever is the later date, if the conviction is of a misdemeanor offense;

- (ii) Less than five (5) years have elapsed since the date of conviction or the date of release from confinement for the conviction, whichever is the later date, if the conviction is of a felony offense; or
 - (iii) Less than five (5) years have elapsed since the date of the last conviction or the date of release from confinement for the last conviction, whichever is the later date, if the convictions are of two (2) or more misdemeanor offenses or combination of misdemeanor and felony offenses occurring within any twenty-four month period.
- (b) The fact that a conviction is being appealed shall have no effect on the disqualification of the applicant.
 - (c) An applicant who has been convicted of an offense listed above may qualify for a sexually oriented business license only when the time period required by this section has lapsed.
7. The applicant has failed to make application using a legal name or has failed to produce a valid North Carolina driver's license or a valid North Carolina identification card.

6.10.7 License granted

The license, if granted, shall state on its face the legal name of the person or persons to whom it is granted, the classification of sexually oriented business for which it is granted, the expiration date, and the address of the sexually oriented business. Licenses shall be posted in a conspicuous place at or near the entrance to the sexually oriented business so that they may be easily read at any time.

(Ord. No. 19-94, 9-19-94)

6.10.8 Suspension of License

The Town Manager, or his or her designee, is authorized to, and will, suspend a sexually oriented business license for a period not to exceed thirty (30) days if the Police Department and/or Inspections Department determines that a business licensee has:

- A. Violated or is not in compliance with this section or with any other requirements of the Town Code, including those relating to buildings, electricity, plumbing, fire safety, and mechanical equipment;
- B. Refused to allow an inspection of the sexually oriented business premises as authorized by this section, other provisions of the Town Code, the North Carolina General Statutes and/or the State Building Code;
- C. Permitted illegal gambling by any person on the sexually oriented business premises; or
- D. Demonstrated an inability to operate or manage a sexually oriented business in a peaceful and law-abiding manner thus necessitating action by law enforcement officers.

(Ord. No. 19-94, 9-19-94)

6.10.9 Revocation of License

- A. The Town Manager, or his or her designee, is authorized to, and will, revoke a license if a cause for suspension in 6.10.8 occurs and the license has been suspended within the preceding twelve (12) months.
- B. The Town Manager, or his or her designee, is authorized to, and will, revoke a sexually oriented business license if the he or she determines that a business licensee:
 - 1. Gave false or misleading information in the material submitted to the Town during the application process, including, but not limited to, the use of a name other than a legal name to procure a license;
 - 2. Has allowed the possession, use, or sale of controlled substances, as that term is defined by G.S. § 90-87, on the premises;
 - 3. Has allowed prostitution on the premises;
 - 4. Has operated or worked in the sexually oriented business during a period of time when the licensee's license was suspended;
 - 5. Has been convicted of an offense named in section 6.10.6 A.6 or for which the time period required in that section has not lapsed;
 - 6. On two (2) or more occasions within a twelve-month period, a person or persons committed an offense occurring in or on the licensed premises of a crime named in section 6.10.6. A.6 for which a conviction has been obtained, and the person or persons were employees of the sexually oriented business at the time the offenses were committed;
 - 7. Has allowed any act of sexual intercourse, masturbation, oral copulation, or sodomy to occur in or on the licensed premises; or
- C. The fact that a conviction is being appealed shall have no effect on the revocation of the license.
- D. Subsection (B)(7) of this section does not apply to adult motels as a ground for revoking the license unless the business licensee or employee allowed the act of sexual intercourse, masturbation, oral copulation, sodomy, or sexual contact to occur in a public place or within public view.
- E. When the Town Manager revokes a license, the revocation shall continue for one year and the licensee shall not be issued a sexually oriented business license for one year from the date revocation became effective. If, subsequent to revocation, the Town Manager finds that the basis for the revocation has been corrected or abated, the licensee may be granted a license if at least ninety (90) days have elapsed since the date the revocation became effective. If the license was revoked under the authority of section B.5. or B.6. above, an applicant may not be granted another license until the appropriate number of years required under section 6-7.14.6 A. 7, as the case may be, have elapsed.

(Ord. No. 19-94, 9-19-94)

6.10.10 Denial.

If the Town denies the issuance of a license, or suspends or revokes a license, or denies an appeal, the Town will send to the applicant, or licensee, by certified mail, return receipt requested, written notice of the action.

6.10.11 Appeal.

An applicant whose application is denied, suspended, or revoked by the Town Manager may appeal such action in writing within thirty (30) days to the Board of Adjustment, which shall decide either to uphold the action or to issue the license no later than the next regular Board of Adjustment meeting after receipt of the appeal. The applicant or licensee shall have the right to present evidence before the Board of Adjustment. The decision to uphold the action of the Town Manager or issue the license shall be based solely on the criteria established herein for the action by the Town Manager. A suspension or revocation shall be stayed during the period of an appeal to the Board of Adjustment.

(Ord. No. 19-94, 9-19-94)

6.10.12 Fees.

A. License – new.

Every sexually oriented business that applies for a new license shall pay to the town a fee of one thousand dollars (\$1,000), which shall be nonrefundable if the license is issued. If the license is denied then one-half shall be refunded to the applicant. The fees required by this section is imposed for regulatory purposes and not intended to be a tax.

B. License – renewal.

An application for renewal must be accompanied by a nonrefundable fee of five hundred dollars (\$500.00).

C. Changes to a license during license year.

A substitution of a manager of the business which occurs during the license year shall be filed with the Town Manager within thirty (30) days of its occurrence, and a one hundred dollar (\$100.00) investigation fee shall be paid.

6.10.13 Transfer of license.

Unless a new application for a license is made, a licensee shall not transfer a license to another, nor shall a business licensee operate a different classification of a sexually oriented business than that designated in the application, or transfer ownership or control to another person(s), or operate a sexually oriented business under the authority of a license at any place other than the address designated in the application. No sexually oriented business shall be operated under any name or conducted under any designation or classification not specified in the license for that business.

(Ord. No. 19-94, 9-19-94)

6.10.14 Inspection.

A. A sexually oriented business license applicant or licensee shall permit representatives of the Police Department or any other city, county, state, or federal department, division, or agency that enforces codes, regulations or statutes relating

to human health, safety or welfare or structural safety to inspect the premises of the sexually oriented business for the purpose of ensuring compliance with the law, at any time it is occupied or open for business.

- B. It shall be unlawful for a person who operates a sexually oriented business or his agent or employee to refuse to permit a lawful inspection of the premises by persons designated above.
- C. The provisions of this section do not apply to areas of an adult motel which are currently being rented by the customer for use as a permanent or temporary habitation.

(Ord. No. 19-94, 9-19-94)

6.10.15 Expiration of license.

- A. All licenses shall expire one year from the date of issuance and may be renewed only by making application as provided in 7.14.6 and paying the renewal fee as provided in section 6.10.5.
- B. Application for renewal should be made at least thirty (30) days before the expiration date, and when made less than thirty (30) before the expiration date, the expiration of the license will not be affected.

(Ord. No. 19-94, 9-19-94)

6.10.16 Hours of operation.

No sexually oriented business, except for an adult motel, may remain open at any time between the hours of 1:00 a.m. and 6:00 a.m. on weekdays and Saturdays, and 1:00 a.m. and 10:00 a.m. on Sundays, except to the extent allowed by state law and regulations pertaining to the sale of alcoholic beverages by the business if the sexually oriented business has a state ABC permit.

(Ord. No. 19-94, 9-19-94)

6.10.17 Sexually oriented businesses.

It shall be unlawful for a person to allow another person under the age of eighteen (18) years to enter or remain on or in the enclosed portion of a sexually oriented business, or for a person under the age of eighteen (18) years to enter or remain on or in the enclosed portion of a sexually oriented business.

(Ord. No. 19-94, 9-19-94)

6.10.18 Additional regulations for specific sexually oriented uses.

- A. Escort agencies.

It shall be unlawful for a person to act as an escort or agree to act as an escort for any person under the age of eighteen (18) years.

(Ord. No. 19-94, 9-19-94)

- B. Adult theaters, adult cabarets, adult motion picture theaters.

- 1. It shall be unlawful for a person to appear in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade.

2. It shall be unlawful for an employee to allow a person to appear in a state of nudity in an adult cabaret, adult theater, or adult motion picture theater, or adult arcade.

(Ord. No. 19-94, 9-19-94)

C. Adult motels.

1. Evidence that a sleeping room in a hotel, motel or similar commercial establishment has been rented and vacated two (2) or more times in a period of less than ten (10) hours creates a rebuttable presumption that the establishment is an adult motel as that term is defined in this section.
2. It shall be unlawful for a person in control of a sleeping room in a hotel, motel, or similar commercial establishment that does not have a sexually oriented business license to rent or sublet a sleeping room to another and, within ten (10) hours from the time the room is rented, rent or sublet the same sleeping room again.
3. For purposes of subsection (2) of this section, the terms “rent” or “sublet” mean the act of permitting a room to be occupied for any form of consideration.

D. Sexually oriented businesses with viewing or other rooms.

1. A person who operates or causes to be operated a sexually oriented business, other than an adult motel, which either: (i) exhibits on the premises in a viewing room of less than one hundred fifty (150) square feet of floor spaces, a DVD or other digital media, film, videocassette, or other video reproduction which depicts specified sexual activities or specified anatomical areas; or (ii) has a room or booth, excluding restrooms, of less than one hundred fifty (150) square feet to which patrons are admitted for any reason, shall comply with the following requirements:
 - (a) Upon application for a sexually oriented business license, the application shall be accompanied by a diagram of the premises showing a plan thereof specifying the location of one or more manager's stations and the location of all overhead lighting fixtures and designating any portion of the premises in which patrons will not be permitted. A manager's station may not exceed thirty-two (32) square feet of floor area. The diagram shall also designate the place at which the license will be conspicuously posted, if granted. A professionally prepared diagram in the nature of an engineer's or architect's blueprint shall not be required; however, each diagram should be oriented to the north or to some designated street or object and should be drawn to a designated scale with marked dimensions sufficient to show the various internal dimensions of all areas of the interior of the premises. The Town Manager, or his or her designee, may waive the foregoing diagram for renewal applications if the applicant adopts a diagram that was previously submitted and certifies that the configuration of the premises has not been altered since it was prepared.
 - (b) The application shall be sworn to be true and correct by the applicant(s).

- (c) No alteration in the configuration or location of a manager's station may be made without the prior approval of the Town Manager or his designee.
- (d) It is the duty of the owners and operator of the premises to ensure that at least one employee is on duty and situated in each manager's station at all times that any patron is present inside the premises. It is the duty of the owners and operator of the premises and the employees who are present to ensure that no more than one person occupies a room or booth at any time, and that all other entrances to rooms, booths or viewing areas (and to the aisles, walkways and hallways leading to rooms, booths or viewing areas) are maintained free of any obstruction such as a door, curtain, panel, board, slat, ribbon, cord, rope, chain or other device.
- (e) The interior of the premises shall be configured in such a manner that there is an unobstructed view from a manager's station of every area of the premises to which any patron is permitted access for any purpose, excluding restrooms. Restrooms may not contain video reproduction equipment, cameras, or any other kind of photographic equipment. If the premises have two (2) or more manager's stations designated, then the interior of the premises shall be configured in such a manner that there is an unobstructed view of each area of the premises to which any patron is permitted access for any purpose from at least one of the manager's stations. The view required in this subsection must be by direct line of sight from the manager's station.
- (f) It shall be the duty of the owners and operator, and it shall also be the duty of all employees present in the premises to ensure that the line of sight and view area specified in subsection (5) remains unobstructed by any doors, walls, merchandise, display racks or other materials at all times that any patron is present in the premises and to ensure that no patron is permitted in the manager's station or any area where the view from the manager's station is obstructed.
- (g) The premises shall be equipped with overhead lighting fixtures of sufficient intensity to illuminate every place to which patrons are permitted access at an illumination of not less than one (1.0) foot-candle as measured at the floor level.
- (h) It shall be the duty of the owners and operator and it shall also be the duty of all employees present on the premises to ensure that the illumination described above is maintained at all times that any patron is present in the premises.
- (i) No operator, owner or employee shall allow openings of any kind to exist between rooms or booths.
- (j) No person shall make or attempt to make an opening of any kind between rooms or booths.
- (k) The operator or owner shall, during each business day, regularly inspect the walls between the rooms or booths to determine if any openings or holes exist.

- (l) The owner or operator shall cause all floor coverings in rooms, booths and viewing areas to be nonporous, easily cleanable surfaces, with no rugs or carpeting.
- (m) The owner or operator shall cause all wall surfaces and seating surfaces in rooms, booths and viewing areas to be constructed of, or permanently covered by, nonporous, easily cleanable material. No wood, plywood, composition board or other porous material shall be used within forty-eight (48) inches of the floor.

- 2. It shall be unlawful for any person having a duty under subsections (a) through (m) of subsection (1) to fail to fulfill that duty.

(Ord. No. 19-94, 9-19-94)

6.10.19 Criminal penalty.

Any person who violates any provision of this article shall be guilty of a Class 3 misdemeanor, and, upon conviction, shall be subject to a fine of five hundred dollars (\$500.00). Per General Statute § 14-4

(Ord. No. 19-94, 9-19-94)

6.10.20 Civil Remedies.

In addition to the criminal penalties set forth herein, the Town may seek to correct any violation of this section using any or all civil remedies available to it for the enforcement of the other provisions of this ordinance, including seeking civil penalties, injunctions and orders of abatement.

(Ord. No. 19-94, 9-19-94)

6.10.21 Liability for the conduct of others.

A licensee of a sexually oriented business is jointly and individually liable for violations of and offenses under this section by the employees of the sexually oriented business, and for all civil and criminal sanctions or remedies for such violations and offenses, including but not limited to license suspension or revocation, prescribed herein.

(Ord. No. 19-94, 9-19-94)

6.10.22 Temporary Uses

A. Construction Trailers as Temporary Offices

- 1. A contractor engaged upon a construction project for which a building permit has been issued by the Town of Maiden may temporarily use a construction trailer for office facilities in the location where the work is being done; provided such construction trailer shall not be placed upon a public street, but only upon the property on which the building permit authorizes the construction. The construction trailer shall be removed within 30 days of completion of the work for which the permit has been issued.
- 2. A zoning permit may be issued by the Planning Director for a one-year period for the use of a manufactured home, or a modular home, as a temporary office while business properties are being remodeled, provided that it is placed upon the property for which there is a building permit issued for the remodeling. The

permit shall be for a period of one year or until the remodeling is completed, whichever is the shorter period. The permit may be renewed after the expiration of the one (1) -year period.

B. Model Dwelling Units

1. In any residential district, the developers, builders or their agents may operate three model dwelling units as a sales office for the specific project under construction, subject to the following restrictions:
 - (a) The model dwelling unit shall meet all applicable lot size and setback standards of the underlying zoning district.
 - (b) Signs shall not be illuminated.
 - (c) The model dwelling unit shall not be used for any business activity other than showing and sales.
 - (d) At least 5 off street parking spaces shall be provided on the same lot as the model dwelling unit or on a contiguous lot within the specific project.
 - (e) The model dwelling unit shall be discontinued when the specific residential project is sold out and shall comply with regulations generally applicable within the district.
 - (f) The model dwelling unit shall not be approved for occupancy unless the site conditions and access are free from hazards to the public.
2. Model dwelling units may be erected or displayed in districts which exclude residential uses, provided that such models shall not be used for residential purposes, but only for display as a means to sell homes in districts in which they are permitted and provided that all other requirements of the district in which the model dwelling unit is erected shall be met.

C. Repair of Automobiles or Motor Vehicles in Residential Districts

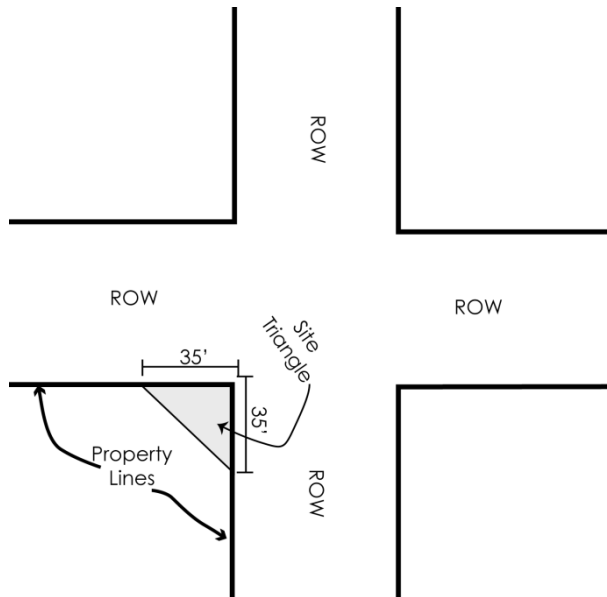
The repair of any automobile or motor vehicle in a residential zoning district shall be subject to the standards of this subsection.

1. Only minor repairs and maintenance may be performed which, for purposes of this subsection, are defined as the changing and replenishment of fluid levels, such as hydraulic fluid, windshield washer fluid, and lubricating oil, the replacement of sparkplugs, ignition points, the rotation of tires and the checking of adequate pressure, and the replacement of drive belts and hydraulic lines.
2. Any other repairs on a motor vehicle or automobile shall be restricted to totally enclosed spaces and only accomplished on privately registered vehicles having current State of North Carolina license plates, or motor vehicles designated by the State of North Carolina as qualifying for an antique or horseless carriage designation.

6.11 VISIBILITY AT INTERSECTIONS.

On a corner lot in any residential district no planting, structure, sign, fence, wall or obstruction to vision more than three (3) feet in height measured from the centerline of the street shall be placed or maintained within the triangular area formed by the intersecting

street right-of-way lines and a straight line connecting points on such street right-of-way lines each of which is thirty-five (35) feet distant from the point of intersection.



(Ord. of 4-11-70, Art. IX, § 93; Code 1976, § 12.49)

Section 6.12 Wireless Telecommunications Facilities or Complexes

6.12.1 Purpose and Legislative Intent

1. The Telecommunications Act of 1996 affirmed the Town of Maiden's authority concerning the placement, construction and Modification of Wireless Telecommunications Facilities or Complexes. This ordinance provides for the safe and efficient integration of Wireless Facilities or Complexes Necessary for the provision of advanced wireless telecommunications services throughout the community and to ensure the ready availability of reliable wireless services to the public, government agencies and first responders, with the intention of furthering the public safety and general welfare.
2. The Town of Maiden finds that Wireless Telecommunications Facilities (Facilities) and Complexes may pose significant concerns to the health, safety, public welfare, character and environment of the Town and its inhabitants. The Town also recognizes that facilitating the development of wireless service technology can be an economic development asset to the Town and of significant benefit to the Town and its residents. In order to assure that the placement, construction or Modification of a Facility or Complex is consistent with the Town's land use policies, the Town is adopting a single, comprehensive, Wireless Telecommunications Facility or Complex application and permitting process. The intent of this Section is to minimize the physical impact of Wireless

Telecommunications Facilities on the community, protect the character of the community to the extent reasonably possible, establish a fair and efficient process for review and approval of applications, assure an integrated, comprehensive review of environmental impacts of such facilities, and protect the health, safety and welfare of the Town of .

6.12.2 Severability

1. If any word, phrase, sentence, part, section, subsection, or other portion of this Section or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, section, subsection, or other portion, or the proscribed Application thereof, shall be severable, and the remaining provisions of this Section, and all applications thereof, not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.
2. Any Special Use Permit issued pursuant to this Section shall be comprehensive and not severable. If part of a permit is deemed or ruled to be invalid or unenforceable in any material respect, by a competent authority, or is overturned by a competent authority, the permit shall be void in total, upon determination by the Town.

6.12.3 Definitions

For purposes of this Section, and where not inconsistent with the context of a particular section, the defined terms, phrases, words, abbreviations, and their derivations shall have the meaning given in this section. When not inconsistent with the context, words in the present tense include the future tense, words used in the plural number include words in the singular number and words in the singular number include the plural number. The word “shall” is always mandatory, and not merely directory.

1. “**Accessory Facility or Structure**” means an accessory facility or structure serving or being used in conjunction with Wireless Telecommunications Facilities or Complexes, including but not limited to utility or transmission equipment storage sheds or cabinets.
2. “**Amend**”, “**Amendment**” and “**Amended**” mean and shall relate to any change, addition, correction, deletion, replacement or substitution, other than typographical changes of no effect.
3. “**Applicant**” means any Wireless service provider submitting an Application for a Special Use Permit for Wireless Telecommunications Facilities.
4. “**Application**” means all Necessary and *required* documentation that an Applicant submits in order to receive a Special Use Permit or a Building Permit for Wireless Telecommunications Facilities.

5. **“Antenna”** means a system of electrical conductors that transmit or receive electromagnetic waves or radio frequency or other wireless signals.
6. **“Council”** means the Town Council.
7. **Certificate of Completion** or **COC** means a required document issued by the Town that confirms that all work represented in the application i) was properly permitted; ii) was done in compliance with and fulfilled all conditions of all permits, including any final completion deadline; iii) was fully constructed as approved and permitted; and iv) a final inspection was requested, conducted and the Facility or Complex passed the final inspection.
8. **“Co-location”** means the use of an approved telecommunications structure to support Antenna for the provision of wireless services.
9. **“Commercial Impracticability”** or **“Commercially Impracticable”** means the inability to perform an act on terms that are reasonable in commerce, the cause or occurrence of which could not have been reasonably anticipated or foreseen and that jeopardizes the financial efficacy of the project. The inability to achieve a satisfactory financial return on investment or profit, standing alone and for a single site, shall not deem a situation to be “commercially impracticable” and shall not render an act or the terms of an agreement “commercially impracticable”.
10. **Council** means the Town Council of the Town of Maiden.
11. **“Completed Application”** means an Application that contains all necessary and required information and/or data necessary to enable an informed decision to be made with respect to an Application.
12. **Complex** means the entire site or Facility, including all structures and equipment located at the site.
13. **“DAS”** or **“Distributive Access System”** means a technology using antenna combining technology allowing for multiple carriers or Wireless Service Providers to use the same set of antennas, cabling or fiber optics.
14. **Eligible Facility** means an existing wireless tower or base station that involves collocation of new transmission equipment or the replacement of transmission equipment that does not constitute a Substantial modification.
15. **FAA** means the Federal Aviation Administration, or its duly designated and authorized successor agency.
16. **Facility** means a set of wireless transmitting and/or receiving equipment, including any associated electronics and electronics shelter or cabinet and generator.

17. **“FCC”** means the Federal Communications Commission, or its duly designated and authorized successor agency.
18. **“Height”** means, when referring to a Tower or wireless support structure, the distance measured from the pre-existing grade level to the highest point on the Tower or structure, even if said highest point is an Antenna or lightning protection device.
19. **In-Kind Replacement** means replacing a component(s) that is malfunctioning with a properly functioning component of the same weight and dimensions and that does not enable an increase in revenue for the service provider or increase the compensation paid to the owner or manager of the support structure.
20. **“Maintenance”** or **“Routine Maintenance”** means plumbing, electrical or mechanical work that may require a building permit but that does not constitute a Modification to the WTF. It is work necessary to assure that a wireless facility and/or support structure exists and operates i) reliably and in a safe manner; ii) presents no threat to persons or property; and iii) remains compliant with the latest editions and amendments of all applicable laws, codes, rules and regulations, but does not change the number, types or levels of service provided and is not done for the purpose of enabling increased revenue for the wireless service provider or the owner of the support structure.
21. **“Modification”** or **“Modify”** means the addition, removal or change of any of the physical and visually discernable components or aspects of a wireless Facility or Complex with identical components, including but not limited to antennas, cabling, equipment shelters, landscaping, fencing, utility feeds, changing the color or materials of any visually discernable components, vehicular access, parking and/or an upgrade or change-out of equipment for better or more modern equipment.
- a) **Modification re a Tower or other Support Structure** means anything that i) changes the loading and stresses placed on the support structure; or ii) changes the profile or size of the structure vertically or horizontally; or iii) results in changes to the lateral or vertical support of the structure, such as, but not limited to, changes in or to support guy wires or their anchors ; or iv) changes in the means of attachment to the foundation or changes in the size, shape or type foundation.
- b) **Modification re Wireless Facility** means a change in or addition of equipment that i) results in different dimensions than the existing equipment; ii) is of a different color than the existing equipment; iii) is expressly intended to enable an increase in revenue for the service provider; iv) increases the compensation paid to the owner or manager of the support structure.
22. **“Necessary”** or **“Necessity”** or **“Need”** means what is technologically required for the equipment to function as designed by the manufacturer and that anything less will result in prohibiting the provision of service as intended and described in the narrative of the Application. Necessary or Need does not mean what may be desired, preferred or the most cost-efficient approach and is not related to an Applicant’s specific chosen design

standards. Any situation involving a choice between or among alternatives or options is not a Need or a Necessity.

23. **“NIER”** means Non-Ionizing Electromagnetic Radiation.

24. **“Person”** means any individual, corporation, estate, trust, partnership, joint stock company, association of two (2) or more persons having a joint common interest, or any other entity.

25. **“Personal Wireless Facility”** See definition for ‘Wireless Telecommunications Facilities’.

26. **“Personal Wireless Services”** or **“PWS”** or **“Personal Telecommunications Service”** or **“PTS”** shall have the same meaning as defined and used in the 1996 Telecommunications Act.

24. **“Repairs and Maintenance”** means the replacement or repair of any components of a wireless Facility or Complex where the replacement is identical to the component being replaced, or for any matters that involve the normal repair and maintenance of a wireless Facility or Complex without the addition, removal or change of any of the physical or visually discernable components or aspects of a wireless Facility or Complex that will impose new visible burdens of the Facility or Complex as originally permitted.

25. **“Special Use Permit”** means the official document or permit by which an Applicant is allowed to file for a building permit to construct and use a Facility or Complex as granted or issued by the Town.

26. **“Stealth”** or **“Stealth Technology”** means a design or treatment that minimizes adverse aesthetic and visual impacts on the land, property, buildings, and other facilities adjacent to, surrounding, and in generally the same area as the requested location of such Wireless Telecommunications Facilities, which shall mean building the least visually and physically intrusive facility and Complex that is not technologically or commercially impracticable under the facts and circumstances. Stealth technology includes such techniques as DAS or its functional equivalent or camouflage where the Tower is disguised to make it less visually obtrusive and not recognizable to the average person as a Wireless Facility or Complex.

27. **“State”** means the State of North Carolina.

28. **“Structural Capability”** or **“Structural Capacity”** means, notwithstanding anything to the contrary in any other standard, code, regulation or law, up to and not exceeding a literal 100% of the designed loading and stress capability of the support structure.

29. **Substantial Modification** means a change or Modification that

- a. increases the existing vertical height of the structure by the greater of (a) more than ten percent (10%) or (b) the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet; or

- b. except where necessary to shelter the antenna from inclement weather or to connect the antenna to the tower via cable, adding an appurtenance to the body of a wireless support structure that protrudes horizontally from the edge of the wireless support structure the greater of (i) more than 20 feet or (ii) more than the width of the wireless support structure at the level of the appurtenance; or
 - c. increases the square footage of the existing equipment compound by more than 2,500 square feet.
30. **“Telecommunications”** means the transmission and/or reception of audio, video, data, and other information by wire, radio frequency, light, and other electronic or electromagnetic systems.
31. **“Telecommunications Site”** See definition for Wireless Telecommunications Facilities.
32. **“Telecommunications Structure”** means a structure used to support equipment used to provide wireless communications.
33. **“Temporary”** means not permanent in relation to all aspects and components of this Section, something intended to, and that does, exist for fewer than ninety (90) days.
34. **“Town”** means the Town of Maiden
35. **“Tower”** means any structure designed primarily to support an antenna for receiving and/or transmitting a wireless signal.
36. **“Wireless Telecommunications Facility or Facilities (WTF or WTFs) or Complex”** means and includes a **“Telecommunications Site”** and **“Personal Wireless Facility Site”**. It means a specific location at which a structure that is designed, or intended to be used to house or accommodate Antennas or other transmitting or receiving equipment is located. This includes without limit, Towers of all types and kinds and support structures, including but not limited to buildings, church steeples, silos, water Towers, signs or other any other structure that is used or is proposed to be used as a support structure for Antennas or the functional equivalent of such. It expressly includes all related facilities and equipment such as cabling, radios and other electronic equipment, equipment shelters and enclosures, cabinets and other structures associated with the Complex used to provide, though not limited to, radio, television, cellular, SMR, paging, 911, Personal Communications Services (PCS), commercial satellite services, microwave services and any commercial wireless telecommunication service not licensed by the FCC.

6.12.4 General Policies and Procedures for Applications under this Section

In order to ensure that the placement, construction and Modification of a Facility or the components of a Complex do not endanger or jeopardize the Town’s health, safety, public welfare, environmental features, the nature and character of the community and neighborhood

and other aspects of the quality of life specifically listed elsewhere in this Section, the Town hereby adopts an overall policy and related procedures with respect to the submittal, review, approval and issuance of permits or Administratively granted authority for Wireless Facilities for the express purpose of achieving the policies and goals set forth herein:

1. Requiring a Special Use Permit for any new Complex, Facility or any Substantial Modification of a Facility or Complex or for a Co-located Facility;
2. Requiring Administrative approval and a properly issued Building Permit for any co-location or Modification of a Facility or Complex that is not a Substantial Modification or Co-location.
3. Implementing an Application process and requirements;
4. Establishing procedures for examining an Application and issuing a Special Use Permit or Administrative Approval that is both fair and consistent;
5. Promoting, and requiring wherever possible, the sharing and/or co-location of support structures among service providers;
6. Requiring, promoting and encouraging, wherever possible, the placement, height and quantity of a Facility or Complex in such a manner as to minimize the physical and visual impact on the community, including but not limited to the use of stealth technology.
7. Requiring that the Facility and Complex shall be the least visually intrusive among those options available in the Town given the facts and circumstances.
8. The Town Council is the officially designated agency or body of the Town to whom applications for a Special Use Permit for a Facility or Complex must be made, and that is authorized to make decisions with respect to granting or not granting or revoking Special Use Permits applied for under this Section. The Council may at its discretion delegate or designate the Town Planning Board or other official agencies or officials of the Town or outside consultants to accept, review, analyze, evaluate and make recommendations to the Council with respect to the granting or not granting or revoking Special Use Permits for Wireless Telecommunications Facilities. However, the Council shall possess the sole right to grant all Special Use Permits.
9. There shall be a pre-application meeting for all intended applications. The pre-application meeting may be held either on site, or telephonically as deemed appropriate by the Town or its designee. The purpose of the pre-application meeting will be to address i) issues that will help to expedite the review; and permitting process; and ii) certain issues or concerns the Town or the Applicant may have.
10. If there has not been a prior site visit for the requested Complex within the previous six (6) months a site visit shall be conducted. Costs of the Town's consultant to prepare for and attend the pre-application meeting will be borne by the applicant and paid for out of a

fee set forth in the Town's Schedule of Fees, which shall have been paid to the Town prior to any site visit or pre-application meeting.

- 11.** An Applicant shall submit to the Town the number of completed Applications determined to be needed at the pre-application meeting. If Council action is required, applications will not be transmitted to the Council for consideration until the application is deemed complete.
- 12.** If the proposed site is within one (1) mile of another jurisdiction, written notification of the Application shall be provided to the legislative body of all such adjacent jurisdictions as applicable and/or requested.
- 13.** The owner(s) of the support structure to which antennas or related equipment are to be attached must be an official Applicant of Record.
- 14.** All Applicants shall closely follow the instructions for preparing an Application. Not following the instructions without permission to deviate from such shall result in the application being deemed incomplete and a tolling of the time allowed for action on an Application until a Complete Application is received.
- 15.** The Applicant shall be notified in writing of any deficiencies within forty-five days of the submission of an Application as regards any deficiencies related to the completeness of the Application. Remediation of deficiencies in an Application shall be deemed an amendment of the Application that was received.
- 16.** The Town may deny applications not meeting the requirements stated herein or which are otherwise not complete after proper notice and a reasonable opportunity to make the Application complete has been afforded.. Applications will deemed abandoned if left incomplete for more than ninety (90) days after the date of notice of incompleteness.
- 17.** No work of any kind on a Facility or Complex shall be started until the Application is reviewed and approved by the Council and the Special Use Permit or Conditional Use Permit , if applicable, has been issued, or if for an Eligible Facility, a Building Permit has been issued.
- 18.** Any and all representations made by the Applicant or that are made in support of the Application shall be deemed to be on the record, whether written or verbal, and shall be deemed to have been relied upon in good faith by the Town. Any verbal representation shall be treated as if it were made in writing.
- 19.** Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued where the Facility or Complex is not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility or Complex not in full compliance with this Section shall be required to be brought into full compliance before any Permit of any kind will be issued.

- 20.** An Application shall be signed on behalf of the Applicant(s) by a person vested with the authority to bind and commit the Applicant attesting to the truthfulness, completeness and accuracy of the information presented.
- 21.** The Applicant must provide documentation to substantiate that it has the right to proceed as proposed on the site or at the Complex in the form of an executed copy of the lease with the landowner or a signed letter of agency granting authorization
- 22.** Applications shall include written commitment statements to the effect that:

 - a.**the applicant's Facility or Complex shall at all times and without exception be maintained in a safe manner, and in compliance with all conditions of all permits, as well as all applicable and permissible local codes, ordinances, and regulations and all applicable Town, State and Federal Laws, rules, and regulations, unless specifically granted relief by the Commission in writing; and
 - b.** the construction of the Facility or Complex is legally permissible, including, but not limited to the fact that the Applicant is licensed to do business in the State.
- 23.** Where a certification is called for in this Section, such certification shall bear the signature and seal of a Professional Engineer licensed in the State.
- 24.** A support structure and any and all accessory or associated structures shall maximize the use of building materials, colors and textures designed to blend with the structure to which it may be affixed and to harmonize with the natural surroundings. This shall include the utilization of stealth or camouflage or concealment technology as may be required by the Town.
- 25.** All utilities at a Complex or site shall be installed underground and in compliance with all Laws, ordinances, rules and regulations of the Town, including specifically, but not limited to applicable electrical codes.
- 26.** At a Facility or Complex needing vehicular access, an access road, parking and turn around space for emergency vehicles shall be provided to assure adequate emergency and service access. Maximum use of existing roads, whether public or private, shall be made to the extent practicable. Road construction shall at all times minimize ground disturbance and the cutting of vegetation. Road grades shall closely follow natural contours to assure minimal visual disturbance and reduce soil erosion. If the current access road or turn around space is deemed in disrepair or in need of remedial work to make it serviceable and safe and in compliance with any applicable regulations as determined at a site visit, the Application shall contain a commitment to remedy or restore the road or turn around space so that it is serviceable and safe and in compliance with applicable regulations.
- 27.** All work at a Facility or Complex shall be done in strict compliance with all current applicable technical, safety and safety-related codes adopted by the Town, State, or United States, including but not limited to the most recent edition of the TIA ANSI Code,

National Electric Safety Code, the National Electrical Code and the Occupational and Safety and Health Administration (OSHA) regulations, recommended practices of the National Association of Tower Erectors and accepted and responsible workmanlike industry practices. The codes referred to are codes that include, but are not limited to, construction, building, electrical, fire, safety, health, and land use codes. In the event of a conflict between or among any of the preceding the more stringent shall apply.

- 28.** A holder of a Special Use Permit or Administratively granted authority granted under this Section shall obtain, at its own expense, all permits and licenses required by applicable law, ordinance, rule, regulation or code, and must maintain the same, in full force and effect, for as long as required by the Town or other governmental entity or agency having jurisdiction over the applicant.
- 29.** Unless such is proven to be technologically impracticable, the Town requires the co-location of new antenna arrays on existing structures, as opposed to the construction of a new Complex or support structure or increasing the height, footprint or profile of a Facility or Complex beyond the conditions of the approved Special Use Permit for an existing Facility or Complex. In instances not qualifying for the Streamlined process the Applicant shall submit a comprehensive report inventorying all existing structures more than fifty feet (50') in height within one-half (1/2) mile of the location of any proposed new Facility or Complex.
- 30.** An Applicant intending to co-locate on or at an existing Facility or Complex shall be required to document the intent of the existing owner to permit its use by the Applicant.
- 31.** Co-located equipment shall consist only of the minimum Antenna array technologically needed to provide service primarily and essentially within the Town, to the extent practicable, unless good cause is shown in the form of clear and convincing evidence.
- 32.** DAS systems that are owned or operated by a commercial carrier and are part of a commercial wireless system, or are used for commercial purposes, are expressly included in the context of this Section, regardless of the location or whether the Facility or any of its components is located inside or outside a structure or building.
- 33.** The existence of a lease or an option to lease shall not be deemed justification for not complying with the siting priorities set forth in this Section. An Applicant may not bypass sites of higher priority solely because the site proposed is under lease or an option to lease exists. If a site other than the number 1 priority is proposed, the applicant must explain to the reasonable satisfaction of the Town why co-location is technically or commercially impracticable. Build-to-Suit agreements between carriers and a proposed Tower owner shall not be a valid basis for any claim of exemption, exception or waiver from compliance with this Section.
- 34.** New Towers or other support structures shall be prohibited in Residential Districts, Historic Districts, Renaissance Districts and areas officially deemed to be visual or scenic sensitive areas, unless the Applicant provides clear and convincing technical evidence demonstrating that i) a new Tower as proposed is Necessary, ii) that the intended area

cannot be served from outside the District or sensitive area; iii) that no existing or previously approved Facility or Complex can reasonably be used to serve the intended area within the Town; and iv) that not to permit a new Tower would result in or would preclude eliminating a significant gap in service.

6.12.5 Responsible Party(s)

The owner(s) of a Facility or Complex, any support structure used to accommodate wireless Facilities, and of the land upon which a Facility support structure or Complex is located, shall at all times be jointly and severally responsible for: (1) the physical and safe condition of the Facility or Complex, support structure and all components on the site related to the Facility or Complex; (2) assuring that all activities of owners, users, or lessees occurring on the site, and all components on the site related to the Facility or Complex, are at all times in compliance with all applicable laws, ordinances, rules, regulations, orders, and permits related to the Facility or Complex; and (3) assuring the proper permitting as required by this Article and other Town regulations by all lessees and users of the Facility or Complex, including but not limited to any upgrades and/or Modifications of equipment. Said owner(s) shall regularly and diligently monitor activities at the site to assure that the Facility or Complex is operated in compliance with this Ordinance, other Town regulations, and any Special or Conditional Use Permit.

6.12.6 Application Fee

All fees and charges, including but limited to Application fees, Expert Assistance fees, Inspection fees and Permit fees, shall be as set forth in the Town's Fee Schedule.

6.12.7 Existing Facilities and Complexes

1. Any legally permitted Facility, Tower or other support structure or Complex that exists on the effective date of this Section shall be allowed to continue as it presently exists, provided that i) all work was properly permitted; ii) the Facility or Complex is in compliance with all applicable local, State and federal laws, rules regulations, orders and permit conditions; iii) a Certificate of Completion (COC) was issued for the most recent work performed;
2. Any work not properly previously permitted prior to the adoption of this Section must be permitted within ninety (90) days of the effective date of this Section.
3. Any Substantial Co-location or Modification of a Facility, Tower or other support structure or Complex, must be permitted under this Section and will require the entire Facility or Complex and any new Co-location or Modification to comply with this Section, including obtaining a valid COC.
4. Any proposed Eligible Facility shall not require a permit granted under this Section, but shall be required to obtain a Building Permit and a Certificate of Completion.

6.12.8 Certificate of Completion

- A. No work shall be allowed to be done at or on any Facility or Complex, excepting normal repair and maintenance work as defined in this Section, for which the owner cannot produce the COC for the most recent work, until a final inspection has been conducted and a COC has been issued. The owner of the Facility, Tower or other support structure or Complex shall pay for the actual cost of the required final inspection prior to the inspection being conducted. If the Facility or Complex does not pass the initial final inspection, the owner shall be required to pay for any subsequent inspection prior to the inspection being conducted. A passing final inspection is required prior to the issuance of a COC.
- B. If no COC can be produced for previously done work, at the discretion of either the Planning Director or the Building Director, fines and other penalties as allowed by law maybe imposed until the Facility or Complex is compliant and the required COC has been issued.

6.12.9 Exclusions

The following shall be exempt from section 6.12.8:

- A. Any facilities expressly exempt from the Town's zoning, land use, siting, building and permitting authority.
- B. Any reception or transmission devises expressly exempted under the Telecommunications Act of 1996.
- C. A Facility used exclusively for private, non-commercial radio and television reception and private citizen's bands, licensed amateur radio and other similar non-commercial Telecommunications that is less than 100' above ground.
- D. Facilities used exclusively for providing unlicensed spread spectrum technologies where i) there is no charge for the use of the wireless service; ii) the Facility or Complex does not require a new Tower or increase the height of the structure being attached to; and iii) the service is not intended to be useable more than one-hundred feet (100') from the Antenna(s).

6.12.10 New Tower, Substantial Modification or Co-location - Application Requirements for a New Tower or Support Structure or For a Substantial Modification or Co-location

- A. All Applicants for a Special Use Permit for a new Wireless Facility or Complex, including for a new Tower or other support structure or that constitutes a Substantial Modification, shall comply with the requirements set forth in this Section. In addition to the required information set forth in this Section, all applications for the construction or installation of new Facility or Complex shall contain the information hereinafter set forth prior to the issuance of a Building Permit.

Ownership and Management

1. The Name, address and phone number of the person preparing the Application;

2. The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
3. The Postal address and tax map parcel number of the property;
4. A copy of the FCC license applicable for the intended use(s) of the Wireless Telecommunications Facilities, including all FCC licensed frequency bands;
5. The Applicant shall disclose in writing any agreement in existence that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs or has constructed for it;

Zoning and Planning

6. The Zoning District or designation in which the property is situated;
7. The size of the property footprint on which the structure to be built or attached is located, stated both in square feet and lot line dimensions, and a survey showing the location of all lot lines;
8. The location, size and height of all existing and proposed structures, enclosures and cabinets on the property on which the structure is located and that are related to the subject of the Application;
9. A certified site plan to scale, not a hand drawn sketch, showing a vertical drawing of the Tower or other support structure identifying all attachments by owner and the height of such, the footprint of the Support Structure and the type, location and dimensions of access drives, landscaping and buffers, fencing and any other requirements of site plans;
10. Elevation drawings showing the profile or the vertical rendition of the Tower or support structure at the Facility or Complex and identifying all existing and proposed attachments, including the height above the existing grade of each attachment and the owner or operator of each, as well as all lighting;
11. The type and design of the Tower or support structure, the number of antenna arrays proposed to be accommodated and the basis for the calculations of the Tower's or support structure's capacity to accommodate the required number of antenna arrays for which the structure must be designed;
12. Disclosure in writing of any agreement in existence prior to the submission of the Application that would limit or preclude the ability of the Applicant to share any new Telecommunication Tower that it constructs.
13. A certified statement of i) the total cost of construction for the work associated with the Application; and ii) the total cost of all equipment of the Applicant at the Facility. To verify the accuracy of the information, the Town reserves the right to require copies of applicable invoices or other clear and convincing corroborating evidence.

Safety

14. the age of the Tower or support structure and Complex stated in years, including the date of the grant of the original permit;
15. a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or other type of support structure;

- 16.** the make, model, type and manufacturer of the Tower and the structural design analysis and report, including the calculations, certified by a Professional Engineer licensed in the State and proving the Tower or support Structure's capability to safely accommodate the Facilities of the Applicant without change or Modification .
 - 17.** if a Substantial Co-location, change or Modification of a Facility or Complex is needed, a detailed narrative explaining what changes are needed and why they are needed. This includes a complete list of all equipment and Facilities proposed to be removed and all equipment proposed to be added;
 - 18.** a complete, unredacted copy of the foundation design and report for the Tower or other structure, including a geotechnical sub-surface soils investigation report and foundation design;
 - 19.** if Substantially Modifying or Co-locating on an existing Tower or other support structure, a complete, unredacted and certified TIA ANSI 222 Report regarding the physical condition of the Complex and its components done within the previous six (6) months. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Wireless Facility or related equipment where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Town, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the Town Planning Department or Inspections and Permits Department;
 - 20.** In an instance involving a Tower with only a single array of antennas, or for the first antenna array to be attached to a Tower where the array will be ten (10) meters or more above ground level and not within 100 feet of areas to which the public has or could reasonably have or gain access to, signed documentation in the form of the FCC's "Checklist to Determine whether a Facility may be Categorically Excluded" shall be provided to verify that the Facility and Complex with the proposed installation will be in full compliance with the FCC's current RF Emissions regulations;
 - 21.** In certain instances the Town may deem it appropriate to have an on-site RF survey of the Facility or Complex done after the construction or Modification and activation of the Facility or Complex, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance;
 - 22.** If not previously submitted, a signed statement that the Applicant will expeditiously remedy any physical or RF interference with other telecommunications or wireless devices or services.
- B.** A written copy of an analysis completed by a qualified individual or organization to determine if the proposed Wireless Telecommunications Facility or Complex is in compliance with Federal Aviation Administration Regulation Part 77, and if it requires lighting. Unless already lighted, this requirement shall also be for any Facility or Complex where the application proposes to increase the height of the Tower or support structure. If this analysis determines that an FAA determination is required, then all

filings with the FAA, all responses from the FAA and any related correspondence shall be provided with the application.

- C. All Applications for a proposed Facility or Complex applicable to this Section shall contain clear and convincing evidence that the Facility or Complex is sited and designed so as to create the least visual intrusiveness reasonably possible given the facts and circumstances involved, and thereby will have the least adverse visual effect on the environment and its character, on existing vegetation, and on the nature and character of the community in the area of the Facility or Complex. To achieve this goal the Town expressly reserves the right to require the use of Stealth or Camouflage siting techniques such as, but not limited to, DAS (Distributive Antenna System technology) or its functional equivalent and such shall be subject to approval by the Council.
- D. If proposing a new Tower or support structure, or a Substantial Co-location or Modification of an existing structure, the Applicant shall be required to submit clear and convincing evidence that there is no alternative solution within one-half (1/2) mile of the proposed site that would be less visually intrusive and that not to permit the proposed new Tower or support structure, or a Substantial Co-location or Modification would result in the prohibition of service or the perpetuation of a significant gap in service primarily within the Town.
- E. In order to better inform the public, in the case of a new Tower, the applicant shall hold a “balloon test” prior to the initial public hearing on the application. The Applicant shall arrange to fly, or raise upon a temporary mast, a minimum of a ten (10) foot in length brightly colored balloon at the maximum height of the proposed new Tower.
- F. At least fourteen (14) days prior to the conduct of the balloon test, a sign shall be erected so as to be clearly visible from the road nearest the proposed site and shall be removed no later than fourteen (14) days after the conduct of the balloon test. The sign shall be at least four feet (4’) by four feet (4’) in size and shall be readable from the road by a person with 20/20 vision.
 - 1. Such sign shall be placed off, but as near to, the public right-of-way as is possible.
 - 2. Such sign shall contain the times and date(s) of the balloon test and contact information.
 - 3. The dates, (including a second date, in case of poor visibility or wind in excess of 15 mph on the initial date) times and location of this balloon test shall be advertised by the Applicant seven (7) and fourteen (14) days in advance of the first test date in a newspaper with a general circulation in the Town and as agreed to by the Town. The Applicant shall inform the Town in writing, of the dates and times of the test, at least fourteen (14) days in advance. The balloon shall be flown for at least four (4) consecutive hours between 10:00 am and 2:00 p.m. on the dates chosen. The primary date shall be on a week-end, but the second date, in case of poor visibility on the initial date, may be on a week day. A report with pictures from various locations of the balloon shall be provided with the application.

4. The Applicant shall notify all property owners and residents located within one-thousand five hundred feet (1,500) of the nearest property line of the subject property of the proposed construction of the Tower and Facility or Complex and of the date(s) and time(s) of the balloon test. Such notice shall be provided at least fourteen (14) days prior to the conduct of the balloon test and shall be delivered by first-class mail.
5. The Wireless Telecommunications Facility or Complex shall be structurally designed to accommodate at least four (4) Antenna Arrays, with each array to be flush mounted or as close to flush-mounted as is reasonable possible.

G. The Applicant shall provide certified documentation in the form of a structural analysis and report, including all supporting calculations, showing that the Facility or Complex will be constructed to meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict the more stringent shall apply.

H. The Applicant shall furnish a Visual Impact Assessment, which shall include:

1. a computer generated “Zone of Visibility Map” at a minimum of one mile radius from the proposed structure shall be provided to illustrate locations from which the proposed installation may be seen, with and without foliage;
2. Pictorial representations (photo simulations) of “before and after” views from key viewpoints inside of the Town as may be appropriate and required, including but not limited to state highways and other major roads, state and local parks, other public lands, historic districts, preserves and historic sites normally open to the public, and from any other location where the site is visible to a large number of visitors, travelers or residents. Guidance will be provided concerning the appropriate key viewpoints at the pre-application meeting. In addition to photographic simulations to scale showing the visual impact, the applicant shall provide a map showing the locations of where the pictures were taken and the distance(s) of each location from the proposed structure;

I. The Applicant shall provide a description in writing and a visual rendering demonstrating how it shall effectively screen from view the bottom fifteen feet (15’) of the Facility or Complex and all related equipment and structures associated with the Facility or Complex.

J. A Building Permit shall not be issued for construction of a new Tower or other support structure until there is an Application for or by a specific carrier that documents that the Facility or Complex is Necessary for that carrier to serve the community and that co-location on an existing Structure is not feasible.

K. Co-location on an existing structure is not reasonably feasible if technically or commercially impractical or the owner of the Structure is unwilling to enter into a contract for such use at or below fair market value. Sufficient documentation in the form of clear and convincing evidence to support such claims shall be submitted with an Application for the first carrier in order to determine whether co-location on existing structures is reasonably feasible and to document the

need for a specific stated height, and that less height will serve to prohibit or have the effect of prohibiting the provision of service.

6.12.11 Eligible Facility – General Policies

- A.** No Special Use Permit shall be required for an Eligible Facility. However, a Building Permit, a COC and all other applicable permits and authorizations shall be required. The following represent the Town’s policy(s) regarding Eligible Facilities.
- B.** The Town, or designee, shall not be required to issue a Building Permit for any Eligible Facility, the service area for which is not primarily and substantially within the Town.
- C.** Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be flush-mounted on the facade without increasing the height of the building or other structure, unless it can be shown by clear and convincing evidence that such will prohibit or have the effect of prohibiting the provision of service. All such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.
- D.** Attachments to Towers: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible so as to create the smallest profile reasonably possible under the facts and circumstances, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.
- E.** Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service. The provisions of Subsection (9) of this section shall also apply to any attachment to a water tank.
- F.** Structural Analysis and Report: The Applicant shall provide a certification by a Professional Engineer licensed in the State, along with documentation in the form of a structural analysis, including calculations, that prove that the support structure and its foundation as proposed to be utilized are designed and were or will be constructed to meet all local, Town, State, Federal and TIA ANSI 222 structural requirements for loads, including wind and ice loads and the placement of any equipment on the roof a building after the addition of the proposed new equipment.
- G.** ANSI Inspection: A complete, unredacted TIA ANSI 222 Report regarding the physical condition of the Facility or Complex and its components done within the previous six (6) months shall be provided. If such report has not been done within the previous six (6) months, one shall be done and submitted as part of the Application. No Building Permit shall be issued for any Tower, other support structure, Complex or Wireless Facility or

related equipment without the required TIA ANSI 222 Report and where the structure being attached to is in need of remediation to comply with the requirements of this subsection and other adopted standards of the Town, unless and until all remediation work that is deemed needed has been completed or a schedule for the remediation work has been approved by the Town Planning Department.

H. Compliance: Other than to remediate non-compliant situations related to matters of safety or the conditions of a permit, no permits for work at a Facility or Complex shall be issued for any work related to an Eligible Facility where the Facility and Complex are not in full compliance with all applicable local, State and federal laws, rules, regulations and orders. A Facility and Complex not in full compliance shall be required to be brought into full compliance before a Building Permit will be issued for work related to an Eligible Facility request or application.

6.12.12 Application Requirements for Eligible Facility Co-locations or Modifications

A) A Building permit shall be required for any work that is not Routine Maintenance as defined in this section and that constitutes a Non-substantial Modification or co-location as defined in this section.

B) No Building Permit shall be required for Routine Maintenance, nor for work that does not constitute a Modification or Co-location, all as defined in this Section.

C) The following shall be required in an application for and prior to obtaining a Building Permit (Permit). No Building Permit shall be issued until the requirements of this Section have been complied with. No work related to a Modification or Co-location may be performed without having obtained a valid and properly issued Building Permit.

1) If deemed necessary, a site visit shall be conducted and a Pre-Application meeting shall be held for all intended applications. At or before the Pre-Application meeting, the Applicant shall be provided instructions for completing an Application. Said instructions shall be controlling as regards the form and substance of the issues addressed in the Application and must be followed. Applications submitted that do not follow the instructions shall be deemed incomplete. Prior to the site visit and the Pre-Application meeting, the Applicant shall prepare and submit a Project Information Form provided by the City and the required fee, but shall not submit the Application at that time;

2) For the co-location, modification or upgrade of a wireless facility that qualifies as an Eligible Facilities request under applicable law, the following information shall be required to be contained in an application for a Building Permit.

Safety

- a) the age of the Tower or other support structure in years, including the date of the grant of the original permit;
- b) a description of the type of Tower, e.g. guyed, self-supporting lattice or monopole, or a description of the other type of support structure;

- c) A detailed narrative description and explanation of the specific objective(s) of the new equipment, expressly including and explaining the purpose of such, such as coverage and/or capacity, technical requirements, frequencies to be used and the identified boundaries of the specific geographic area of intended coverage;
- d) Technical documentation that shows by clear and convincing technical evidence that the Need for the requested height is Necessary to provide the type and coverage of the service primarily and essentially within the City using generally accepted industry methods.
- e) certified documentation in the form of a structural analysis and report, including all supporting calculations, showing that the Facility, as designed, will meet all local, state and federal structural requirements for loads, including wind and ice loads and including, but not limited to, the North Carolina Building Code and all applicable ANSI (American National Standards Institute) TIA 222 guidelines. In the event of a conflict, the more stringent shall apply
- f) a copy of the installed foundation design, including a geotechnical sub-surface soils investigation report and foundation design recommendation for the Tower or other structure;
- g) certified documentation regarding the physical situation and physical condition of all equipment and facilities at the site in the form of a report based on an on-site inspection, done pursuant to and in compliance with the latest version of TIA/ANSI 222. The inspection must be done by a qualified individual experienced in performing such inspections and the report must be signed by an individual with authority to order any needed remediation or resolution of issues.
- h) all of the modeling information (i.e. data) inputted into the software used to produce the evidence used to determine the Needed height, including, but not limited to any assumptions made such as ambient tree height;
- i) a copy of the FCC licenses for each frequency band applicable for the intended use of the Wireless Telecommunications transmission and/or receive equipment;
- j) The frequency, modulation and class of service of radios or other transmitting and receiving equipment;
- k) The maximum transmission power capability at which each type of radio is designed to operate,;
- l) The actual intended transmission power stated as the maximum effective radiated power (ERP), both in dBm's and watts;
- m) The number, type and model of the Antenna(s) proposed, along with a copy of the specification sheet(s) for the antennas;
- n) A statement from the owner of the Facility certifying that the Facility and all attachments thereto are currently in compliance with the conditions of the approved Special Use Permit or setting forth any non-compliant situation.

Ownership and Management

- o) The Name, address and phone number of the person preparing the Application;
- p) The Name, address, and phone number of the property owner and the Applicant, including the legal name of the Applicant. If the owner of the structure is different than the applicant, the name and all Necessary contact information shall be provided;
- q) The Postal address and tax map parcel number of the property;

- r) a copy of the FCC license applicable for the intended use of the Wireless Telecommunications Facilities.

Construction

- s) the total cost of construction and the value of all new and replacement components and equipment.

D) In certain instances the Town may deem it appropriate to have an on-site RF survey of the facility done after the construction or Modification and activation of the Facility, such to be done under the direction of the Town or its designee, and an un-redacted copy of the survey results provided, along with all calculations, prior to issuance of a Certificate of Compliance.

E) Attachments

1) Attachments to Buildings: To preserve and protect the nature and character of the area and create the least visually intrusive impact reasonably possible under the facts and circumstances, any attachment to a building or other structure with a facade, the antennas shall be mounted on the facade without increasing the height of the building or other structure, unless it can be proven that such will prohibit or have the effect of prohibiting the provision of service, and all such attachments and exposed cabling shall use camouflage or stealth techniques to match as closely as possible the color and texture of the structure.

2) Attachments to Water Tanks: If attaching to a water tank, in order to maintain the current profile and height, mounting on the top of the tank or the use of a corral shall only be permitted if the Applicant can prove that to locate elsewhere less visually on the tank will prohibit or have the effect of prohibiting the provision of service. The provisions of Subsection (9) of this section shall also apply to any attachment to a water tank.

3) Profile: So as to be the least visually intrusive reasonably possible given the facts and circumstances involved, and thereby have the least adverse visual effect, all antennas attached to a Tower or other structure shall be flush mounted or as near to flush mounted as is possible so as to create the smallest profile reasonably possible under the facts and circumstances, unless it can be proven that such would prohibit or serve to prohibit the provision of service or be technologically impracticable.

6.12.13 Location of Wireless Telecommunications Facilities

A. Applicants shall locate, site and erect all Facilities and associated equipment in accordance with the following priorities, in the following order:

1. No tower or other new support structure taller than existing surrounding structures shall be permitted in any existing or planned (i.e. platted) residential neighborhood, nor within one-half mile of such.
2. On existing structures without increasing the height of the Tower or structure.

3. On Town-owned properties or facilities.
 4. On existing structures without increasing the height of the structure by more than is Technically Needed.
 5. On properties in areas zoned for Business use.
 6. On properties in areas zoned for Rural use.
 7. On properties in designated Historic Districts without increasing the height of the support structure and only if Camouflaged or Stealthed to the satisfaction of the Planning Director.
 8. On properties in areas zoned for Residential use without increasing the height of the support structure and only if Camouflaged or stealthed to the satisfaction of the Planning Director.
 9. In Renaissance Districts without increasing the height of the support structure and only if Camouflaged or stealthed to the satisfaction of the Planning Director.
- B.** If the proposed site is not proposed for the highest priority listed above, then a detailed narrative and technical explanation must be provided as regards why a site from all higher priority designations was not selected. The person seeking such an exception must satisfactorily demonstrate the reason or reasons why a Special Use Permit or Administrative Authorization should be granted for the proposed site.
- C.** Notwithstanding anything else to the contrary, the Town may approve any site located within an area in the above list of priorities, provided that the Town finds that the proposed site is in the best interest of the health, safety and welfare of the Town and its inhabitants and will not have a deleterious effect on the nature and character of the community and neighborhood. Conversely, the Town may direct that the proposed location be changed to another location that is more in keeping with the goals of this Section and the public interest as determined by the Town and that serves the intent of the Applicant.
- D.** Notwithstanding that a potential site may be situated in an area of highest priority or highest available priority, the Town may disapprove an Application for any of the following reasons:
1. Conflict with safety and safety-related codes and requirements, including but not limited to setback and Fall Zone requirements;
 2. Non-Compliance with zoning or land use regulations;
 3. The placement and location of Facilities which would create an unacceptable safety risk to residents or the general public, employees and agents of the Town or employees of the service provider or other service providers, physical or financial damage to or trespass on private property, or the reasonable possibility of such;
 4. The placement and location of a Facility or Complex would result in a conflict with, compromise in or change in the nature or character of the adjacent surrounding area, and expressly including but not limited to loss in value as measured from the end of calendar year prior to the Application having been filed;
 5. Conflicts with the provisions of this Section;

- 6.** Failure to submit a complete Application as required under this Section, after proper notice and opportunity to make the Application complete.
- E.** Notwithstanding anything to the contrary in this Section, for good cause shown such as the ability to utilize a shorter, smaller or less intrusive Facility or Complex elsewhere and still accomplish the primary service objective, the Town may require the relocation of a proposed site, including allowing for the fact that relocating the site chosen by the Applicant may require the use of more than one (1) site to provide substantially the same service if the relocation could result in a less intrusive Facility or Complex, singly or in combination with other locations.

6.12.14 Type and Height of Towers

- A.** All new Towers shall be of the monopole type. No new Towers of a lattice or guyed type shall be permitted, unless relief is otherwise expressly granted.
- B.** Pursuant to the 1996 Telecommunications Act and subsequent case law related to the right to deny an application for cause, the Applicant for a new Tower or other support structure shall submit clear and convincing technical evidence by a carrier or wireless service provider committed to use the new Tower or other support structure justifying the total height of the proposed Tower or other support structure requested and the basis therefore, including all attachments. If the Applicant chooses to provide evidence in the form of propagation studies, such must include all modeling information and support data used to produce the studies at the requested height and a minimum of ten feet (10') lower to enable verification of the Need for the requested height.
- C.** Pursuant to the 1996 Telecommunications Act and subsequent case law related to the right to deny an application for cause, the Town reserves the right to require a drive test to be conducted under the supervision of the Town or its delegate as evidence of the technical Need for what is requested.
- D.** As the Town has made the policy decision that more Facilities of a shorter height is in the public interest, as opposed to fewer taller Facilities, spacing or the distance between Facilities shall be such that the service can be provided without exceeding the maximum permitted height.
- E.** The maximum permitted total height of a tower or other proposed support structure shall be one hundred ninety nine feet (199') above pre-construction ground level, unless it can be shown by clear and convincing technical evidence that such height would prohibit or have the effect of prohibiting the provision of service in the intended service area within the Town. The maximum permitted height is not an as-of-right height, but is the maximum allowable height.
- F.** At no time shall a Tower or other support structure be of a height that requires lighting by the FAA.

- G.** Towers shall be structurally designed to support a minimum of four (4) carriers using functionally equivalent equipment to that used by the first carrier attaching to a Tower or other support structure and that can be increased in height if Needed.

6.12.15 Visibility and Aesthetics

- A.** No Tower or support structure that is not a building and is constructed after the effective date of this Section shall be tall enough to require lighting by the FAA.
- B.** Stealth: All new Facilities, including but not limited to Towers, shall utilize Stealth or Camouflage siting techniques, unless such can be shown to be either Commercially or Technologically Impracticable.
- C.** Finish/Color: Towers shall be galvanized and/or painted with a rust-preventive paint of an appropriate color to harmonize with the surroundings and shall be maintained in accordance with the requirements of this Section.
- D.** Lighting: Notwithstanding the prohibition of lighting, in the event lighting is subsequently required by the FAA, the Applicant shall provide a detailed plan for sufficient lighting of as unobtrusive and inoffensive an effect as is permissible under State and Federal regulations. For any Facility or Complex for which lighting is required under the FAA's regulations, or that for any reason has lights attached, all such lighting shall be affixed with technology that enables the light to be seen as intended from the air, but that prevents the ground scatter effect so that it is not able to be seen from the ground to a height of at least 20 degrees vertical for a distance of at least 1 mile in a level terrain situation. Such device shall be compliant with or not expressly in conflict with FAA regulations. A physical shield may be used, as long as the light is able to be seen from the air, as intended by the FAA.
- E.** Retrofitting re Lighting: In the event a Tower or other support structure that is lighted as of the effective date of this Section is modified, at the time of the Modification, the Town may require that the Tower be retrofitted so as to comply with the lighting requirements of this Section or be reduced to a height that does not require lighting.
- F.** Flush Mounting: Except for omni-directional whip antennas, all new or replacement antennas, shall be flush-mounted or as close to flush-mounted on the support structure as possible, unless it can be demonstrated by clear and convincing technical evidence that such has the effect of prohibiting the provision of service to the intended service area, alone or in combination with another site(s), or unless the Applicant can prove that it is technologically impracticable.
- G.** Placement on Building: If attached to a building, all antennas shall be mounted on the facade of the building and camouflaged so as to match the color and, if possible, the texture of the building, or in a manner so as to make the antennas as visually innocuous and undetectable as is possible given the facts and circumstances involved.

6.12.16 Security

All Facilities shall be located, fenced or otherwise secured in a manner that prevents unauthorized access. Specifically:

- A.** All Facilities, including Antennas, Towers and other supporting structures, including all guy anchors and guy wires, shall be made inaccessible to unauthorized individuals and shall be constructed or shielded in such a manner that they cannot be climbed or collided with; and
- B.** Transmitters and Telecommunications control points shall be installed so that they are readily accessible only to persons authorized to operate or service them.

6.12.17 Signage

Facilities shall contain a sign no larger than four (4) square feet and no smaller than two (2) square feet in order to provide adequate warning to persons in the immediate area of the presence of RF radiation. A sign of the same size is also to be installed bearing the name(s) of the owner(s) and operator(s) of the Antenna(s) as well as emergency phone number(s). The sign shall be on the equipment shelter or cabinet of the Applicant and must be visible from the access point of the Facility or Complex and must identify the equipment owner of the shelter or cabinet. On Tower sites, an FCC registration sign, as applicable, is also to be present. The signs shall not be lighted, unless applicable law, rule or regulation requires lighting. No other signage, including advertising, shall be permitted.

6.12.18 Setback and Fall Zone

- A.** All proposed Towers and any other proposed Wireless support structures shall be set back from abutting parcels, recorded rights-of-way and road and street lines by the greater of the following distances: i) a distance equal to the height of the proposed Tower or support structure plus ten percent (10%) of the height of the Tower or other structure, otherwise known as the Fall Zone; or ii) the existing setback requirement of the underlying zoning district, whichever is greater. Any Accessory structure shall be located within the fenced compound area as approved in the Special Use Permit and so as to comply with the applicable minimum setback requirements for the property on which it is situated. The Fall Zone shall be measured from the center-line of the Tower to the nearest portion of the right-of-way of any public road or thoroughfare and any occupied building or domicile, as well as any property boundary lines. Further, the nearest portion of any access road leading to a Facility shall be no less than ten (10) feet from the nearest property line.
- B.** There shall be no development of habitable buildings within the Setback area or Fall Zone.

6.12.19 Retention of Expert Assistance or Consultant Cost to be Borne by Applicant

- A.** To prevent taxpayers from having to bear the cost related to the issue of permitting and regulating Wireless Telecommunications Facilities, an Applicant shall pay to the Town a fee(s) as set forth in the Town's Fee Schedule. The fee(s) is intended to cover all costs of the expert or consultant in connection with the review of any Application or the permitting, inspection, construction or Modification requested under this Ordinance .
- B.** Timing of Payment: The payment of the Expert Assistance or Consultant fee to the Town shall precede any work being done related to the intended Application, including but not limited to a site visit, pre-application meeting or discussions or inquiries initiated by the Applicant.
- C.** Review prior to the formal submittal of the Application: The expert assistance cost for any review of an Application or any portion thereof that is requested by the Applicant prior to the formal submittal of the Application shall be paid for by the Applicant and shall be separate and apart from the cost for expert assistance related to the formal review of the Application.
- D.** Amended or Changed Application: Pursuant to N.C. 160A-400.52(f), if an Application is Amended or changed after its formal submittal at any time prior to the grant of the permit or authorization required under this Ordinance, the Town reserves the right to require additional payment for review and analysis equal to, but not exceeding, the cost created for the Town by the Amendment of the Application. Such amount shall be paid to the Town prior to the issuance of the Special Use Permit, any Administrative Authorization, Building Permit or any other permit.
- E.** Relief or Waiver Request: The cost of expert assistance to the Town related to work associated with a request for relief or waiver shall be paid for by the Applicant and shall not be deemed to be part of the Application process.
- F.** Lease Negotiations: The intended lessee shall pay all costs of the Town's expert assistance incurred for lease negotiations. The cost for the Town's expert assistance for lease negotiations is and shall be separate and apart from an application review for any permit, and shall be required to be paid for by the requesting lessee prior to the start of any work related to the intended lease negotiations.
- G.** The Town may hire any consultant of its choice to assist the Town in reviewing and evaluating Applications, provided the consultant is a North Carolina resident and has at least five (5) years experience working exclusively for the public sector regulating Towers and Wireless Facilities and negotiating leases for such facilities. Preference shall be given to firms whose home office is in North Carolina and, in compliance with applicable federal law, who qualify as Minority or Women-owned Firms.
- H.** The total amount of the funds needed for expert assistance as set forth in the Town's Fee schedule may vary with the scope and complexity of the Application, the completeness of the Application and other information as may be needed to complete the necessary review, analysis and inspection of any construction or Modification or

the amount of time spent responding to an Applicant's arguments as regards its Application or the requirements of this Section.

- I. The Town will maintain an accounting for the expenditure of all such funds.

6.12.20 Procedural Requirements for a Granting a Special Use Permit

- A. The following procedures shall apply where a Special Use Permit. is requested
- B. The Town shall schedule any required public hearing(s) once it finds the Application is complete and there are no issues of non-compliance with applicable law, rule or regulation. The Town is not required to set a date if the Application is not complete or if there are unresolved issues of non-compliance with applicable law, rule, regulation or order. The Town may, at any stage prior to issuing a Special Use Permit or administrative authority, require such additional information as it deems Necessary to make an informed decision and is not prohibited from requiring such by applicable law as relates to the issue of the siting, construction or Modification of or at a Wireless Telecommunications Facility or Complex.
- C. The Applicant shall be responsible for sending written notice of the hearing to all residents located within one thousand five hundred feet (1,500') of the perimeter of the Facility or Complex. Notice shall be by registered letter sent via the U.S. Postal Service and shall provide proof of said mailing upon request by the Town. The notice shall be sent no later than fourteen calendar days prior to the scheduled hearing.
- D. Upon Council review and approval, a Special Use Permit shall be issued for a new or Substantially Modified Wireless Support Structure or Substantial Co-location. Notwithstanding the preceding, the Building Permit for a new Tower or other proposed support structure shall not be issued until an Applicant has provided clear and convincing substantiating documentation under Section 6.12.10 of this Ordinance governing the placement of the first antenna array prior to construction of a new Wireless Telecommunications Facility.

6.12.21 Action on an Application

- A. Timely Review: The Town will undertake a review of an Application pursuant to this Article in a timely fashion, consistent with its responsibilities and applicable law, and shall act within the time required by applicable law.
- B. Referral of Application: The Town may refer any Application or part thereof to any advisory committee or consultant for a non-binding recommendation.
- C. Action on an Application: Either after the public hearing, if a hearing is required, or after Administrative review as applicable, and after formally considering the Application, the Town may i) approve; ii) approve with conditions; or iii) deny a Permit or Administrative Authorization. The decision shall be in writing and shall be

supported by substantial evidence contained in a written record. Throughout the Application and permitting process, the burden of proof for compliance with this ordinance or the need for something not allowed, shall always be upon the Applicant.

- D. Refusal to Provide Information Needed for Written Record:** An Applicant shall not be permitted to refuse to provide information needed to establish the substantial written record required under federal law and applicable case law. Refusal shall result in denial of the Application.
- E. Approval Notification:** If the Town approves the Special Use Permit or Administrative Authority for the Facility or Complex, then the Applicant shall be notified of approval of its Application, including any conditions, within 30 calendar days of the Town's action. The Special use Permit or Administrative Authorization shall be issued within thirty (30) days after such approval.
- F. Denial Notification:** The Applicant shall be notified of a denial of its Application at the Commission Meeting, and in writing within 30 calendar days of the Commission's action, which notice shall set forth in writing the reason or reasons for the denial.

6.12.22 Extent and Parameters of Special Use Permit or Administrative Authority for Wireless Telecommunications Facilities

The extent and parameters of a Special Use Permit or Administrative Authorization for a Facility or Complex shall be as follows:

- A.** Such Special Use Permit or Administrative Authorization shall not be assigned, transferred or conveyed without the express prior written notification to the Town, such notice to be not fewer than thirty (30) business days prior to the intended assignment, transfer or conveyance.
- B.** A transfer, assignment or other conveyance of the Special Use Permit or Administrative Authorization shall require the written commitment of the proposed new holder of the Special Use Permit or Administrative Authorization to abide by all applicable laws, rules and regulations, including but not limited to this Ordinance.
- C.** Following notice and an opportunity to cure, a Special Use Permit granted under this Ordinance may be revoked, canceled, or terminated for a violation of the conditions and provisions of the Special Use Permit or other applicable law, rule, regulation or order, and if warranted the payment of a fine(s) as is permissible.
- D.** If not cured within the time frame set forth in the Notice of Violation, a hearing shall be held upon due prior notice to the Applicant citing the violation and the date, time and place of the hearing, which shall be provided by registered mail to the last known address of the holder of the Special Use Permit.

- E.** Following the original notice and an opportunity to cure, subsequent or repeated violations of a substantially similar nature shall not require an opportunity to cure prior to the imposition of fines or penalties.

6.12.23 Removal and Performance Security

Removal and Performance: The Applicant and the owner of record of any proposed new Tower or other support structure or Complex shall, at its sole cost and expense, be required to execute and file with the Town a bond or other form of security that is acceptable to the Town as to the type of security and the form and manner of execution, in an amount of at least \$75,000.00 for a Tower or other support structure and with such sureties as are deemed adequate by the Town to assure the faithful performance of the requirements of this Section and conditions of any Special Use Permit issued pursuant to this Section. The full amount of the bond or security shall remain in full force and effect throughout the term of the Special Use Permit and/or until any necessary site restoration is completed to restore the site to a condition comparable to that, which existed prior to the issuance of the original Special Use Permit.

6.12.24 Reservation of Authority to Inspect Wireless Telecommunications Facilities

- A.** In order to verify that the holder of a Special Use Permit for a Facility or Complex and any and all lessees, renters, and/or licensees of Wireless Telecommunications Facilities, place and construct such facility in accordance with all applicable technical, safety, fire, building codes, zoning codes, laws, ordinances and regulations and conditions of any permit granted under this Ordinance, the Town or its designee shall have the right to inspect all facets of said permit holder's, renter's, lessee's or licensee's placement, construction, Modification and maintenance of such facilities, including, but not limited to, Towers, Antennas and buildings or other structures constructed or located on the permitted site.
- B.** Refusal to allow or grant access to the Town's representative upon reasonable notice shall be deemed a violation of this ordinance.

6.12.25 Liability Insurance

- A.** A holder of a Special Use Permit for a Wireless Telecommunications Support Structure shall secure and at all times maintain public liability insurance for personal injuries, death and property damage, and umbrella insurance coverage, for the duration of the Special Use Permit in amounts as set forth below:
 - 1.** Commercial General Liability covering personal injuries, death and property damage: \$1,000,000 per occurrence/\$3,000,000 aggregate; and
 - 2.** Automobile Coverage: \$1,000,000.00 per occurrence/ \$3,000,000 aggregate; and
 - 3.** A \$3,000,000 Umbrella coverage; and
 - 4.** Workers Compensation and Disability: Statutory amounts.
- B.** For a Facility or Complex located on Town property, the Commercial General Liability insurance policy shall specifically name the Town and its officers, Boards,

- employees, committee members, attorneys, agents and consultants as additional insureds.
- C.** The insurance policies shall be issued by an agent or representative of an insurance company licensed to do business in the State and with an AM Best's rating of at least A.
 - D.** The insurance policies shall contain an endorsement obligating the insurance company to furnish the Town with at least thirty (30) days prior written notice in advance of the cancellation of the insurance.
 - E.** Renewal or replacement policies or certificates shall be delivered to the Town at least fifteen (15) days before the expiration of the insurance that such policies are to renew or replace.
 - F.** Before construction of a permitted Wireless Telecommunications Facility or Complex is initiated, but in no case later than fifteen (15) days prior to the grant of the Building Permit, the holder of the Special Use Permit shall deliver to the Town a copy of each of the policies or certificates representing the insurance in the required amounts.
 - G.** A Certificate of Insurance that states that it is for informational purposes only and does not confer rights upon the Town shall not be deemed to comply with this Section.

6.12.26 Indemnification

- A.** Any application for Wireless Telecommunication Facilities that is proposed to be located on Town property shall contain a provision with respect to indemnification of the Town. Such provision shall require the applicant, to the extent permitted by applicable law, to at all times defend, indemnify, protect, save, hold harmless and exempt the Town and its officers, Boards, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or are caused by, the placement, construction, erection, Modification , location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility or Complex, excepting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the Town, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the Town.
- B.** Notwithstanding the requirements noted in subsection A of this section, an indemnification provision will not be required in those instances where the Town itself applies for and secures a Special Use Permit for a Wireless Telecommunications Facility or Complex.

6.12.27 Fines

- A.** In the event of a violation of this Section, or any Special Use Permit or Administrative Authorization issued pursuant to this Section, the Town may impose and collect, and the holder of the Special Use Permit or Administrative Authorization for a Wireless Telecommunications Facility or Complex shall pay to the Town, fines or penalties as set allowed by State law or as otherwise established by the Town.
- B.** Notwithstanding anything in this Section, the holder of the Special Use Permit or Administrative Authorization for a Facility or Complex may not use the payment of fines, liquidated damages or other penalties, to evade or avoid compliance with this Section or any section of this Ordinance. An attempt to do so shall subject the holder of the Special Use Permit to termination and revocation of the Special Use Permit in addition to the payment of fines. The Town may also seek injunctive relief to prevent the continued violation of this Section without limiting other remedies available to the Town.

6.12.28 Default and/or Revocation

If a support structure, Facility or Complex is repaired, rebuilt, placed, moved, re-located, modified or maintained in a way that is inconsistent or not in compliance with the provisions of this Ordinance or of the Special Use Permit or Administrative Authorization, then the Town shall notify the holder of the Special Use Permit or Administrative Authorization in writing of such violation. A Permit or Administrative Authorization holder found to be in violation may be considered in default and subject to fines as permitted under applicable State law, and if a violation is not corrected to the satisfaction of the Town in a reasonable period of time the Special Use Permit or Administrative Authorization shall be subject to revocation.

6.12.29 Removal or Moving of Co-located Facilities and Equipment

- A.** If attached to an existing tower or other support structure, unless the Town Council deems doing so to be in the public interest, it shall be impermissible for a wireless service provider's or carrier's equipment to be relocated from one structure to another without clear and convincing evidence that not to do so would, for technical reasons, prohibit or serve to prohibit the provision of service in the service area served by the existing wireless facility.
- B.** If the lease for the existing co-location expires and is not renewed, thereby forcing the facility to be moved, such move shall be allowed upon i) the provision of clear and convincing evidence satisfactory to the Town Council of the need to move or relocate the facility; and ii) clear and convincing evidence satisfactory to the Town Commission of the lack of impact on the neighborhood or area of intended new location. Cancellation or abandonment of a lease by a lessee shall not be deemed a permissible reason for relocating.

- C. The owner of any Facility or Complex shall be required to provide a minimum of thirty (30) days written notice to the Town Clerk prior to abandoning any Facility or Complex.
- D. Under the following circumstances, the Town may determine that the health, safety, and welfare interests of the Town warrant and require the removal of Facilities.
1. a Facility or Complex that has been abandoned (i.e. not used as Wireless Telecommunications Facilities) for a period exceeding ninety (90) consecutive days or a cumulative total of one hundred-eighty (180) non-consecutive days in any three hundred-sixty five (365) day period, except for periods caused by force majeure or Acts of God, in which case, repair or removal shall be completed within 90 days of abandonment;
 2. A Support Structure or Facility or Complex falls into a state of disrepair such that it creates a health or safety hazard or is deemed an attractive nuisance or a visual blight;
 3. A Support Structure or Facility or Complex has been located, constructed, or modified without first obtaining, or in a manner not authorized by, the required Special Use Permit, or Administrative Authorization, and the Special Permit or Administrative Authorization may be revoked.
 4. If the Town makes such a determination as noted in subsections (2) or (3) of this section, then the Town shall notify the holder of the Permit or Administrative Authorization for the Facility or Complex in writing that said Facility or Complex is to be removed.
 5. The holder of the Special Use Permit or Administrative Authorization, or its successors or assigns, shall dismantle and remove such Facility or Complex and all associated structures and equipment from the site and restore the site to as close to its original condition as is possible, such restoration being limited only by physical or commercial impracticability. Restoration shall be completed within ninety (90) days of receipt of written notice from the Town. However, if the owner of the property upon which the Facility or Complex is located wishes to retain any access roadway to the Facility or Complex, the owner may do so with the approval of the Town.
 6. If a Facility or Complex has not been removed, or substantial progress has not been made to remove the Facility or Complex, within ninety (90) days after the permit holder has received notice, then the Town may order officials or representatives of the Town to remove the Facility or Complex at the sole expense of the owner or Special Use Permit holder.
 7. If the Town removes, or causes Facilities to be removed, and the owner of the Facility or Complex does not claim and remove it from the site to a lawful

location within ten (10) days, then the Town may take steps to declare the Facility or Complex abandoned, and sell them and their components.

8. Notwithstanding anything in this Section to the contrary, the Town may approve a temporary use permit/agreement for the Facility or Complex for no more than ninety (90) days duration, during which time a suitable plan for removal, conversion, or re-location of the affected Facility or Complex shall be developed by the holder of the Special Use Permit, subject to the approval of the Town, and an agreement to such plan shall be executed by the holder of the Special Use Permit or Administrative Authorization and the Town. If such a plan is not developed, approved and executed within the ninety (90) day time period, then the Town may take possession of and dispose of the affected Facility or Complex in the manner provided in this Section and utilize the bond in Section (BB).

6.12.30 RF Emissions

- A. To assure the protection of the public health and safety, unless expressly prohibited by State or federal law, the Town expressly reserves the right to require that an Applicant, a user of a Facility or Complex or the owner of the Facility or Complex verify compliance with the FCC's regulations regarding RF emissions as may be deemed appropriate from time to time, and that all users of the Facility or Complex cooperate with the party responsible for such verification. Failure to cooperate shall be deemed a violation of this Section and subject the non-cooperating party to all fines and other remedies at law or tort and shall further be deemed cause for the Town to call upon the services of the U.S. Department of Labor's Occupational Safety and Health Administration (OSHA) to make a determination.
- B. With respect to Support Structures other than Towers, if any section or portion of the structure to be attached to or area within 100' of such, is not in compliance with the FCC's regulations regarding RF radiation, that section or portion must be barricaded with a suitable barrier to discourage approaching into the area in excess of the FCC's regulations, and be marked off with brightly colored plastic chain or striped warning tape as appropriate, as well as placing RF Radiation signs as needed and appropriate to warn individuals of the potential danger.

6.12.31 Relief

- A. Any Applicant desiring relief, waiver or exemption from any aspect or requirement of this Section shall address and identify such at the Pre-Application meeting. The relief or exemption must be contained in the submitted Application for either a Special Use Permit or Administrative Authorization, or in the case of an existing or previously granted Special Use Permit or Administrative Authorization, a request for Modification of the Facility or Complex and/or equipment. Such relief may be temporary or permanent, partial or complete.

- B. Requests for relief shall not be considered part of the Application process.
- C. The burden of proving the need for the requested relief, waiver or exemption shall be solely on the Applicant to prove.
- D. The Applicant shall bear all costs of the Town in considering the request and the relief, waiver or exemption, including expert assistance costs.
- E. No relief or exemption shall be approved unless the Applicant demonstrates by clear and convincing evidence that, if granted, the relief, waiver or exemption will have no significant affect on the health, safety and welfare of the Town, its residents and other service providers.

6.12.32 Adherence to State and/or Federal Rules and Regulations

- A. To the extent that the holder of a Special Use Permit or administrative authorization for a Wireless Telecommunications Facility or Complex has not received relief, or is otherwise exempt, from appropriate State and/or Federal agency rules or regulations, then the holder of such a Special Use Permit shall adhere to, and comply with, all applicable rules, regulations, standards, and provisions of any State or Federal agency, including, but not limited to, the FAA and the FCC. Specifically included in this requirement are any rules and regulations regarding height, lighting, security, electrical and RF emission standards.
- B. To the extent that applicable rules, regulations, standards, and provisions of any State or Federal agency, including but not limited to, the FAA and the FCC, and specifically including any rules and regulations regarding height, lighting, and security are changed and/or are modified during the duration of a Special Use Permit or Administrative Authorization for Wireless Telecommunications Facilities, then the holder of such a Special Use Permit or Administrative Authorization shall conform the permitted Facility or Complex to the applicable changed and/or modified rule, regulation, standard, or provision within a maximum of twenty-four (24) months of the effective date of the applicable changed and/or modified rule, regulation, standard, or provision, or sooner as may be required by the issuing entity.

6.12.33 Conflict with Other Laws

Where this Section differs or conflicts with other Laws, rules and regulations, unless the right to do so is preempted or prohibited by the Town, State or federal government, this Section shall apply.

6.12.34 Effective Date

This Section shall be effective immediately upon passage, pursuant to applicable legal and procedural requirements.

6.12.35 Authority

This Section is enacted pursuant to applicable authority granted by the State and federal government.

6.12 YARD SALES (GARAGE SALE, ATTIC SALE, RUMMAGE SALE, PORCH SALE).

For the purpose of this section, “yard sale” shall mean an occasional sale at which surplus and primarily used household goods and/or clothing are sold. In cases where such sales are conducted on the same property more than six (6) days per calendar year or in cases when new or used merchandise purchases for resale are resold, it shall be deemed a flea market and not a yard sale.

It shall be unlawful for any person to conduct or permit to be conducted on his property in the Town more than six (6) yard sales per calendar year, with each yard sale limited to one (1) twenty-four-hour day.

6.12.1 Permit Required.

A zoning permit must be issued to the property owner by the Planning Department and must be posted in a highly visible place at the yard sale. All apparatus, racks, shelves, tables, signs and other appurtenances associated with the sale shall be removed the same day as the sale.

6.13 SUPPLEMENTAL STANDARDS.

Wind turbine towers and any towers associated with photovoltaic cells or other active or passive solar technologies shall be set back a sufficient distance from all property lines so that the fall zone for every tower shall not cross over the property lines of any adjoining properties.

6.14 INTERNET CAFÉ AND SWEEPSTAKES CONDITIONAL USE PERMIT

6.14.1 Purpose and findings.

The Town Council is committed to protecting the general welfare of the Town through the enforcement of laws prohibiting obscenity, reducing the deleterious effects of incompatible land uses within certain zoning districts and surrounding land uses, protecting the health, safety, and wellbeing of the citizens of Maiden.

The Town Council finds that internet cafes and like oriented businesses in certain locations contribute to neighborhood/business park deterioration and blight through, an increase in crime and diminution of property values, among other adverse secondary impacts, and finds that such effects are contrary to the general welfare of the Town. The Town Council recognizes that important and substantial government interests provide a legislative basis for reasonable regulation of the time, place and manner under which internet cafés operate; and that, therefore, the Town Council has determined that persons seeking to operate an internet cafés and like businesses shall be required to observe specific location requirements before they commence business,

as provided for in this article. The Town Council finds that the licensing of internet cafés and like businesses is necessary to ensure compliance with the location and zoning requirements of such businesses.

The provisions of this section shall not be construed as permitting any use, activity or structure that is otherwise prohibited, illegal or made punishable by law, nor shall it be construed so as to prohibit conduct or expression that are subject to constitutional protection.

6.14.2 Definitions.

For the purposes of this article the following definitions shall apply unless the context clearly indicates or requires a different meaning:

Internet Café	Any business enterprise, whether as a principal or accessory use, where persons utilize electronic machines, as permitted and authorized by NCGS 14-306.4, including but not limited to computers and gaming terminals, to conduct games of chance, including sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or predetermined odds. Electronic gaming operations may include, but are not limited to, internet cafes, internet sweepstakes, electronic gaming machines/operations, or cybercafés. This does not include any lottery approved and run by the state of North Carolina or any nonprofit operation that is otherwise lawful under state law (for example, church or civic organization fundraisers).
Sweepstakes	(see internet café)
Applicant.	The person who will operate the internet cafe, and shall include each of the following persons associated with that business: <ol style="list-style-type: none"> 7. The owner of a sole proprietorship. 8. Each member of a firm, association, general partnership, or limited liability company. 9. Each general partner in a limited partnership. 10. Each officer, director and owner of more than ten (10) percent of the stock of a corporation. 11. The manager of an establishment operated by a corporation or other business entity. Any manager or other person who has been empowered as attorney-in-fact for a nonresident individual or partnership.
Employ, employee and employment.	These terms describe and pertain to any person who performs any service on the premises of an internet café related business on a full-time, part-time or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise. “Employee” does not include a person exclusively on the premises for repair or maintenance of the premises or for the delivery of goods to the premises.

Mobile billboard	A licensed vehicle that’s exterior is covered by sign(s), wraps, or similar advertisement to advertise the location of the business while parked in a parking lot where the business sign could not normally be located under this article. Exception: two four square foot magnets or stickers placed on a licensed vehicle to denote its ownership to a particular company shall not be considered a mobile billboard.
Establishment.	Establishment means and includes any of the following: 5. The opening or commencement of any internet cafe business as a new business; 6. The conversion of an existing business, whether or not an internet cafe business, to any internet café; 7. The addition of any internet cafe to any other existing business; or 12. The relocation of any internet cafe.
Licensee.	Person(s) in whose name appears on a conditional use permit and certificate of occupancy to operate internet café.
Code Enforcement Officer	The Maiden Planning Director or designee.
Person.	An individual, proprietorship, partnership, corporation, association, limited liability company, or other legal entity.
Town Planning Director	The Maiden Planning Director or designee
Town Clerk.	The Maiden Town Clerk
Town Manager	The Maiden Town Manager or designee.
Transfer of ownership or control.	Transfer of ownership or control of an internet cafe includes any of the following: 4. The sale, lease, or sublease of the business 5. Persons other than those named as applicants for a license becoming associated with the business, as provided in the definition of applicant; The establishment of a trust, gift, or other similar legal device which transfers the ownership or control of the business, except for transfer by bequest or other operation of law upon the death of the person possessing the ownership or control.

i. Business Classification.

Internet Cafés may be located in the C-1, C-2 and 321-ED(MX) zoning districts as a conditional use provided all other requirements of this article are met.

6.14.4 License required.

A. It is unlawful for any person to operate an internet cafe without a valid certificate of occupancy issued by the Planning Director, or his or her designee, pursuant to this section.

6.14.5 Application for Conditional Use Permit and Certificate of Occupancy.

- B. Application for conditional use permit shall be available at the Planning Department.
- C. An application for a Certificate of Occupancy shall be made with a zoning permit at the Planning Department.
 - 1. The applicant shall include all items required on a Town of Maiden Zoning Permit including but not limited to the applicants name, business name, phone number and mailing and physical address.
 - 2. Complete Fire and Building inspections with Catawba Co. Building Services.
 - 3. Zoning Clearance for location.
 - 4. Return copies of approved inspections to the Planning Department.
 - 5. Industrial waste survey.
 - 6. Attach copy of approved conditional use permit.
 - 7. Attach copy of signed Internet Café acknowledgement and liability form per NCGS 14-306.4

6.14.6 Revocation or Appeal of a Conditional Use Permit

- A. Shall follow all procedures in Article 2 of the Town of Maiden Unified Development Ordinance.

6.14.7 Denial.

If the Town denies the issuance of a conditional use permit, the Town will send to the applicant, by certified mail, return receipt requested, written notice of the action.

6.14.8 Transfer of license.

Unless a new application for a license is made, a licensee shall not transfer a license to another, or transfer ownership or control to another person(s), or operate an internet cafe under the authority of a license at any place other than the address designated in the conditional use permit. No internet café shall be operated under any name or conducted under any designation or classification not specified in the license for that business.

6.14.9 Inspection.

- A. An internet café license applicant or licensee shall permit representatives of the police department, code enforcement officer or any other city, county, state, or federal department, division, or agency that enforces codes, regulations or statutes relating to human health, safety or welfare or structural safety to inspect the premises of the internet café for the purpose of ensuring compliance with this code or any other state or federal laws, at any time it is occupied or open for business.

6.14.10 Hours of operation.

No internet cafe may remain open at any time between the hours of 12:00 a.m. and 8:00 a.m. on weekdays and weekends.

6.14.11 Internet Café as an accessory use.

Operation of an internet café as an accessory use shall follow all guidelines of an internet café as a primary use.

6.14. Age restrictions.

It shall be unlawful for a person to allow another person under the age of eighteen (18) years to enter or remain on or in the enclosed portion of an internet cafe, or for a person under the age of eighteen (18) years to enter or remain on or in the enclosed portion of an internet café.

6.14.13 Additional regulations for specific internet cafés.

D. The building, building unit(s) and sign(s) including mobile billboards shall not be located within a buffer of one thousand five hundred (1,500) feet from any property boundary of a public or private school (excluding day care facilities).

E. The building, building unit(s) and sign(s) shall not be located within a buffer of two hundred (200) feet from any property boundary of a church, temple, mosque, synagogue or other house of worship in which services are conducted or property owned by the institution either adjacent to excluding road right of ways in excess of one hundred (100) feet.

F. Exceptions.

1. Parking lots for internet cafés may be located within the one thousand five hundred (1,500) foot buffer requirements.
2. Businesses that offer courtesy WIFI to their patrons as an accessory to the primary business. Examples include restaurants, libraries, doctors' offices, and like uses.
3. Public libraries, schools, and town owned facilities

6.14.14 Remedies.

The Town may seek to correct any violation of this section using any or all civil and criminal remedies available to it for the enforcement of this or other provisions of this ordinance, including seeking civil penalties, injunctions and orders of abatement.

6.14.15 Liability for the conduct of others.

A licensee of an internet café is jointly and individually liable for violations of and offenses under this section by the employees of the internet cafe, and for all civil and criminal sanctions or remedies for such violations and offenses, including but not limited to license suspension or revocation, prescribed herein.

6.14.16 Conditions required for a conditional use permit to operate an internet café.

The following conditions are required within a conditional use permit to operate an internet café.

Town of Maiden Unified Development Ordinance

1. All employees, visitors, guests, and customers shall be over the age of 18 as required in article 6.14.12.
2. A buffer of one thousand five hundred (1,500) feet shall be observed from all schools, and two hundred (200) feet from church property, as required in article 6.14.13 for all structures and signs.
3. Maintain valid Internet Café acknowledgement and liability form per NCGS 14-306.4.
4. Maintain valid Certificate of Occupancy.
5. Shall operate between the hours of 8:00 AM and 12:00 AM.

ARTICLE 7 | Intensity and Dimensional Standards

7.1 RESIDENTIAL DISTRICTS

All development in residential zoning districts shall be subject to the following intensity and dimensional standards. These standards shall not be interpreted as a “guarantee” of development intensity. Other factors and requirements may limit development intensity more than these standards.

Residential Property Standards	R-20	R-15	R-15SF	R-11	R-8
Minimum Lot Area (sq ft) [1]					
Single-Family Detached	20,000	15,000	15,000	11,000	8,000
Two-Family	5,000 [1]	20,000	N/A	16,000	8,000 [5]
Multi-Family	N/A	N/A	N/A		8,000 [5]
Minimum Lot Depth (feet)		80	80		
Minimum Lot Width/ Frontage (feet)	100	80	80	75	70 [6]
Primary Structure					
Minimum Yard Setbacks					
Front Yard	40	30	30	30	30
Rear Yard	20% lot depth [2]	20% lot depth [2]	20% lot depth [2]	20% lot depth [2]	20% lot depth [2]
Interior Side Yard	12	10	10	10	10
Street Side Yard	15	15	15	15	12
Maximum Height	35 feet [3]	35 feet [3]	35 feet [3]	35 feet [3]	35 feet [3]
Maximum Building/Lot Coverage [4]	20%	30%	30%	30%	40%
Accessory Structure					
Minimum Yard Setbacks					
Front Yard	40	30	30	30	30
Rear Yard	5	5	5	5	5
Interior Side Yard	5	5	5	5	5
Street Side Yard	15	15	15	15	12
Maximum Height					

Notes:

[1] five thousand (5,000) additional square feet lot area for the second attached dwelling unit (duplex); however, where the residence will be serviced by municipal water facilities, the lot area for the first dwelling unit need only be fifteen thousand (15,000) square feet.

[2] Minimum required rear yard shall be twenty (20) percent of the mean lot depth, provided that such rear yard need not exceed thirty (30) feet.

[3] Additional building height may be added at a ratio of two to one (two feet of building height for every foot of front and side yard setback increase).

[4] Maximum building/lot coverage is the total coverage of all structures on a lot. For example, if the lot is 10,000 square feet then a lot is allowed to have 3,000 square feet of structure coverage.

[5] Four thousand (4,000) square feet additional of lot area per attached dwelling unit for each unit up to a maximum of (10) dwelling units per acre. Four thousand (4,000) square feet of additional lot area per detached dwelling unit up to 5 detached units per acre.

[6] Ten (10) feet additional width required for second attached building.

7.2 NON-RESIDENTIAL DISTRICTS

Non-residential Development Standards				
	C-1 [6]	C-2 [6]	O-I	M-1
Min. Lot Area (sq ft)	N/A	N/A	N/A	N/A
Min. Lot Width (ft)	N/A	N/A	N/A	N/A
Max Density (units per acre)	N/A	N/A	N/A	N/A
Yards/Setbacks (ft)				
Max. Front (street) Setback	40 [1]	N/A	N/A	N/A
Min Front Setback	N/A	40	15 [7]	50
Min. Side Corner	15	20	20	20
Min. Side	0/8 [2]	10	0/8 [2]	15
Min. Rear	0	20	15	20
Min Building Separation	15 [8]	15 [8]	15 [8]	15 [8]
Max. Building Height (ft)	50 [3]	35 [5]	35	50 [5]
Max. Floor Area Ratio				
Buffer Required	Yes	Yes		
Building Coverage		50%		
Yard/Setbacks Residential district adjacent (ft)				
Min Front	30	30	30	
Min Side	10	10	8	
Min. Rear	15	20% lot depth up to 30'	20% lot depth up to 30'	20% lot depth up to 30'

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Min Street Side Yard	12	12	12	15
Maximum Lot Coverage [4]				
WS II Critical Area	6%	6%	6%	6%
w/stormwater controls	24%	24%	24%	24%
WS II Balance of watershed area	12%	12%	12%	12%
w/stormwater controls	30%	30%	30%	30%
WS IV Balance of Watershed Area	24%	24%	24%	24%
w/stormwater controls	70%	70%	70%	70%

Notes

[1] Measured from the centerline of the street

[2] A side yard is not required but when provided must be at least 8 feet if the yard abuts a residential property.

[3] An additional one-foot of building setback is required for every 2 feet or part thereof in height that is granted above 50 feet, but in no case shall the building height exceed 55 feet.

[4] Maximum building/lot coverage is the total coverage for all structures on a lot. Lots are allowed an additional allowance of 30% of the building area for impervious surfaces (if the building coverage is 10,000 square feet then a lot is allowed to have 3,000 square feet of impervious surface coverage)

[5] An additional one-foot of building setback is required for every 2 feet or part thereof in height above max height.

[6] If the property is development for residential purposes property setbacks must those setbacks established for the R-8 district.[7] When abutting a residentially zoned property the front yard setback shall be thirty (30) feet.

[9] Setbacks or building separations may be increased or reduced consistent with the findings of the Fire Marshal or North Carolina Building Code.

ARTICLE 8 | Environmental Protection

- 8.1 **FLOOD DAMAGE PREVENTION ORDINANCE (FPM-O)***
See Appendix A Flood Hazard Reduction 17.1

* **Editor's note**-Ord. No. 22-2007, adopted Aug. 28, 2007, repealed the former Art. Iv; §§ 17-401-17-414 and enacted a new Art. IV as set out herein. The former Art. IV pertained to flood damage prevention and derived from the Code of 1976, §§ 12.67.1-12.67.12; Ord. No. 17-80, 8-18-80; Ord. No. 4-87, § 1, 3-2-87; Ord. No. 8-90, §§ 1-4, 3-19-90; Ord. No. 25-80, 11-17-80.

ARTICLE 9 | **Landscaping and Buffering**

9.1 **PURPOSE:**

It is generally agreed upon by Town Council that there is a link between the aesthetics of the community appearance and harmony of surrounding land uses. Different land uses should have visual barriers separating the land use so as to protect neighboring property owners' health, safety, wellbeing, and property values from incompatible land uses.

9.2 **AGREEMENT WITH OTHER CODES; TREES PLANTED BY PROPERTY OWNER:**

- A. In interpreting and applying the provisions of this article, they shall be held to be the minimum requirements for the promotion of the public safety, health, convenience, prosperity and general welfare. It is not intended by this article to interfere with or abrogate or annul any easements, covenants or other agreements between parties, provided, however, where this article imposes greater requirements for landscaping and/or buffering within the 321 Corridor District the provisions of this article shall govern.
- B. Nothing in this article shall prohibit a property owner from planting trees other than those required by this article. However, trees not authorized by this article may not count toward any screening requirements

9.3 **DEFINITIONS**

9.3.1 Screening Tree

Fast growing evergreen tree that generally stays dense and vertical in their natural growth and provides a year-round visual barrier between neighboring properties.

9.3.2 Yard Tree

A deciduous tree that shades the property and provides screening from the right-of-way and/or neighboring property.

9.3.3 Shrub

Smaller plants that may be planted closer to or under utility rights-of-way and in areas with limited sunlight or growing area.

9.4 **GENERAL REQUIREMENTS:**

All calculations are to be based using the mature tree size as found in reputable generally available printed data. At the time of planting trees and shrubs shall be planted with sufficient growth room to maintain road right of ways, utility right of ways, sight triangles and other right of ways, easements and setbacks. Under no circumstances shall trees or shrubs be planted within the Town or NCDOT road rights-of-way. Screening trees may be included in part of an approved Phase II stormwater plan. It is recommended that a variety of screening trees be mixed together to provide a more natural appearance and healthy environment for the trees.

9.4.1 Landscaping Types

The applicant is encouraged to utilize plant materials which complement the natural character of the Town of Maiden region and which are adaptable to the climatic, topographic and hydrologic characteristics of the site. In selecting species, the applicant is encouraged to utilize the Town of Maiden tree guide or similar planting recommendations produced by the North Carolina Department of Agriculture or other State agency. The following sample list is for guidance purposes only and many additional trees are permitted for landscaping, it is strongly recommended that soil tests be preformed to help select the appropriate trees for the site:

A. Screening Trees

Leland Cyprus, Murray Cypress, Japanese Cedar, Arizona Cypress, Fragrant Tea Olive (*Osmanthus Fragrans*), and Fortune's Tea Olive.

B. Yard Trees

Dog Woods, Japanese Maple, Northern Red Oak, and fruit trees (Apple, Peach, Cherry).

C. Shrubs and cultivars shall be of an evergreen variety

Boxwood, Southern Magnolia, and 'Santa Rosa'.

9.4.2 Buffer Standards

All planting required by this article shall be provided within the property lines within the area identified below as the buffer area. Buffer areas shall be provided along property lines except where buildings are built with no setback or where a parking abuts another parking lot. Buffer widths may include required building setbacks. The following are the minimum required buffers, when required, for the type of use identified in sections 9.16 - 9.19 below:

- A. Single Family residences shall have no buffer required under Article 9 except those required under Phase II Stormwater.
- B. Duplex: a minimum of five (5) feet.
- C. Apartments/Townhomes/Condominiums: a minimum of ten (10) feet
- D. Commercial/ Office/ Institutional: a minimum of ten (10) feet
- E. Industrial: a minimum of ten (10) feet.

9.4.3 Minimum Size

A. Screening Trees

At the time of planting any screening tree shall be at least two (2) feet tall.

B. Yard Trees

At the time of planting any yard tree shall be at least two (2) feet tall and have a trunk circumference of at least two (2) inches.

C. Shrubs

At the time of planting all shrubs shall be a minimum height of twelve (12) inches tall) as measured from its top to soil level.

9.4.4 Minimum Spacing

A. Screening Tree

One evergreen screening tree spaced at a minimum of ten (10) feet on center unless a greater spacing is required to ensure healthy productive growth for the species in accordance with the Town of Maiden tree guide or similar planting recommendations produced by the North Carolina Department of Agriculture, other State agency, or other reputable generally available data sources.

B. Yard Tree

One evergreen or deciduous tree shall be required for every thirty-five feet of road frontage. For the purposes of this section, fractions of thirty-five feet shall be considered in the following manner: for fractions greater than 2/3 an additional yard tree is required; for fractions less than 2/3 no additional yard tree is required. Yard trees shall be spaced as evenly as possible. Yard trees should be planted in accordance with the Town of Maiden Tree Guide or similar planting recommendations produced by the North Carolina Department of Agriculture, other State agency, or other reputable generally available data sources.

C. Shrubs

Smaller plants intended to provide a four (4) to twelve (12) foot tall screen (the plants shall be evergreen) that buffers views into and out of the site. Shrubs shall be spaced through the entire length of the buffer area.

9.5 **TREES EXPRESSLY PROHIBITED**

Trees that are highly susceptible to storm damage as listed in Town of Maiden Tree Guide are not to be permitted for use as a screening or yard tree. Trees listed below may be included on the property but may not count towards screening or yard tree credit.

9.5.1 The following is a list of trees expressly prohibited for use as screening or yard tree:

Bradford Pear, Virginia Pine, Black Locust, River Birch, Paper Birch, and Basswood

9.6 **VISIBILITY AT INTERSECTIONS**

The required sight triangle as required in Section 6.11 of this code shall be maintained within all required buffers.

9.7 **CORNER TREES**

Corner trees must be planted so at full maturity they will not obstruct the view of drivers in oncoming traffic or pedestrian movement. They may be counted in multiple buffer rows.

9.8 **PROPERTY OWNER RESPONSIBLE**

It shall be the responsibility of the property owner to replace any damaged, diseased or deceased bush within six months. It shall be the responsibility of the property owner to remove any tree located within a utility right of way.

9.9 **PROTECTION OF UTILITY LINES**

To insure that at full maturity trees and shrubs do not become a hazard to the utility lines the following regulations shall apply:

- A. Screening trees may not be planted closer than fifteen (15) feet from any road right of way or utility line when planted;
- B. Yard Trees may not be planted closer than twenty (20) feet from any road right of way or utility line when planted;
- C. Shrubs placed within an electric utility right of way shall not exceed six (6) feet in height at full maturity. The Town shall not be held responsible for damage to shrubs from utility maintenance or repair.

9.10 USE OF EXISTING TREES

The use of existing trees is encouraged to fulfill buffer requirements provided they meet setback requirements. Clustered existing trees may account for up to fifty (50) percent of the total required buffer. Existing trees located on a neighboring property may be used for screening if the neighboring property is in use for multifamily purposes and if the screen on the neighboring property meets the required buffer requirements.

9.11 APPROVED TREE SUBSTITUTION

Shrubs may be substituted for trees at the discretion of the Planning Director and the Public Works Director, provided the shrubs

- 9.11.1 Protect the visibility at intersections,
- 9.11.2 Protect utility right of ways, or
- 9.11.3 Allow for pedestrian movement. Shrubs may account for up to twenty five (25) percent of any required screening or yard trees.

9.12 ABUTTING PROPERTY AND CONCURRENT DEVELOPMENT

In the rare event that similar buildings or facility types are being built on abutting properties at the same time, the developer(s) may enter into an agreement with the Planning Department that will allow for each builder to install half of the required buffer. Both parties are required to submit to the Town a bond payment equal to one hundred and twenty five (125) percent of the estimated cost of installation of any required buffers. Once installation of both parties' buffers is completed said payment(s) shall be returned to the developer(s) in accordance with Town policy.

9.13 ABUTTING PROPERTY SAME OWNER

If a developer owns two adjoining properties and is developing one of the properties, he or she may choose to install the required buffer in compliance with the development type below at the time of the development of the first property, or the developer may choose to wait until he or she develops the adjacent property owned by the developer. If the developer chooses to wait until he or she develops the adjacent property, he or she shall enter into an agreement with the Planning Department making a bond payment equal to one hundred and twenty five (125) percent of the estimated cost of installation of required buffers. Once said buffer is installed the Town shall return the installation guaranty.

9.14 FAILURE TO COMPLY

Failure to comply shall result in the denial of or suspension of the occupancy permit for the structure.

9.15 APPROVAL

The Town Planning Director and the Public Works Director jointly, or their designee, shall be responsible for approving all buffer requirements. A sketch plan showing any existing buffer that will be retained, new plantings, distances between required plantings, building location, utilities and any other pertinent information shall be submitted to the Planning Department. Upon approval a copy letter signed by both directors shall be returned to the developer and property owner. Any deviation from the plan must be submitted in writing to the Planning Department for approval. The Planning Director and Public Works Director jointly, or their designee, shall have the authority to approve minor deviations that address unexpected site conditions (i.e. rocks, unknown underground utilities, etc.), but significant deviations must be approved as a new plan.

9.16 SINGLE FAMILY DETACHED RESIDENTIAL AND DUPLEXES

9.16.1 General:

New or existing single family home(s) abutting existing (built) single-family homes, duplexes, multifamily, commercial or industrial properties shall not be required to install buffers in conformity with this article. New and existing single family homes are encouraged to plant buffers so as to protect their own health, safety, well-being and property values from surrounding uses.

9.16.2 Duplex

A. Existing Duplex(s):

Nothing in this article shall require an existing duplex(s) to upgrade its buffer requirements to conform to this section unless the use is damaged. Any existing duplex that is destroyed or expanded beyond fifty five (55) percent of the current structure shall conform to the new buffer requirements.

B. New Duplex(s)

All new duplex(s) shall conform to the following buffer requirements:

1. Side and Rear

- (a) For property abutting a lot zoned or allowing single-family residential uses one screening tree per spacing requirements provided in 9.4 shall be required.
- (b) For property abutting an existing duplex or multi-family structure, one yard or screening tree shall be provided per the spacing requirements of section 9.4. If a buffer already exists, then no additional buffering is required. The use of existing trees per section 9.10 is allowed.
- (c) For property abutting lots or zones allowing commercial or industrial uses, screening trees shall be provided per section 9.4. If a buffer already exists then no additional buffering is required. The use of existing trees per section 9.10 is allowed.

2. Front yard

One approved yard tree per spacing requirements of section 9.4

3. Side with street

One approved yard tree per spacing requirements of section 9.4

9.17 APARTMENTS/CONDOS/TOWNHOMES

9.17.1 Existing Apartments/Condos/Townhomes

Nothing in this article shall require existing apartments/condominiums/townhomes to meet the buffer requirements of this section unless the use is destroyed beyond fifty (50) percent of its assessed value or expanded by twenty five (25) percent. All proposed or new apartments/condominiums/townhomes shall conform to the following requirements.

1. Side and Rear
 - (a) For property abutting a lot zoned or allowing single-family or duplex residential uses one screening tree shall be required per the spacing requirements in section 9.4.
 - (b) For property abutting existing apartment/townhome/condominiums one yard or screening tree shall be required per the spacing requirements of section 9.4. If a buffer already exists, then no additional buffering is required. The use of existing trees per section 9.10 is allowed.
 - (c) For property abutting lots or zones allowing commercial or industrial uses, screening trees shall be provided per section 9.4. If a buffer already exists then no additional buffering is required. The use of existing trees per section 9.10 is allowed.
2. Front yard
One approved yard tree per spacing requirements of section 9.4
3. Side with street
One approved yard tree per spacing requirements of section 9.4

9.18 COMMERCIAL, OFFICE AND INSTITUTIONAL

9.18.1 Existing commercial and office institutional development:

Nothing in this article shall require existing commercial, office or institutional uses to meet the buffer requirements of this section unless the use is destroyed or expanded beyond fifty-five (55) percent. All proposed or new commercial, office, or institutional uses shall conform to the following requirements.

1. Side and Rear
 - (a) For property abutting a lot zoned or allowing residential uses one screening tree shall be required per the spacing requirements in section 9.4.
 - (b) For property abutting existing apartment/townhome/condominium uses one yard or screening tree shall be required per the spacing requirements of section 9.4. If a buffer already exists, then no additional buffering is required. The use of existing trees per section 9.10 is allowed.
 - (c) For property abutting lots or zones allowing commercial or industrial uses, screening trees shall be provided per section 9.4. If a buffer already exists then no additional buffering is required. The use of existing trees per section 9.10 is allowed.

2. Front yard
One approved yard tree per spacing requirements of section 9.4
3. Side with street
One approved yard tree per spacing requirements of section 9.4

9.19 INDUSTRIAL

9.19.1 Existing industrial development:

Nothing in this article shall require existing industrial uses to meet the buffer requirements of this section unless the use is destroyed or expanded beyond fifty-five (55) percent. All proposed or new industrial uses shall conform to the following requirements.

1. Side and Rear
 - (a) For property abutting a lot zoned or allowing residential uses a staggered double row of screening trees shall be required. Each screen tree row shall be ten (10) feet on center so that each tree shall be no more than five (5) feet from center. Clustering of no more than ten (10) percent is permitted.
 - (b) For property abutting existing apartment/townhome/condominium uses one yard or screening tree shall be required per the spacing requirements of section 9.4. If a buffer already exists, then no additional buffering is required.
 - (c) For property abutting lots or zones allowing commercial or industrial uses, screening trees shall be provided per section 9.4. If a buffer already exists then no additional buffering is required.
2. Front yard
One approved yard tree per spacing requirements of section 9.4
3. Side with street
One approved yard tree per spacing requirements of section 9.4

9.19.2 Exceptions for industrial developments

For industrial developments of at least three (3) acres, screening trees may be a minimum of twelve (12) inches in height at the time of planting may be used and yard trees may have a circumference of one (1) inch.

ARTICLE 10| **Off-street Parking and Loading**

10.1 **GENERAL OFF-STREET AND STORAGE.**

The purpose of the off-street parking and loading regulations of this article is to ensure that the off-street parking, loading and vehicular access needs of land uses will be met without adversely affecting traffic patterns, vehicular and pedestrian safety, or the surrounding neighborhoods. In recognition of the fact that different transportation access-based solutions will be appropriate in different areas of the town and for different types of development, the standards set out in this article allow flexibility in dealing with vehicle parking, loading and access issues.

10.1.1 Applicability

A. New Development

Unless otherwise expressly stated in this section, the parking, loading and access standards shall apply to all new buildings constructed and all new uses established in all zoning districts.

B. Expansions and Increases in Intensity

Unless otherwise expressly stated in this section, the parking, loading and access standards of this section shall apply when an existing structure or use is expanded or enlarged, through the addition of dwelling units, floor area, seating capacity, employees or other units of measurement used for establishing off-street parking and loading requirements. Additional off-street parking and loading spaces shall be required only to serve the enlarged or expanded area, not the (pre)existing building or use. The following shall be exempt from the requirements of this subsection: (i) existing parcels located in the C-1 zoning district with structures currently used as or proposed, and (ii) commercial uses that are less than half an acre in size.

C. Change of Occupancy

Unless otherwise expressly stated in this section, off-street parking and loading facilities shall be provided for any change of occupancy, use or manner of operation that would result in a requirement for more parking or loading spaces than the former use. Additional parking or loading spaces shall be required only in proportion to the extent of the change.

10.1.2 Certificate of minimum parking requirements.

Each application for a zoning permit or certificate of occupancy submitted to the Town Planner shall include information as to the location and dimensions of off-street parking and loading space and means of ingress and egress to such space. This information shall be in sufficient detail to enable the zoning enforcement officer to determine whether the requirements of this article are met.

10.1.3 Shared Parking

Shared parking spaces may occur where two or more uses on the same or separate sites are able to share the same parking spaces because their parking demands occur at

different times. Shared use of required nonresidential parking spaces is allowed if the following documentation is submitted in writing to the Town Planner as part of a building or zoning permit application or land use review:

- A. The names and addresses of the uses and of the owners or tenants that are sharing the parking.
- B. The location and number of parking spaces that are being shared.
- C. An analysis showing that the peak parking times of the uses occur at different times and that the parking area will be large enough for the anticipated demands of both uses; and
- D. A legal instrument such as an easement or deed restriction that guarantees access to the parking for both uses. Any such legal instrument must be recorded in the Register of Deeds office within thirty (30) days after the shared parking has been approved.

10.1.4 Remote parking space.

If the off-street parking space required by this section cannot reasonably be provided on the same lot on which the principal use is located, such space may be provided on any land within five hundred (500) feet of the main entrance to such principal use, provided such land is in the same ownership as the principal use. Such land shall be used for no other purpose so long as no other adequate provision for parking space meeting the requirements of this article has been made for the principal use.

10.1.5 Requirements for parking lots in residential districts.

Where parking lots for more than five automobiles are permitted or required in residential districts, the following provisions shall be complied with:

- A. The lot may be used only for parking in relation to the principal use of the lot and not for any type of loading sales, repair work, dismantling or servicing.
- B. All entrances, exits, barricades at sidewalks and drainage works shall be approved by the Town Planner prior to construction.
- C. Only one (1) entrance and one (1) exit sign not larger than four (4) square feet in area prescribing parking regulations may be erected at each entrance or exit. No other signs shall be permitted.

10.1.6 Minimum parking requirements. The required number of off-street parking spaces specified below for each use shall be provided as in Schedule A. Uses not listed in Schedule A shall not be required to provide off-street parking.

A. Schedule A

Use Categories	Specific Uses	Minimum Parking	Maximum Parking
Residential Categories			
Group Living		1 per 4 residents	None
Residential Household Living		1 per unit plus 1 per bedroom after	None

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		3 bedrooms, 1 per ADU	
Commercial Categories			
Adult Business		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Commercial Outdoor Recreation		20 per acre of site	30 per acre of site
Commercial Parking		Not applicable	None
Drive-through Facility		Not applicable	None
Major Event Entertainment		1 per 8 seats or per Schedule B	1 per 5 seats or per Schedule B
Office	General Office	1 per 500 sq. ft. of floor area	1 per 300 sq. ft. of floor area
	Medical/ Dental Office	1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Quick Vehicle Servicing		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Retail Sales and Service	Retail, Personal Service, Repair-oriented	1 per 330 sq. ft. of floor area	1 per 200 sq. ft. of floor area
	Restaurants and Bars	1 per 250 sq. ft. of floor area	1 per 60 sq. ft. of floor area
	Health Clubs, Gyms, Lodges, Meeting Rooms, and similar. Continuous entertainment such as arcades and bowling alleys.	1 per 330 sq. ft. of floor area	1 per 180 sq. ft. of floor area
	Temporary Lodging	1 per rentable room; for associated uses such as restaurants, see above	1.5 per rentable room; for associated uses such as restaurants, see above
	Theaters	1 per 4 seats or 1 per 6 feet of bench area	1 per 2.7 seats or 1 per 4 feet of bench area
Mini-storage Facilities		Same as Warehouse and Freight Movement	Same as Warehouse and Freight Movement

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Vehicle Repair		1 per 750 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Industrial Categories			
Industrial Service, Railroad Yards, and Wholesale Sales		1 per 1,000 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Manufacturing and Production		1 per 1,000 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Warehouse and Freight Movement		1 per 1,000 sq. ft. of floor area for the first 3,000 sq. ft. of floor area and then 1 per 3,500 sq. ft. of floor area thereafter	1 per 200 sq. ft. of floor area
Waste-related, High Impact Use		Per Schedule B	Per Schedule B
Institutional Categories			
Basic Utilities		None	None
Colleges		1 per 600 sq. ft. of floor area exclusive of dormitories, plus 1 per 4 dorm rooms	1 per 200 sq. ft. of floor area exclusive of dormitories, plus 1 per 2.5 dorm rooms
Community Service		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Daycare		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Medical Centers		1 per 500 sq. ft. of floor area	1 per 200 sq. ft. of floor area
Parks and Open Areas		Per Schedule B for active areas	Per Schedule B for active areas
Religious Institutions		1 per 100 sq. ft. of main assembly area	1 per 60 sq. ft. of main assembly area
Schools	Grade, Elementary, Junior High	1 per classroom	none
	High School	7 per classroom	None
Other Categories			
Agriculture		Per Schedule B	Per Schedule B
Aviation and Surface Passenger Terminals		Per Schedule B	

Detention Facilities		Per Schedule B	Per Schedule B
Essential Public Facilities		Per Schedule B	Per Schedule B
Mining		Per Schedule B	Per Schedule B
Rail Lines and Utility Corridors		Per Schedule B	Per Schedule B
Wireless Communication Facilities		Per Schedule B	Per Schedule B

(Ord. of 4-11-70, Art. VII, § 72; Code 1976, § 12.35)

B. Schedule B

Schedule B uses have widely varying parking demands, making it difficult to specify a single requirement. The off-street parking requirement for such uses shall be established by the Planning Director based on estimates of parking demand, which may include recommendations of the Institute of Traffic Engineers (ITE), data collected from uses that are the same or comparable to the proposed use, or other relevant information. The Planning Director may require that the applicant submit a parking study that provides analysis and justification for the proposed number of spaces to be provided. Parking studies shall document the source of data used to develop the recommendations. The Planning Director shall review the submitted study along with any other traffic engineering and planning data that are appropriate and establish the off-street parking or loading requirements for the use proposed.

10.2 OFF-STREET LOADING AND UNLOADING SPACE.

Every building or structure used for business, trade or industry hereafter erected shall provide space as indicated herein for the loading and unloading of vehicles off the street or public alley. Such space shall have access to an alley or, if there is no alley, to a street. For the purposes of this section an off-street loading space shall have a minimum dimension of twelve (12) feet by forty (40) feet and an overhead clearance of fourteen (14) feet in height above the alley or street grade.

- 10.2.1 Retail, commercial, office and institutional, and similar use operations: One (1) loading space for each twenty thousand (20,000) square feet of non-residential gross floor area or fraction thereof.
- 10.2.2 Wholesale and industrial operations: One (1) space for each fifty thousand (50,000) square feet of gross floor area or fraction thereof.

(Ord. of 4-11-70, Art. VII, §73; Code 1976, § 1236)

ARTICLE 11| **Sign Standards**

11.1 SIGN REGULATIONS.

11.1.1 Purpose. The purpose of this section is:

- A. To allow visually attractive signage that protects and enhances the appearance of the town;
- B. To provide for the safety of vehicular traffic and the general public;
- C. To protect property values and promote economic development through effective, non-distracting forms of advertisement and communication.

11.1.2 Administration.

No sign shall be constructed, enlarged, moved, replaced or altered until a zoning permit has been issued by the zoning enforcement officer, except for those signs specifically permitted in zoning districts without a zoning permit. All signs shall be constructed and installed in accordance with the applicable provisions of the State Building Code and shall obtain applicable permits prior to construction. The building inspector or zoning enforcement officer shall order the immediate removal of any signs or supporting structures that are not constructed or maintained safely in good repair in accordance with the provisions of this article or in accordance with the applicable provisions of the state building code.

Signs with a zoning permit that existed on or before the adoption of this ordinance shall be allowed to remain provided they are in compliance with 1.1.4.

Unauthorized signs posted in the public right-of-way or on public property may be removed by the zoning enforcement officer or other designated Town Staff without notice. Signs removed by town staff shall be collected and stored for a minimum of ten (10) business days to allow the owner to claim their sign(s). Any individual wishing to claim his or her sign(s) must first accept a copy of or acknowledge they have an up to date copy of the Town Sign Ordinance. Signs not retrieved after ten (10) business days may be disposed of by the Town. If removed signs contain a contact phone number, mailing address or email address, the Town staff shall attempt to notify the owner of the signs prior to disposal, but a failure to actually contact the owner prior to disposal of the signs shall not be deemed a failure to comply with this ordinance.

11.1.3 Definitions.

Canopy Sign: A sign painted or otherwise affixed directly to a canopy or awning.

Digital Sign: see Light Emitting Diode (LED) sign.

Flashing Sign: A strobe light, LED light or other light that turns on and off quickly to attract attention. Flashing signs include stand-alone signs and lights that are parts of larger signs. Flashing signs also include blinking and/or pulsating lights. A flash on an LED sign is defined as a light or message that blinks or pulsates on or off with a

change faster than every two (2) seconds. A digital sign with a scrolling message shall not be considered a “flashing sign” solely because of the scrolling message.

Ground Sign: A sign attached directly to the ground by means of one (1) or more upright pillars, braces, posts, poles or foundations placed directly upon or in the ground and not attached to any part of the building

Home Occupation Sign: A sign used to identify the location of a home occupation, day care or other business permitted in a residential zoning district.

Hybrid sign: A sign containing multiple elements including LED panel(s) or moveable text panel(s). Hybrid signs shall have a maximum permitted size of that allowed for the sign type it is contained in. Examples of a hybrid sign are gas station pole signs displaying prices, restaurants signs showing specials, etc.

Incidental Signs: Signs that are not a part of the main business and include general information. Examples of this type of sign include Open, Closed, hours of operation, payment types accepted, fuel pump identifiers, signs displaying acceptance of insurance, warning signs, and other small signs in general agreement with this definition. Incidental signs shall not advertise any display of stock, and they shall not exceed a maximum of four (4) square feet in size and three (3) feet in height.

Island: for the purposes of this article an island is defined as a median with grass, bushes or other vegetation or may be paved with concrete, asphalt or other material separating two or more travel or turn lanes within a public or private road right-of-way. Examples of islands include, but are not limited, the “triangle” located in the middle of the Forest Dr., Spring Hill Ln., Oak Ridge Farms Circle, and the intersections of Island Ford, E Maiden Rd. and Providence Mill Rd.

Light Emitting Diode (LED) Sign: A sign that uses electricity to display changeable text messages. Such signs shall not flash messages as defined by this article to avoid distracting drivers and reduce confusion by the general public of an approaching emergency vehicle.

Marquee sign: A sign that extends out from a building with changeable text such as is commonly used at movie theaters or concert halls.

Obscene*: For the purposes of this article, “obscene” shall be defined by G.S. § 14-190.1(b) and (c), which define a material to be “obscene” if:

- (1) The material depicts or describes in a patently offensive way sexual conduct; and
- (2) The average person applying contemporary community standards relating to the depiction or description of sexual matters would find that the material taken as a whole appeals to the prurient interest in sex; and
- (3) The material lacks serious literary, artistic, political, or scientific value; and

* State law reference - *See also*, G.S. Art. 19.

(4) The material as used is not protected or privileged under the Constitution of the United States or the Constitution of North Carolina.

“Sexual conduct” means:

- (1) Vaginal, anal, or oral intercourse, whether actual or simulated, normal or perverted; or
- (2) Masturbation, excretory functions, or lewd exhibition of uncovered genitals; or
- (3) An act or condition that depicts torture, physical restraint by being fettered or bound, or flagellation of or by a nude person or a person clad in undergarments or in revealing or bizarre costume.

Pole Sign: A sign placed on one or more supports (poles) to raise the sign into the air. For the purposes of this chapter a pole sign is considered a ground sign.

Political Sign: A sign advocating a political position or urging support for a candidate in an election.

Projection Sign: A hanging or suspended shingle, blade or any other type of sign that is mounted to and projects perpendicularly from a building wall or forms a triangle with an angle of between 30 degrees and 65 degrees from a building wall.

Real Estate Directional Sign: An off-premises sign designed to direct traffic to a piece of real estate that is for sale, rent or lease.

Real Estate Sign: A sign placed on a piece(s) of property for the purpose of advertising property for sale, rent or lease. Pursuant to subsection 11.1.11(E), in nonresidential zones one (1) real estate sign per unit and per street frontage is permitted, but no more than four (4) real estate signs total are permitted for each building lot. Each real estate sign shall be a maximum of thirty-two (32) square feet in nonresidential zoning districts. The sign(s) shall not be illuminated and shall not be placed closer than five (5) feet from the roadway or sidewalk or placed between the sidewalk and roadway. Pursuant to subsection 11.1.12(A), in residential zoning districts one (1) real estate sign per dwelling unit is permitted. Individual signs shall not exceed six (6) square feet in area. No such sign shall be illuminated and shall not be placed closer than five (5) feet from the roadway or sidewalk or placed between the sidewalk and roadway.

Roadway: The paved or graveled area of a road where a vehicle is expected to travel.

Roof Sign: A sign which is attached to or painted on the roof of a building or structure.

Sandwich Board: A sign designed to look like an inverted “V” that is small enough to be easily picked up and moved. Small vertical signs with portable bases shall be considered sandwich board(s) provided their intent and use is the same as an inverted “V” sandwich board.

Sexually Explicit: See “Obscene.”

Sidewalk: A paved or other hard surface walkway used for pedestrian travel next to or near a roadway. Walking trails and other pedestrian only walkways shall for the purposes of this article be considered a sidewalk.

Sign: Any structure, object, device or part thereof which is used to advertise, identify, display, direct or attract attention to an object, person, institution, organization, business, product, service or location by any means, including words, letters, figures, designs, symbols, fixtures, colors, illumination, or projected images. Signs do not include the flag or emblem of any nation, state, city or any fraternal, religious or civic organizations; works of art which in no way identify an object, person, institution, organization, business, product, service, event or location by any means; or scoreboards located on athletic fields.

Subdivision/Group Development Sign: A sign used to identify the entrance to a subdivision, planned unit development, apartment or townhouse complex, manufactured home park, or other group development.

Temporary Sign: A sign that is not permanently installed in the ground or affixed to any structure or building and designed to be mobile or movable. This includes, but is not limited to, portable signs, real estate signs, real estate directional signs, sandwich boards, banners, political signs, and signs on parked vehicles.

Wall Sign: A sign attached or painted directly on the building wall, generally on the facade, with the exposed display surface of the sign in a plane parallel to the wall.

Window Sign: A sign directly attached to windows or doors. Window signs do not include signs installed to comply with the NC State Building Code or other statutes, regulations or ordinances.

Wire-type signs: A temporary or permanent ground sign typically supported by one or two narrow metal or plastic wire stands. Such signs shall not be greater than four (4) feet tall in total height, as measured from the ground to top of the sign, and shall not have a display area greater than four (4) feet square. Wire-type signs used to advertise a home occupation shall permitted in accordance with subsection 11.1.10(J) and any other ordinance section applicable to home occupation signs.

11.1.4 Nonconforming signs.

Any sign existing on the effective date of this article which does not conform to the requirements set forth in this ordinance will be allowed to remain if in good repair but shall not be changed to another nonconforming sign. Notwithstanding the foregoing sentence, the face of a nonconforming sign may be replaced. If a nonconforming sign is damaged by accident or by natural cause, it may be restored to its original condition within one hundred and eighty (180) days of the date of its damage.

11.1.5 Removal of deteriorated signs.

No sign may be allowed to deteriorate to such a point that it constitutes a public nuisance pursuant to Chapter 14 of the Town of Maiden Code of Ordinances.

11.1.6 Measurement of sign area.

The area of a sign shall be measured to include the entire sign, including its display area, frame, border, incidental decoration and foundation of any kind except a pole. Where a sign consists of letters, figures or other devices individually mounted to a building wall, the sign area shall be the smallest circle or rectangle that can be inscribed around the entire sign. Only one (1) side of a double-faced sign shall be included in calculating the display area.

11.1.7 Sign location.

- A. No sign requiring a permit shall be placed closer than ten (10) feet from a street right-of-way line or five (5) feet from an interior lot line, except as expressly allowed by this section or as required by the North Carolina Department of Transportation. Signs that do not require a permit may be located along public street or roadway. Wall signs are not permitted unless they located on a building wall that is parallel to a road right of way. None of the foregoing types of signs are permitted on town property.
- B. The sign owner shall be responsible for removing or moving signs not requiring a permit and located within a public right-of-way during road, utility and sidewalk construction or snow removal.
- C. No sign shall be placed between a road, including a private right-of-way, and a sidewalk. Any sign placed in this location within a public right-of-way may be removed by Town staff in accordance with section 11.1.2 of this article.
- D. Emergency and utility line repair, expansion and removal: The Town of Maiden may, without notice, remove all real estate directional, real estate, wire-type, temporary and other signs placed within public rights-of-way and/or town utility easements during emergencies, repair, expansion or construction of utility lines. A sign owner shall not hold the Town of Maiden or its employees liable for any damage caused by the removal or damage to a sign caused by utility work or utility failure.
- E. Setback exceptions: Real estate directional, real estate and wire-type temporary signs may not be placed closer than five (5) feet from public utilities (underground electrical service, stormwater drains, fire hydrants, transformers, junction boxes, man holes, water valves and other infrastructure). Such signs shall not obstruct the visibility of the traveling public and shall not be placed between the road and sidewalk. A sign owner who places a sign closer than ten (10) feet of a public right-of-way may not hold the town liable for any damage to said sign. Any liability loss or claim of any kind arising from placement or installation of a temporary sign shall be the sole responsibility of the sign owner or its agents.

11.1.8 Additional setbacks

Additional setbacks may be required so as not to obstruct visibility at a street or driveway, in accordance with section 7.13 (Visibility at intersections).

11.1.9 Illumination.

Where permitted, illuminated signs may be either directly lit from inside the sign or may have an indirect light source that shines on to the surface of the sign. Any illuminated sign shall be so designed or placed so as to prevent direct or reflected light from being cast upon adjacent properties, the public right-of-way or the night sky. Flashing, blinking or pulsating signs shall not be permitted except as allowed by this article and must be part of a digital or LED (light emitting diode) sign.

11.1.10 Sign types

A. Ground sign.

Ground signs must conform to the following provisions:

1. The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding one hundred (100) square feet.
2. No ground sign shall be more than twenty (20) feet tall, measured from the ground to the top of the frame.
3. The sign shall not be placed closer than ten (10) feet from the right-of-way line.
4. Only one (1) ground sign may be erected per building, regardless of the number of tenants, except as provided for in subsection 11.1.11(F) and 11.1.12 A.
5. The sign may be illuminated.
6. A pole sign is considered a ground sign. The maximum size of a pole sign is one hundred (100) square feet in all zoning districts except the C1 district where such signs shall be limited to fifty (50) square feet.

B. Wall sign.

Wall signs must conform to the following provisions:

1. The maximum area for the sign is one (1) square foot per lineal foot of building frontage. The maximum area for a wall sign in the C-1 zoning district is two (2) square feet per lineal foot of building frontage.
2. One (1) or more wall signs may be used on a building, as long as the total area of the signs does not exceed the maximum permitted.
3. On multiple-occupancy buildings, each occupant with a separate outside entrance serving the public may have a separate wall sign.
4. No part of a wall sign shall extend more than eighteen (18) inches from the wall.
5. The sign may be illuminated.

C. Projection sign.

Projection signs must conform to the following provisions:

1. The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding forty (40) square feet.
2. The sign shall not project more than four (4) feet from the building.

3. The sign shall not extend higher than three (3) feet above the roof of the building.
4. The sign shall have nine (9) or more feet of vertical clearance from the ground or sidewalk level.
5. The sign may be illuminated.
6. Projecting signs may be allowed when suspended from a canopy, provided the sign is at least eight (8) feet above the sidewalk, otherwise, signs must not project more than eighteen (18) inches from such walks.

D. Roof sign.

Roof signs must conform to the following provisions:

1. The maximum area for the sign is one (1) square foot per lineal foot of building frontage not exceeding forty (40) square feet.
2. The sign shall be placed a minimum of five (5) feet from the edge of the roof.
3. The sign shall not exceed six (6) feet in height.
4. Only one (1) roof sign shall be permitted per business.
5. The sign may be illuminated.

E. Marquee sign.

Marquee signs shall conform to the following provisions:

1. The minimum width for a sign is twenty (20) feet.
2. The maximum width is the maximum width of the building to which the sign is attached.
3. The setback for a marquee sign shall be the same for the primary building to which the sign is attached, except that within the C1 zoning district where the minimum setback shall be one (1) foot from the road right of way or public utility easements or equipment. Notwithstanding the foregoing sentence, required setbacks from electrical easements or equipment may be greater in order to protect the public health and safety. The town staff is authorized to require such greater setback as reasonably necessary to protect the public safety.
4. The sign shall have nine (9) or more feet of vertical clearance from the ground or sidewalk level.
5. The overall design of a marquee shall be in harmony with surrounding land uses.
6. A marquee sign requires conditional use permit.

F. Canopy sign.

Canopy signs shall conform to the following provisions:

1. The signage area shall not exceed twenty-five (25) square feet.
2. The sign shall identify only the name of the business and logo

3. The sign may be illuminated.

G. Window sign.

Window signs shall conform to the follow provisions:

1. A business may use one (1) or more window signs but the total sign area shall not exceed twenty-five (25) percent of the glass area.
2. The sign may be illuminated.

H. Off premises sign.

Off-premises signs shall conform to the following requirements:

1. Off premises signs shall not be permitted in the town, except for temporary signs and directional signs identifying the location of a church or other religious institution, civic organization, fraternal organization or other noncommercial operation. Off-premises directional signs shall be no larger than four (4) square feet in size. An organization may have no more than two (2) off-premises directional signs.
2. Temporary signs shall be governed by section 11.1.10(H), but other off-premises signs shall not exceed an area of four (4) square feet and, may not be illuminated, and be must be located outside of road rights-of-way.
3. Notwithstanding the foregoing, any billboard lawfully erected and currently permitted by the North Carolina Department of Transportation, shall be entitled to remain so long as it complies with the provisions of this ordinance and, if applicable, the North Carolina Outdoor Advertising Control Act.

I. Subdivision/Group development sign.

Subdivision/Group development signs shall conform to the following requirements:

1. The area of the face of a group development sign shall not exceed thirty-six (36) square feet but may be mounted on a larger masonry wall.
2. The sign may be illuminated.

J. Home occupation sign.

Home occupation signs must conform to the following provisions:

1. The maximum area for the sign shall not exceed ten (10) square feet.
2. The maximum height for the sign shall not exceed three (3) feet.
3. The sign may be a ground sign or wall mounted.
4. The sign must be located ten (10) feet outside of any road right of way.
5. The sign may not be illuminated.

11.1.11 Number and type of permitted signs in nonresidential zoning districts.

- A. A single-occupancy building in the C-1, C-2, O-I, or M-1 zoning district is permitted to choose a total of three (3) signs from the following list: ground, wall, projection, canopy, window, roof or temporary. The selection of more than one (1)

sign of each type is not permitted. A temporary sign may be replaced with a permanent sign. This subsection does not apply to temporary signs intended to advertise a time-limited event, such as a sale.

- B. Each business or entity in a multiple-occupancy building in the C-1, C-2, O-I or M-1 zoning district is permitted to choose a total of three (3) signs from the following list: ground (1 per building), wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted. A temporary sign may be replaced with a permanent sign. This subsection does not apply to temporary signs intended to advertise a time-limited event, such as a sale.
- C. In addition to the number of signs permitted in subsections (1) and (2) above, a building in the C-1, C-2, O-I or M-1 zoning district situated on a corner lot or a lot bounded by more than one street shall be permitted to choose one (1) additional sign per building front from the following list: ground, wall, projection, canopy, window, roof or temporary, provided that the additional sign area does not exceed the sign area permitted for the building front. Additional sign area shall be used specifically for the side or rear of the building and may be illuminated. A temporary sign may be replaced with a permanent sign. This subsection does not apply to temporary signs intended to advertise a limited-time event, such as a sale.
- D. LED panel(s) and or moveable text panel(s) are limited to fifty (50) square feet. Only one sign having LED panels and/or moveable text is permitted per parcel. In the case of multiple tenant buildings the fifty (50) square feet of allowed LED or moveable text panel(s) may be shared provided the combined total area of the panel(s) does not exceed fifty (50) square feet.
- E. One (1) real estate sign per unit and per street frontage is permitted, but no more than four (4) real estate signs total are permitted for each building lot. Each real estate sign shall be a maximum of thirty-two (32) square feet in nonresidential zoning districts. The sign(s) shall not be illuminated or placed between the sidewalk and roadway.

11.1.12 Number and types of permitted signs in residential zoning districts.

- A. One (1) real estate sign per dwelling unit is permitted. Individual signs shall not exceed six (6) square feet in area. No such sign shall be illuminated and shall not be placed closer than five (5) feet from the roadway or sidewalk or placed between the sidewalk and roadway.
- B. Any church or school located in a residential zoning district is permitted to choose three (3) signs from the following list: ground, wall, projection, canopy, window, roof or temporary. The selection of more than one (1) sign of each type is not permitted.
- C. Any business located in a residential zoning district is permitted to have one (1) home occupation sign.
- D. A subdivision or group development is permitted two (2) subdivision/group development signs per entrance. Subdivision or group development signs shall be a minimum of 800 feet apart if located on the same street.

11.1.13 Signs in the 321 corridor.

Signs in the 321-ED(I) or 321-ED(MX) zoning districts shall follow the provisions in section Sec 17-709(h)

11.1.14 Signs permitted in all zoning districts.

The following signs are permitted in all zoning districts without a zoning permit, provided they are kept in good condition, do not obstruct the visibility of the traveling public, are not located in the public right-of-way and comply with the provisions below:

- A. Any sign erected by a government agency to convey information about a public facility or service or to regulate, control or direct vehicular or pedestrian traffic. Such signs may be illuminated, flashing or moving as necessary for public safety.
- B. Signs which warn of safety hazards. Such signs may be illuminated.
- C. Other permanent signs not otherwise provided for in this section and which do not exceed a display area of four (4) square feet. Such signs shall not be illuminated. Political signs shall not be subject to this size limitation, but they must meet the setback requirements of this ordinance. For temporary signs, see section 11.1.14(F), below.
- D. Construction site identification signs on active construction sites. The sign(s) shall be a maximum of four (4) square feet in size in residential zoning districts and thirty-two (32) square feet in nonresidential zoning districts. The sign(s) shall not be illuminated and shall be removed within thirty (30) days of the completion of the project.
- E. Incidental signs not exceeding four (4) square feet in size or three (3) feet in height if located closer than five (5) feet from the right-of-way line. The sign(s) may be illuminated.
- F. Temporary signs.

Temporary signs shall conform to the following requirements:

- 1. Real estate and real estate directional signs may be placed on property for as long as a property is for sale, rent or lease. All real estate signs and real estate directional signs pertaining to a property must be removed within forty-eight (48) hours of the selling, rental or leasing of the property. Sections 11.1.11(E) and 11.1.12(A) impose additional restrictions on real estate signs.
- 2. Political signs may be placed on property longer than ninety (90) days, but if they pertain to a particular election, they must be removed in accordance with subsection 11.1.14(F)(6). Political signs that express a general idea or opinion that is not connected to a specific election need not be removed and may be maintained as a permanent sign in compliance with subsection 11.1.14(G).
- 3. A sandwich board sign may be placed on a sidewalk in front of a business indefinitely. However, a sandwich board signs may only be located on the sidewalk during the hours of operation of the business with which the sign is associated. A sandwich board sign must be stored inside the business when the business is closed.

4. Political signs pertaining an election (i.e. signs that support a certain candidate, political party or issue being voted on in the up-coming election) shall be removed within forty-eight (48) hours after the election has concluded. Other temporary signs advertising an event shall be removed within forty-eight (48) hours after the termination of the advertised event. Property owners shall be responsible for the removal of obsolete temporary signs.
 5. Temporary sandwich board sign may be placed on the sidewalk; however, any person erecting such a sign shall indemnify and hold harmless the town and its employees from any claims arising from the presence of the sign in the right-of-way. Sandwich board signs placed on a public sidewalk or other public walkway shall not block access or otherwise reduced the accessible to area to less than required under the Americans with Disabilities Act (ADA).
 6. Temporary signs may not be placed on or within five (5) feet of public utilities (underground electrical service, stormwater drains, fire hydrants, transformers, junction boxes, man holes, water valves and other infrastructure). Such signs shall not obstruct the visibility of the traveling public and shall not be placed between the road and sidewalk. A sign owner who places a sign closer than ten (10) feet to a public right-of-way may not hold the town liable any damage to said sign. Any liability loss or claim of any kind arising from placement or installation of a temporary sign shall be the sole responsibility of the sign owner or its agents.
 7. Temporary signs may not be placed between a roadway and sidewalk where a sidewalk is present.
 8. Temporary signs may not be illuminated.
 9. Any temporary sign not meeting the above requirements may be immediately removed by the Town staff in compliance with section 11.1.2 of this article.
 10. Streamers, pennants, balloons and similar devices. Such devices shall not be illuminated.
 11. Yard sale signs may not be put up more than forty eight (48) hours before a yard sale and must be removed no later than forty eight (48) hours after said sale is completed. Yard sale signs may not be placed on utility poles or Town owned property.
- G. Signs Expressing Noncommercial Speech Protected by the First Amendment. A permanent sign of any size intended to express an idea that is protected as noncommercial speech under the First Amendment of the United States Constitution may be erected on private property, provided that the sign meets the setback requirements of section 11.1.10 for the applicable sign type. A temporary sign of any size intended to express an idea that is protected as noncommercial speech under the First Amendment of the United States Constitution may be erected on private property, provided that the sign meets the setback requirements of section 11.1.14(F). Permanent and temporary political signs must also meet the requirements of subsection 11.1.14(F)(6).

11.1.15 Signs prohibited in all districts.

- A. The following signs shall be prohibited in all districts and may be removed without notice by Town staff:
1. Signs or other devices that resembles traffic signals, traffic signs, emergency vehicle flashing lights, or which are likely to be misconstrued by the traveling public as being an official governmental sign or emergency warning.
 2. Flashing signs.
 3. Signs located on Town-owned property, with the exception of political signs placed near polling sites, which are permitted in accordance with this ordinance and any other applicable statutes and regulations. Political signs shall not be located on public property, except at polling places on the day of the election or in any right-of-way five (5) feet from roadway or sidewalk.
 4. Signs placed on utility poles (power, telephone, fiber optic, etc), transformers, traffic control boxes and other utility/infrastructure equipment.
 5. All other signs not expressly permitted by this article.
- B. Obscene text, messages and/or images are prohibited and may be removed after the Town Council determines that the text, messages and/or images are obscene by clear and convincing evidence. The hearing required by this subsection shall be held in the same manner as hearings for alleged public nuisances pursuant to chapter 14 of the Maiden Code of Ordinances.
- (Ord. of 4-11-70, Art. VII, § 71; Code 1976, § 12-34; Ord. No. 15-90, 5-7-90; Ord. No. 3-94, 4-18-94; Ord. No. 16-94, 8-15-94; Ord. No. 5-95, 2-6-95; Ord. No. 16-96, 7-22-96; Ord. No. 31-2003, 11-3-03; Ord. No. 4-2005, 2-21-05; Ord. No. 1-2007,2-12-07)

ARTICLE 12| Infrastructure and Public Improvements

12.1 IMPROVEMENT REQUIREMENTS

Reserved

12.2 INGRESS AND EGRESS

Reserved

12.3 STREETS

Reserved

12.4 STORMWATER MANAGEMENT

Reserved

12.5 OTHER UTILITIES

Reserved

ARTICLE 13| **Subdivision Requirements***

13.1 **GENERALLY**

13.1.1 Definitions.

For the purposes of this article, the following words and phrases shall have the meanings respectively ascribed to them by this section:

<i>Building setback line</i>	A line extending through a lot which is parallel to a property line and between which and such property line no building shall be erected.
<i>Corner lot</i>	A lot which abuts the right-of-way of two (2) streets at their intersection.
<i>Crosswalk</i>	A public pedestrian right-of-way which cuts across a block to facilitate pedestrian access to adjacent streets and properties.
<i>Easement</i>	A grant by the property owner for use by the public, a utility company or a person of a strip of land for specified purposes.
<i>Group development</i>	Two (2) or more principal structures built on a single tract on which the construction and dedication of a public street is proposed.
<i>Lot</i>	A portion of a subdivision or other parcel of land intended as a unit for transfer of ownership or for development.
<i>Planning area</i>	The land located within the corporate limits of the town and the land located within the extraterritorial planning jurisdiction of the town.
<i>Planning authority</i>	The Planning Board appointed pursuant to the provisions of G.S. Chapter 160A, Article 19, sections 160A-361 and 160A-362.
<i>Plat</i>	A map or plan of a parcel of land which is to be or which has been subdivided.
<i>Street</i>	A public right-of-way for vehicular traffic.
<i>Major thoroughfare</i>	A street which is used for moving heavy volumes of traffic or high speed traffic or both.
<i>Minor thoroughfare</i>	A street performing the function of collecting traffic from residential, commercial and industrial streets and carrying it to the major thoroughfares. In some cases, they supplement the major thoroughfare system by facilitating a minor through traffic movement. In either case, they perform an additional function by also serving abutting

* **Cross references**-Any subdivision ordinance saved from repeal, § 1-107; planning board to review subdivision regulations and make recommendations, § 17-209; new streets named, § 19-501.

	residential, commercial or industrial property.
<i>Local access streets</i>	A street having the purpose of providing access to abutting residential, commercial or industrial traffic. These streets are not intended to carry heavy volumes of traffic and should be located in such a way to serve only traffic with origins or destinations on these streets. Typical local residential streets are designed as loops or cul-de-sacs.
<i>Marginal access street</i>	A minor street parallel and adjacent to a major thoroughfare or railroad which provides access to abutting properties, protection from through traffic and control of access to the major thoroughfare.
<i>Cul-de-sac</i>	Short minor street having one (1) end open to traffic and the other permanently terminated by a vehicular turnaround.
<i>Alley</i>	A public vehicular way providing service access along rear or side property lines of lots which are also served by one (1) of the previously listed street types.
<i>Private Road</i>	A vehicular travel way not dedicated or offered for dedication as a public street, but resembling a cul-de-sac or a local street by carrying traffic from a series of driveways to the public street system. Such roads shall be maintained by a private Home Owners Association or Land Owners Association.
<i>Subdivider</i>	Any person who subdivides or develops any land deemed to be a subdivision as defined in this section.
<i>Subdivision</i>	All divisions of a tract or parcel of land into two (2) or more lots, building sites or other divisions for the purpose, whether immediate or future, of sale or building development and all divisions of land involving the dedication of a new street or a change in existing streets.
<i>Thoroughfare plan</i>	The thoroughfare plan adopted by the Town and the State Highway Commission as the basis for the development of the street and highway system in the Town.
<i>Town Council</i>	The Town Council of the Town of Maiden, North Carolina.
<i>Town Manager</i>	The Town Manager of the Town of Maiden or his or her designated agent.

(Code 1976, § 12.71; Ord. No. 9-77, 10-3-77, Part I; Ord. No. 19-80, 8-18-80)

Cross reference-Definitions and rules of construction generally, § 1-102.

13.1.2 Purpose of and authority for enactment of article.

Pursuant to the authority of G.S. § 160A-371 to 160A-376, this article is designed and enacted to provide for the orderly development of the Town and its environs through the regulation of the subdivision of land. The regulations contained in this article are intended to coordinate proposed development with existing development and with officially adopted plans for the future development of the Town, to ensure the provision of adequate facilities for transportation, water, sewerage and other public facilities in subdivisions, to ensure the proper legal description, monumentation and

recording of subdivided land and to create conditions essential to public health, safety and general welfare.

13.1.3 Territorial applicability of article.

- A. The regulations contained in this article shall govern each and every subdivision of land within the corporate limits of the Town, as now or hereafter established, and the extraterritorial jurisdiction of the town.

(Code 1976, § 12.73; Ord. No. 1-79, 2-5-79; Ord. No. 19-80,8-18-80)

- B. The provisions of this article shall not apply to the following:

1. The combination or recombination of portions of previously platted lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the Town as shown by the regulations prescribed by this article.
2. The division of land into parcels greater than five (5) acres where no street right-of-way dedication is involved.
3. The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.
4. The division of a tract in single ownership whose entire area is not greater than two (2) acres into not more than three (3) lots where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the Town as shown by the subdivision regulations contained in this article.
5. Cemeteries and memorial burial grounds.

13.1.4 Registration of article with county register of deeds.

The Town shall file a copy of this article with the Registers of Deeds of Catawba and Lincoln Counties. The Register of Deeds shall not thereafter file or record a plat of any subdivision located within the territorial jurisdiction of the Town or its extraterritorial jurisdiction without the approval of the Town Council as required in this article. The filing or recording of a plat of a subdivision without the approval of the Town Council shall be null and void. The clerk of the superior court of the county shall not order or direct the recording of a plat where such recording would be in conflict with this section.

(Code 1976, § 12.74)

13.1.5 No services or permits to be issued until final plat approved.

No street shall be maintained or accepted by the Town, nor shall water, sewer, electric power or other town facilities or services be extended to or connected with any subdivision of land, nor shall any permit be issued by an administrative agent or department of the Town for the construction of any building or other improvement requiring a permit upon any land for which a plat is required to be approved, unless and until the requirements set forth in this article have been complied with.

(Code 1976, § 12.75)

13.1.6 Thoroughfares to comply with official plans.

When a proposed subdivision embraces any part of a thoroughfare which has been designated on the officially adopted thoroughfare plan of the Town, such part of such planned thoroughfare shall be platted and offered for dedication to the Town or the North Carolina Department of Transportation, as appropriate, by the subdivider in the location shown on the plan and at the width specified in this article.

(Code 1976, § 12.76)

13.1.7 Exceptions to article; group developments.

The standards and requirements of this article may be modified in the case of a plan for a group development which, in the judgment of the Planning Director, provides adequate public space and improvements for the circulation, recreation, light, air and service needs of the tract when fully developed and populated and which also provides such covenants or other legal provisions as will assure conformity to and achievement of the proposed plan. In such cases the Planning Director may recommend and the Town Council may authorize an exception.

(Code 1976, § 12.77)

13.1.8 Variances.

Where, because of topographical or other conditions peculiar to the site, strict adherence to the provisions of this article would cause an unnecessary hardship, the Planning Director may recommend and the Town Council authorize a variance, if such variance can be made without destroying the intent of this article. Any variance thus authorized is required to be entered in writing in the minutes of the Town Council meeting where the variance was approved, with the reasoning on which the departure was justified set forth in Section 2.4

(Code 1976, § 12.78)

13.1.9 Amendment procedure.

This article may hereafter be amended from time to time by the Town Council, but no amendment shall become effective unless it shall have been submitted to the Planning Board for review and recommendations. The Planning Board shall have forty-five (45) days within which to submit its report. If the Planning Board fails to submit a report within the specified time, it shall be deemed to have recommended approval of the amendment. Further, no amendment to this article shall become effective until the Town Council has held a public hearing on the proposed amendment. Notice of such public hearing shall be published once per week for two (2) successive weeks in a newspaper of general circulation within the town. The notice shall be first published not less than ten (10) days nor more than twenty-five (25) days prior to the date fixed for the hearing. The notice shall indicate the date, time and place of the hearing and shall include a statement of the substance of the proposed amendment. (Code 1976, § 12.79)

13.1.10 Penalties.

- A. In addition to the remedies provided in Article 15 of this ordinance, any one or combination of the following remedies may be used to enforce the provisions of this article:

1. Any person who, being the owner or agent of the owner of any land located within the jurisdiction of the Town, subdivides his or her land in violation of this ordinance or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved pursuant to the requirements of this ordinance and recorded in the office of the appropriate Register of Deeds, shall be guilty of a Class 1 misdemeanor. The description by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring land shall not exempt the transaction from this penalty.
 2. The Town may bring an action for injunction of any illegal subdivision, transfer, conveyance, or sale of land, and the court shall, upon appropriate findings, issue an injunction and order requiring the offending party to comply with the Maiden Unified Development Ordinance.
 3. Building permits required pursuant to G.S. § 160A-417 may be denied for lots that have been illegally subdivided.
 4. The Town may institute any appropriate action or proceedings to prevent the unlawful subdivision of land, to restrain, correct, or abate the violation, or to prevent any illegal act or conduct.
- B. The provisions of this section shall not prohibit any owner or its agent from entering into contracts to sell or lease by reference to an approved preliminary plat for which a final plat has not yet been properly approved pursuant to this ordinance or recorded with the Register of Deeds, provided the contract does all of the following:
1. Incorporates as an attachment a copy of the preliminary plat referenced in the contract and obligates the owner to deliver to the buyer a copy of the recorded plat prior to closing and conveyance.
 2. Plainly and conspicuously notifies the prospective buyer or lessee that a final subdivision plat has not been approved or recorded at the time of the contract, that no governmental body will incur any obligation to the prospective buyer or lessee with respect to the approval of the final subdivision plat, that changes between the preliminary and final plats are possible, and that the contract or lease may be terminated without breach by the buyer or lessee if the final recorded plat differs in any material respect from the preliminary plat.
 3. Provides that if the approved and recorded final plat does not differ in any material respect from the plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than five (5) days after the delivery of a copy of the final recorded plat.
 4. Provides that if the approved and recorded final plat differs in any material respect from the preliminary plat referred to in the contract, the buyer or lessee may not be required by the seller or lessor to close any earlier than fifteen (15) days after the delivery of the final recorded plat, during which fifteen-day period the buyer or lessee may terminate the contract without breach or any further obligation and may receive a refund of all earnest money or prepaid purchase price.

- C. The provisions of this ordinance shall not prohibit any owner or its agent from entering into contracts to sell or lease land by reference to an approved preliminary plat for which a final plat has not been properly approved under the subdivision ordinance or recorded with the Register of Deeds where the buyer or lessee is any person who has contracted to acquire or lease the land for the purpose of engaging in the business of construction of residential, commercial, or industrial buildings on the land, or for the purpose of resale or lease of the land to persons engaged in that kind of business, provided that no conveyance of that land may occur and no contract to lease it may become effective until after the final plat has been properly approved under this ordinance and recorded with the appropriate Register of Deeds.

(Code 1976, § 12.80)

13.1.11 Control over final plat.

No final plat of a subdivision within the Town planning area shall be submitted for recording by the Register of Deeds until final approval has been given by the Planning Director or Town Council. To obtain final plat approval the subdivider shall follow steps set out in this article and sections 2.10 and 2.11.

(Code 1976, § 12.81)

13.1.12 Family subdivisions.

Family subdivisions shall meet the minimum requirements of the subdivision regulations except for the following exceptions:

- A. A family subdivision is a subdivision where lots intended to be conveyed to members of the owner's lineal family for the purpose of building a residence for the new owner (family member). Lineal family shall include only direct lineal descendants (children, grandchildren, great-grandchildren, and so on) direct lineal ascendants (father, mother, grandfather, grandmother, and so on) and their spouses (including widowed spouses). Lots can be conveyed as a gift, as settlement of the property owner's estate or for a nominal consideration.
- B. No more than seven (7) additional lots may be created under this section and a plat shall be submitted to the Town planner for approval.
- C. All lots created by a family subdivision shall have a fifty (50) foot right-of-way on the property to be divided extending to a state maintained road and serving all subdivided parcels.
- D. All lots created by a family subdivision shall have either a ten (10) foot paved drive or an eighteen (18) foot gravel drive on the property to be divided extending to a state maintained road and serving all subdivided parcels. Pavement is required for the first thirty (30) foot of right-of-way from the town or state maintained road. Four (4) inches of gravel shall be used for the required eighteen (18) foot wide gravel drive.
- E. A plat map is required showing the resulting lots and rights-of-way. The plat shall state that it is a family subdivision, and shall state the name(s) of the owner(s) of the original tract being subdivided. Such plat shall be prepared by a registered surveyor and recorded with the register of deeds.

- F. A disclosure statement is required on the plat stating that the road will not be maintained by NC DOT or the Town of Maiden.
- G. After approval of an initial family subdivision, additional lots shall not be subdivided unless the road serving the family subdivision is improved to meet the 'Town of Maiden's street design standards for residential subdivisions.
- H. The sale, rental or occupancy of lots by persons not members of lineal family, as defined above, will be denied zoning and/or building permits for a period of five (5) years after the approval of the family subdivision.

(Ord. No. 34-2001, § 1, 10-15-01; Ord. No. 13-2003, 5-19-03)

13.1.13 Reserved.

13.2 MINOR SUBDIVISIONS

13.2.1 Defined.

For the purposes of these regulations, a minor subdivision is defined as a subdivision:

- A. Involving not more than five (5) residential or C-1/C-2 zoned property (when used for residential purposes) lots fronting on an existing approved street; and
- B. Involving not more than three (3) commercial or industrial lots zoned C-1, C-2, M-1, 321-ED(I), and 321-ED(MX) lots fronting on an existing approved street; and
- C. Not involving any new public street or prospectively requiring any new public street for access to interior property; and
- D. May include private roads provided all other ordinances and regulations are met; and
- E. Not requiring extension of public sewage or waterlines or creation of new drainage easements through lots to serve property at the rear; and
- F. Not adversely affecting the development of the remainder of the parcel or of adjoining property; and
- G. Creating no new or residual parcels not conforming to the requirements of these regulations.

(Code 1976, § 12.81.1; Ord. No. 19-80, 8-18-80)

Cross reference-Definitions and rules of construction generally, § 1-2.

13.2.2 Approval process.

If the land to be subdivided meets the definition of a minor subdivision as defined in section 13.2.1, the subdivider will not have to follow the same procedures as for a general subdivision. The review process for minor subdivisions shall be adequate to protect the public interest, but should also provide minimum delay and expense to the subdivider. A preliminary plat is not required. The developer may go from a sketch plan to a final plat with the approval of the Town Planning Director. However, the following minor plat approval process may be used only where the subdivision includes all contiguous land under the ownership of the sponsor.

(Code 1976, § 12.81.2; Ord. No. 19-80, 8-18-80; Ord. No. 13-2003, 5-19-03)

13.2.3 Sketch plan required.

A preliminary plat shall not be required for approval for minor subdivisions. Instead, a sketch design plan shall first be submitted to the Town Planning Director for approval and shall depict or contain the following information:

- A. A sketch vicinity map showing the location of the subdivision in relation to neighboring tracts, subdivisions, roads and waterways;
- B. The boundaries of the tract to be subdivided;
- C. The total acreage to be subdivided;
- D. The existing and proposed uses of the land within the subdivision and adjoining it;
- E. The lines of existing streets and easements;
- F. The name, address and telephone number of the owner and developer;
- G. The zoning classification of the tract and adjacent properties.

(Code 1976, § 12.81.3; Ord. No. 19-80,8-18-80; Ord. No. 13-2003, 5-19-03)

13.2.4 Review procedure.

The review of Minor Subdivisions shall be made consistent with Article 2.10 of this Unified Development Ordinance.

(Code 1976, § 12.81.4; Ord. No. 19-80, 8-18-80; Ord. No. 13-2003, 5-19-03)

13.2.5 Approval of sketch plat by town planner.

The town planner, after determining that all requirements of this chapter have been met on the sketch map, shall submit copies to the county health department, erosion control section, soil and water conservation district and inspection division for their comments and reports. The sketch plan shall be approved and the subdivider shall be advised that the final plat may be prepared as long as it conforms to the sketch plat. This review shall in no way be construed as constituting an official approval for recording.

(Code 1976, § 12.81.5; Ord. No. 19-80, 8-18-80; Ord. No. 13-2003, 5-19-03)

13.2.6 Dispute of findings of town planner.

If the subdivider disagrees with any findings of the town planner concerning approval of a sketch plan for a minor subdivision, the matter shall be taken to the planning board for a decision. No final plat shall be prepared until the planning board has acted on the disputed sketch plan.

(Code 1976, § 12.81.6; Ord. No. 19-80,8-18-80; Ord. No. 13-2003, 5-19-03)

13.2.7 Disposition of copies.

The Town shall receive one (1) paper copy and two (2) mylars for recording and records. If an applicant disputes the Planning Department's findings, the applicant may appeal the decision. In the case of an appeal, the applicant shall submit eighteen (18) additional paper copies to the Planning Department.

(Code 1976, § 12.81.7; Ord. No. 19-80, 8-18-80)

13.2.8 Final plat of minor subdivision.

In order not to cause any unnecessary expense to the developer and to the administrative departments of the Town, the Planning Director shall have the responsibility for approving minor subdivisions. The final plat for minor subdivisions shall be complete and show all information required for a final plat for general subdivisions as prescribed by this article. The recording of a minor subdivision plat shall be the same as for a general subdivision as provided in this article. If a minor subdivision plat is disapproved, the town planner shall specify the reasons for such action in writing. One (1) copy of such reasons shall be given to the subdivider. If a minor subdivision plat is disapproved, the subdivider may make the recommended changes as requested and submit a revised minor plat, or appeal the decision to Superior Court as provided by G.S. § 160A-378(b).

(Code 1976, § 12.81.8; Ord. No. 19-80, 8-18-80; Ord. No. 13-2003, 5-19-03)

13.2.9 17-529-17-550 Reserved

13.3 MAJOR/GENERAL SUBDIVISIONS PROCEDURES

13.3.1 General subdivision approval process-Generally.

A Major subdivision is also referred to in this ordinance as a general subdivision. General subdivisions are subdivisions of land that do not meet the limitations of Minor Subdivisions as defined in Article 13.2. The following procedure shall be followed to obtain approval of all general subdivisions. Prior to submitting a preliminary plat, subdividers may prepare and submit to the Planning Director a sketch design plan of a proposed subdivision. The plan shall be submitted at least ten (10) days prior to the submission of the preliminary plat and should contain the following information:

- A. The proposed name and location of the subdivision;
- B. The name and address of the owner and subdivider;
- C. The total acreage of the proposed subdivision;
- D. The tentative street and lot arrangement;
- E. Lot sizes and number of lots;
- F. The existing and proposed uses of the land within the subdivision and adjoining it;
- G. The zoning classification of the tract which is to be subdivided and of adjoining properties.

(Code 1976, § 12.82; Ord. No. 19-80, 8-18-80)

13.3.2 Same-Planning review.

- A. The Planning Director shall review the sketch design plan for general compliance with the requirements of this article and shall advise the subdivider or his representative of the regulations pertaining to the proposed subdivision and the procedures to be followed in the preparation and submission of the preliminary and final plats.
- B. No fee shall be charged for this review.

- C. This review shall in no way be construed as constituting an official action of approval of the subdivision by the Town Council as required by this ordinance.

(Code 1976, § 12.83)

13.3.3 Preliminary plat-Submission; preparation and contents.

- A. The subdivider shall submit twenty (20) copies of the preliminary plat, so marked, to the Town Clerk and Planning Director not less than thirty (30) days prior to the planning authority meeting at which it is to be considered.
- B. The preliminary plat shall be drawn at a scale of one (1) inch to one hundred (100) feet or larger, on sheets of sixteen (16) inches by twenty (20) inches or twenty (20) inches by twenty-four (24) inches and shall show the following:
 - 1. The location of existing and platted property lines, streets, buildings, watercourses, railroads, transmission lines, sewers, bridges, culverts, storm drains, water mains and any public utility easements, both on the land to be subdivided and on the land immediately adjoining;
 - 2. The boundary line of the tract to be subdivided drawn accurately with all bearings and distances shown;
 - 3. Wooded areas, marshes and any peculiar natural conditions affecting the site;
 - 4. Names of adjoining property owners or subdivisions;
 - 5. Zoning classification, if any, both on the land to be subdivided and on adjoining land;
 - 6. Proposed streets, street names, rights-of-way, pavement widths, approximate grades and typical street cross sections.
 - 7. The plans for proposed utility layouts (sewer, water, gas and electricity) showing connections to existing systems or plans for individual water supply, sewer disposal, storm drainage, etc.;
 - 8. Other proposed rights-of-way or easements, location, widths and purposes;
 - 9. Proposed lot lines, lot and block numbers and approximate dimensions;
 - 10. Proposed minimum building setback lines;
 - 11. Contours with vertical intervals of two (2) feet and referenced to USGS datum;
 - 12. Proposed location and size of parks, school sites or other public open spaces, if any;
 - 13. Title, date, north point and graphic scale;
 - 14. Name of owner, surveyor and land planner;
 - 15. Site data:
 - (a) Acreage in total tract;
 - (b) Acreage in parks or other land usage;
 - (c) Total number of lots;

- (d) Lineal feet in streets;
 - (e) Number of residential lots and average sizes.
- 16. Sketch vicinity map showing relationship between subdivision and surrounding area;
 - 17. The preliminary plat shall be accompanied by a copy of any proposed deed restrictions or restrictive covenants;
 - 18. Drainage plan;
 - 19. Stormwater
 - 20. The proposed sites, if any, for multiple family residential use, business areas, industrial areas, churches and other nonpublic uses exclusive of one-family residential uses;
 - 21. One hundred (100) year (regulatory flood, see Appendix A) flood elevation data shall be provided for subdivision proposals and other proposed development which is greater than either fifty (50) lots or five (5) acres.

(Code 1976, § 12.84; Ord. No. 21-80, 8-18-80; Ord. No. 19-2006, § (2), 8-21-06)

13.3.4 Same-Planning Board review.

- A. The Planning Board shall review and take action on each preliminary plat within thirty (30) days after first consideration by the Planning Board. First consideration shall be at the next regularly scheduled meeting of the Planning Board that follows at least thirty (30) days after the plat is submitted. Before taking final action on the plat, the Planning Board shall refer copies of the plat and any accompanying material to those public officials and agencies concerned with new development, including but not limited to the telephone company, the fire department, the county health department and the NC DOT district engineer, for review and recommendations.
- B. In accordance with section 2.11.5, the Planning Board shall offer a recommendation on the preliminary plat.
- C. In accordance with section 2.11.6 and after receiving the Planning Board's recommendation, the Town Council shall consider the preliminary plat. Upon approval of the preliminary plat by the Town Council, the subdivider may proceed with the preparation of the final plat and installation or arrangement for required improvements in accordance with the approved preliminary plat and the requirements of this article. Approval of the preliminary plat shall not constitute acceptance of the final plat. The approval of the preliminary plat shall terminate unless a final plat thereon is submitted within one (1) year from the date of approval of the preliminary plat. However, the Town Council shall have the power to extend that time deadline where the subdivider can present substantial reason for doing so.

(Code 1976, § 12.85; Ord. No. 9-77, 10-3-77, Part III)

13.3.5 Final plat-Submission.

- D. The final plat shall constitute only that portion (i.e. phase) of the preliminary plat which the subdivider proposes to record and develop at the time; such portion shall conform to all requirements of this article.
- E. No final plat shall be approved unless and until the subdivider shall have installed all improvements required by this article or shall have guaranteed their installation as provided for in this article.
- F. The subdivider shall submit eleven (11) copies of the final plat to the Planning Director not more than twenty-four (24) months after the date on which the preliminary plat was approved. Otherwise the preliminary plat approval shall be null and void unless an extension of this time limit is granted by the Town Council on or before the required completion date.

(Code 1976, § 12.86)

13.3.6 Same-Preparation and contents.

The final plat shall be prepared by a surveyor or civil engineer licensed and registered to practice in the state. The final plat shall be drawn to the same scale and on the same size sheets as was the preliminary plat and shall conform to the preliminary plat as it was approved. The final plat shall conform to the provisions of G.S. § 47-30.1. Two (2) copies of the final plat shall be drawn in ink or linen or film suitable for reproduction and three (3) copies shall be black or blue line paper prints. The final plat shall show the following information:

- A. The exact boundary lines of the tract to be subdivided fully dimensioned by lengths and bearings and the location of intersection boundary lines of adjoining lands, with adjacent subdivisions identified by official names.
- B. The accurate locations and descriptions of all monuments, markers and control points.
- C. Sufficient engineering data to determine readily and reproduce on the ground every straight or curved boundary line, street line, lot line, right-of-way line, easement line and setback line, including dimensions, bearings or deflection angles, radii, central angles and tangent distances for the centerline of curved streets and curved property lines that are not the boundary of curved streets. All dimensions shall be measured to the nearest one-tenth of a foot and all angles to the nearest minute.
- D. The location of all rights-of-way, easements and areas to be dedicated to public use with the purpose of each stated.
- E. The location, purpose and dimensions of areas to be used for purposes other than residential and public.
- F. The blocks numbered consecutively throughout the entire subdivision and the lots numbered consecutively throughout each block.
- G. Minimum building setback lines.
- H. Right-of-way lines, widths and names of all streets and the location and width of all adjacent streets and easements.

- I. The plans, including profiles based on mean sea level, for water mains, sanitary sewers, storm sewers, gas lines and electrical service.
- J. The name of the subdivision, the owner and the surveyor or engineer.
- K. The date of the survey and plat preparation, a north arrow indicating whether true north or magnetic and graphic scale.
- L. The deed restrictions proposed for the subdivision, if any.
- M. Any other information considered by either the subdivider or the planning authority to be pertinent to the review of the final plat.
- N. The following signed certificates shall appear on each of the two (2) mylar copies of the final plat which are submitted to the Planning Director by the subdivider:

- 1. Certificate of ownership and dedication.
I hereby certify that I am the owner of the property shown and described hereon and that I hereby adopt this plan of subdivision with my free consent, establish minimum building setback lines, and dedicate all streets, alleys, walks, parks and other sites and easements to public or private use as noted. Furthermore, I dedicate all sewer and water lines to the Town of Maiden.

Date

Owner(s)

- 2. Certification of approval of water supply and sewage disposal systems.
I hereby certify that the water supply and sewage disposal systems installed, or proposed for installation in Subdivision fully meet the requirements of the N.C. Board of Health and are hereby approved as shown:

Date

County Health Officer or his authorized representative

- 3. Certificate of survey and accuracy.
I, _____ certify that this plat was (drawn by me) (drawn under my supervision) from (an actual survey made by me) (an actual survey made under my supervision) which is recorded in Book __, Page __, etc.; that _____ the error of closure as calculated by latitudes and departures is 1: _____; that the boundaries not surveyed are shown as broken lines plotted from information found in Book _____, Page _____. Witness my hand and seal the _____ day of _____, 20 ____.

Surveyor or engineer

Registration number

- 4. Certificate of approval of the design and installation of streets, utilities and other required improvements including stormwater.

We hereby certify that all streets, utilities, stormwater facilities and other required improvements have been installed in an acceptable manner and according to town specifications and standards in the _____ Subdivision or that a guarantee of the installation of the required improvements in an amount and manner satisfactory to the Town of Maiden has been received.

Date

Town Manager

Town Stormwater Administrator
(Code 1976, § 12.87)

5. If any portion of the proposed subdivision is within the ½ mile notification radius of an approved voluntary agricultural district the follow shall appear on the plat. “Subject Property is within ½ mile of an approved voluntary agricultural district.”

13.3.7 Same-Town staff review and approval; acceptance of offers of dedication.

- O. The Planning Director shall consider the final plat and shall approve it if the plat conforms to the requirements of this ordinance.
- P. During the review of the final plat, the Planning Director may appoint an engineer or surveyor to confirm the accuracy of the final plat.
- Q. If the Planning Director approves the final plat, such approval shall be indicated on each copy of the plat by the following signed certificate:

Certificate of approval for recording.

I hereby certify that the subdivision plat shown hereon has been found to comply with the Unified Development Ordinance for Maiden, North Carolina, with the exception of such variances, if any, as are noted and that this plat has been approved by the Maiden Town Council for recording in the office of the Register of Deeds of Catawba County.

Date

Town of Maiden Planning Director

- R. Before a final plat can be approved and recorded, the Town Council must accept all offers of dedication for streets, easements, rights-of-way, public parks and public open space. If the Town Council accepts the offer of dedication for these items, such approval shall be indicated on each copy of the plat by the following signed certificate:

Certificate of approval and acceptance of dedication.

I hereby certify that the Town Council of Maiden, North Carolina, approved this plat and, as and for the act of the Town of Maiden, accepted the dedication of the streets, easements, rights-of-way, public parks and public open space shown thereon, but assumes no responsibility to open or maintain the same until in the opinion of the Town Council it is in the public interest to do so.

Date

Clerk, Town of Maiden

- S. The original tracing and one (1) print of the plat shall be returned to the subdivider. One (1) reproducible tracing and one (1) print shall be filed with the town clerk and one (1) print shall be retained by the Planning Department.
- T. If the final plat is disapproved by Planning Director, the reasons for such disapproval shall be stated in writing, specifying the provisions of this ordinance with which the final plat does not comply. One (1) copy of such reasons shall be retained by the Planning Director and one (1) copy shall be transmitted to the subdivider.

13.3.8 Same-To be filed with county register of deeds.

The subdivider shall file the approved final plat with the county Register of Deeds for recording within sixty (60) days after the date of Town Council approval; otherwise, such approval shall be null and void.

(Code 1976, § 12.90)

13.3.9 Resubdivision procedures.

For any replatting or resubdivision of land, the same procedures, rules and regulations shall apply as prescribed in this ordinance for an original subdivision. Lot sizes may, however, be varied on an approved plan after recording; provided, that:

- A. No lot or tract of land shall be created or sold that is smaller than the size shown on the approved plan.
- B. Drainage, easements or rights-of-way shall not be changed.
- C. Street alignment and block sizes shall not be changed.
- D. The property line between the back of the lots shall not be changed.
- E. The rear portion of lots shall not be subdivided from the front part.
- F. The character of the area shall be maintained.
- G. A new plat showing the actual lot sizes is recorded in the Register of Deeds.

(Code 1976, § 12.91)

13.3.10 17-561-17-570. Reserved.

13.4 SPECIFICATIONS AND STANDARDS

13.4.1 Minimum requirements.

The provisions of this article, supplemented by town specifications and standards for paving, utilities and other required improvements, shall be considered minimum requirements for subdivision development within the planning area.

(Code 1976, § 12.92)

13.4.2 Streets.

- A. In every new subdivision, the street system shall conform to the thoroughfare plan. In areas where the thoroughfare plan does not apply, streets shall be designed and located in proper relation to existing and proposed streets, to the topography, to such natural features as streams and tree growth, to public safety and convenience and to the proposed use of land to be served by such streets. All proposed streets shall provide for the appropriate projection of principal streets in surrounding areas and provide reasonable access for surrounding acreage tracts.
- B. Right-of-way widths. The following right-of-way widths shall apply for all proposed streets.
1. All streets lying outside of existing municipal limits shall comply with the minimum right-of-way width standards for subdivision roads as required by the North Carolina Department of Transportation, Division of Highways.
 2. All streets identified on the county thoroughfare plan prepared by the NC Department of Transportation as being major arterials, minor arterials, major collector or minor collector, shall not be less than eighty (80) feet in width.
 3. All streets on the state highway system within the Town shall be a minimum of sixty (60) feet in width.
 4. All other streets located inside municipal limits shall have a minimum width of:

Major thoroughfare	80 feet.
Minor thoroughfare	60 feet.
Local access streets	50 feet.
Marginal access streets	50 feet.
Cul-de-sac turnarounds	100 foot diameter
Other temporary turnarounds	Per Fire Code
 5. Subdivisions along existing streets of inadequate right-of-way shall provide additional right-of-way to meet the minimum widths specified by this subsection if necessary to accommodate utilities or sidewalks. The Town Engineer is authorized to make this determination. The entire right-of-way shall be provided where any part of a new subdivision is on both sides of an existing street, and one-half the required right-of-way measured from the centerline of the existing street shall be provided where a new subdivision is located only on one (1) side of an existing street.
 6. The dedication of half streets of less than sixty (60) feet at the perimeter of a new subdivision shall be prohibited. If circumstances render this impracticable, adequate provision for the concurrent dedication of the remaining half of the street must be furnished by the subdivider. Where there exists a half street in an adjoining subdivision, the remaining half shall be provided by the proposed development. However, a partial width right-of-way, not less than sixty (60)

feet in width, may be dedicated when adjoining undeveloped property that is owned or controlled by the subdivider; provided that the width or a partial dedication be such as to permit the installation of such facilities as may be necessary to serve abutting lots. When the adjoining property is subdivided, the remainder of the full required right-of-way shall be dedicated.

7. The subdivider will only be required to dedicate a maximum width of one hundred (100) feet of right-of-way. In cases where over one hundred (100) feet of right-of-way is desired, the subdivider will be required only to reserve the amount in excess of one hundred (100) feet. In all cases in which right-of-way is sought for an access controlled facility, the subdivider will only be required to make a reservation.

C. **Pavement requirements.** It is hereby required that all streets must be paved by the subdivider at his own expense. Further, all access roads to any subdivision approved pursuant to this article must also be paved by the subdivider at his own expense; however, the subdivider may hold in abeyance the paving of an access road pursuant to section 13.4.10 of this article until final plat approval of at least a portion of the subdivision is approved by the Town. At the time that at least a portion of the subdivision receives final plat approval, the access road must be paved in accordance with section 13.4.10. The following pavement requirements shall apply to all proposed streets:

1. All streets lying outside existing municipal limits shall be constructed to meet the current requirements of the North Carolina Department of Transportation, Division of Highways standards for state maintenance.
2. Pavement widths or graded width shall be as follows:

	Streets with Curb and Gutter (face of curb)	Streets without Curb and Gutter
Major thoroughfares	44 feet	40 feet
Minor thoroughfares	34 feet	24 feet
Local access streets	24 feet	20 feet
Marginal access street	24 feet	20 feet
Cul-de-sac turnaround	24 feet	20 feet

D. **Grades.** Unless necessitated by exceptional topography and subject to the approval of the entity approving the plat, street grades shall not be more than ten (10) percent nor less than one-half of one (1) percent on any street.

1. Grades approaching intersections shall not exceed five (5) percent for a distance of not less than one hundred (100) feet from the right-of-way line of such intersection.
2. Street grades shall be established wherever practicable in such a manner as to avoid excessive grading, the significant removal of ground cover and tree growth and general leveling of the topography.
3. All changes in street grade shall be connected by vertical curves of at least one hundred (100) feet or the equivalent of fifteen (15) times the algebraic difference in the rate of grade, whichever is greater.

- E. Radii of curvature. Where a street centerline deflection of more than ten (10) degrees occurs, a curve shall be introduced having a radius of curvature on such centerline of not less than the following:
- | | |
|--------------------|----------|
| Major thoroughfare | 300 feet |
| Minor thoroughfare | 200 feet |
| Minor street | 100 feet |
- F. Tangents. A tangent of not less than one hundred (100) feet shall be provided between reverse curves on all streets.
- G. Intersections. Street intersections shall be laid out in the following manner:
1. No more than two (2) streets shall intersect at a point.
 2. Streets shall intersect as nearly as possible at right angles, and no street shall intersect any other street at an angle of less than sixty (60) degrees.
 3. Intersections with major thoroughfares shall be at least eight hundred (800) feet apart, measured from centerline to centerline.
 4. Street jogs with centerline offsets of less than one hundred twenty-five (125) feet shall be prohibited.
 5. Property lines at street intersections shall be rounded with a minimum radius of twenty (20) feet. At an angle of intersection less than seventy-five (75) degrees, a greater radius may be required by the entity approving the plat.
 6. Proper sight lines shall be maintained at all intersections of streets. There shall be a clear sight distance of one hundred fifty (150) feet for major streets and seventy-five (75) feet for all other streets from the point of intersection as measured along the centerline. No building or obstruction shall be permitted in this area.
- H. Cul-de-sac. Permanent dead-end streets or cul-de-sacs shall be no longer than seven hundred fifty (750) feet. In general, streets with one (1) end permanently closed shall be avoided unless the design of the subdivision and the existing or proposed street system in the surrounding area clearly indicates that a through street is not essential in the location of the proposed cul-de-sac.
- I. Alleys. The subdivider shall construct alleys in commercial or industrial zoning districts. Alleys shall conform to the following specifications:
1. Right-of-way width: 20 feet.
 2. Property line radius at alley intersections: 15 feet.
 3. Minimum radius to centerline when deflection angle of more than ten degrees: 35 feet.
 4. Minimum turnaround diameter of dead-end alley (right-of-way width): 80 feet.
- J. Marginal access streets. Where a tract of land to be subdivided adjoins a major thoroughfare, the entity approving the plat may require that such lots be provided with frontage on a marginal access street.

- K. Street names. Street names shall be subject to the approval of the entity approving the plat. New street names shall not duplicate or be similar to existing street names. Existing street names, however, shall be continued where existing streets are extended.
- L. Collector and local streets. Collector and local streets shall be so laid out that their use by through traffic will be discouraged. Streets shall be designed or walkways dedicated to assure convenient access to parks, playgrounds, schools and other places of public assembly.
- M. Access to adjacent properties. Where a property is subdivided that is adjacent to a vacant property or one which could reasonably be expected to be developed or subdivided in the future, the entity approving the plat may require that proposed streets be extended by dedication to the boundary of such property and a temporary turnaround shall be provided.
- N. Reserved strips. Reserved strips shall be prohibited within any platted subdivision.
- O. Private streets. Private streets shall be allowed in platted subdivisions provided they meet the following criteria.
 - 1. Minimum road right of way fifty (50) feet.
 - 2. A maximum of 10 lots and or individual dwelling units served by a private road.
 - 3. Minimum lot size shall be one and a half (1.5) acres
 - 4. Maximum private road length shall be seven hundred and fifty (750) feet.
 - 5. The private road shall be paved with a minimum width of eight (8) feet for the entire length of roadway with a dust free material such as concrete or asphalt.
 - 6. Curb and gutter shall not be required; all ditches shall be maintained in accordance to NC DOT regulations, Phase II stormwater regulations and best management practices.
 - 7. The end of a private road shall terminate with standard cul-de-sac bulb.
 - 8. Building setbacks from approved private roads shall be the same distance as required along non-private roads and shall be measured from the private road right-of-way, private road easement, or the boundary line of the common area reserved for the current or future private road.
 - 9. A Home Owners Association or Land Owners Association is required to maintain said private road. Such associations shall also be responsible for overseeing all Phase II stormwater requirements.
 - 10. Town services relating to street maintenance and solid waste removal shall not be provided on a private street, including but not limited to trash service, snow removal, street maintenance, brush removal and or any other service.
 - 11. The Town of Maiden (Police, Fire, EMS) and any other emergency response vehicle(s) shall not be held liable for any damage caused to a private road while going about their normal activities.

12. Utility lines may be placed within the road right of way with any and all taps extending across such private road prior too paving. The Town shall hold a separate right of way and or easement for any such utility lines on said property. The Town shall not be responsible for damage to said road or road right of way.
13. A central trash pickup site shall be provided at the entrance of the private road where it meets either an NC DOT maintained road or a Town of Maiden maintained road. Such site shall be a minimum of six (6) feet wide by six (6) feet deep per lot or dwelling unit and may be located in the private road right of way or easement. The location shall be paved, and the Town shall be held exempt from any damage to such roadway when providing services to the site.
14. The Town shall not accept any maintenance duties unless said roadway is upgraded to the current road way requirements of the Town of Maiden.
15. The following statement shall be placed on all subdivision plats which include private streets:
“The maintenance of streets designated on this plat as ‘private’ shall be the responsibility of property owners and the duly incorporated homeowners’ association within this development having access to such streets. Private streets as shown here on were not constructed to the minimum standards required to allow their inclusion, for maintenance purposes, on the North Carolina highway system nor for maintenance by the Town of Maiden. Neither the Town of Maiden nor the North Carolina Department of Transportation will maintain a private street. (Note: This statement shall not serve as a substitute for any other statutory disclosure requirements.)”
16. The following statement will be required to be entered into the deed chain for any property served by a private road.
“The Town of Maiden shall never maintain directly or indirectly any private road referenced in this deed. The Town of Maiden takes no responsibility of any private roads and their maintenance within the Town of Maiden or its Extraterritorial Jurisdiction (ETJ). The Town of Maiden shall not be responsible to bring any private road into compliance with the North Carolina Department of Transportation Standards or Town of Maiden road standards. The property owner understands and agrees that all maintenance and alteration costs with respect to any private roads are the sole responsibility of the property owner and not the Town of Maiden.”

(Code 1976, § 12.93; Ord. No. 9-77,10-3-77, Part II; Ord. No. 21-93, 12-6-93; Ord. No. 19-2006, § (2), 8-21-06)

13.4.3 Blocks

- A. Proposed use. Blocks shall be laid out with special consideration given to the type of land use proposed within the block.
- B. Length. Blocks shall not exceed twelve hundred (1200) feet in length nor shall they be less than four hundred (400) feet in length. Loop roads shall be subject to the maximum and minimum block lengths. Loop roads are local streets that have one entrance/exit to any other existing or planned street.

- C. Width. Blocks shall have sufficient width to provide for two (2) tiers of lots of appropriate depth except where otherwise required to separate residential development from through traffic.
- D. Crosswalks. A pedestrian crosswalk not less than ten (10) feet in width may be required near the center and entirely across any block nine hundred (900) feet or more in length where deemed essential by the entity approving the plat to provide adequate access to schools, shopping centers, churches or transportation facilities.

(Code 1976, § 12.94)

13.4.4 Lots and setbacks.

- A. Size. Lot sizes shall conform to the dimensional and area requirements of the Unified Development Ordinance, Article 7 et seq. of this ordinance, provided that they are large enough to accommodate individual water or sewer systems if no public water or sewer is available. Where neither public water nor sewer is available, lots shall be at least twenty thousand (20,000) square feet in area and not less than one hundred (100) feet wide at the building setback line nor less than one hundred fifty (150) feet deep.
- B. Setbacks. All building setback lines shall conform to the requirements of the zoning ordinance.
- C. Access. Every lot shall abut a public street which has a minimum right-of-way width of at least fifty (50) feet or a private street approved in accordance with this article.
- D. Double frontage lots. Double frontage lots should be avoided unless additional screening is provided in the rear yard. Acceptable screening includes a planted hedge, wall or fence of not less than six (6) feet in height.
- E. Orientation. Side lot lines shall be perpendicular or radial to street right-of-way lines, except where a variation will provide a better street and lot layout and with the approval of the entity approving the plat.
- F. Corner lots. Corner lots for residential use shall have additional width sufficient to provide equal setbacks from front and side streets.

(Code 1976, § 12.95; Ord. No. 19-2006, § (2), 8-21-06)

13.4.5 Easements.

- A. Utility easements. The subdivider shall convey easements to the Town or appropriate utility company for both underground and overhead utility installation where needed. Easements shall be at least fifteen (15) feet wide and normally centered along rear or side lot lines. Wider easements may be required if the topography along the proposed right-of-way is such that maintenance equipment cannot reasonably operate within the minimum fifteen-foot wide easement.
- B. Drainage easements. Where a subdivision is traversed by a watercourse, drainageway, channel or stream, there shall be provided a stormwater easement or drainage right-of-way conforming substantially with the lines of such watercourses and of such further width or construction or both as will be adequate for the

purpose. Lakes, ponds, watercourses and the land immediately adjacent thereto shall be considered for maintenance by the Town only if sufficient land is dedicated as a public recreation area or park or if such area constitutes a necessary part of the drainage control system. The Town reserves the right to reject any intended dedications.

(Code 1976, § 12.96)

13.4.6 Public facilities.

If a proposed park, school or other public facility site shown on any part of the officially adopted comprehensive plan for the Town is located in whole or in part within a proposed subdivision, the entity approving the plat shall require that the subdivider dedicate or grant an option to purchase such land for such public use. Purchase options so granted shall be executed for a period of two (2) years from the date of final plat approval. Options so granted must be fully exercised and consummated within two (2) years of the date of final plat approval; otherwise, they shall become null and void. All such dedications and options shall be made to the Town.

(Code 1976, § 12.97)

13.4.7 Buffer strips.

In residential districts it is recommended that a buffer strip at least twenty-five (25) feet in depth in addition to the normal required lot depth be provided adjacent to all railroads, limited access highways and the commercial developments. This strip shall be a part of the platted lots, but shall have the following restriction lettered on the face of the plat:

"This strip reserved for the planting of trees or shrubs by the developer; the building of structures hereon is prohibited."

(Code 1976, § 12.98)

13.4.8 Minimization of flood damage.

All subdivision proposals shall:

- A. Be consistent with the need to minimize flood damage;
- B. Have public utilities and facilities such as sewer, gas, electrical and water systems located and constructed to minimize flood damage;
- C. Have adequate drainage provided to reduce exposure to flood hazards.
- D. Subdivisions within the flood hazard zone shall obtain a Floodplain Development Permit as provided in Article 2.12 and Article 17.1

(Code 1976, § 12.98.1; Ord. No. 21-80, 8-18-80)

13.4.9 General requirements.

- A. Prior to approval of a final plat for the subdivision of land within the planning jurisdiction of the Town, the subdivider shall have installed improvements specified in this article or shall have guaranteed their installation as provided.

- B. No municipal services or utilities shall be extended or furnished to any subdivision within the planning area until the subdivider shall have installed the improvements specified in this article or shall have guaranteed their installation as provided.

(Code 1976, § 12.99)

13.4.10 Guarantees.

- A. Performance guarantee.

In lieu of prior construction of the improvements required by this article and Article 17.2 Phase II Stormwater, the Town may; for the purpose of approving a final plat, accept a guarantee from the subdivider that such improvements will be carried out according to the Town's specifications at his expense. Such guarantee may be in the form of a surety bond made by a surety company licensed to do business in the state or certified check drawn in favor of the town, or cash deposited with the town or letter of credit from a bank or other institution or from a person with resources sufficient to cover the cost of improvements. The developer may choose which type of surety will be provided. Such guarantee shall be in an amount of not less than one hundred (100) percent nor more than one hundred twenty-five (125) percent of the estimated cost of the construction of the required improvements. This amount shall be determined by the Town Manager. Performance guarantees shall run for a period of one (1) year and may be renewed twice, each renewal period for one (1) year upon written approval from the Town Council.

- B. Defects guarantee.

The Town Council may require a bond guaranteeing utility taps, curbs, gutters, sidewalks, drainage facilities, water and sewer lines and other improvements against defects for one (1) year where the town inspection of improvements installed by the developer has yielded less than adequate results. This bond shall be in the amount determined by the Town Manager and shall be in cash or be made by a surety company authorized to do business in the state or be a letter of credit from a bank or other institution. The developer may choose which type of surety will be provided.

- C. Maintenance guarantee. The Town Manager shall secure from all subdividers a letter in which such subdivider shall agree to maintain the backfill and any improvements located thereon and therein and any ditch which has been dug in connection with the installation of such improvements. Such letter shall be binding on the subdivider for a period of one (1) year after the acceptance of such improvements by the Town.

- D. Inspection and certification.

1. The Public Works Director or his or her designee shall regularly inspect for defects in the construction of required improvements. Upon completion of these improvements, the Public Works Director shall file with the town Council a statement either certifying that the improvements have been completed in the specific manner or listing the defects in those improvements.

2. Upon completion of the improvements, the subdivider shall file with the Town Council a statement stipulating the following:
 - (a) That all required improvements are complete;
 - (b) That these improvements are in compliance with the minimum standards specified by this ordinance and the Town Council for their construction;
 - (c) That the subdivider knows of no defects from any cause in those improvements; and
 - (d) That these improvements are free and clear of any encumbrance or lien.
 3. The subdivider shall also file with the Town Council an agreement dedicating such improvements to the town.
 4. If the Public Works Director has certified that the contracted improvements are complete and free from defect, then upon receipt of the other statements and agreements detailed above, the Town shall accept the dedication of those improvements. The Town may, at its discretion, accept the dedication of any portion of the required improvements, provided that all statements and agreements specified above have been received for that portion of the improvements.
- E. Reduction of guarantees. In those cases where improvement guarantees have been made under escrow account or letter of credit, the amount of the guarantee may be reduced upon acceptance, in compliance with subsection (A) of the dedication of a portion of the required improvements. The amount of the reduction shall not exceed the percentage which the improvements just accepted for dedications made up of all originally required improvements. In no case, however, shall the guarantee be reduced to less than fifteen (15) percent of the original amount.
- F. Release of guarantee. Upon acceptance, in accordance with subsection (D), of the dedication of the final portion of improvements, the Town Council shall authorize the release of the remaining portion of the improvement guarantee.

(Code 1976, § 12.99.1; Ord. No. 9-77, 10-3-77, Part IV; Ord. No. 19-2006, § (2), 8-21-06)

13.4.11 Permanent reference points.

Prior to the approval of the final plat, the following survey reference markers shall be installed:

- A. Monuments control corners complying with the requirements of G.S. Chpt. 39, Art. 5A and the Standards of Practice for Land Surveying in North Carolina (21 N.C.A.C. 56 .1600, et. seq.) shall be placed in all subdivisions.
- B. Monuments and control corners. Metal markers, 3 feet long and $\frac{3}{4}$ inch in diameter, shall be placed at all corners, other than those where monuments are installed, at all points of curve, points of intersection, and points of tangency. All monuments and control corners shall be shown on the final plat.
- C. Markers. All lot corners, all points where the street lines interest the exterior boundaries of the subdivision and all angle points and points of curve in each street

shall be marked with iron pipe not less than three-fourths inches in diameter and thirty (30) inches long, driven so as to be within one (1) inch of the finished grade.

D. Property corner tie. At least one (1) corner of the property surveyed shall be designated by course and distance (tie) from a readily discernible reference marker. If a corner is within two thousand (2,000) feet of a U.S. Coast Geodetic Station or State Grid System coordinated monument, then this corner shall be marked with a monument so designated and shall be accurately tied to the station or monument by computed x and y coordinates which shall appear on the map with a statement identifying the station or monument and to an accuracy of 1:5000. When such a monument or station is not available, the tie shall be made to some pertinent and readily recognizable landmark or identifiable point, physical object or structure.

E. Survey accuracy.

1. Angular error of closure shall not exceed twenty-five (25) seconds times the square root of the number and angles turned.
2. Linear error of closures shall not exceed one (1) foot per ten thousand (10,000) feet of perimeter of the lot of land.

(Code 1976, § 12.99.2; Ord. No. 19-2006, § (2), 8-21-06)

State law reference-Requirement of permanent markers as control corners, G.S. § 39-32.1.

13.4.12 Required improvements.

A. Street improvements.

1. Grading. The subdivider shall bear the costs of grading all streets within the subdivision to their full right-of-way width except on major thoroughfares where he shall bear the costs of grading to a width of sixty (60) feet. Finished grade, cross-section and profile shall be approved by the Public Works Director or his her designee.
2. Base material and paving. The subdivider shall bear the costs of the installation of base material and paving for all streets within the subdivision in accordance with the specifications and standards of the Town. For major thoroughfares, the subdivider shall be responsible only for the cost of base materials and paving equal to that required to construct a minor thoroughfare.
3. Curb and gutters and alternatives. The subdivider shall bear the costs of implementing the recommendation of the Town Engineer with respect to a drainage plan regarding curb and gutter, valley curb, ditch liners, etc., on all streets within the subdivision in accordance with the specifications and standards of the Town.

B. Sidewalks. In the R-8 and R-11 zoning districts, sidewalks shall be required on at least one side of every new street built as part of a major/general subdivision, except that no sidewalk shall be required on new streets having five (5) or fewer houses that end in a cul-de-sac.

C. Sanitary sewer and water.

1. If a subdivision lies within the corporate limits of the Town and within five hundred (500) feet of the municipal water or sanitary sewer system, the subdivider shall, at his expense, connect every lot of the subdivision to the municipal water and sewer systems. Sufficient taps shall be extended to lot lines to prevent subsequent cutting of pavement. All materials, design and installation shall be made in accordance with specifications and standards of the Town.
2. If a subdivision lies beyond the corporate limits, the subdivider may, at his expense, connect the subdivision lots to the municipal sewer and water system if all required improvements and standards of subdivision design set forth by this article are complied with. Where municipal sewer and water facilities are not available beyond the corporate limits at the time subdividing occurs, such facilities may later be extended on petition and at the expense of the lot owners if all required improvements and standards of subdivision design set forth by this article were originally employed by the subdivider. For the purposes of this subsection, water and sewer required improvements shall be deemed to include approval by the county health department, in writing, of any individual or community water supplies and waste disposal systems to be used on an interim basis.
3. Notwithstanding the provisions of subsections (1) and (2), subdividers or other persons who wish to secure an extension of the municipal water or sanitary system to serve an area to which the Town Council would not otherwise, at the time of the proposed extension, extend the system at Town expense, may with the prior agreement of the Town Council and subject to compliance with the Town's specifications and standards, construct such extensions and the Town will pay over to such a person any funds received by way of tap fees (exclusive of meter setting costs and the in town tap fees for connections thereto) for a period of five (5) years to begin from the date that the line is approved for placement in service.

D. Storm drainage.

The subdivider shall provide an adequate drainage system in compliance with Appendix B Phase II Stormwater for the proper drainage of all surface water in order to protect the proposed development from water damage. The design of such system shall be subject to the approval of the Planning Director, in consultation with the Public Works Director and in conformance with the following standards and requirements:

1. No surface water shall be channeled or directed into a sanitary sewer.
2. Where feasible, the subdivider shall connect to the municipal storm drainage system.
3. Where the municipal storm drainage system cannot feasibly be extended to the subdivision, a surface drainage system shall be designed to complement surface drainage systems on surrounding properties.

4. Cross pipes under streets and driveways shall be reinforced concrete or corrugated metal. Where corrugated metal is used, the gauge shall be in accordance with the specifications of the North Carolina Department of Transportation.
 5. Surface drainage courses shall have side slopes of at least one (1) foot of horizontal distance for each one (1) foot of vertical distance.
 6. The minimum grade along the bottom of a surface drainage course shall be a vertical fall of approximately one (1) foot in each three hundred (300) feet of horizontal distance.
 7. The design shall meet all requirements of Appendix B, Phase II Stormwater regulations.
- E. Street signs. Appropriate name signs which meet Town specifications shall be placed at all street intersections at the expense of the developer.
- F. Utilities. In the case of minor subdivisions, the Planning Director and, in the case of major subdivisions, the Town Council may allow utilities to be placed along rear property lines or underground if the available street rights-of-way are not sufficient to provide service. Underground gas, electrical, cable or telephone service shall be installed prior to the installation of street paving. Sufficient gas taps shall extend to lot lines to ensure against subsequent cutting of pavement.
- G. Street trees. It is recommended that street trees be planted in all subdivisions, which the Town considers to be good design as well as good business practice. ~~The planting of street trees is considered a duty of the subdivider as well as good business.~~ Street trees are a protection against excessive heat and glare and enhance the attractiveness and value of the property. Trees should be planted inside the property lines where they are less subject to injury, decrease the chance of motor accidents and enjoy more favorable conditions for growth.
- H. Ownership. All water, sanitary sewerage and storm drainage facilities installed under the requirements of this article shall become the sole property of the Town upon acceptance by the Town. A deed to the Town for such facilities, including easements pertaining to right-of-entrance for maintenance, shall be executed prior to connections to the acceptance of respective municipal systems.
- I. Oversized improvements and reimbursement. Where the Town Council deems it necessary in the interest of the health, safety and general welfare of the residents of the planning area, the subdivider shall make certain improvements at sizes in excess of those which would normally be required to serve only his subdivision. Where oversized improvements are required, the Town shall reimburse the subdivider for the cost of materials and labor incurred over and above those required to serve his subdivision. Such reimbursement shall be made in twelve (12) equal payments during a period of two (2) years. Improvements subject to reimbursement are the following:
1. The cost of materials for water mains over six (6) inches in diameter including the extra cost of lines over six (6) inches in diameter incurred to reach the particular subdivision;

2. The cost of materials for sanitary sewer lines over eight (8) inches in diameter including the extra cost of lines over eight (8) inches in diameter incurred to reach the particular subdivision;
3. Storm drainage facilities to be determined at the time of preliminary plat review. (Code 1976, § 12.99.3; Ord. No. 7-85, 7-1-85; Ord. No. 21-93, 12-6-93; Ord. No. 19-2006, § (2), 8-21-06)

ARTICLE 14| **Nonconformities**

14.1 **PURPOSE AND INTENT**

The regulations of this article govern uses, structures, lots, signs and other situations that came into existence legally but that do not conform to one or more requirements of this Unified Development Ordinance.

14.1.1 The regulations are further intended to:

- A. recognize the interests of property owners in continuing to use their property;
- B. promote reuse and rehabilitation of existing buildings; and
- C. place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole.

14.1.2 Authority to Continue

Any nonconformity that legally existed on October 17, 2011 or that becomes nonconforming upon the adoption of any amendment to this Unified Development Ordinance may be continued in accordance with the provisions of this article. If such use is discontinued for a period of one hundred and eighty (180) days, such nonconformity shall be deemed to have been abandoned and shall not be continued in the future except in conformance with the provisions of this Unified Development Ordinance.

14.1.3 Determination of Nonconformity Status

The burden of establishing that a nonconformity is a legal nonconformity shall, in all cases be solely upon the owner of such nonconformity.

14.1.4 Repairs and Maintenance

- A. Incidental repairs and normal maintenance of nonconformities shall be permitted unless such repairs are otherwise expressly prohibited by this Unified Development Ordinance. For the purpose of this provision, repair or replacement of non-load bearing walls, fixtures, wiring or plumbing shall be considered incidental repairs if the total value of the repairs in any 12-month period does not exceed 25 percent of the current replacement value of the structure.
- B. Nothing in this article shall be construed to prevent structures from being structurally strengthened or restored to a safe condition, in accordance with an official order of a public official. When improvements are made to restore the property to a safe condition, the cost of such repairs or alterations shall not be included in the 25 percent noted in the preceding paragraph.

14.1.5 Change of Tenancy or Ownership

The status of a nonconformity is not affected by changes of tenancy, ownership, or management.

14.1.6 Cost Estimates

In making determinations regarding replacement value, the Planning Director shall use the Dodge Reports, Marshall Swift, or their successors, as a basic reference. The Planning Director may also accept sworn affidavits from a licensed general contractor or other licensed tradesperson (i.e. plumber, electrician, etc.) as to the cost of replacement.

14.2 NONCONFORMING USES

14.2.1 Definition

A nonconforming use is a use that was legally established but which is no longer allowed by the use regulations of the zoning district in which it is located. A use that was legally established without a special use permit or conditional use permit shall not be deemed nonconforming solely because a special use permit or a conditional use permit is now required for the subject use. Enlargement, replacement or modification of the subject use resulting in an expansion of more than 300 square feet of building area, the expansion of the site to include additional property or the addition of more than 20 parking stalls shall require approval of a special use permit or conditional use permit, just as if it were a new application.

14.2.2 Expansion

- A. A nonconforming use shall not be enlarged or expanded unless one of the following conditions exists:
 - 1. such expansion eliminates or reduces the nonconforming aspects of the situation;
 - 2. the expansion is into a part of a building or other structure that was lawfully and manifestly designed or arranged for such use; or
 - 3. the expansion is for a living space addition to a single dwelling unit.
- B. Expansion for the sole purpose of providing off-street parking shall not be considered expansion of a nonconforming use.

14.2.3 Change of Use

A nonconforming use may not be changed to any use other than a use allowed in the zoning district in which it is located except as provided below. A nonconforming use can be changed to another similar or less intense nonconforming use with the approval of the Planning Board. The Planning Board shall find that the new use is no more intensive in character than the original nonconforming use. Such changes shall be treated in the same manner as conditional uses.

14.2.4 Moving

A nonconforming use shall not be moved in whole or in part to another location on the lot or parcel unless the movement or relocation eliminates or decreases the extent of nonconformity.

14.2.5 Loss of Legal Nonconformity Status

- A. Abandonment

If a nonconforming use is abandoned, ceases or is discontinued for any reason for a period of more than 180 days, the use shall be considered abandoned. Once abandoned, the legal nonconforming status of the use shall be lost and re-establishment of the use shall be prohibited, except in compliance with this ordinance. Evidence of abandonment shall include but not be limited to the following: cessation or discontinuance of the particular use, disconnection of water service to the property, disconnection of electric service to the property, failure to pay property taxes or failure to maintain the property. Any subsequent use of the property shall comply with the regulations of the zoning district in which it is located.

B. Damage or Destruction

1. Nonconforming uses that are damaged or deteriorated to an extent, including being completely destroyed, may be restored, provided (i) that the total square footage of the repaired or rebuilt dwelling(s) shall not exceed 110% of the square footage of the original dwelling units and (ii) that the repaired or rebuilt structure(s) shall not be more nonconforming in any way than the original structure(s)
2. When any building or structure, other than a detached single-family dwelling and any associated accessory dwelling unit, devoted to a nonconforming use is damaged or deteriorated to the extent of sixty (60) percent or more of the assessed taxable value of the building or structure, such building, if restored, shall thereafter be devoted to conforming uses.

C. Reuse

A nonconforming use can be changed to another similar or less intense use with the approval of the Board of Adjustment. The Board of Adjustment shall find that the new use is no more intensive in character than the original nonconforming use. Such changes shall be treated in the same manner as special uses.

D. Single Family Dwelling

Any nonconforming single-family dwelling may be altered, repaired, enlarged or replaced with a single-family dwelling, provided that the altered or replaced structure meets the dimensional requirements of the Unified Development Ordinance.

14.2.6 Accessory Uses and Structures

No use or structure that is accessory to a principal nonconforming use or structure shall continue after such principal use or structure shall have ceased or terminated, unless it complies with all regulations of this Unified Development Ordinance.

14.3 NONCONFORMING STRUCTURES

14.3.1 Definition

A nonconforming structure is any building or structure, other than a sign, that was legally established but which no longer complies with the Intensity, Dimensional and

Design Standards of Unified Development Ordinance. Nonconforming structures may remain, subject to the regulations of this section.

14.3.2 Structural Changes

Structural changes, including enlargements, shall be permitted if the structural change does not increase the extent of nonconformity. When a structure is nonconforming because it encroaches into a required setback, this provision shall be interpreted as allowing other portions of the structure to be expanded out to the extent of the existing encroachment, as long as there is no greater reduction of required setbacks.

14.3.3 Use

A nonconforming structure may be used for any use allowed in the underlying zoning district.

14.3.4 Moving

A nonconforming structure may be moved in whole or in part to another location on the subject parcel if the movement or relocation decreases or eliminates the nonconformity.

14.3.5 Loss of Nonconforming Status; Damage or Destruction

- A. If a nonconforming structure is damaged or destroyed to the extent of more than 60 percent of the assessed taxable value of the structure immediately prior to damage, the nonconforming structure shall not be restored unless it is in full compliance with all applicable provisions of this Unified Development Ordinance.
- B. If a nonconforming structure is damaged by 60 percent or less of its assessed taxable value immediately prior to damage, the structure may be re-established to the extent that it existed before the time of damage, provided that such repairs, restoration or reconstruction are substantially completed within 12 months of the date of such damage.
- C.

14.4 NONCONFORMING LOTS

14.4.1 Definition

A nonconforming lot is a tract of land, designated on a duly recorded subdivision plat, or by a duly recorded deed, or by other lawful means, that complied with all applicable lot area, lot width and lot depth standards of the zoning district in which it was located at the time of its creation, but which does not comply with the minimum lot area, lot width or lot depth requirements of the zoning district in which it is now located.

14.4.2 Use of Single Nonconforming Lots

The provisions of this section apply to nonconforming lots:

- A. In residential zoning districts, single nonconforming lots may be used for detached single-family dwellings and related accessory structures, subject to all other applicable standards of the underlying zoning district, provided that a single-family dwelling must still meet the minimum separation and setback requirements established by the North Carolina State Building Code.

- B. In nonresidential zoning districts, single nonconforming lots may be used for uses allowed within the underlying zoning district, subject to all other applicable standards of the underlying zoning district. If the underlying zoning district allows a variety of uses or a variety of intensities of uses and one or more uses or intensities would comply with applicable lot area, lot width or other dimensional standards, while others would not, then only the uses or intensities that comply with applicable standards shall be permitted.

14.4.3 Division of Nonconforming Lots

Where a nonconforming lot of record in single ownership existed and was occupied by more than one (1) single-family dwelling which meets the State Building Code prior to December 21, 1965, such lot may be resubdivided to create a separate lot for each dwelling even though the resulting lots do not meet the lot area or width standards of the underlying zoning district. Before such subdivision is allowed, the Planning Director shall make the following findings:

- A. Drainage easements and rights-of-way will be maintained;
- B. The division does not adversely affect permissible development of adjoining property;
- C. No additional nonconformities are created;
- D. The division will maintain or enhance the value of contiguous property; and
- E. The character of the area will be maintained or enhanced.

Any nonconforming lot subdivision shall follow all requirements of a major subdivision, in approving such resubdivisions, may attach reasonable and appropriate conditions to the approval such that public health, safety and general welfare are protected.

14.5 NONCONFORMING SIGNS

14.5.1 Definition

A nonconforming sign is a sign that was legally established but which no longer complies with the Sign regulations of Article 11.

14.5.2 Compliance or Removal -- Point of Purchase Signs

Point of Purchase Sign is a sign that advertises a product at its point of sale, or “point of purchase” location”

Point of purchase signs shall be replaced with signs conforming to the regulations contained in Article 11 when removed or repaired if the cost of such repair exceeds 50% of the value of the sign.

14.5.3 Compliance or Removal – Off Premise Signs

Nonconforming off premise signs shall be brought into compliance with existing regulations or removed in accordance with the regulations of this article, except that the repair and removal off premise signs that are subject to the requirements of the North Carolina Outdoor Advertising Control Act (G.S. Chpt. 136, Art. 11) shall be governed by the applicable NC DOT regulations.

14.5.4 Noncompliance

All signs which are nonconforming because of noncompliance with Article 11.1.15 (Prohibited Signs) shall be altered to comply with **Error! Reference source not found.** or removed within 1 year of the date that written notice of the nonconformity is provided by the Planning Director to the sign owner.

14.5.5 Nonconforming signs.

Any sign existing on the effective date of this article which does not conform to the requirements set forth in this ordinance will be allowed to remain if in good repair but shall not be changed to another nonconforming sign. Notwithstanding the foregoing sentence, the face of a nonconforming sign may be replaced. If a nonconforming sign is damaged by accident or by natural cause, it may be restored to its original condition within one hundred and eighty (180) days of the date of its damage.

[t. VII, § 70; Code 1976, § 12.33; Ord. No. 23-90, 12-3-90](#)

ARTICLE 15| **Enforcement**

15.1 **REMEDIES AVAILABLE.**

- A. Unless otherwise stated herein, a violation of this ordinance, including, but not limited to, violations of variances, zoning permits, and conditional use permits, is a Class 3 misdemeanor as provided by G.S. § 14-4. A person charged with a misdemeanor for violating this ordinance, may be fined not more than \$500.00.
- B. Unless otherwise stated herein, a violation of this ordinance, including, but not limited to, violations of variances, zoning permits, and conditional use permits, shall also subject the offender to a civil penalty of up to Fifty 00/100 Dollars (\$50.00) per violation.
- C. The requirements of this ordinance may be enforced by an appropriate equitable remedy issuing from a court of competent jurisdiction. In such case, the General Court of Justice shall have jurisdiction to issue such orders as may be appropriate, and it shall not be a defense to the application of the Town for equitable relief that there is an adequate remedy at law.
- D. The requirements of this ordinance may also be enforced by injunction and order of abatement, and the General Court of Justice shall have jurisdiction to issue such orders. When a violation of the ordinance occurs, the Town may apply to the appropriate division of the General Court of Justice for a mandatory or prohibitory injunction and order of abatement commanding the defendant to correct the unlawful condition upon or cease the unlawful use of the property. The action shall be governed in all respects by the laws and rules governing civil proceedings, including the North Carolina Rules of Civil Procedure in general and Rule 65 in particular.
- E. In addition to an injunction, the court may enter an order of abatement as a part of the judgment in the cause. An order of abatement may direct that buildings or other structures on the property be closed, demolished, or removed; that fixtures, furniture, or other movable property be removed from buildings on the property; that grass and weeds be cut; that improvements or repairs be made; or that any other action be taken that is necessary to bring the property into compliance with the ordinance. If the defendant fails or refuses to comply with an injunction or with an order of abatement within the time allowed by the court, he may be cited for contempt, and the Town may execute the order of abatement. In such cases, the Town shall have a lien on the property for the cost of executing an order of abatement in the nature of a mechanic's and materialman's lien. The defendant may secure cancellation of an order of abatement by paying all costs of the proceedings and posting a bond for compliance with the order. The bond shall be given with sureties approved by the Clerk of the appropriate Superior Court in an amount approved by the judge before whom the matter is heard and shall be conditioned on the defendant's full compliance with the terms of the order of abatement within a time fixed by the judge. Cancellation of an order of abatement shall not suspend or cancel an injunction issued in conjunction therewith.

- F. The requirements of this ordinance may be enforced by any one, all, or a combination of the remedies authorized and prescribed by this section.
- G. Each day's continuing violation shall be a separate and distinct offense.
- H. In case any building is erected, constructed, reconstructed, altered, repaired, converted or maintained or any building or land is used in violation of this chapter, the zoning enforcement officer or any other appropriate town authority or any person who would be damaged by such violation, in addition to other remedies, may institute an action for injunction, or mandamus, or other appropriate action or proceeding to prevent such violation.

(Ord. of 4-11-70, Art. X, § 104; Code 1976, § 12.56)

ARTICLE 16| Definitions

16.1 DEFINITIONS

16.1.1 Interpretation of commonly used terms and words.

For the purpose of interpreting this chapter certain words or terms are herein defined. The following words shall, for the purpose of this chapter, have the meaning herein indicated:

- A. Lot. The word “lot” shall include the words “parcel” or “tract.”
- B. Structure. The word “structure” shall include the word “building.”
- C. Used for. The words “used for” shall include the meaning “designed for.”

(Ord. of 4-11-70, Art. IV, § 40; Code 1976, § 12.24)

[Cross reference-Definitions and rules of construction generally, § 1-102.](#)

16.1.2 Definitions of specific terms and words.

Accessory use.	A use customarily incidental and subordinate to the principal use or building and located on the same lot with such principal use or building.
Agricultural use	The use of waters for stock watering, irrigation, and other farm purposes.
Alley.	A public or private thoroughfare which affords only a secondary means of access to abutting property and not intended for general traffic circulation.
Best Management Practices (BMP)	A structural or nonstructural management-based practice used singularly or in combination to reduce non point source pollution to receiving waters in order to achieve water quality protection goals.
Billboard.	Outdoor structure or display, pictorial or otherwise, either freestanding or attached to a building, which advertises or attracts attention to a business, commodity, service or other activity, conducted, sold or offered elsewhere than on the premises on which structure or display is located.
Buffer	An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not become channelized and which provides for infiltration of the runoff and filtering or pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.
Building	Any structure having a roof supported by columns or by walls, and intended for shelter, housing or enclosure of persons, animals or property. The connection of two (2) buildings by means of an open porch, breezeway, passageway, carport or other such open structure, with or without a roof, shall not be deemed to make them one (1) building.
Building, accessory	A building subordinate to the main building on a lot and used for

	purposes customarily incidental to the main or principal building and located on the same lot therewith
Building, principal.	A building in which is conducted the principal use of the lot on which the building is situated
Building setback line.	A line establishing the minimum allowable distance between the nearest portion of any building, excluding the outermost three (3) feet of any uncovered porches, steps, eaves, gutters and similar fixtures, and the street right-of-way line when measured perpendicularly thereto.
Built-upon area	That portion of a development project that is covered by impervious or partially impervious cover including buildings, pavement, gravel areas (e.g., roads, lots, paths) recreation facilities (e.g., tennis courts), etc., excluding wooden slatted decks and the water area of a swimming pool.
Cluster development	The grouping of buildings in order to conserve land resources and provide for innovation in the design of the project. This term includes nonresidential development as well as single-family residential subdivisions and multi-family developments that do not involve the subdivision of land.
Common open space	A parcel or parcels of land or an area of water or a combination of both land and water within the site designated for development and designed and intended for the use and enjoyment of residents of the development or for the general public, not including streets or off-street parking areas. Common open space shall be substantially free of structures but may contain such improvements as are in the plan as finally approved and are appropriate for the benefit of residents of the development
Communication antennas.	Any dish-type antennas, four (4) feet in diameter or larger, designed to receive television, radio and other communication signals primarily from orbiting satellites and any ground-mounted antenna that extends more than thirty-five (35) feet above ground level or more than ten (10) feet over the highest point of the roofline of the primary building on the lot and designed to send or receive television, radio and other communication signals from any source.
Conditional use permit.	A permit granted by the Town Council which authorizes a use which would not be appropriate generally throughout the zoning district but which, if controlled as to number, size, location, or relation to the neighborhood, would promote the public health, safety, and general welfare. Wherever it appears in this Unified Development Ordinance the terms “conditional use” and “special use” and the terms “conditional use permit” and “special use permit” shall be interchangeable.
Condominium	Real estate, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real estate is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

<p>Condominium unit</p>	<p>A physical portion of the condominium designated for separate ownership or occupancy which includes enclosed space consisting of one (1) or more rooms occupying all or part of a floor in a building or one (1) or more floors or stories regardless of whether it be designed for residence, for office, for the operation of any industry or business or for any other type of independent use and shall include such accessory spaces and areas as may be described in the declaration, such as garage space, storage space, balcony, terrace or patio, provided it has a direct exit to a thoroughfare or to a given common space leading to a thoroughfare.</p>
<p>Critical area</p>	<p>The area adjacent to a water supply intake or reservoir where risk associated with pollution is greater than from the remaining portions of the watershed. The critical area is defined as the area one-half mile upstream and draining to a water supply reservoir or water intake located in a stream or river; or to the ridge line of the watershed, whichever comes first.</p>
<p>Customary home occupation</p>	<p>Any use conducted for gain entirely within a dwelling and carried on by the occupants thereof, which use is clearly incidental and secondary to the use of the dwelling for residential purposes and does not change the character thereof, and in connection with which there is no display; provided further, no person, not a resident on the premises, shall be employed specifically in connection with the activity; no mechanical equipment shall be installed or used except such as is normally used for domestic or professional purposes; and not over twenty-five (25) percent of the total floor space of any structure shall be used for home occupations.</p>
<p>Development.</p>	<p>That which is to be done pursuant to a zoning permit, conditional use permit, or sign permit.</p>
<p>Dwelling, multifamily.</p>	<p>A building or portion thereof used or designed as a residence for three (3) or more families living independently of each other, including apartment houses, apartment hotels and group housing projects.</p>
<p>Dwelling, single-family.</p>	<p>A detached building designed for or occupied exclusively by one (1) family.</p>
<p>Dwelling, two-family.</p>	<p>A building arranged or designed to be occupied by two (2) families living independently of each other.</p>
<p>Dwelling unit.</p>	<p>A building, or portion thereof, providing complete and permanent living facilities for one (1) family. The term “dwelling unit” shall not be deemed to include a motel, hotel, tourist home, mobile home or other structure designed for transient residence.</p>
<p>Existing development.</p>	<p>Those projects that are built or those projects that at a minimum have established a vested right under North Carolina zoning law as of the effective date of this ordinance based on at least one (1) of the following criteria:</p> <p>(1) Having expended substantial of resources (time, labor, money) based on a good faith reliance upon having received a valid local government approval to proceed with the project, or</p>

	<p>(2) Having an outstanding valid building permit as authorized by the General Statutes (G.S. § 160A-385.1), or</p> <p>(3) Having an approved site specific or phased development plan as authorized by the General Statutes (G.S. § 160A-385.1)</p>
Existing lot (lot of record).	A lot which is part of a subdivision, a plat of which has been recorded with the appropriate Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance. See also, "Lot of Record."
Family.	An individual or two or more persons related by blood, marriage, or adoption, or a group of not more than five persons, excluding dependents, who are not related by blood, marriage or adoption, living together as a single housekeeping unit
Family care home.	A home licensed by the State Department of Health and Human Services with support and supervisory personnel that provides room and board, personal care and habilitation services in a family environment for not more than six (6) resident handicapped persons as defined by the state. See, G.S. § 168-21.
Fowl/Birds	Fowl and birds include the following: chickens, game hens, ducks, swans, geese and other birds typically used as food. This definition for the purpose of animal keeping does not include parrots, parakeets, and other non-food birds.
Freeway	A roadway designed with the purpose of high mobility and low access with a design speed of fifty five (55) miles per hour or greater that do not have traffic signals or driveways.
GDP	General Development Plan
Gross floor area.	The total floor area of a building including basements, mezzanines and upper floors, exclusive of stairways and elevator shafts. It excludes separate service facilities outside the main building such as boiler rooms and maintenance shops.
Group development.	A group of two (2) or more principal structures built on a single lot, tract or parcel of land not subdivided into the customary streets and lots and which will not be so subdivided, and designed for occupancy by separate families, businesses or other enterprises. Examples include cluster-type subdivisions, row houses, apartment courts, school and hospital campuses, shopping centers and industrial parks.
Group home for developmentally disabled adults.	Any facility licensed by the State Department of Health and Human Services, by whatever name it is called, other than a "family care home," as defined by this section, with support and supervisory personnel that provides room and board, personal care or habilitation services in a family environment for not more than nine (9) resident persons. See, the definition of "residential facility" in G.S. § 122C-3.
Hazardous material.	Any substance listed as such in the Superfund Amendments and Reauthorization Act of 1986 ("SARA") section 302, Extremely

	Hazardous Substances; the sections of the Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) pertaining to Hazardous Substances; or Section 311 of the Clean Water Act (“CWA”), which pertains to oil and hazardous substances.
Household	A household includes all the people who occupy a housing unit as their usual place of residence.
Household Pet	Any animal kept as a pet rather than for productive purposes, including but not limited to dogs, cats and parrots, parakeets and other non-food birds. For the purposes of this ordinance, a working dog, such as a hunting dog or sheep herding dog, shall be considered a pet and not livestock. Any animal not classified as livestock shall be deemed a household pet. See, “livestock.”
Industrial development.	Any nonresidential development that requires a National Pollution Discharge Elimination System (“NPDES”) permit for an industrial discharge and/or requires the use or storage of any hazardous material for the purpose of manufacturing, assembling, finishing, cleaning or developing any product.
Junkyard.	The use of more than three hundred (300) square feet of the area of any lot for the storage, keeping or abandonment of junk, including scrap metals or other materials, or for the dismantling, demolition or abandonment of automobiles or other vehicles or machinery or parts thereof. Area shall be calculated by determining the smallest rectangle capable of enclosing the storage area then multiplying width by length.
Landfill.	A facility for the disposal of solid waste on land in a sanitary manner in accordance with Chapter 130A, Article 9 of the N.C. General Statutes. For the purpose of this ordinance this term does not include composting facilities.
Livestock	Animals raised for the production of meat, milk, eggs, fiber or used for draft or equestrian purposes, including but not limited to horses, mules, cattle, pigs, goats, llamas, sheep, rabbits, and all other animals that typically are kept primarily for productive or useful purposes rather than as pets. See also “Household Pet” and “Fowl/Birds.”
Lot.	A parcel of land occupied or capable of being occupied by a building or group of buildings devoted to a common use, together with the customary accessories and open spaces belonging to the same.
Lot, corner.	A lot which occupies the interior angle at the intersection of two (2) street lines which make an angle of more than forty-five (45) degrees and less than one hundred thirty-five (135) degrees with each other. The street line forming the least fringe shall be deemed the front of the lot except where the two (2) street lines are equal, in which case the owner shall be required to specify which is the front when requesting a zoning permit. The portion of the lot considered the front shall have a formal front door.
Lot depth.	The mean horizontal distance between the front and rear lot lines.
Lot of record.	A lot which is part of a subdivision, a plat of which has been recorded

	with the appropriate Register of Deeds prior to the adoption of this ordinance, or a lot described by metes and bounds, the description of which has been so recorded prior to the adoption of this ordinance.
Lot width.	The distance between side lot lines measured at the building setback line.
Major Thoroughfare	Road facilities that provide expedition movement of high volumes of traffic within and through an urban area.
Major variance from the Watershed Protection Ordinance.	<p>A variance from the requirements of the Watershed Protection Ordinance that results in any one (1) or more of the following:</p> <p>(1) The complete waiver of a management requirement;</p> <p>(2) The relaxation, by a factor of more than ten (10) percent, of any management requirement that takes the form of a numerical standard;</p> <p>(3) The relaxation of any management requirement that applies to a development proposal intended to qualify under the high density option.</p>
Manufactured home (mobile home).	<p>A structure, transportable in one (1) or more sections, which in the traveling mode is eight (8) body feet or more in width or forty (40) body feet or more in length or, when erected on site, is three hundred twenty (320) or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation, when connected to required utilities including the plumbing, heating, air conditioning and electrical systems contained therein. Manufactured homes are classified in three (3) categories as follows:</p> <p>Class A manufactured home. A single-family manufactured home constructed in accordance with the standards set forth in the North Carolina State Building Code and composed of components substantially assembled in a manufacturing plant and transported to the building site for final assembly on a permanent foundation and also meeting town appearance criteria, as determined by the town zoning enforcement officer (see section 17-353 of this chapter). Class A manufactured homes are also known as modular homes and are regulated according to State law as such.</p> <p>Class B manufactured home. A manufactured home that meets or exceeds the construction standards established by the U.S. Department of Housing and Urban Development that were in effect at the time of construction and is a multisection unit. The home shall also meet all requirements of the town appearance criteria, as determined by the town zoning enforcement officer (see section 17-353 of this chapter).</p> <p>Class C manufactured home. A manufactured home that meets or exceeds the construction standards established by the U.S. Department</p>

	<p>of Housing and Urban Development that were in effect at the time of construction. The home must also meet all requirements of the town appearance criteria, as determined by the town zoning enforcement officer (see section 17-353 of this chapter).</p> <p>Wherever it appears in this Code of Ordinances, the term “mobile home” shall be replaced with the term “manufactured home,” and the term “mobile home park” shall be replaced with the term “manufactured home park.”</p>
Manufactured home park.	Any lot, tract or parcel of land used, maintained or intended to be used, leased or rented for occupancy of manufactured homes, consisting of not less than two (2) acres in area, excluding street rights-of-way. This definition shall not include trailers sales lots on which unoccupied manufactured homes are parked for the purpose of inspection and sale.
Minor Thoroughfare	Road facilities that collect traffic from local access streets and carry it to a major thoroughfare.
Minor variance from the Watershed Protection Ordinance.	A variance from the requirements of the Watershed Protection Ordinance that does not qualify as a major variance.
Modular Home	A single-family dwelling unit (which may be in the form of a factory-built or manufactured housing permit as well as a standard building permit) constructed in a factory in accordance with the State Building Code and bearing the appropriate gold insignia indicating such compliance. The term includes “pre-fabricated,” “panelized,” and “factory-built” units. See also, “Class A Manufactured Home.”
Nonconforming lot of record.	A lawfully created lot described by a plat or a deed that does not meet the current minimum lot size or other development requirements of this ordinance.
Nonconforming use.	Any use of a building, structure or land which does not conform to the use regulations of this ordinance, either at the effective date of this ordinance or as a result of subsequent amendments.
Nonresidential development.	All development other than residential development, agriculture and silviculture (tree farm).
Open storage.	Unroofed storage area, whether fenced or not.
Parking space.	A storage space of not less than ten (10) feet by twenty (20) feet for one (1) automobile, plus the necessary access space. It shall always be located outside the dedicated street right-of-way.
Planned unit development.	A tract of land at least one (1) acre in area, under single corporation, firm, partnership, or association ownership, planned and developed as an integral unit, in a single development operation or a definitely programmed series of development operations and according to an approved outline development plan.
Quasi-judicial decision.	A decision involving the finding of facts regarding a specific

	<p>application of an ordinance and the exercise of discretion when applying the standards of the ordinance. Quasi-judicial decisions include decisions involving variances, special and conditional use permits, and appeals of administrative determinations. Decisions on the approval of site plans are quasi-judicial in nature if the ordinance authorizes a decision-making board to approve or deny the site plan based not only upon whether the application complies with the specific requirements set forth in the ordinance, but also on whether the application complies with one or more generally stated standards requiring a discretionary decision on the findings of fact to be made by the decision-making board.</p>
Residential development.	<p>Buildings for residence such as attached and detached single-family dwellings, apartment complexes, condominiums, townhouses, cottages, etc. and their associated outbuildings such as garages, storage buildings, gazebos, etc.</p>
Sign area.	<p>Sign area shall be measured by the smallest square, rectangle, triangle, circle or combination thereof, which will encompass the entire advertising copy area. In computing area only one (1) side of a double-faced sign shall be considered.</p>
Sign, business.	<p>Any outdoor notice containing words, letters, figures, numerals, emblems, devices, trademarks, or trade names or combinations thereof, by which anything is made known such as the destination of a firm, corporation, profession, business, commodity or product located or available on the premises.</p>
Single-family residential.	<p>Any development where: (1) no building contains more than one (1) dwelling unit; (2) every dwelling unit is on a separate lot; and (3) where no lot contains more than one (1) dwelling unit.</p>
Street.	<p>A dedicated and accepted public right-of-way for vehicular traffic which affords the principal means of access to abutting properties.</p>
Structure.	<p>Anything constructed or erected, the use of which requires more or less permanent location on the ground or which is attached to something having more or less permanent location on the ground.</p>
Variance.	<p>A grant of relief from the requirements of this Unified Development Ordinance that permits construction in a manner that would otherwise be prohibited.</p>
Vested right	<p>The right to undertake and complete the development and use of property under the terms and conditions of an approved site specific development plan or an approved phased development plan. Article 2.13 provides the standards for vested rights.</p>
Water dependent structure.	<p>Any structure for which the use requires access to or proximity to or citing within surface waters to fulfill its basic purpose, such as boat ramps, boat houses, docks and bulkheads. Ancillary facilities such as restaurants, outlets for boat supplies, parking lots and commercial boat storage areas are not water dependent structures.</p>
Watershed.	<p>The entire land area contributing surface drainage to a specific point</p>

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	(e.g. the water supply intake.).
Watershed Protected area.	The area five (5) miles upstream and draining to a water supply reservoir, or to the ridge line of the watershed, whichever comes first; or ten (10) miles upstream and draining to a water intake located in a stream or river, or to the ridge line of the watershed, whichever comes first.
Watershed Variance	A permission to develop or use property granted by the watershed review board relaxing or waiving a water supply watershed management requirement adopted by the Environmental Management Commission that is incorporated into this ordinance.
Watershed administrator.	An official designated by the Town Manager, responsible for administration and enforcement of this ordinance. The duties of the watershed administrator may be performed by the Town Planner, Zoning Enforcement Officer or other designated personnel.
Yard, front.	An open, unoccupied space on the same lot with the principal building between the front of the building (exclusive of steps) and the front property or street right-of-way line and extending across the full width of the lot.
Yard, rear.	An open, unoccupied space extending the full width of the lot and situated between the rear line of the lot and the rear line of the building projected to the side lines of the lot.
Yard, side.	An open, unoccupied space, situated between the side line of the building and the adjacent side line of the lot and extending from the rear line of the front yard to the front line of the rear yard.

(Ord. of 4-11-70, Art. IV, § 41; Code 1976, § 12.25; Ord. No. 2-83, 2-7-83; Ord. No. 12-85, 6-17-85; Ord. No. 9-86, § 1,6-16-86; Ord. No. 2-90, 1-15-90; Ord. No. 12-90,3-19-90; Ord. No. 8-91,8-5-91; Ord. No. 12-93, 8-16-93; Ord. No. 35-96, 12-2-96; Ord. No. 23-98, 7-20-98; Ord. No. 23-2004,9-20-04; Ord. No. 29-2005, 10-3-05)

Cross reference-Definitions and rules of construction generally, § 1-102.

ARTICLE 17| **Appendices**

17.1 **APPENDIX A- PROVISIONS FOR FLOOD HAZARD REDUCTION**

17.1.1 Purpose.

- A. The flood hazard areas in the jurisdiction of the Town of Maiden located in Catawba County and Lincoln County are subject to periodic inundation which results in loss of life and property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety and general welfare. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood-prone areas by uses vulnerable to floods or other hazards. The purpose of this article is to promote the public health, safety, and general welfare and to minimize public and private losses due to flood conditions in specific areas by provisions designed to:
1. Restrict or prohibit uses which are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
 2. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
 3. Control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;
 4. Control filling, grading, dredging, and all other development that may increase erosion or flood damage; and
 5. Prevent or regulate the construction of flood barriers that will unnaturally divert floodwaters or which may increase flood hazards to other lands.
- B. The objectives of this article are:
1. To protect human life, safety and health;
 2. To minimize expenditure of public money for costly flood control projects;
 3. To minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;
 4. To minimize prolonged business losses and interruptions;
 5. To minimize damage to public facilities and utilities, (i.e. water and gas mains; electric, telephone, cable and sewer lines; streets: and bridges) located in flood-prone areas;
 6. To help maintain a stable tax base by providing for the sound use and development of flood-prone areas: and
 7. To ensure that potential homebuyers are aware that property is in a special flood hazard area.

(Ord. No. 22-2007, 8-28-07)

17.1.2 Statutory authorization.

The Legislature of the State of North Carolina has in Ch. 143, Art. 21, pt. 6; Ch. 160A, Art. 19, pts. 3, 5, and 8; and Ch. 160A, Art. 8 of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare.

Therefore, the Maiden Town Council of the Town of Maiden, North Carolina, does ordain as follows.

(Ord. No. 22-2007, Art. 1, § A, 8-28-07)

17.1.3 Findings of fact.

- A. The flood-prone areas within the jurisdiction of the town are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.
- B. These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood-prone areas of uses vulnerable to floods or other hazards.

(Ord. No. 22-2007, Art. 1, § B, 8-28-07)

17.1.4 Statement of purpose.

It is the purpose of this article to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood-prone areas by provisions designed to:

- A. Restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;
- B. Require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;
- C. Control filling, grading, dredging, and natural protective barriers, which are involved in the accommodation of floodwaters;
- D. Control filling, grading, dredging, and all other development that may increase erosion or flood damage;
- E. Prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

(Ord. No. 22-2007, Art. 1, § C, 8-28-07)

17.1.5 Objectives.

The objectives of this article are to:

- A. Protect human life, safety, and health;
- B. Minimize expenditure of public money for costly flood control projects;

- C. Minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public.
- D. Minimize prolonged business losses and interruptions;
- E. Minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood-prone areas;
- F. Help maintain a stable tax base by providing for the sound use and development of flood-prone areas;
- G. Ensure that potential buyers are aware that property is in a special flood hazard area.

(Ord. No. 22-2007, Art. 1, § D, 8-28-07)

17.1.6 Definitions.

Unless specifically defined below, words or phrases used in this article shall be interpreted so as to give them the meaning they have in common usage and to give this article its most reasonable application.

Accessory structure (appurtenant structure)	A structure which is located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms and may not be located on the same parcel as the farm dwelling or shop building.
Addition (to an existing building)	An extension or increase in the floor area or height of a building or structure.
Appeal.	A request from a review of the planning director's interpretation of any provision of this article.
Area of shallow flooding	A designated AO on a community's flood insurance rate map (FIRM) with base flood depths determined to be from one (1) to three (3) feet, where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.
Area of special flood hazard	See special flood hazard area (SFHA).
Basement.	Any area of the building having its floor sub grade (below ground level) on all sides.
Base flood.	The flood having a one (1) percent chance of being equaled or exceeded in any given year.
Base flood elevation (BFE)	A determination of the water surface elevations of the base flood as published in the flood insurance study. When the BFE has not been provided in a "special flood hazard area", it may be obtained from engineering studies available from a federal, state or other source using FEMA approved engineering methodologies. This elevation, when combined with the "freeboard", establishes the "regulatory flood protection elevation."

Building	See "structure."
Chemical storage facility	A building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.
Development.	Any manmade change to improved or unimproved real estate, including but not limited to buildings or other structures; mining, dredging, filling, grading, paving, excavation, or drilling operations; or storage of equipment or materials.
Disposal.	Defined as in G.S. § 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including ground waters.
Elevated building	A non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.
Encroachment	The advance or infringement of uses, fill, excavation, buildings, structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.
Existing manufactured home park or manufactured home subdivision.	A manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are affixed, including at a minimum the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads was completed before the initial effective date of the floodplain management regulations adopted by the community.
Flood or flooding	A general and temporary condition of partial or complete inundation of normally dry land areas from the overflow of inland or tidal waters; and/or the unusual and rapid accumulation or runoff of surface waters from any source.
Flood hazard boundary map (FHBM)	An official map of a community, issued by the federal emergency management agency (FEMA), where the boundaries of the special flood hazard areas have been designated as zone A.
Flood insurance.	The insurance coverage provided on the National Flood Insurance Program.
Flood insurance rate map (FIRM)	An official map of a community, issued by the federal emergency management agency, on which both the special flood hazard areas and the risk premium zones applicable to the community are delineated.
Flood insurance study (FIB)	An examination, evaluation, and determination of flood hazard areas, corresponding water surface elevations (if appropriate), flood insurance risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The flood insurance study report includes flood insurance rate maps (FIRM) and flood boundary and floodway maps (FBFM) if published.
Flood-prone area	See "floodplain."
Floodplain or flood-prone area	Any land area susceptible to being inundated by water from any source.

Floodplain development permit	Any type of permit that is required in conformance with the provisions of this chapter, prior to the commencement of any development activity.
Floodplain Administrator	The individual appointed to administer and enforce the floodplain management regulations.
Floodplain management.	The operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.
Floodplain management regulations	This article, building code, health regulations, special purpose chapters of the county code, and other applications of police power. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.
Floodproofing	Any combination of structural and nonstructural additions, changes, or adjustments to structures which reduce or eliminate risk of flood damage to real estate or improved real property, water and sanitation facilities, or structures with their contents.
Floodway	The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.
Flood zone.	A geographical area shown on a flood hazard boundary map or flood insurance rate map that reflects the severity or type of flooding in the area.
Floor	The top surface of an enclosed area in a building, including basement, for example, the top of slab in concrete slab construction or the top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.
Freeboard.	The height added to the base flood elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood and floodway conditions, such as wave action, blockage of bridge openings, and the hydrological effects of urbanization of the watershed. The base flood elevation plus the freeboard establishes the regulatory flood protection elevation
Functionally dependent facility	A facility which cannot be used for its intended purpose unless it is located in close proximity to water, limited to a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. This term does not include long-term storage, manufacture, sales or service facilities.
Hazardous waste management facility	A facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste as defined in G.S. Ch. 130A, Art. 9.
Highest adjacent grade	The highest natural elevation of the ground surface, prior to

(HAG) Historic structure.	construction, next to the walls of the proposed structure. Any structure that is: Listed individually in the National Register of Historic Places (a listing maintained by the U.S. Department of the Interior) or preliminarily determined by the secretary of the interior as meeting the requirements for individual listing on the National Register; Certified or preliminarily determined by the secretary of the interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the secretary of the interior to qualify as a registered historic district; Individually listed on a local inventory of historic landmarks in communities with a certified local government (CLG) program; or Certified as contributing to the historical significance of a historic district designated by a community with a CLG program. Certified local government (CLG) programs are approved by the U.S. Department of Interior in cooperation with the state department of cultural resources through the state historic preservation officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.
Letter of map amendment (LOMA)	A letter provided by FEMA stating that an existing structure or parcel of land that has not been elevated by fill would not be inundated by the base flood.
Lowest adjacent grade (LAG)	The elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building. For zones A and AO, use the natural grade elevation prior to construction.
Lowest floor	The lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this article.
Manufactured home	A structure, transportable in one (1) or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term manufactured home does not include a recreational vehicle.
Manufactured home park or subdivision.	A parcel, or contiguous parcels of land divided into two (2) or more manufactured home lots for rent or sale. (Also see new manufactured home park.)
Market value.	The building value, excluding the land value and that of any accessory structures or other improvements on the lot, established by independent certified appraisal, replacement cost depreciated by age of building and quality of construction (actual cash value), or adjusted tax assessed values.
Mean sea level	For the purposes of the NFIP, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum

	(NAVD) as corrected in 1988, or other vertical control datum use as a reference for establishing varying elevations within the floodplain to which base flood elevations (BFE) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.
New construction	Structures for which the start of construction commenced on or after the effective date of the initial floodplain management regulations and includes any subsequent improvements to such structures.
Nonconforming building or development	Any legally existing building or development which fails to comply with the current provisions of this article.
Non-encroachment area.	The channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the flood insurance study report.
Post-FIRM	Construction or other development for which the start of construction occurred on or after the effective date of the initial flood insurance rate map.
Pre-FIRM	Construction or other development for which the start of construction occurred before the effective date of the initial flood insurance rate map.
Principally above ground.	At least fifty-one (51) percent of the actual cash value of the structure is above ground.
Public safety and / or nuisance.	Anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.
Recreational vehicle (RV)	A vehicle, which is: (i) Built on a single chassis; (ii) Four hundred (400) square feet or less when measured at the largest horizontal projection; (iii) Designed to be self-propelled or permanently towed by a light-duty truck; and (iv) Not designed for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.
Reference level.	The portion of a structure or other development that must be compared to the regulatory flood protection elevation to determine regulatory compliance. For structures within special flood hazard areas designated as zone A1-A30, AE, A, A99 or AO, the reference level is the top of the lowest floor or bottom of lowest attendant utility including ductwork, whichever is lower.
Regulatory flood protection elevation.	The elevation, in relation to mean sea level, to which the reference level of all structures and other development located within special flood hazard areas must be protected. Where base flood elevations (BFE) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. Where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade
Remedy a violation	To bring the structure or other development into compliance with state and community floodplain management regulations, or, if this is

	not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the chapter or otherwise deterring future similar violations, or reducing federal financial exposure with regard to the structure or other development.
Riverine	Relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.
Salvage yard	Any nonresidential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery
Solid waste disposal facility	Any facility involved in the disposal of solid waste, as defined in G.S. § 130A-290(a)(35).
Solid waste disposal site	Any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method, as defined in G.S. § 130A-290(a)(36)
Special flood hazard area (SFHA)	The land in the floodplain subject to a one (1) percent or greater chance of being flooded in any given year as determined in section 17.1.9.
Start of construction.	Includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within one hundred eighty (180) days of the permit date. The actual start means either the first placement of permanent construction of a structure, including a manufactured home, on a site, such as pouring of slabs or footings, installation of piles, construction of columns, or any work beyond the stage of excavation or the placement of a manufacture home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, foundations, or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units, or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.
Structure	A walled and roofed building, a manufactured home, or a gas or liquid storage tank that is principally above ground. For floodplain management purposes, "principally above ground" means other manmade facilities or infrastructure principally above ground.
Substantial damage.	Damage of any origin sustained by a structure during anyone-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed fifty (50) percent of the market value of the structure before the damage occurred. (See also

	definition of substantial improvement.)
Substantial improvement	Any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during anyone-year period for which the cost equals or exceeds fifty (50) percent of the market value of the structure before the start of construction of the improvement. This term includes structures which have incurred substantial damage, regardless of the actual repair work performed. The term does not include either: Any correction of existing violations of state or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or Any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure
Variance Violation.	A grant of relief from the requirements of this article. The failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in the floodplain management overlay district is presumed to be in violation until such time as that documentation is provided
Water surface elevation (WSE)	The height, in relation to mean sea level (existing grade in case of zone AO), of floods of various magnitudes and frequencies in the floodplains of riverine areas.
Watercourse	A lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

(Ord. No. 22-2007, Art. 2, 8-28-07)

17.1.7 Reserved.

17.1.8 Lands to which this article applies.

This article shall apply to all special flood hazard areas within the jurisdiction, including extra-territorial jurisdictions (ETJ's) if applicable, of the Town of Maiden and within the jurisdiction of any other communities whose governing body agrees, by resolution, to such applicability.

(Ord. No. 22-2007, Art. 3, § A, 8-28-07)

17.1.9 Basis for establishing the special flood hazard areas.

A. The special flood hazard areas are those identified under the cooperating technical state (CTS) agreement between the State of North Carolina and FEMA in its flood insurance study (FIS) and its accompanying flood insurance rate maps (FIRM), for the Town of Maiden dated August 18, 1980, which are adopted by reference and declared to be part of this article.

B. The initial flood insurance rate maps are as follows for the jurisdictional areas at the initial date: September 3, 1980 for sections in Catawba County and December 18, 1991 for sections in Lincoln County.

(Ord. No. 22-2007, Art. 3, § B, 8-28-07)

17.1.10 Establishment of floodplain development permit.

A floodplain development permit shall be required in conformance with the provisions of this article prior to the commencement of any development activities within special flood hazard areas determined in accordance with the provisions of section 17-422 of this article.

(Ord. No. 22-2007, Art. 3, § C, 8-28-07)

17.1.11 Compliance.

No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this article and other applicable regulations.

(Ord. No. 22-2007, Art. 3, § D, 8-28-07)

17.1.12 Abrogation and greater restrictions.

This article is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this article and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(Ord. No. 22-2007, Art. 3, § E, 8-28-07)

17.1.13 Interpretation.

In the interpretation and application of this article, all provisions shall be:

- A. Considered as minimum requirements;
- B. Liberally construed in favor of the governing body; and
- C. Deemed neither to limit nor repeal any other powers granted under state statutes.

(Ord. No. 22-2007, Art. 3, § F, 8-28-07)

17.1.14 Warning and disclaimer of liability.

The degree of flood protection required by this article is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by manmade or natural causes. This article does not imply that land outside the special flood hazard areas or uses permitted within such areas will be free from flooding or flood damage. This article shall not create liability on the part of the Town of Maiden or by any officer or employee thereof for any flood damages that result from reliance on this article or any administrative decision lawfully made hereunder.

(Ord. No. 22-2007, Art. 3, § G, 8-28-07)

17.1.15 Penalties for violation.

Violation of the provisions of this chapter or failure to comply with any of its requirements, including violation of conditions and safeguards established in

connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this article or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than fifty dollars (\$50.00) or imprisoned for not more than thirty (30) days, or both. Each day a violation continues shall be considered a separate and distinct offense. Nothing contained within this chapter shall prevent the town from taking other lawful action as is necessary to prevent or remedy any violation.

(Ord. No. 22-2007, Art. 3, § H, 8-28-07)

17.1.16 Designation of floodplain administrator.

The planning director or his/her designee, hereinafter referred to as the "floodplain administrator," is hereby appointed to administer and implement the provisions of this article.

(Ord. No. 22-2007, Art. 4, § A, 8-28-07)

17.1.17 Floodplain development application, permit and certification requirements.

A. Application for a floodplain development permit shall be made to the floodplain administrator prior to any development activities located within special flood hazard areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

1. A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

- (a) The nature, location, dimensions, and elevations of the area of development disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;
- (b) The boundary of the special flood hazard area as delineated on the FIRM or other flood map as determined in section 17.1.9, or a statement that the entire lot is within the special flood hazard area;
- (c) Flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in section 17.1.9.
- (d) The boundary of the floodway(s) or non-encroachment area(s) as determined in section 17.1.9;
- (e) The base flood elevation (BFE) where provided as set forth in section 17.1.24;
- (f) The old and new location of any watercourse that will be altered or relocated as a result of proposed development;

2. Proposed elevation and method thereof, of all development within a special flood hazard area including but not limited to:

- (a) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;
- (b) Elevation in relation to mean sea level to which any nonresidential structure in zone AE, A, or AO will be flood proofed; and

- (c) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed.
3. If floodproofing, a floodproofing certificate (FEMA form 81-65) with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.
4. A foundation plan drawn to scale which shall include details of the proposed foundation system to ensure all provisions of this chapter are met. These details include but are not limited to:
 - (a) The proposed method of elevation, if applicable (for example, fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/ piers/piles/shear walls);
 - (b) Openings to facilitate automatic equalization of hydrostatic flood forces on walls in accordance with subsection 17.1.22 A.4.9(c) when solid foundation perimeter walls are used in zones A, AO, AE, and AI-30.
5. Usage details of any enclosed areas below the lowest floor.
6. Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;
7. Certification that all other local, state and federal permits required prior to floodplain development permit issuance have been received.
8. Documentation for placement of recreational vehicles and/or temporary structures, when applicable, to ensure that the provisions of subsection 17.1.22 A 6 and 7 are met.
9. A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

B. Permit requirements. At a minimum, the floodplain development permit must include:

1. A description of the proposed development;
2. The special flood hazard area determination for the proposed development in accordance with available data specified in section 17.1.9;
3. The regulatory flood protection elevation required for the reference level and all attendant utilities;
4. The regulatory flood protection elevation required for the protection of all public utilities;
5. All certification submittal requirements with timelines;
6. A statement that no fill material shall encroach into the floodway or non-encroachment area of any watercourse, as applicable;
7. The flood openings requirements, if in zone A, AO, AE or AI-30; and

8. Limitations of below BFE enclosure uses (if applicable), (i.e., parking, building access and limited storage only).

C. Certification requirements.

1. Elevation certificates.

- (a) An elevation certificate (FEMA form 81-31) or floodproofing certificate (FEMA form 81-65) is required after the reference level is established. Within seven (7) calendar days of establishment of the reference level elevation, it is the duty of the permit holder to submit to the Floodplain Administrator, a certification of the elevation of the reference level, in relation to mean sea level. Elevation certification must be prepared and certified by, or under the direct supervision of, a registered land surveyor or professional engineer. Any work done within the seven-day calendar period, and prior to submission of the certification, is at the permit holder's risk. The planning director shall review the certificate data submitted. Deficiencies detected by such review must be corrected by the permit holder immediately and prior to further work being permitted to proceed. Failure to submit the certification or failure to make required corrections shall be cause to issue a stop-work order for the project.
- (b) A final as-built elevation certificate (FEMA form 81-31) is required after construction is completed and prior to certificate of compliance/occupancy issuance. The permit holder has the duty to submit to the planning director a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The planning director shall review the certificate data submitted. Deficiencies must be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.
- (c) A final as-built elevation certificate (FEMA form 81-31), completed by a qualified surveyor, is required within seven (7) days of completion, after all construction is completed and prior to certificate of compliance/occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to certificate of compliance/occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to make required corrections shall be cause to withhold the issuance of a certificate of compliance/occupancy.

2. Floodproofing certificate. If nonresidential flood proofing is used to meet the regulatory flood protection elevation requirements, a floodproofing certificate (FEMA

form 81-65), with supporting data, an operational plan, and an inspection and maintenance plan, is required prior to the actual start of any new construction. The permit holder has the duty to submit to the planning director a certification of the flood proofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification must be prepared and certified by, or under the direct supervision of, a professional engineer or architect. The planning director shall review the certificate data, operational plan, and the inspection and maintenance plan submitted by the permit holder. Deficiencies detected by such review must be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a certificate of compliance/occupancy.

3. If a manufactured home is placed within zone A, AO, AE, or AI-3D and the elevation of the chassis is more than thirty-six (36) inches in height above grade, an engineered foundation certification is required in accordance with the provision of subsection 17.1.22 A.3(b)).

4. If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation must all be submitted by the permit applicant prior to issuance of a floodplain development permit.

5. Certification Exemptions. The following structures, if located within zone A, AO, AE or AI-3D, are exempt from the elevation floodproofing certification requirements specified in items A and B above:

- (a) Recreational vehicles meeting requirements of subsection 17.1.22A.6;
- (b) Temporary structures meeting requirements of subsection 17.1.22 A.7; and
- (c) Accessory structures less than one hundred fifty (150) square feet meeting requirements of subsection 17.1.22 A.8.

(Ord. No. 22-2007, Art. 4, § B, 8-28-07)

17.1.18 Duties and responsibilities of the Floodplain Administrator.

At a minimum, the planning director is responsible for the following:

A. Review all floodplain development applications and issue permits for all proposed development within special flood hazard areas to assure that the requirements of this chapter have been satisfied;

B. Review all proposed development within special flood hazard areas to assure that all necessary local, state, and federal permits have been received;

C. Notify adjacent communities and the state department of crime control and public safety, division of emergency management, state coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to FEMA;

D. Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is maintained;

E. Prevent encroachments within floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of section 17.1.26 are met;

F. Obtain actual elevation (in relation to mean sea level) of the reference level, (including basement) and all attendant utilities of all new and substantially improved structures, in accordance with subsection 17.1.17;

G. Obtain actual elevation (in relation to mean sea level) to which the new or substantially improved structures and all utilities have been floodproofed in accordance with the provisions of subsection 17.1.17;

H. Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with the provisions of subsection 17.1.17;

I. When flood proofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with the provisions of subsection 17.1.17 and subsection 17.1.22 A.2;

J. Where interpretation is needed as to the exact location of boundaries of the special flood hazard areas, floodways, or non-encroachment areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary has thirty (30) days to appeal the interpretation as provided in this article;

K. When BFE data has not been provided in accordance with section 17.1.9, obtain, review and reasonably utilize any base flood elevation (BFE) data, along with floodway data or non-encroachment area data available from a federal, state or other source, including data developed pursuant to subsection 17.1.25 A.2(b), in order to administer the provisions of this chapter;

L. When BFE data is provided but no floodway or non-encroachment area data has been provided in accordance with section 17.1.9, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a federal, state, or other source in order to administer the provisions of this chapter;

M. When the lowest floor and the lowest adjacent grade of a structure or the lowest ground elevation of a parcel or structure in a special flood hazard area is above the BFE, advise the owner of the option to apply for a letter of map amendment (LOMA) from FEMA. Maintain a copy of the LOMA issued by FEMA in the floodplain development permit file;

N. Permanently maintain all records that pertain to the administration of this chapter and make these records available for public inspection, recognizing that such information may be subject to the Privacy Act of 1974, as amended;

O. Make onsite inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the Floodplain Administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local chapter and the terms of the permit. In exercising this power, the planning director has a right, upon presentation of proper

credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action;

P. Issue stop-work orders as required. Whenever a building or part of a building is being constructed, reconstructed, altered, or repaired in violation of this chapter, the Floodplain Administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing or in charge of the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stopped, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor;

Q. Revoke floodplain development permits as required. The Floodplain Administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, and specifications; for refusal or failure to comply with the requirements of state or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable state or local law may also be revoked;

R. Make periodic inspections throughout the special flood hazard areas within the jurisdiction of the community. The Floodplain Administrator shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action;

S. Follow through with corrective procedures of section 17.1.19;

T. Review, provide input, and make recommendations for variance requests;

U. Maintain a current map repository to include, but not limited to, the FIS report, FIRM and/or other official flood maps/studies adopted under section 17.1.9, including any revisions thereto including letters of map change, issued by the state and/or FEMA. Notify the state and FEMA of mapping needs;

V. Coordinate revisions to FIS reports and FIRM, including letters of map revision based on fill (LOMR-F) and letters of map revision (LOMR).

(Ord. No. 22-2007, Art. 4, § C, 8-28-07)

17.1.19 Corrective procedures.

A. Violations to be corrected. When the Floodplain Administrator finds violations of applicable state and local laws, he must notify the owner or occupant of the building of the violation. The owner or occupant must each immediately remedy each of the violations of law cited in such notification.

B. Actions in event of failure to take corrective actions. If the owner of a building or property fails to take prompt corrective action, the Floodplain Administrator shall give the owner written notice, by certified or registered mail, to the owner's last known address or by personal service, stating:

1. That the building or property is in violation of the floodplain management regulations;

2. That a hearing will be held before the Floodplain Administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner is entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and
3. That following the hearing, the planning director may issue an order to alter, vacate, or demolish the building, remove fill as applicable.

C. Order to take corrective action. If, upon a hearing held pursuant to the notice prescribed above, the Floodplain Administrator shall find that the building or development is in violation of the this article, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days, nor more than one hundred eighty (180) calendar days. Where the Floodplain Administrator finds that there is imminent danger to life or other property, he may order that corrective action be taken in such lesser period as may be feasible.

D. Appeal. Any owner who has received an order to take corrective action may appeal from the order to the Board of Adjustment by giving notice of appeal in writing to the secretary of the board of adjustment within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the Floodplain Administrator shall be final. The Board of Adjustment shall hear an appeal within a reasonable time and may affirm, modify and affirm or revoke the order.

E. Failure to comply with orders. If the owner of a building or property fails to comply with an order to take corrective action from which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

[\(Ord. No. 22-2007, Art. 4, § D, 8-28-07\)](#)

17.1.20 Variance procedures.

A. The Board of Adjustment as established by the Town of Maiden, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this article.

B. Any person aggrieved by the decision of the appeal board may appeal such decision to the court, as provided in G.S. Ch. 7A.

C. Variances may be issued for:

1. The repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and the variance is the minimum necessary to preserve the historic character and design of the structure;
2. Functionally dependent facilities if determined to meet the definition, as stated in subsection (9)(b), (c), and (e) of this section, have been satisfied, and such facilities are protected by methods that minimize flood damages during the base flood and create no additional threats to public safety.
3. Any other type of development, provided it meets the requirements of this section.

D. In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this article, and:

1. The danger that materials may be swept onto other lands to the injury of others;
2. The danger to life and property due to flooding or erosion damage;
3. The susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;
4. The importance of the services provided by the proposed facility to the community;
5. The necessity of the facility of a waterfront location, as defined in division 2 of this article, as a functionally dependent facility, where applicable;
6. The availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;
7. The compatibility of the proposed use with existing and anticipated development;
8. The relationship of the proposed use to the comprehensive plan and floodplain management program for that area;
9. The safety of access to the property in times of flood for ordinary and emergency vehicles;
10. The expected heights, velocity, duration, rate of rise and sediment transport of the floodwaters, and the effects of wave action, if applicable, expected at the site; and
11. Costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

E. A written report addressing each of the above factors must be submitted with the application for a variance.

F. Upon consideration of the factors listed above and the purposes of this chapter, the Board of Adjustment may attach such conditions to the granting of variances as it deems necessary to further the purposes and objectives of this chapter.

G. Any applicant to whom a variance is granted shall be given written notice specifying the difference between the BFE and the elevation to which the structure is to be built and that such construction below the BFE increases risks to life and property, and that the issuance of a variance to construct a structure below the BFE will result in increased premium rates for flood insurance up to twenty-five dollars (\$25.00) per one hundred dollars (\$100.00) of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

H. The Floodplain Administrator shall maintain the records of all appeal actions and report any variances to FEMA and the state upon request.

I. Conditions for variances:

1. Variances shall not be issued when the variance will make the structure in violation of other federal, state, or local laws, regulations, or ordinances.

2. Variances shall not be issued within any designated floodway or nonencroachment area if the variance would result in any increase in flood levels during the base flood discharge;
3. Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief;
4. Variances shall only be issued prior to development permit approval;
5. Variances shall only be issued upon: i) showing of good and sufficient cause; ii) a determination that failure to grant the variance would result in exceptional hardship; and iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety or extraordinary public expense; create a nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

J. A variance may be issued for solid waste disposal facilities or sites, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in special flood hazard areas provided that all of the following are met:

1. The use serves a critical need in the community;
2. No feasible location exists for the use outside the special flood hazard area;
3. The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation;
4. The use complies with all other applicable federal, state and local laws; and
5. The town has notified the secretary of the State Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

(Ord. No. 22-2007, Art. 4, § E, 8-28-07)

17.1.21 General standards.

A. In all areas of special flood hazard the following are required:

1. All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, or lateral movement of the structure;
2. All new construction and substantial improvements must be constructed with materials and utility equipment resistant to flood damage;
3. All new construction or substantial improvements must be constructed by methods and practices that minimize flood damages;
4. Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities must be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding to the regulatory flood protection elevation. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, hot water heaters, and electric outlets/switches;

5. All new and replacement water supply systems must be designed to minimize or eliminate infiltration of floodwaters into the systems;
6. New and replacement sanitary sewage systems must be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into floodwaters;
7. Onsite waste disposal systems must be located and constructed to avoid impairment to them or contamination from them during flooding;
8. Any alteration, repair, reconstruction, or improvements to a structure which is in compliance with the provisions of this article, must meet the requirements of new construction as contained in this article;
9. Nothing in this article prevents the repair, reconstruction, or replacement of a building or structure existing on September 3, 1980 within the county and August 18, 1980 within the town limits, the effective date of the original ordinance, and located totally or partially within the floodway, non-encroachment area, or stream setback, provided that the bulk of the building or structure below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback is not increased and provided that the repair, reconstruction, or replacement meets all of the other requirements of this article;
10. New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted in special flood hazard areas, except by variance as specified in subsection 17.1.20. A structure or tank for chemical or fuel storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a special flood hazard area only if the structure or tank is either elevated or flood-proofed to at least the regulatory flood protection elevation and certified in accordance with the provisions of subsection 17.1.9;
11. All subdivision and other development proposals must be consistent with the need to minimize flood damage;
12. All subdivision and other development proposals must have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage;
13. All subdivision and other development proposals must have adequate drainage provided to reduce exposure to flood hazards; and
14. All subdivision proposals and other development proposals must have received all necessary permits from those governmental agencies for which approval is required by federal or state law, including § 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.
15. When a structure is partially located in a special flood hazard area, the entire structure shall meet the requirements for new construction and substantial improvements.
16. When a structure is located in multiple flood hazard zones or in a flood hazard risk zone with multiple base flood elevations, the provisions for the more restrictive flood hazard risk zone and the highest base flood elevation shall apply.

(Ord. No. 22-2007, Art. 5, § A, 8-28-07)

17.1.22 Specific standards.

A. All special flood hazard areas where BFE data has been provided, as set forth in section 17.1.9, or section 17.1.24, the following provisions, in addition to the provisions of section 17.1.21, are required.

1. Residential construction. New construction and substantial improvement of any residential structure, including manufactured homes, shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in division 2 of this article.

2. Nonresidential construction. New construction and substantial improvement of any commercial, industrial, or nonresidential structure must have the referenced level including basement, elevated no lower than the regulatory flood protection elevation, as defined in division 2 of this article. Structures located in A, AO, AE and A 1-30 zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the required flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO zones, the floodproofing elevation shall be in accordance with subsection 17.1.27. A registered professional engineer or architect must certify that the standards of this subsection are satisfied. Such certification must be provided to the official as set forth in subsection 17.1.17, along with operational and maintenance plans.

3. Manufactured homes.

(a) New and replacement manufactured homes must be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in division 2 of this article.

(b) Manufactured homes must be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement either by certified engineered foundation system, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured/Mobile Homes, 1995 Edition, and any revision thereto adopted by the commissioner of insurance pursuant to G.S. § 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis at least thirty-six (36) inches or less above the grade at the site, the chassis must be supported by reinforced piers or an engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

(c) All enclosures or skirting shall be in accordance with subsection (4).

(d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood-prone areas. This plan must be filed and approved by the Floodplain Administrator and the local emergency management coordinator.

4. Elevated buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the regulatory protection elevation:

- (a) Cannot be designed or used for human habitation, but may only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area must be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of the enclosed area must not be finished or partitioned into separate rooms, except to enclose storage areas;
- (b) Must be constructed entirely of flood resistant materials at least to the regulatory flood protection elevation; and
- (c) Must include, in zones A, AO, AE, and AI-30, measures to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet the following minimum design criteria:
 - (i) A minimum of two (2) flood openings on different sides of each enclosed area subject to flooding;
 - (ii) The total net area of all openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;
 - (iii) If a building has more than one (1) enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;
 - (iv) The bottom of all required openings shall be no higher than one (1) foot above the adjacent grade;
 - (v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and
 - (vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, do not require flood openings. Masonry or wood underpinning, regardless of structural status, are considered to be an enclosure and requires openings as outlined above.

5. Additions/improvements.

- (a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more nonconforming than the existing structure.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

- (b) Additions to post-FIRM structures with no modifications to the existing structure, other than a standard door in the common wall, require only the addition to comply with the standards for new construction.
- (c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:
 - (i) Not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.
 - (ii) A substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

6. Recreational vehicles. Recreational vehicles must either:

- (a) Be on site for fewer than one hundred eighty (180) consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or
- (b) Meet the requirements for new construction.

7. Temporary nonresidential structures. Prior to the issuance of a floodplain development permit, for a temporary structure, applicants must submit to the Floodplain Administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information must be submitted in writing to the Floodplain Administrator for review and written approval:

- (a) A specified time period for which the temporary use will be permitted. Time specified may not exceed three (3) months, renewable up to one (1) year;
- (b) The name, address and phone number of the individual responsible for the removal of the temporary structure;
- (c) The time-frame prior to the event during which a structure will be removed (for example, a minimum of seventy-two (72) hours before landfall of a hurricane or immediately upon flood warning notification);
- (d) A copy of the contract or other suitable instrument with entity responsible for physical removal of the structure; and
- (e) The designation, accompanied by documentation, of a location outside the special flood hazard area, to which the temporary structure will be moved.

8. Accessory structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a special flood hazard area, the following criteria must be met:

- (a) Accessory structures shall not be used for human habitation, (including work, sleeping, living, cooking or restroom areas);
- (b) Accessory structures shall not be temperature controlled;
- (c) Accessory structures shall be designed to have low flood-damage potential;

- (d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;
- (e) Accessory structures shall be firmly anchored in accordance with the provisions of subsection 17.1.21 A.1;
- (f) All service facilities, such as electrical, shall be installed in accordance with the provisions of subsection 17.1.21 A.4;
- (g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with the provisions of subsection 4.c of this section; and
- (h) An accessory structure with a footprint less than one hundred fifty (150) square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures.

(Ord. No. 22-2007, Art. 5, § B, 8-28-07)

17.1.23Reserved.

17.1.24Standards for floodplains without established base flood elevations.

A. Within the special flood hazard areas designated as approximate zone A and established in section 17.1.9 where no BFE data has been provided by FEMA, the following provisions, in addition to the provisions of section 17.1.21, shall apply:

1. No encroachments, including fill, new construction, substantial improvements, or new development, shall be permitted within a distance of twenty (20) feet from each side from the top of each bank or five (5) times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.
2. The BFE used in determining the regulatory flood protection elevation shall be determined based on the following criteria:
 - (a) When BFE data is available from other sources, all new construction and substantial improvements within such areas must comply with all applicable provisions of this chapter and shall be elevated or floodproofed in accordance with standards in sections 17.1.21 and 17.1.22.
 - (b) When floodway data is available from a federal, state, or other source, all new construction and substantial improvements within floodway areas shall also comply with the requirements of sections 17.1.21 and 17.1.26.
 - (c) All subdivision, manufactured home park and other development proposals located within special flood hazard areas shall provide BFE data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. The BFE data must be adopted by reference in accordance with section 17.1.9 and utilized in implementing this article.

- (d) When BFE data is not available from a federal, state, or other source as outlined above, the reference level shall be elevated or floodproofed (nonresidential) to or above the regulatory flood protection elevation as defined in division 2. All other applicable provisions of section 17.1.22 shall also apply.

(Ord. No. 22-2007, Art. 5, § D, 8-28-07)

17.1.25 Standards for riverine floodplains with BFE but without established floodways or non-encroachment areas.

A. Along rivers and streams where BFE data is provided by FEMA or is available from another source but neither floodway nor nonencroachment areas are identified for a special flood hazard area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

1. Standards outlined in sections 17.1.21 and 17.1.22; and
2. Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one (1) foot at any point within the community.

(Ord. No. 22-2007, Art. 5, § E, 8-28-07)

17.1.26 Floodways and non-encroachment areas.

A. Areas designated as floodways or non-encroachment areas are located within the special flood hazard areas established in section 17.1.9. The floodways and nonencroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in sections 17.1.21 and 17.1.22, shall apply to all development within such areas:

1. No encroachments, including fill, new construction, substantial improvements and other developments, shall be permitted unless:
 - (a) It is demonstrated that the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the Floodplain Administrator prior to issuance of floodplain development permit, or
 - (b) A conditional letter of map revision (CLOMR) has been approved by FEMA. A letter of map revision (LOMR) must also be obtained upon completion of the proposed encroachment.
2. If subsection (1) is satisfied, all development must comply with all applicable provisions of this chapter.

3. No manufactured homes shall permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

- (a) The anchoring and the elevation standards of subsection 17.1.22 A.3; and
- (b) The no encroachment standards of subsection (1) are met.

(Ord. No. 22-2007, Art. 5, § F, 8-28-07)

17.1.27 Standards for areas of shallow flooding (AO zones).

A. Located within the special flood hazard areas established in section 17.1.9 are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to sections 17.1.21 and 17.1.22, all new construction and substantial improvements of all structures shall meet the following requirements:

1. The reference level must be elevated at least as high as the depth number specified on the FIRM in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least two (2) feet above the highest adjacent grade plus a freeboard of two (2) feet if no depth number is specified.
2. Nonresidential structures may, in lieu of elevation, be floodproofed to the same level as required in subsection (1) of this section, that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as in accordance with subsection 17.1.9 and subsection 17.1.22 A.2.
3. Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

(Ord. No. 22-2007, Art. 5, § G, 8-28-07)

17.1.28 Reserved.

17.1.29 Legal Status Provisions

A. Effect on rights and liabilities under the existing flood damage prevention ordinance.

This article in part comes forward by reenactment of some of the provisions of the flood damage prevention ordinance enacted August 18, 1980 as amended, and it is not the intention to repeal but rather to reenact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued there under are reserved and may be enforced. The enactment of this article shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the Town of Maiden enacted on August 18, 1980, as amended, which are not reenacted herein are repealed.

(Ord. No. 22-2007, Art. 6, § A, 8-28-07)

B. Effect upon outstanding floodplain development permits.

Nothing contained in this article shall require any change in the plans, construction, size or designated use of any development, or any part for which a floodplain development permit has been granted by the planning director before the time of passage of this article; provided, however, that if construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, the construction or use shall be in conformity with the provisions of this article.

[\(Ord. No. 22-2007, Art. 6, § B, 8-28-07\)](#)

Chapter 17 Phase II Stormwater Appendix B

Appendix B-101 TITLE

This ordinance shall be officially known as “The Phase II Stormwater Ordinance Appendix.” It is referred to herein as “this ordinance.”

(Ordinance 36-2007)

Appendix B-102 AUTHORITY

The Maiden Town Council is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; Municipal charter of the Town of Maiden; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission there under; Session Law 2004-163; Chapter 160A, §§ 174, 185 . [; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control)][; Article 21, Part 6 (Floodway Regulation) [; Chapter 160A, Article 19 (Planning and Regulation of Development), ; Chapter 153A, Article 18].

Appendix B-103 FINDINGS

It is hereby determined that:

Development and *redevelopment* alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.

Further, the Federal Water Pollution Control Act of 1972 (“Clean Water Act”) and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt the minimum stormwater controls such as those included in this ordinance.

Therefore, the Maiden Town Council establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

Appendix B-104 **PURPOSE**

(A) General

The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point source pollution associated with new *development* and *redevelopment* [as well as illicit discharges into municipal stormwater systems]. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.

(B) Specific

This ordinance seeks to meet its general purpose through the following specific objectives and means:

1. Establishing decision-making processes for *development* that protect the integrity of watersheds and preserve the health of water resources;
2. Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm in order to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;
3. Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;
4. Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;
5. Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace and other conservation areas to the maximum extent practicable;
6. Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

7. Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.
8. Controlling illicit discharges into the municipal separate stormwater system.
9. Controlling erosion and sedimentation from construction activities in compliance with existing controls provided through Catawba County erosion control.
10. Assigning responsibility and processes for approving the creation and maintenance of adequate drainage and flood damage prevention.

Appendix B-105 **APPLICABILITY AND JURISDICTION**

(A) General

Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, subdivision applications, and grading applications, unless exempt pursuant to Subsection (B) of this Section, Exemptions, below.

(B) Exemptions

Development that cumulatively disturbs less than one acre and is not part of a *larger common plan of development or sale* is exempt from the provisions of this ordinance.

Redevelopment that cumulatively disturbs less than one acre and is not part of a larger common plan of *development* or sale is exempt from the provisions of this ordinance.

Development and *redevelopment* that disturb less than one acre are not exempt if such activities are part of a *larger common plan of development or sale*, even though multiple, separate or distinct activities take place at different times on different schedules.

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

(C) No Development or Redevelopment Until Compliance and Permit

No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

(D) Map

The provisions of this ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of Town of Maiden, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural BMPs* permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

Appendix B-106 INTERPRETATION

(A) Meaning and Intent

All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 104, Purpose. If a different or more specific meaning is given for a term defined elsewhere in the Town of Maiden code of ordinance book, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

(B) Text Controls in Event of Conflict

In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

(C) Authority for Interpretation

The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

(D) References to Statutes, Regulations, and Documents

Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Design Manual, NCDWQ BMP manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

(E) Computation of Time

The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the Town of Maiden, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the Town of Maiden. References to days are calendar days unless otherwise stated.

(F) Delegation of Authority

Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of Town of Maiden may be carried out by his or her designee.

(G) Usage

(1) Mandatory and Discretionary Terms

The words “shall,” “must,” and “will” are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words “may” and “should” are permissive in nature.

(2) Conjunctions

Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word “and” indicates that all connected items, conditions, provisions or events apply. The word “or” indicates that one or more of the connected items, conditions, provisions or events apply.

(3) Tense, Plurals, and Gender

Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

(H) Measurement and Computation

Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

Appendix B-107 ***DESIGN MANUAL***

(A) Reference to *Design Manual*

The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the *Design Manual* as the basis for decisions about stormwater permits and about the design,

implementation and performance of *structural and non-structural stormwater BMPs*.

The *Design Manual* includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

(B) Relationship of *Design Manual* to Other Laws and Regulations

If the specifications or guidelines of the *Design Manual* are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the *Design Manual*.

(C) Changes to Standards and Specifications

If the standards, specifications, guidelines, policies, criteria, or other information in the *Design Manual* are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

Appendix B-108 RELATIONSHIP TO OTHER LAWS, REGULATIONS AND PRIVATE AGREEMENTS

(A) Conflict of Laws

This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law, and where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare, shall control.

(B) Private Agreements

This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such easement, covenant, or other private agreement, then the requirements of this ordinance shall govern. Nothing in this ordinance shall modify or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall Town of Maiden be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

Appendix B-109 SEVERABILITY

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

Appendix B-110 EFFECTIVE DATE AND TRANSITIONAL PROVISIONS

(A) Effective Date

This Ordinance shall take effect on December 18, 2007 at 12:00 am.

(B) Final Approvals, Complete Applications

All *development* and *redevelopment* projects for which complete and full applications were submitted and approved by the Town of Maiden prior to the effective date of this ordinance shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions, including but not limited to illicit discharge provisions.

Violations Continue

Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, *development*, construction, or other activity complies with the provisions of this ordinance.

SECTION 2: ADMINISTRATION AND PROCEDURES

Appendix B-201 REVIEW AND DECISION-MAKING ENTITIES

(A) Stormwater Administrator

(1) Designation

A Stormwater Administrator shall be designated by the Maiden Town Council to administer and enforce this ordinance.

(2) Powers and Duties

In addition to the powers and duties that may be conferred by other provisions of the Town of Maiden Code and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

- a. To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.
- b. To make determinations and render interpretations of this ordinance.

- c. To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Maiden Town Council on applications for *development or redevelopment* approvals.
- d. To enforce the provisions of this ordinance in accordance with its enforcement provisions.
- e. To maintain records, maps, and official materials as relate to the adoption, amendment, enforcement, or administration of this ordinance.
- f. To provide expertise and technical assistance to the Town Council and Planning Board, upon request.
- g. To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.
- h. To take any other action necessary to administer the provisions of this ordinance.

Appendix B-202 **REVIEW PROCEDURES**

(A) Permit Required; Must Apply for Permit

A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

(B) Effect of Permit

A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural BMPs* and elements of site design for stormwater management other than *structural BMPs*.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *structural BMPs* or other techniques such as low-impact or low-density design. The permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

(C) Authority to File Applications

All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

(D) Establishment of Application Requirements, Schedule, and Fees

(1) Application Contents and Form

The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how *post-development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

(2) Submission Schedule

The Maiden Town Council shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications; and that the various stages in the review process are accommodated.

(3) Permit Review Fees

The Maiden Town Council shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

(4) Administrative Manual

For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Design Manual in an Administrative Manual, which shall be made available to the public.

(E) Submittal of Complete Application

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is

incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

(F) Review

Within 30 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval

If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to Comply

If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) Revision and Subsequent Review

A complete revised application shall be reviewed by the Stormwater Administrator [within 30 working days] after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

Appendix B-203 APPLICATIONS FOR APPROVAL

(A) Concept Plan and Consultation Meeting

Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept

plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Local watershed plans, the Town of Maiden code of ordinances, and other relevant resource protection plans may be consulted in the discussion of the concept plan.

To accomplish this goal the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(1) Existing Conditions / Proposed Site Plans

Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (when available); boundaries of existing predominant vegetation and proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

(2) Natural Resources Inventory

A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development*.

(3) Stormwater Management System Concept Plan

A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

(B) Stormwater Management Permit Application

The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Section 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence, and shall verify that the design of all stormwater management facilities and practices meets the submittal requirements for complete applications, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Design Manual*, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section xx-202(D).

(C) As-Built Plans and Final Approval

Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify that the completed project is in accordance with the approved stormwater management plans and designs, and shall submit actual “as built” plans for all stormwater management facilities or practices after final construction is completed.

The plans shall show the final design specifications for all stormwater management facilities and practices and the field location, size, depth, and planted vegetation of all measures, controls, and devices, as installed. The designer of the stormwater management measures and plans shall certify, under seal, that the as-built stormwater measures, controls, and devices are in compliance with the approved stormwater management plans and designs and with the requirements of this ordinance. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

(D) Other Permits

No certificate of compliance or occupancy shall be issued by the Planning Department without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the Town Planning Department and or Catawba County Permit Center may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

Appendix B-204 **APPROVALS**

(A) **Effect of Approval**

Approval authorizes the applicant to go forward with only the specific plans and activity authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

(B) **Time Limit/Expiration**

An approved plan shall become null and void if the applicant has failed to make *substantial progress* on the site within one year after the date of approval. The Stormwater Administrator may grant a single, one-year extension of this time limit, for good cause shown, upon receiving a written request from the applicant before the expiration of the approved plan.

In granting an extension, the Stormwater Administrator may require compliance with standards adopted since the original application was submitted unless there has been substantial reliance on the original permit and the change in standards would infringe the applicant's vested rights.

Appendix B-205 **APPEALS**

(A) **Right of Appeal**

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Stormwater Administrator may file an appeal to the Board of Adjustment within 30 days.

(B) **Filing of Appeal and Procedures**

Appeals shall be taken within the specified time period by filing a notice of appeal and specifying the grounds for appeal on forms provided by Town of Maiden. The Stormwater Administrator shall forthwith transmit to the Board of Adjustment all documents constituting the record on which the decision appealed from was taken.

The hearing conducted by the Board of Adjustment shall be conducted in the nature of a quasi-judicial proceeding with all findings of fact supported by competent, material evidence.

(C) **Review by Superior Court**

Every decision of the Board of Adjustment shall be subject to Superior Court review by proceedings in the nature of certiorari. Petition for review by the Superior Court shall be filed with the Clerk of Superior Court within thirty (30) days after the latter of the following:

- (1) The decision of the Board of Adjustment is filed; or
- (2) A written copy thereof is delivered to every aggrieved party who has filed a written request for such copy with the (Planning Department or Town Manager) at the time of its hearing of the case.

SECTION 3: STANDARDS

Appendix B-301 GENERAL STANDARDS

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section.

Appendix B-302 DEVELOPMENT STANDARDS FOR LOW-DENSITY PROJECTS

Low-density projects shall comply with each of the following standards:

- (A) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.
- (B) All *built-upon area* shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology.
- (C) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

Appendix B-303 DEVELOPMENT STANDARDS FOR HIGH-DENSITY PROJECTS

High-density projects shall implement stormwater control measures that comply with each of the following standards:

- (A) The measures shall control and treat the difference in stormwater runoff volume leaving the project site between the pre- and post-*development* conditions for, at a minimum, the *1-year, 24-hour storm*. Runoff volume

drawdown time shall be a minimum of 24 hours, but not more than 120 hours.

- (B) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids;
- (C) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Design Manual*;
- (D) All *built-upon area* shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using Division-approved methodology.
- (E) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *development* and *redevelopment* maintains the *site* consistent with the approved project plans.

Appendix B-304 COMPREHENSIVE WATERSHED PLAN

Appendix B-305 STANDARDS FOR STORMWATER CONTROL MEASURES

(A) Evaluation According to Contents of *Design Manual*

All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the *Design Manual*. The Stormwater Administrator shall determine whether they will be adequate to meet the requirements of this ordinance.

(B) Determination of Adequacy; Presumptions and Alternatives

Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and

specifications in the *Design Manual*, the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide such documentation, calculations, and examples as necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

Appendix B-306 DEDICATION OF BMPS, FACILITIES & IMPROVEMENTS

Dedication of BMPs and other improvements will not be accepted for maintenance by the Town of Maiden. A dedication of a right of way and right to inspect is required.

Appendix B-307 VARIANCES

(A) Any person may petition the Town of Maiden for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

- (1) Unnecessary hardships would result from strict application of this ordinance.
- (2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.
- (3) The hardships did not result from actions taken by the petitioner.
- (4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

(B) The Town of Maiden may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

Appendix B-308 ADDITIONAL STANDARDS FOR SPECIAL SITUATIONS

(A) SA Waters

Additional standard for fecal coliform.

In addition to the standards for stormwater handling set out in the *design manual*, *development* and *redevelopment* that drains in whole or part to class SA waters shall design and implement the best stormwater practices that ensure reduction of fecal coliform loading. The best practices are ones that result in the highest degree of fecal die-off and control sources of fecal coliform to the maximum extent practicable while still meeting the other requirements of this ordinance.

- (1) Pet waste
 - (a) Dogs At Large Prohibited

It shall be unlawful for the owner of any dog to allow the animal to be off the premises of his owner and not on a leash in Town of Maiden.

(b) Restrictions on Pet Waste

(i) It shall be unlawful for the owner or custodian of any dog to take it off the owner's own property limits without the means to properly remove and dispose of the dog's feces from any public or private property.

(ii) It is the responsibility of a dog's owner or custodian to clean up the dog's feces from any public or private property outside of the dog's owner's own property limits. Such property includes, but is not limited to, parks, rights-of-way, paths, and public access areas.

(iii) "Means to properly remove and dispose of feces" shall consist of having on or near one's person a device such as a plastic bag, or other suitable plastic or paper container, that can be used to clean up and contain dog waste until it can be disposed of in an appropriate container. Such a device must be produced and shown, upon request, to anyone authorized to enforce these ordinances.

(iv) This provision shall not apply to handicapped persons assisted by trained guide or assistance dogs.

(v) "Public nuisance" is defined to include "a dog which deposits feces on public property or on private property without the consent of the owner or person in lawful possession of the private property, and the person owning, possessing, harboring or having the care, charge, control or custody of the dog fails to remove the feces so deposited. Provided, however, this definition shall not apply to any dog assisting a handicapped person.

(2) No Direct Discharge or Expansion of Discharges to SA Waters

No new direct points of stormwater discharge to SA waters or expansion of existing points of discharge to any constructed stormwater conveyance systems, or constructed system of conveyances that discharge to SA waters, shall be permitted. "Expansion", for purposes of this section, means an increase in drainage area or an increase in impervious surface within the drainage area resulting in a net increase in peak flow or volume from the 1 year, 24 hour storm. Overland sheetflow of stormwater or stormwater discharge to a wetland, vegetated buffer or other natural area capable of providing treatment or absorption will not be considered a direct point of stormwater discharge for the purposes of this ordinance.

(B) Trout Waters

In addition to the standards for stormwater handling set out in the *design manual, development and redevelopment* that drains in whole or part to class TR waters shall design and implement the best stormwater practices that do not result in a sustained increase in the receiving water temperature, while still meeting the other requirements of this ordinance.

(C) Nutrient Sensitive Waters

In addition to the standards for stormwater handling set out in the *design manual, development and redevelopment* that drains in whole or part to class NSW waters shall design and implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.

Appendix B-309 ONSITE WASTEWATER

Onsite wastewater controls and inspections are implemented and permitted by Catawba County Public Health.

SECTION 4: MAINTENANCE

Appendix B-401 GENERAL STANDARDS FOR MAINTENANCE

(A) Function of BMPs As Intended

The *owner* of each *structural BMP* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural BMP* was designed.

(B) Annual Maintenance Inspection and Report

The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from a qualified registered North Carolina professional engineer, surveyor, or landscape architect performing services only in their area of competence. The inspection report shall contain all of the following:

- (1) The name and address of the land *owner*;
- (2) The recorded book and page number of the lot of each *structural BMP*;
- (3) A statement that an inspection was made of all *structural BMPs*;
- (4) The date the inspection was made;

- (5) A statement that all inspected *structural BMPs* are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and
- (6) The original signature and seal of the engineer, surveyor, or landscape architect.

All inspection reports shall be on forms supplied by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

Appendix B-402 **OPERATION AND MAINTENANCE AGREEMENT**

(A) In General

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property, sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for *development* or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owners* of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property, sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owners* to maintain, repair and, if necessary, reconstruct the *structural BMP*, and shall state the terms, conditions, and schedule of maintenance for the *structural BMP*. In addition, it shall grant to Town of Maiden a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural BMP*; however, in no case shall the right of entry, of itself, confer an obligation on Town of Maiden to assume responsibility for the *structural BMP*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval.

A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

(B) Special Requirement for Homeowners' and Other Associations

For all *structural BMPs* required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

- (1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.
- (2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMPs*. If *structural BMPs* are not performing adequately or as intended or are not properly maintained, the Town of Maiden, in its sole discretion, may remedy the situation, and in such instances the Town of Maiden shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *structural BMPs*, provided that the Town of Maiden shall first consent to the expenditure.
- (3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMPs*. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMPs*. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.
- (4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the Town of Maiden depending on the design and materials of the stormwater control and management facility.
- (5) Granting to the Town of Maiden a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMPs*.
- (6) Allowing the Town of Maiden to recover from the association and its members any and all costs the Town of Maiden expends to maintain or repair the *structural BMPs* or to correct any operational deficiencies.

Failure to pay the Town of Maiden all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. The Town of Maiden shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

- (7) A statement that this agreement shall not obligate the Town of Maiden to maintain or repair any *structural BMPs*, and the Town of Maiden shall not be liable to any person for the condition or operation of *structural BMPs*.
- (8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the Town of Maiden to enforce any of its ordinances as authorized by law.
- (9) A provision indemnifying and holding harmless the Town of Maiden for any costs and injuries arising from or related to the structural BMP, unless the Town of Maiden has agreed in writing to assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

Appendix B-403 **INSPECTION PROGRAM**

Inspections and inspection programs by Town of Maiden may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties

Appendix B-404 **PERFORMANCE SECURITY FOR INSTALLATION AND MAINTENANCE**

(A) May Be Required

The Town of Maiden may, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other

acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural BMPs* are

(1) installed by the permit holder as required by the approved stormwater management plan, and/or

(2) maintained by the *owner* as required by the operation and maintenance agreement.

(B) Amount

(1) Installation

The amount of an installation performance security shall be the total estimated construction cost of the BMPs approved under the permit, plus 25%.

(2) Maintenance

The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long term inflation.

(C) Uses of Performance Security

(1) Forfeiture Provisions

The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

(2) Default

Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural BMP* in accordance with the applicable permit or operation and maintenance agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the Town of Maiden shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) Costs in Excess of Performance Security

If Town of Maiden takes action upon such failure by the applicant or *owner*, the Town of Maiden may collect from the applicant or *owner* for the difference should the amount of the reasonable cost of such action exceed the amount of the security held.

(4) Refund

Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, with the exception of any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

Appendix B-405 NOTICE TO OWNERS

(A) Deed Recordation and Indications On Plat

The applicable operations and maintenance agreement [, conservation easement, or dedication and acceptance into public maintenance (whichever is applicable)] pertaining to every *structural BMP* shall be referenced on the final plat and shall be recorded with the county Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement[, conservation easement, or dedication and acceptance into public maintenance, whichever is applicable] shall be recorded with the county Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

(B) Signage

Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural BMPs* shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

Appendix B-406 RECORDS OF INSTALLATION AND MAINTENANCE ACTIVITIES

The *owner* of each *structural BMP* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

Appendix B-407 NUISANCE

The *owner* of each stormwater BMP, whether *structural* or *non-structural BMP*, shall maintain it so as not to create or result in a nuisance condition.

Appendix B-408 MAINTENANCE EASEMENT

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

SECTION 5: ENFORCEMENT AND VIOLATIONS

Appendix B-501 GENERAL

(A) Authority to Enforce

The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of Town of Maiden. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of Town of Maiden.

(B) Violation Unlawful

Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other *development* or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

(C) Each Day a Separate Offense

Each day that a violation continues shall constitute a separate and distinct violation or offense.

(D) Responsible Persons/Entities

Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.

For the purposes of this article, responsible person(s) shall include but not be limited to:

(1) **Person Maintaining Condition Resulting In or Constituting Violation**

An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) **Responsibility For Land or Use of Land**

The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, *development* or *redevelopment* of the property.

Appendix B-502 **REMEDIES AND PENALTIES**

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

(A) **Remedies**

(1) **Withholding of Certificate of Occupancy**

The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) **Disapproval of Subsequent Permits and *Development* Approvals**

As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the (Town Council and Planning Board) may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the (zoning, subdivision, and/or building regulations, as appropriate) for the land on which the violation occurs.

(3) **Injunction, Abatements, etc.**

The Stormwater Administrator, with the written authorization of the (Town Council), may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be

subject to the full range of equitable remedies provided in the General Statutes or at common law.

(4) Correction as Public Health Nuisance, Costs as Lien, etc.

If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the written authorization of the Town Manager, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) Stop Work Order

The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

(B) Civil Penalties

Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which Town of Maiden is subject for violations of its Phase II Stormwater permit.

(C) Criminal Penalties

Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

Appendix B-503 **PROCEDURES**

(A) Initiation/Complaint

Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

(B) Inspection

The Stormwater Administrator shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

(C) Notice of Violation and Order to Correct

When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the (Code enforcement officer), by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

(D) Extension of Time

A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 60 days. The Stormwater Administrator may grant 60 -day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

(E) Enforcement After Time to Correct

After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

(F) Emergency Enforcement

If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

SECTION 6: DEFINITIONS

Appendix B-601 **TERMS DEFINED**

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

Built-upon area (BUA)

That portion of a *development* project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. “Built-upon area” does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department

The North Carolina Department of Environment and Natural Resources.

Design Manual

The stormwater design manual approved for use in Phase II jurisdictions by the *Department* [developed by North Carolina Department of Water Quality and certified by this jurisdiction [approved by the *Division*] as at least as stringent as the stormwater design manual approved for use in Phase II jurisdictions by the *Department*] for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the *Design Manual* are to the latest published edition or revision.

Development

Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

Division

The Division of Water Quality in the *Department*.

High-density project

Any project that exceeds the low density threshold for dwelling units per acre and built-upon area.

Larger common plan of development or sale

Any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Low-density project

A project that has no more than two dwelling units per acre or twenty-four percent *built-upon area* (BUA) for all residential and non-residential *development*.

1-year, 24-hour storm

The surface runoff resulting from a 24-hour rainfall of an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours.

Owner

The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. "Owner" shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of "owner" under another description in this definition, such as a management entity.

Redevelopment

Any rebuilding activity other than a rebuilding activity that results in no net increase in *built-upon area* and provides equal or greater stormwater control than the previous *development*.

Structural BMP

A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. "Structural BMP" is synonymous with "structural practice", "stormwater control facility," "stormwater control practice," "stormwater treatment practice," "stormwater management practice," "stormwater control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

Substantial progress

For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the

completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. “Substantial progress” for purposes of determining whether an approved plan is null and void is not necessarily the same as “substantial expenditures” used for determining vested rights pursuant to applicable law.

SECTION 7: Illicit Discharges

Illicit Discharges and Connections

(A) Illicit Discharges

No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

- (1) Water line flushing;
- (2) Landscape irrigation;
- (3) Diverted stream flows;
- (4) Rising ground waters;
- (5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));
- (6) Uncontaminated pumped ground water;
- (7) Discharges from potable water sources;
- (8) Foundation drains;
- (9) Air conditioning condensation;
- (10) Irrigation water;
- (11) Springs;
- (12) Water from crawl space pumps;
- (13) Footing drains;
- (14) Lawn watering;
- (15) Individual residential car washing;

- (16) Flows from riparian habitats and wetlands;
- (17) Dechlorinated swimming pool discharges;
- (18) Street wash water; and
- (19) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by Town of Maiden.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(B) Illicit Connections

(1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section (a) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property *owner* or the person using said connection shall remove the connection within one year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

- a. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or
- b. Was made in violation of any applicable regulation or ordinance, other than this section;

the Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

- 1. The quantity and complexity of the work,
- 2. The consequences of delay,

3. The potential harm to the environment, to the public health, and to public and private property, and
4. The cost of remedying the damage.

(C) Spills

Spills or leaks of polluting substances released, discharged to, or having the potential to released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their preexisting condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Fire Chief of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(D) Nuisance

Illicit discharges and illicit connections which exist within the town limits or within the town's ETJ are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances. Such public nuisances shall be abated in accordance with the procedures set forth in Chapter 14, 17, and 19 of the Town of Maiden code of ordinances