

Z-12-11/SSP-3-11 Hillsborough Street and Friendly Drive – is located on the south side of Hillsborough Street, northwest of its intersection with Friendly Drive, being Wake County PINs 079419529317, 079419529395, 079419620333. Approximately 0.64 acres are requested to be rezoned from NB (0.32 acre) and NB CUD with PBOD (0.32 acre) to NB CUD with PBOD and Streetscape and Parking Plans (SSP-3-11) dated August 3, 2011.

Conditions dated 8/8/11

Narrative of conditions being requested:

- 1) The following uses shall be prohibited:
 - (a) Automotive service and repair facilities;
 - (b) landfills of all types;
 - (c) manufacturing of all types;
 - (d) mini-warehouse storage facility; and
 - (e) all Special Uses which must be approved by the Board of Adjustment or City Council under Sections 10-2144 and 10-2145, except for Yard Reductions.
- 2) Building height shall include a minimum of three occupied stories but shall not exceed a maximum of seventy-five feet (75); provided that any portion of the building exceeding three stories in height shall be stepped back at least eight (8) feet from the front edge of the building along Hillsborough Street.
- 3) The subject property shall be subject to the Stanhope Village Streetscape and Parking Plan dated as of November 19, 2002, as amended September 15, 2009, and as amended by that amendment attached hereto as Exhibit C-1.
- 4) Residential density shall not exceed seventy (70) dwelling units or equivalent dwelling units per acre.
- 5) Uses on the ground floor of any building constructed on the subject property shall be retail uses.
- 6) Following development, the subject property shall contain at least ten percent (10%) Open Space, as defined in City Code Section 10-2055(d) (4).
- 7) The ground floor (measured between zero (0) feet and twelve feet (12) feet above the adjacent sidewalk) of any building constructed on the subject property shall achieve a level of transparency of at least forty (40%) of the surface of such facades along Hillsborough Street and Friendly Drive. That portion of a surface which is covered by either non-opaque glass window(s) and/or non-opaque glass door(s) shall be deemed to have achieved transparency.
- 8) Prior to the subdivision of the property or the issuance of a building permit for the property, whichever shall occur first, a transit easement measuring twenty (20) feet along Hillsborough Street by fifteen (15) feet shall be granted to the City pursuant to a transit easement deed approved

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by the City Attorney and recorded in the Wake County Registry. This easement may be located in whole or in part within the area to be dedicated as right-of-way (to the extent not used for road construction) or dedicated or reserved for sidewalks.

9) Any drive-through window or stacking lane serving the subject property shall not be visible from Hillsborough Street at street level.

10) Any surface parking adjacent to Hillsborough Street located on the subject property shall be stepped back at least twenty feet (20) from the south edge of the sidewalk along Hillsborough Street, and the twenty-foot (20) stepback area shall be landscaped with the following per twenty-five (25) linear feet adjacent to the surface parking: at least ten (10) shrubs measuring at least two feet (2') tall at planting and one (1) shade tree or understory tree measuring at least eight feet (8') in height and at least two and one-half inches (2.5") in caliper at planting. All plantings shall be in accordance with the Stanhope Village Streetscape and Parking Plan.

11) The Applicant acknowledges that the Trip Generation Report ("TGR") prepared for the subject property which is attached hereto as Exhibit C-2 predicts approximately 51 new AM peak hour external trips and 54 new PM peak hour trips. Based on the assumed uses shown thereon, the Applicant agrees that it will not change the uses from the assumed uses prior to either (a) producing and providing to the Public Works Department a new TGR which shows that the increase in peak hour traffic trips based on the changed uses does not increase the new external trips by more than twenty-five percent (25%) or (b) if the new TGR shows an increase of more than twenty-five percent (25%), then prior to obtaining a building permit for the changed uses, the Applicant will perform a Traffic Impact Analysis for the subject property and use reasonable efforts to promote the safe, efficient and convenient vehicular and pedestrian traffic for the site.

12) Parking decks shall be prohibited on the subject property.

13) Copies of City Code Sections referenced herein are attached hereto as Exhibit C-3.

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8/3/11

Modified 8/3/11

EXHIBIT C-1

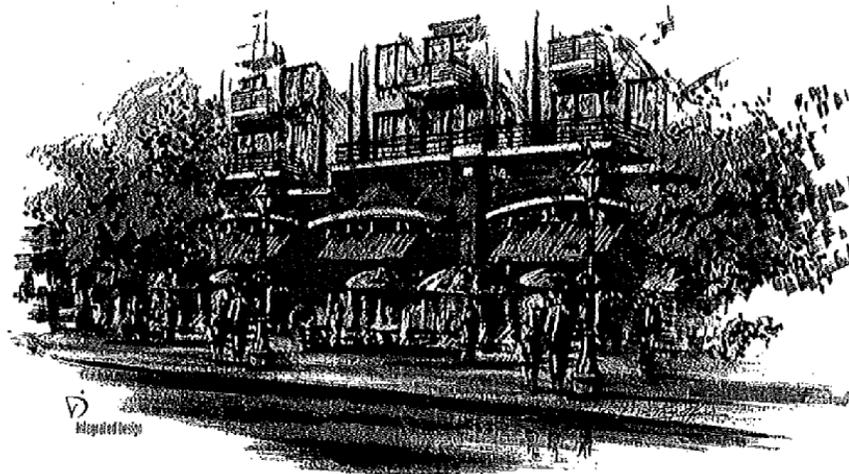
AMENDMENT TO

Stanhope Center

Pedestrian Business Overlay District

Streetscape and Parking Plan

**adopted November 19, 2002,
amended September 15, 2009
(SSP-3-11)**



Prepared by:

The Site Group, PLLC
Stanhope Center
Pedestrian Business Overlay District
Streetscape and Parking Plan
3 August 2011

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Introduction

The Stanhope Center Pedestrian Business Overlay District and the Stanhope Center Pedestrian Business Overlay District Streetscape and Parking Plan dated as of November 19, 2002 and amended September 15, 2009 (the "SSP") are hereby modified to include this modification document which will apply only to the subject 0.64 acre tract of property which includes tax parcels 0794.19.52.9317, 0794.19.52.9395 and 0794.19.62.0333 as described on Exhibit "A" (the "Stanhope Annexed Area").

This modification document includes many of the provisions as set forth in the original SSP, but to avoid confusion on the applicability of various provisions, this document specifies the only SSP provisions which will apply to the Stanhope Annexed Area and that this Amendment will apply to the Stanhope Annexed Area only.

The Stanhope Annexed Area is not a part of the Master Plan referenced in the "SSP," however Stanhope Annexed Area will be complementary to the properties within the Master Plan and will share many design objectives.

Buildings within the Stanhope Annexed Area shall be mixed use buildings, with ground floor retail and shall include at least two uses which may include retail, office, institutional and/or residential uses. Such building(s) shall have a maximum height of five (5) stories or seventy-five feet (75').

On street parking shall not be required if there is not sufficient land area within the site. Parking reductions may be requested in accordance with the City Code PBOD provisions.

The minimum width for sidewalks along both Hillsborough Street and Friendly Drive shall be increased to fourteen (14) feet.

Use of the Pedestrian Business Overlay District enhances the ability to create a vibrant streetscape that is unique to this development. This Amendment to the Stanhope Center Streetscape and Parking Plan proposes streetscape modifications to existing streets and integrates amenities that improve pedestrian quality and experience. These streetscape elements are shown conceptually on Exhibit B.

Existing on- and off-site parking, landscaping, buildings and/or signage will not be made to conform to this Amendment to the Stanhope Center Streetscape and Parking Plan and the provisions of the PBOD shall not take effect until the Stanhope Annexed Area is re-developed.

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Hillsborough Street & Friendly Drive (Stanhope Annexed Area)

The Stanhope Annexed Area, fronts onto the Hillsborough Street right-of-way. Per the City Code, the front yard setback for this PBOD shall be zero, provided that the minimum sidewalk width of fourteen (14) feet is provided. One parcel has Friendly Drive as a corner lot side yard. Building(s) will have a maximum height of 75' and be a maximum of five stories. Each building(s) shall include at least two of the following uses: retail, office, institutional and/or residential.

Streetscape Elements

Streetscape elements are per the Stanhope Center Streetscape and Parking Plan, and include:

On-street Parking

On-street parallel parking places along Hillsborough Street are encouraged, but not required. On-street parking along this portion of Friendly Drive is not anticipated.

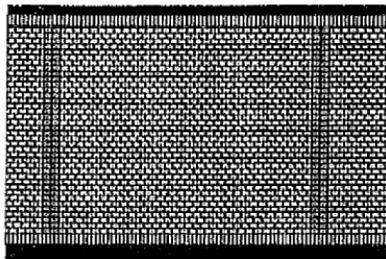
Parking Areas

Parking may be provided as on-street, off-street and/or in an off-site parking deck, provided that on-street parking may not be used to satisfy City Code off-street parking requirements. Parking reductions may be requested in accordance with the City Code PBOD provisions. The on-street and off-street parking may adjoin a private street or a public street. Parking spaces shown on the Master Plan as on-street public parking are illustrative. It is recognized that the Raleigh City Council approves the use of on-street parking.

Sidewalks

The minimum unobstructed sidewalk width along Hillsborough Street and Friendly Drive is fourteen (14) feet. Sidewalks of varying widths (minimum 14) extend from the back of curb to the proposed building fronts. Portions of the sidewalks may be beyond the Hillsborough Street and Friendly Drive right-of-ways.

Sidewalk pavers will be Pine Hall Brick Field Pavers. The primary color of the sidewalk paver will be Pathway Red, which closely matches the older pavers already in place along portions of Hillsborough Street. The accent sidewalk paver color will be English Edge Dark Accent.



Paver patterns will be running bond. A single header course of Accent Sidewalk Pavers will be used against building wall and curbs. A double-row of header-patterned pavers composed of the Sidewalk Accent will be used to define the sidewalk panels.

Signage and Canopies

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Signage will be restricted to lettering displayed on the canopies or awnings, under-canopy signs and wall signs. No ground signs will be permitted.

Canopies and awning heights shall be a minimum of 9.0' above sidewalk grade or such other minimum as may be required by the North Carolina Building Code. Canopies/awnings may or may not be backlit, may be retractable and will be made of canvass, vinyl or translucent materials. The colors will be compatible with the building materials and colors.

Under-canopy signs will be permitted for pedestrian identification of individual businesses. Under-canopy signs will be hung a minimum of 9.0', unobstructed, above the grade of the sidewalk, will not exceed a height of 12" and not exceed the width of the canopy or such other minimum and maximum heights as may be required by the North Carolina Building Code.

Walls signs will be permitted. Total maximum wall sign area per establishment is two (2) square feet per linear foot of the side of the building facing any street or as otherwise permitted or limited thereunder by City Code. Area of copy (height x length) of a wall sign will not exceed 75% of the total sign area.

Canopies/awnings and under-canopy signs, which extend into public rights-of-way, will require an encroachment permit from the City of Raleigh.

Street Signs

Street signage will consist of standard City of Raleigh street sign fastened to a 4-mil powder coated (dark green) aluminum tube post. The property owners association will maintain street signs and mounting poles.

Street Trees



Street tree varieties recommended for both public and private streets within Stanhope Center include Panache Shumard Oak (*Quercus shumardii* 'QSTFC'), Highbeam Overcup Oak (*Quercus lyrata* 'QSFTC'), and Valynor Trident Maple (*Acer buergerianum* 'Valynor').

These species, selected for their shape, size and adaptation to urban settings, will be planted at a minimum of 3" caliper measured at 6" above grade. Street tree quantities are calculated at the rate of one street tree per 50 LF of roadway.

Flowering tree varieties include Crape Myrtle, Savannah Holly, and Goldenrain Tree. Flowering trees will define limits of parking, frame sidewalks, and create a pedestrian scale to the upper canopy of the landscape. Flowering trees will be a minimum of 2" caliper at planting as measured 6" above grade for a single trunk, or as multi-trunked, per species. Flowering trees quantities are calculated at the rate of one per 50 LF of roadway.

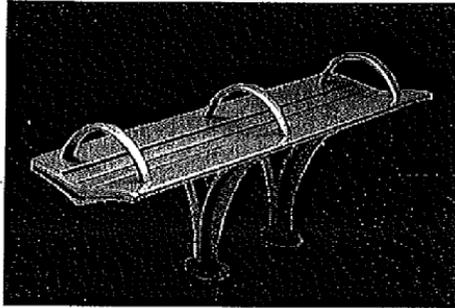
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Tree grates

Tree grates will be either 48" square or 48"x 96" rectangular grates, both with a 16" diameter expandable opening and .25" slot openings. Tree grates will be black. Tree grates will be limited to tree plantings within pedestrian way, along sidewalks and streets.



tree
painted
the

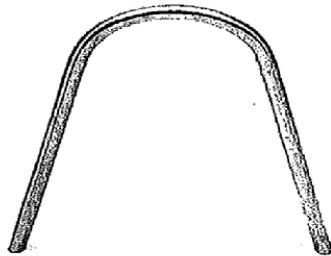


Benches

Benches will be provided at a rate of one bench per 200 LF of sidewalk and will be Landscape Forms "Austin" series Flat Bench with two (2) end arms and one (1) center arm. The powder coat finish contains no heavy metals and is a hard, yet flexible, finish that resists rusting, chipping, peeling and fading

Bicycle Racks

Bicycle storage includes both a secured area within structured parking and surface mounted bicycle racks.



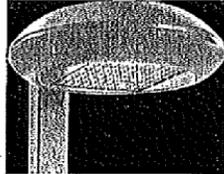
Bicycle racks will be provided at a rate of one rack per 20 parking spaces of the parking spaces provided or one rack per 5,000 square feet of the non-residential uses within the Overlay District, whichever is greater. Bike racks will be similar to Landscape Forms style 'Flo' bike rack'. The color is stainless steel. This design is made of 91% recycled material and is 100% recyclable. Bike racks will be placed within structured parking, parking islands bump outs, and open space areas.

Trash Receptacles

Trash receptacles will be located near seating and will be similar Landscape Forms style "Chase Park" receptacles. The 36-gallon side opening litter receptacle has a closed top which will assist in keeping out rain water

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Lighting



Lighting consists of two types: Street Lighting and Pedestrian Lighting. Street lighting will utilize a 30' RTS Round Tapered Steel pole; Pedestrian lighting will utilize a 16' RTS Round Tapered Steel pole. The Poles will be unfinished steel. Light fixtures will be similar to 'The Edge Round Luminaire', by BETA Lighting. The LED Luminaire will be contained in a Silver Bronze colored fixture.

All lighting will conform to local codes and ordinances.

Streetscape Maintenance

The city will maintain the following streetscape elements:

- Curb and gutter
- Street paving
- Crosswalk striping and signals
- Bus stops (except trimming of any vegetation and clean-up of the grounds at or around the transit easement area and the removal of trash from trash receptacles and litter from the transit easement area)
- On-street parking space striping
- Parking meters
- Street lights

A not-for-profit Property Owners Association established for the Stanhope Center development will maintain:

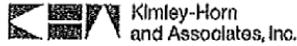
- Street trees, tree grates, and tree guards
- Trash receptacles
- Specialty lighting and lighting attached to buildings
- Encroachments within public right-of-way
- Sidewalks
- Awnings and canopies
- Bike racks
- Benches

Individual businesses will maintain business signs.

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EXHIBIT C-2



June 22, 2011

Mr. Bowman Kelly, PE, PTOE
Transportation Engineer, Office of Transportation Planning
One Exchange Plaza, Suite 727
PO Box 590
Raleigh, North Carolina 27602

Re: Hillsborough Street and Friendly Drive Property Rezoning (Z-12-11) Trip Generation Comparison

Dear Mr. Kelly:

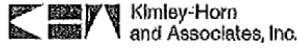
Kimley-Horn and Associates, Inc. (Kimley-Horn) has prepared a trip generation comparison for the proposed rezoning (Z-12-11) of the parcels located at the southwest corner of Hillsborough Street and Dixie Trail/Friendly Drive in the City of Raleigh. The real estate PIN numbers for the subject parcels are 0794.52.9317, 0794.52.9395, and 0794.62.0333. Based on existing zoning, up to 13,000 square feet of retail space and 26,000 square feet of office space on a total of three (3) floors would be permitted. The proposed build-out totals requested in the rezoning will allow up to 15,000 square feet of retail space and 60,000 square feet of office space on a total of five (5) floors. In order to assist the City in determining the effect of the increase in square footage on the trip generation potential of the subject property, Kimley-Horn has prepared the following trip generation comparison tables. Table 1 below summarizes the trip generation potential for the existing zoning. Table 2 below summarizes the trip generation potential for the development totals requested in the rezoning. The Institute of Transportation Engineers' publication *Trip Generation*, 8th Edition was utilized to obtain the trip generation rates and equations for the studied uses.

Land Use Code	Land Use	Daily			AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total	In	Out	Total
710	26,000 s.f. General Office	237	237	474	35	5	40	7	32	39
820	13,000 s.f. Retail (Shopping Center)	902	902	1,804	28	18	46	79	83	162
Existing Zoning Unadjusted Trips		1,139	1,139	2,278	63	23	86	86	115	201
Reduction for Office Internal Capture ⁽¹⁾		-27	-36	-63	0	0	0	-2	-2	-4
Reduction for Retail Internal Capture ⁽²⁾		-36	-27	-63	0	0	0	-2	-2	-4
20% Retail Pass-by Reduction ⁽²⁾		0	0	0	0	0	0	-15	-16	-31
10% Reduction for Office Non-Auto Trips		-21	-20	-41	-4	-1	-5	-1	-3	-4
30% Reduction for Retail Non-Auto Trips		-260	-263	-523	-8	-5	-13	-19	-20	-39
Existing Zoning Total External Trips		795	793	1,588	51	17	68	67	72	119

Notes: (1) - ITE's publication *Trip Generation Handbook*, 2nd Edition does not contain guidance for internal capture during the AM Peak Hour, therefore internal capture for the AM Peak Hour was not calculated.
(2) - ITE's publication *Trip Generation Handbook*, 2nd Edition contains an average pass-by capture rate of 34% for retail uses (LUC 820) in the P.M. Peak Hour, however due to unique conditions of the subject property a 20% pass-by capture rate was utilized.

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Land Use Code	Land Use	24 Hour			AM Peak Hour			PM Peak Hour		
		In	Out	Total	In	Out	Total	In	Out	Total
.710	60,000 s.f. General Office	450	450	900	82	11	93	15	74	89
820	15,000 s.f. Retail	990	990	1,980	31	19	50	87	91	178
Build-Out Unadjusted Trips		1,440	1,440	2,880	113	30	143	102	165	267
Reduction for Office Internal Capture ⁽¹⁾		-30	-40	-70	0	0	0	-3	-2	-5
Reduction for Retail Internal Capture ⁽¹⁾		-40	-30	-70	0	0	0	-2	-3	-5
20% Retail Pass-by Reduction ⁽²⁾		0	0	0	0	0	0	-17	-18	-35
10% Reduction for Office Non-Auto Trips		-42	-41	-83	-8	-1	-9	-1	-7	-8
30% Reduction for Retail Non-Auto Trips		-285	-288	-573	-9	-5	-15	-20	-21	-41
Build-Out Total External Trips		1,043	1,011	2,054	96	23	119	59	114	173
Reduction for Existing Zoning Uses		-795	-793	-1,588	-51	-17	-68	-47	-72	-119
Build-Out Total New External Trips		248	218	466	45	6	51	12	42	54

Notes: (1) - ITE's publication *Trip Generation Handbook*, 2nd Edition does not contain guidance for internal capture during the AM Peak Hour, therefore internal capture for the AM Peak Hour was not calculated.
 (2) - ITE's publication *Trip Generation Handbook*, 2nd Edition contains an average pass-by capture rate of 34% for retail uses (LUC 820) in the P.M. Peak Hour, however due to unique conditions of the subject property a 20% pass-by capture rate was utilized.

As summarized in Table 1 above, the trip generation potential for the existing zoning is 1,588 daily trips, 68 AM Peak Hour trips, and 119 PM Peak Hour trips. As summarized in Table 2, the trip generation potential for the proposed uses after rezoning is 2,084 daily trips, 119 AM Peak Hour trips, and 173 PM Peak Hour trips. Therefore, as summarized in Table 2, the increase in trip generation potential related to the proposed rezoning is 496 daily trips, 51 AM Peak Hour trips, and 54 PM Peak Hour trips. It should be noted that the trip generation calculations for both scenarios were based on "External Trips" after reductions were taken for internal capture, pass-by, and non-auto trips (i.e. pedestrian, bicycle, public transportation, etc.)

If you have any questions concerning our analysis, please call me at 919-677-2062.

Sincerely,

 R. Michael Horn, P.E.
 Principal
 KIMLEY-HORN AND ASSOCIATES
 NC License # F-0102



Exhibit C-3

See §10-2075 for other yard areas required by this Code, method of calculating, exceptions and reductions to yard areas, and illustrations.
Cross reference: Required width of pedestrian ways §10-2055(e)(5)

(3) Height.

Buildings and structures may be constructed to any height established in the Streetscape Plan or Streetscape and Parking Plan. If the height regulations of the underlying district conflict with the height regulations of the Streetscape Plan or Streetscape and Parking Plan, the Plan shall control. Whenever the Streetscape Plan or Streetscape and Parking Plan fails to adopt height limitations, those of the underlying zoning district shall be applied to the property.

See §10-2075 for method of height calculation, exceptions, and illustrations.

(Ord. No. 2000-740-TC-190, TC-1-99, §1, 2-18-00)

10-2055(d)(4)

(4) Required open space.

For the purposes of this subsection, and subsection 10-2051(d)(1)c.6., above, "open space" shall include greenways and any common outdoor landscaped and recreation spaces (excluding vehicular surface areas), outdoor decks, roof gardens and other similar outdoor community space accessible to and available for use by all residents, employees and/or visitors of the development.

The minimum "open space" provided on the site shall be five (5) per cent of the total land area of the development, excluding dedicated rights-of-way unless density transfer is allowed from the right-of-way.

The minimum required open space area shall be required to the following standards:

a. Sidewalk widening.

Where the property lies adjacent to a public street right-of-way with an existing sidewalk width of eighteen (18) or less feet, sidewalk widening shall be required based on the following:

<u>Existing walkway condition</u>	<u>Construct to a minimum of</u>
0-14 feet	14 feet
>14-18 feet	18 feet
>18 feet	No sidewalk construction required

Additional right-of-way dedication shall not be required to accommodate the sidewalk

widening set forth herein. However, for any sidewalk widening provided to comply with these minimum requirements and located on private property, the property owner shall be required to grant to the City a public access easement. The newly constructed sidewalk shall be of compatible paving materials with the public sidewalk and shall conform to any applicable adopted streetscape plan. The sidewalk widening shall occur along the entirety of the public street frontage with no permanent obstructions, other than those that may be required by the City Code and structural columns supporting overhangs or upper-story structures creating an arcade or recessed covered area in which case the columns shall be spaced a minimum of five (5) feet from both the building facade and the individual columns; and

b. Courtyard, roof garden, dining, recreation space.

One-half (1/2) of the required open space shall be in one (1) continuous part with a minimum length and width dimension of twenty (20) feet.

Street level open spaces proposed to meet the requirements of subsection (ii) above located adjacent to proposed sidewalk widening may utilize the portion of the proposed sidewalk located on private property to meet the minimum twenty (20) foot dimension stated above. In the event that required sidewalk widening located on private property represents greater than two and one-half (2 1/2) percent of the total land area of the development, the minimum percentage requirement established by subsection (ii) shall be reduced accordingly such that no more than five (5) per cent of the total land area of the development shall be required to be devoted to open space required by this §10-2051(e).

No open space shall be required for any of the following:

- Rehabilitation of buildings or portions of buildings to sixteen (16) or fewer dwelling units or congregate care or congregate living units, per building.
- Single family detached dwellings or duplex dwellings on their own lot, where "open space" equivalent to the greater of twenty (20) per cent of the area of the lot or four

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hundred thirty-five and six-tenths (435.6) square feet per dwelling or rooming unit is provided.

For rehabilitation of buildings or portions of buildings for all other uses, the designated approving authority as specified by §10-2132.2(c) may approve an alternate method of compliance for the required open space. The approved alternate method of compliance may be less than five (5) per cent of the total land area of the development. Alternate methods of compliance include, but are not limited to, private balconies and decks, indoor recreation areas, meeting rooms and community space accessible to and available for use by the residents, employees and/or visitors.

The minimum open space required by this Code for developments located in a Pedestrian Business Overlay District may be reduced as part of the subdivision or site plan approved by the Planning Commission or the City Council in accordance with §10-2132.2 after a finding that such reduction in open space is in accordance with the general plans for the physical development of the City as embodied in the Comprehensive Plan and after a finding that the site plan complies with the procedures and standards of §10-2132.2(c) and (d).

Editor's note: Prior to December 1, 2007, all high density residential projects approved in accordance with §10-2051(d)(1) shall be required to provide the following minimum "open space" requirement:

The minimum "open space" provided on the site shall be fifteen (15) per cent of the total land area of the development, excluding dedicated rights-of-way unless density transfer is allowed from the right-of-way, but not to exceed four hundred thirty-five and six-tenths (435.6) square feet per unit or in the case of *congregate care* or *congregate living structures*, not to exceed two hundred eighteen (218) square feet per dwelling or rooming unit. In no case shall less than ten (10) per cent of the total land area of the development, excluding dedicated rights-of-way unless density transfer is allowed from that right-of-way, be devoted to common outdoor open space accessible to all residents.

Cross reference: Open space is required for any cluster unit development, congregate care structure or congregate living structure, group housing development, life care community, manufactured home park, multi-family dwelling development, residential unit ownership (condominiums) and townhouse development, Part 10, chapter 2, Article F. (Ord. No. 1992-88-TC-401, §24, TC-4-92, 11-4-92; Ord. No. 1997-137-TC-153, §36, TC-18-96, 6-17-97; Ord. No. 2008-450-TC-316, §4, TC-11-08, 9-2-08; Ord. No. 2010-706-TC-331, §§11, 12, TC-1-10, 2-16-10)

(e) ~~Supplementary Regulations.~~

~~All uses and activities are also subject to Article H, overlay zoning districts, conditional use zoning districts, and supplementary regulations of Article E. Supplementary regulations include:~~

(1) ~~Off-street parking.~~

~~The minimum number of off-street parking spaces required for commercial and recreational land uses shall be based upon the ratios and coordinating strategies recommended by the adopted Streetscape and Parking Plan for the subject area of the Overlay District subject to compliance with the construction improvements required by the Streetscape and Parking Plan. In no case shall a Streetscape and Parking Plan adopt parking strategies which are less restrictive than that specified below. Where a Streetscape Plan had previously been adopted, but no Streetscape and Parking Plan has been subsequently adopted, the minimum number of off-street parking spaces shall be the number of spaces required below subject to compliance with the construction improvements required by the Streetscape Plan.~~

~~Except for site plans approved pursuant to Section 10-2051(d)(1) or for projects in the Transit Orientated Development Overlay District, the minimum number of off-street parking spaces required for new structures, additions or expansions to existing structures or changes in use shall be one (1) space per four hundred (400) square feet of building floor area or the minimum number of parking spaces set forth in §10-2081(a), SCHEDULE OF OFF-STREET PARKING STANDARDS, whichever is less, with the exception of the following land uses:~~

- ~~a. Projects with sixteen (16) or fewer dwelling units per building shall not be required to provide any off-street parking spaces for the dwelling units. Projects with seventeen (17) or more dwelling units per building shall not be required to provide off-street spaces for the first sixteen (16) dwelling units, but shall be required to provide at least one (1) off-street parking space per unit in excess of sixteen (16) units; with the exception that, units occupied by no more than two (2) residents not related by blood, marriage or adoption sixty-two (62) years and older shall provide a minimum of one-half (1/2) space per unit. For residential developments or the residential portion of a mixed-use development, no more than two (2) parking spaces per dwelling unit shall be located on the site. However, proposed expansions or modifications to existing developments with on-site parking shall be required to retain a minimum of one (1) on-site parking space devoted to persons with disabilities.~~

10/2/C-86

2.

**Sec. 10-2143.
VARIANCE.**

(a) In accordance with §10-2141, the Board of Adjustment will hear and decide requests for variances from the requirements of Part 10 chapter 2. Before a variance request is granted the Board must find all of the following:

- (1) That practical difficulties or unnecessary hardship would result if the strict letter of the zoning law were followed.
- (2) That the variance is in accordance with the general purpose and intent of the ordinance.
- (3) That public safety and welfare have been secured and that substantial justice done.
- (4) No change in permitted uses *may* be authorized by variance.
- (5) Appropriate conditions, which must be reasonably related to the conditions or circumstances that give rise to the need for a variance, *may* be imposed on any approval issued by the board.

The Board *may* not grant a variance which is not in accordance with the statutory and decisional law of *this state*.

The Board *may* not, absent specific authority, grant a variance which would modify, alter, change, or suspend the requirements of §§10-2144 and 10-2145, and §10-2146.3, or would change the district boundary or zoning classification of the *property* in question.

In granting a variance, the Board of Adjustment is authorized to attach safeguards and conditions to the approval as is necessary and appropriate in order to protect established *property* values in the *affected area* or to promote the public safety and general welfare. Those conditions *may* include limitations listed in §10-2141(c).

Cross reference: Variances to preliminary *site plans* approved by the *City Council* in accordance with §10-2132.2(c) require the reapproval of the *City Council*. §10-2132.2(0)(3)p.
(Ord. No. 194-TC-312, §4, TC-7-88, 6-26-88; Ord. No. 2005-939-TC-276, §2, 12-6-05)

**Sec. 10-2144.
SPECIAL USE PERMITS APPROVED BY THE
BOARD OF ADJUSTMENT.**

Special use permits - alphabetical listing:

- *Adult establishment.*

- *Airfield or landing strip.*
(Ord. No. 2008-405-TC-312, §10, TC-3-08, 6-3-08)
- *Bed and breakfast inn.*
- *Day care facility* (child or adult).
- *Garage for five (5) or more motorized vehicles accessory to a single-family detached or duplex dwelling.*
(Ord. No. 1997-137-TC-153, §100, TC-18-96, 6-17-97)
- *Ground signs* for double *frontage lots* with parallel opposite one-way *streets*, or *lots* with *frontage* on two (2) or more median-divided *thoroughfares*.
- *Guest house.*
- *Kennel and cattery.*
- *Limited home business.*
- *Manufacturing - specialized.*
- *Other professional or service offices, studios, or agencies not otherwise listed as permitted in the office and institution and Residential Business Districts.*
(Ord. No. 1997-137-TC-153, §2, TC-18-96, 6-17-97)
- *Outdoor storage of recyclable material.*
(Ord. No. 1997-137-TC-153, §101, TC-18-96, 6-17-97)
- *Outdoor storage yard for unlicensed, uninspected, wrecked, crushed, dismantled, or partially dismantled vehicles.*
(Ord. No. 1997-137-TC-153, §101, TC-18-96, 6-17-97)
- *Parking (off-street) reduction for conversions or alteration of a building.*
- *Plant nursery, and fruit and vegetable stand.*
- *Recreational outdoor use - commercial.*
(Ord. No. 1996-877-TC-130, §5, TC-2-96, 5-7-96)
- *Recreational use restricted to membership - not for profit.*
- *Retail sales* not otherwise listed as permitted in the Residential Business and Buffer Commercial Districts.
- *Riding stable.*
- *Rooming house, boarding house, lodging house, tourist home.*
- *School, church or government building* adaptively reused as an office or studio, operating on a not for profit basis, for a professional, business, political, or labor association or agency.
(Ord. No. 1997-137-TC-153, §2, TC-18-96, 6-17-97)
- *Schools - private/parochial.*
- *Special care facility.*
(Ord. No. 2004-647-TC-248, §11, TC-4-04, 6-1-04)
- *Specialty school as a limited home business.*
- *Veterinary hospital* in conjunction with a kennel/cattery.

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- Yard encroachments.

- Yard reductions.

(Ord. No. 1993-134-TC-47, §4, TC-1-93, 2-2-93; Ord. No. 1993-247-TC-63, §10, TC-17-93, 8-3-93; Ord. No. 1993-248-TC-64, §6, TC-18-93, 8-3-93; Ord. No. 1994-365-TC-71, §19, TC-22-93, 4-5-94; Ord. No. 1994-408-TC-75, §7, TC-9-94, 6-7-94; Ord. No. 1996-855-TC-129, §5, TC-4-96, 4-2-96; Ord. No. 1999-616-TC-181, §81, TC-3-99, 8-3-99; Ord. No. 2003-373-TC-231, §11, TC-23-02, 2-4-03)

Editor's note: Ord. No. 1993-248-TC-64, §6, TC-18-93, adopted Aug. 8, 1993, repealed the special use permit alphabetical listing for "Dish antenna" and, in subsection 10-2144(b), repealed the *dish antenna* category, which had derived from Ord. No. 349-TC-217, §4, TC-264, 5-20-84. Additionally, Ord. No. 669-TC-142, TC-6-81, adopted May 19, 1981, permitted a group care facility, but this land use was removed by Ord. No. 1994-365-TC-71, §§19, 20, TC-22-93, adopted April 5, 1994. [Prior to its repeal, the category "group care facility" had been amended by Ord. No. 622-TC-245, §5, TC-16-85, adopted Aug. 6, 1985; Ord. No. 600-TC-242, §4, TC-13-85, adopted July 2, 1985; Ord. No. 220-TC-201, §1, TC-216, adopted Nov. 3, 1983; Ord. No. 438-TC-226, §7, TC-275, adopted Nov. 12, 1984; Ord. No. 810-TC-268, §17, TC-6-86, adopted June 22, 1986; Ord. No. 500-TC-350, §3, TC-1-90, adopted April 2, 1990; Ord. No. 1991-868-TC-378, §7, TC-9-91, adopted March 1, 1992; Ord. No. 1993-206-TC-58, §3, adopted June 1, 1993.] Ord. No. 1997-137-TC-153, §104, TC-18-96, adopted June 17, 1997, repealed the special use permit alphabetical listing for "trade show and temporary retail activity within a hotel or motel" and, in subsection 10-2144(b), repealed the "trade show..." category. Ord. No. 1999-616-TC-181, §81, TC-3-99, adopted Aug. 3, 1999, repealed the special use permit alphabetical listing for "Nonresidential related service (general)" and in subsection 10-2144(b) repealed the "Nonresidential..." category.

(a) Special Use Permits Approved.

In performing its functions and duties under this chapter, the Board of Adjustment following the submittal of a plan containing the information required in §10-2132.1(b) and after making the necessary findings is authorized to issue special use permits to allow the enumerated buildings, uses, and designs in the districts specified in subsection (b) below. The districts referred to herein apply to general use and conditional use districts unless the applicable conditional use district ordinance specifically states otherwise.

(Ord. No. 660-TC-242, §6, TC-13-85, 7-2-85; Ord. No. 029-TC-294, §2, TC-14-87, 12-1-87)

(b) Special Use Permits Enumerated.

Adult establishment.

To permit an *adult establishment* in industrial districts, Shopping Center, Neighborhood Business, Business Zone, and Thoroughfare Districts after the Board finds that the evidence presented at the hearing establishes each of the following:

(1) Off-street parking.

Each facility shall provide off-street parking in accordance with §10-2081.

(2) Advertisements.

Except for *on-premise* and *off-premise signs* permitted under this chapter, advertisements, displays or other promotional materials shall not be visible to the public from pedestrian sidewalks or walkways.

(3) Overconcentration.

No more than one (1) *adult establishment* is located in any two thousand (2,000) foot radius (determined by a straight line and not *street* distance). *Adult establishments* which, because of their very nature, are recognized as having serious objectionable operational characteristics upon adjacent neighborhoods, particularly when they are concentrated. Special regulation of these establishments is necessary to insure that these adverse effects will not contribute to the blighting or downgrading of the surrounding neighborhood. To prevent an overconcentration of *adult establishments* and the creation of a de facto downgrading or blighting of surrounding neighborhoods; this radius requirement is necessary, unless otherwise determined under subparagraph (5) below.

(4) Residential proximity.

No *adult establishment* is located within a two thousand (2,000) foot radius (determined by a straight line and not *street* distance) of any place of worship, school (public or private), *specialty school*, day-care facility, or any residential, O&I-1, O&I-2 and Buffer Commercial zoning districts. *Adult establishments*, because of their very nature, are recognized as having serious objectionable operational characteristics, particularly when they are located near a *residential zoning district* or certain other districts which permit residential uses. Special regulation of these establishments is necessary to insure that these adverse effects will not contribute to a downgrading or blighting of surrounding *residential districts* or certain other districts which permit residential uses, unless otherwise, determined by subparagraph (5) below.

(5) Variances.

The Board of Adjustment shall vary the radius requirements in subparagraphs (3) and (4) above when it finds that:

- n. Practical difficulties or unnecessary hardships would result from the strict enforcement of the radius requirements.

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- b. The proposed use will not be injurious to *property* or improvements in the *affected area*.
 - c. The proposed use will not enlarge or encourage the development of a "skid row" area.
 - d. The permitting of an *adult establishment* in the area will not be contrary to any governmental program of neighborhood conservation, rehabilitation, improvement, or revitalization.
 - e. All other applicable provisions of this chapter will be observed.
- (6) The proposed use will not adversely impact public services and facilities such as parking, traffic, police, etc., and that the secondary effects of such uses will not adversely impact on adjacent *properties*. The secondary effects would include but not be limited to noise, light, stormwater runoff, parking, pedestrian circulation and safety.

When determining preponderance of adult materials, only those objects which have equal access and visibility *shall* be considered.

Annotation: *Adult establishment*. When computing distances the term "*adult establishment*" includes the entire *property* such as parking area *used for* required off-street parking. A-73-82 Murray, Board of Adjustment (May 10, 1982).

(Ord. No. 153-TC-190, §10, 7-29-83, TC-233; Ord. No. 647-TC-7, TC-104, 12-1-77; Ord. No. 1992-15-TC, §§1, 2, TC-393, 2-4-92; Ord. No. 1996-793-TC-125, §§3, 4, TC-28-95, 12-5-95)

Airfield or landing strip.

To permit a government or nongovernment air field or landing strip in all zoning districts other than Conservation Management, and except in a *primary reservoir watershed protection area*, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The use is not injurious to surrounding *properties*.
- (2) For airplane use:
 - a. Proof of air space clearance from F.A.A. is required.
 - b. The minimum landing strip length is one thousand eight hundred (1,800) feet. The length *shall* be increased twenty (20) per cent for each one (1) per cent gradient. The minimum width is one hundred fifty (150) feet.
 - c. The minimum runway length is one thousand six hundred (1,600) feet, and the minimum width is seventy-five (75) feet for sod, forty (40) feet for a paved surface.

- d. The maximum gradient for a runway is two (2) per cent.
- c. The approach slope *shall* begin at least two hundred (200) feet beyond end of runway, and be at least a 20:1 slope.
- f. The length of the clear zone to be controlled and maintained by the airfield developer (no *buildings* allowed) such that future construction is prohibited (*streets*, lakes, etc.), is one thousand (1,000) feet.
- g. There *shall* be a planted area at least twenty-five (25) feet wide on both sides of the landing strip, provided and maintained by the airfield *owner(s)* in such a manner as to minimize noise, dust and hazard from the field, in areas where in the opinion of the Board such protection is found to be desirable.
- h. Except in areas properly zoned for such uses there *shall* be no *prima facie* business, repair, or advertisement, except for the sale of gasoline to the planes based at the field.
- i. Any structures must be so designed and placed that they will not be detrimental to adjoining *properties*.
- j. The area *shall* be so fenced as to prevent trespassing by animals or unauthorized *persons*.

Cross reference: Helicopter operations inside the *City*, §13-2005. (Ord. No. 105-TC-304, §10, TC-24-87, 1-10-88; Ord. No. 1996-851-TC-128, §3, TC-23-95, 4-2-96; Ord. No. 2008-405-TC-312, §11, TC-3-08, 6-3-08)

Bed and breakfast inn.

To permit a *bed and breakfast inn* in Residential-10, Residential-15, Residential-20, Special Residential-30, Residential-30, Residential Business, Office and Institution-1 Districts, and the Planned Development Conditional Use Overlay District, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The inn is located within one (1) or more of the following:
 - a. An Historic Overlay District.
 - b. A *property* designated in accordance with §10-1053 as a *historic landmark*.

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- c. A *property* listed on the National Register of Historic Places.
- d. A *property* identified as a contributing structure within a National Register Historic District, as defined in the Code of Federal Regulations, as amended.

- (2) The inn is located in a structure which was originally constructed as a *single-family dwelling* or otherwise lawfully constructed for a use permitted within the zoning district.
- (3) The total number of *persons* occupying the inn does not exceed the maximum residential density permitted in the district.
- (4) There is no exterior advertising in a *residential districts* except a small unlighted announcement sign not to exceed two (2) square feet in area and three and one-half (3½) feet in height. In the Residential Business and Office and Institution-1 District, the inn is permitted all signage allowed other uses in the District, consistent with any limitations imposed by this special use permit or any other permit issued by the *City*.
- (5) There is no *rooming house, boarding house, tourist home, or bed and breakfast inn* located within four hundred (400) feet (determined by a straight line and not *street* distance) of the facility.
- (6) The *owner* of the inn or a resident manager is domiciled on the *premises*.
- (7) Breakfasts served on the *premises* are only for guests of the inn, and no other meals are provided on the *premises*.
- (8) Off-street parking for the use will be provided in accordance with §10-2081.
- (9) Any prohibited exterior element as provided by §10-2052(c)(4) shall be removed from the structure prior to its use as a *bed and breakfast inn*.
- (10) Any interior modification shall be described in the application and shall not be injurious to the historic character of the structure, woodwork, stairways, fireplaces, windows and doors, cornices, festoons, moldings, chairrails, or light fixtures.

Cross references: *Equivalent dwelling units*, §10-2073. Special use permit issued by the *City Council* in accordance with §10-2145(b) is required when a given number/density of *equivalent dwelling units* is exceeded in Special Residential-30 District, §10-2024 and Office and Institution-1 District, §10-2035. Minimum housing standards, §10-6123(b).

(Ord. No. 320-TC-213, TC-262, 4-3-84; Ord. No. 438-TC-226, §7, TC-275, 11-12-84; Ord. No. 600-TC-242, §4, TC-13-85, 7-2-85; Ord. No. 1991-868-TC-378, §7, TC-9-91, 3-1-92; Ord. No. 1992-29-TC-395, §5, TC-

12-92, 8-4-92; Ord. No. 1992-30-TC-396, §3, TC-13-92, 8-4-92; Ord. No. 1995-760-TC-122, §44, TC-201-95, 11-21-95; Ord. No. 2001-26-TC-208, §10, TC-5-01, 6-19-01)

Day care facility (child or adult).

To permit a *day care facility* in any *residential district* except in an Airport Overlay District or *primary reservoir watershed protection area* after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The use will not be injurious to *property* or improvements in the *affected area*.
- (2) The following minimum land areas per enrollee shall apply:
 - a. Rural Residential, Residential-2, and Residential-4 Districts - one thousand three hundred (1,300) square feet.
 - b. Residential-6, Manufactured Home, Special Residential-6 Districts - eight hundred (800) square feet.
 - c. Residential-10 and districts of lower residential classification - three hundred (300) square feet.

Notwithstanding the requirements in the *preceding* sentences, each facility may increase enrollment twenty (20) per cent to provide for absenteeism of enrollees of a *day care facility*.

- (3) In the case of a *day care facility* for children, there shall be a minimum of seventy-five (75) square feet of fenced outdoor play area per child older than eighteen (18) months of age. When a *day care facility* is approved for thirty (30) or more children, there shall be provided seventy-five (75) square feet per child of fenced outdoor play area for at least one-half (½) of the total number children for which the facility is approved; provided that, the minimum amount of space on the outdoor play area must be enough to accommodate at least thirty (30) children, and the total number of children using the area at any one (1) time does not exceed the number the outdoor space will accommodate at seventy-five (75) square feet per child.
- (4) The structure housing the secular facility is similar in appearance to the area.
- (5) Off-street parking shall be provided in accordance with §10-2081.

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- (6) Access to the facility from nearby *streets* will be adequate based upon the projected number of participants to attend the facility.

Cross reference: Residential *street* and *collector streets*, *Street, Sidewalk and Driveway Access Handbook*, on file with the City Clerk.

- (7) The landscaping of the facility will adequately blend it into the area, screen its purely functional aspects from the *street* and absorb and deflect any excessive noise.
- (8) No excessive light will be generated at the facility in any manner which will annoy residents of the surrounding structures.
- (9) The Board of Adjustment may allow in any residential district one (1) unlighted announcement sign not to exceed two (2) square feet in area and three and one-half (3½) feet in height and an equivalent-sized permanent vehicular sign.
- (10) Only one (1) vehicle used in connection with the day care facility in residential zoning districts will be parked or stored on the premises, or residential street.

This special use permit shall not be required for the day care facility in a residential zoning district if the facility is approved by the Planning Commission or City Council in accordance with all the provisions of §10-2072, Residential Institution in a residential zoning district, and the Planning Commission or City Council find that standards (2) through (10) above are met.

Cross reference: Site plan requirements for residential institutions, §10-2132.2(b)(5).

(Ord. No. 671-TC-359, TC-9-90, 11-11-90; Ord. No. 230-TC-202, TC-247B, 11-15-83; Ord. No. 230-TC-202, TC-247A, 11-15-83; Ord. No. 622-TC-245, §4, TC-16-85, 8-6-85; Ord. No. 946-TC-86, §47, TC-29-86, 7-1-87; Ord. No. 105-TC-304, §9, TC-24-87, 1-10-88; Ord. No. 870-TC-86, TC-121, 9-12-78; Ord. No. 279-TC-113, TC-149, 12-18-79; Ord. No. 1992-43-TC-397, §60, TC-10-92, 9-1-92; Ord. No. 1995-760-TC-122, §45, TC-20B-95, 11-21-95; Ord. No. 1999-570-TC-178, § 1, TC-5-99, 6-1-99; Ord. No. 1999-616-TC-181, §80, TC-3-99, 8-3-99; Ord. No. 2000-734-TC-189, TC-2-00, §1, 2-15-00; Ord. No. 2004-647-TC-248, §12, TC-4-04, 6-1-04)

Garage for five (5) or more motorized vehicles accessory to a single-family detached or duplex dwelling.

To permit a garage for five (5) or more motorized vehicles in residential zoning districts, if the Board finds that the evidence presented at the hearing establishes that such a facility will not be injurious to property or improvements in the affected area and street traffic.

(Ord. No. 1994-408-TC-75, §7, TC-9-94, 6-7-94; Ord. No. 1997-137-TC-153, §100, TC-18-96, 6-17-97)

Ground signs for double frontage lots with parallel opposite one-way streets, or lots with frontage on two (2) or more median-divided thoroughfares.

To permit a premise to contain one (1) additional ground sign, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The premise fronts on parallel streets which are one-way in opposite directions, or the premise fronts on two (2) or more median-divided thoroughfares.
- (2) The premise does not have and will not have any tract identification signs.
- (3) The sum of the area of both ground signs does not exceed one hundred (100) square feet.
- (4) The combined height of both ground signs does not exceed either fifteen (15) feet if the premise has a total street frontage from all streets of one hundred (100) or more feet, or seven (7) feet if the premise has a total street frontage from all streets of less than one hundred (100) feet.
- (5) If it is zoned an office and institution zoning district, the total height of each ground sign does not exceed three and one-half (3½) feet.
- (6) In the case of parallel one-way streets, each ground sign must generally face one (1) of the streets such that both signs are generally not simultaneously visible to motorists. In the case of two (2) or more intersecting median-divided thoroughfares, each ground sign must generally face one (1) of the thoroughfares and be spaced as far apart on the premise as possible to reduce the possibility of both signs being seen simultaneously.
- (7) Each ground sign conforms with all provisions of this Code.
- (8) In the case of median-divided thoroughfares, an additional ground sign is warranted due to the difficulty of seeing the premise caused by the thoroughfare width and speeds permitted.

Cross reference: Signs to comply with sight triangles, §10-2086.

(Ord. No. 152-TC-189, §3, TC-238, 7-19-83; Ord. No. 217-TC-200, TC-252, 11-3-83; Ord. No. 946-TC-286, §48, TC-29-85, 4-7-87; Ord. No. 1993-247-TC-63, §§ 10, 11, TC-17-93, 8-3-93; Ord. No. 1995-760-TC-122, §46, TC-20B-95, 11-21-95)

Guest house.

To permit a guest house in Residential-10, Residential-15, Residential-20, Special Residential-30, and Residential-30, and Office and Institution-1 District, and Planned Develop-

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ment Conditional Use Overlay District, except in any Airport Overlay District, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) All portions of *buildings* housing a *dwelling unit* shall be located within two hundred (200) feet from the closest *vehicular surface area* which is accessible by fire truck, as measured around both sides of the *building* and not through the *building*; or, that an alternate plan for fire truck access, or *building* construction methods for fire control, or any combination thereof shall be approved by the City's Fire Chief and Transportation Director.
- (2) The number of *dwelling units* in the *guest house* conforms to the density requirements permitted by the zoning district.
- (3) Off-street parking is provided in accordance with §10-2081.
- (4) Any *apartment house* complex containing two (2) or more *guest homes* in two (2) separate *dwelling* structures on a single *property* conforms to the requirements of §10-2103.
- (5) No more than the lesser of sixty (60) units or twenty-five (25) per cent of the total number of units contained in the apartment complex may be devoted to *guest house* apartments.
- (6) There will be no external advertising or identification of the *guest house* in a *residential zoning district* visible from the right-of-way except for a tract identification *sign* which is a portion of the tract identification signage for the apartment com-

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plex allowed in §10-2083.2. In the Office and Institution-1 District, the *guest house* is permitted signage that is allowed for other uses in that zone.

Cross reference: Special use permit issued by the City Council in accordance with §10-2145(b) is required when a given number/density of dwelling units is exceeded in Special Residential-30, §10-2024 and Office and Institution-1 District, §10-2035.

(Ord. No. 913-TC-163, §2, TC-210, 6-1-82; Ord. No. 622-TC-245, §5, TC-16-85, 8-6-85; Ord. No. 600-TC-242, §4, TC-13-85, 7-2-85; Ord. No. 438-TC-226, §7, TC-275, 11-12-84; Ord. No. 1991-868-TC-478, §7, TC-9-91, 3-1-92; Ord. No. 1995-673-TC-111, §3, TC-12-95, 7-5-95; Ord. No. 1998-370-TC-167, §30, TC-3-98, 7-7-98)

Kennel and cattery.

To permit a cattery or kennel, as those terms are defined in §12-3004, in Agricultural Productive, Rural Residential, Shopping Center, Neighborhood Business, Business Zone, and Thoroughfare Districts, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The use will not be detrimental or injurious to property or improvements in the affected area.
- (2) No part of any building, structure or run in which animals are housed shall be closer than one hundred fifty (150) feet from any property line, except property owned or occupied by an owner or operator of the kennel or cattery; provided, that the minimum distance referred to above shall not apply if all portions of the facility in which animals are enclosed is located wholly within a building.
- (3) Any kennel or cattery which is not wholly enclosed within a building shall be enclosed by a security fence at least six (6) feet in height, which shall be in addition to the primary enclosures or runs.
Cross reference: Fences and walls, §10-2085. Sight triangles for fences, §10-2086.
- (4) Off-street parking shall be provided in accordance with §10-2081.
- (5) The principal function of the operation is to board animals and not to provide services such as grooming or the sale of merchandise.
- (6) There shall be no on-premise external advertising or identification in any manner in a Rural Residential and Agricultural Productive Districts, except for one (1) unlighted announcement sign not exceeding nine (9) square feet in area and three and one-half (3½) feet in height or in lieu thereof an equivalent-sized permanent vehicular sign.

Cross reference: Kennels and catteries inside the City, Part 12, chapter 3, Article D.

(Ord. No. 946-TC-286, §22, TC-29-85, 4-7-87; Ord. No. 153-TC-190, §11, TC-233, 7-29-83; Ord. No. 647-TC-70, TC-103, 12-1-77)

Limited home business.

To permit, except in Conservation Management Districts, a limited home business carried on by a resident in his dwelling after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) It will not be injurious to property or improvements in the affected area.
- (2) No display of goods, products or services will be visible from outside of the dwelling.
- (3) There will be no external advertising or identification of the occupation displayed in any manner on the premises except for one (1) unlighted announcement sign not to exceed two (2) square feet in area and three and one-half (3½) feet in height or in lieu thereof an equivalent sized permanent vehicular sign.
- (4) Such use will not exceed twenty-five (25) per cent of the livable portion of the dwelling or five hundred (500) square feet, whichever is less.
- (5) Internal or external alterations will not substantially deviate from construction features customarily found in dwellings.
- (6) Resale of items, such as, but not limited to, antiques, jewelry and clothing may be permitted in addition to handmade items produced in the home.
- (7) No equipment or process will be used in connection with the limited home business which creates noise, vibration, glare, fumes, odors, or electrical interference detectable to the normal senses off the premises. In the case of electrical interference, no equipment or process shall be used which creates visual or audible interference in any radio, dish antenna, computer, or television receivers off the premises.
- (8) Automobile parking shall be provided in accordance with the Schedule of Off-street Parking Standards, §10-2081 for the type of limited home business maintained; provided however, no parking areas other than driveways may be located in the required front yard setback, and the off-street spaces required for the limited home business shall be maintained in addition to the space or spaces required for the residence itself.
- (9) Only one (1) vehicle used in connection with the limited home business will be parked or stored on

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the premises; provided however, the vehicle will not be a truck, such as, but not limited to, a dump truck, a fuel oil delivery truck or a wrecker.

- (10) A maximum of two (2) outside employees will be employed.
- (11) Except within the *primary reservoir watershed protection area, specialty school services*, such as, but not limited to, dance instructions, crafts or music lessons *may* be provided for a group no larger than twenty-five (25) persons.
- (12) If within an industrial district, Office and Institution-3 District, and Airport Overlay District, the business is located in an existing *dwelling*.
- (13) The requirements for shipping and receiving of materials in connection with the business does not create excessive noise or adversely affect residential traffic, especially with regard to the size of commercial vehicles involved and frequency of deliveries.
- (14) No person shall be allowed to operate a *limited home business* for the purpose of conducting a business as a gun or firearms dealer. Any *limited home business* permitted by the Raleigh Board of Adjustment for the purpose of conducting a business as a gun or firearms dealer which have been made a *nonconforming use* by this section shall be discontinued no later than May 1, 1999.

Annotatiōn: Employees. In approving a *limited home business*, any partner is an outside employee. A-131-81 Keane, Board of Adjustment (Aug. 10, 1981). (Ord. No. 528-TC-353, §4, TC-3-90, 4-22-90; Ord. No. 230-TC-202, §1, TC-247A, 11-15-83; Ord. No. 1994-484-TC-91, §1, TC-23-94, 9-20-94)

Manufacturing - specialized.

To permit facilities for the design, assembly, testing, or repair of: scientific measuring or analyzing instruments; semiconductor and related solid state devices including but not limited to integrated microcircuits; jewelry, medical, musical instruments, photographic or optical instruments; and timing instruments, watches, in *office and institution districts* and the Buffer Commercial District after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The facility (including storage of materials, components, or products) occupies no more than ten (10) per cent of the *floor area gross* in the *building* in which it is located, or fifteen hundred (1,500) square feet, whichever is greater. Storage

of materials, components, or products shall not exceed ten (10) per cent of the *floor area gross* allowed above.

- (2) In *office and institution districts*, shipping and receiving demands and space requirements do not exceed those normally found in office uses and are not detrimental to surrounding uses.
- (3) No machines are used which *may* create noises, odors or noxious fumes or vapors or in any other way be detrimental to surrounding office and institution operations.
- (4) In *office and institution districts*, no *retail sales* take place on the *premises* and no retail or other showroom *display areas* or displays exist.
- (5) No manufacturing is performed other than assemblage of components, repair work, and testing.
- (6) No undue impact to adjoining uses is caused by noise, dirt, dust, vibration, heat, fumes, or odors.
- (7) Off-street parking shall be provided in accordance with §10-2081.

(Ord. No. 884-TC-278, §§3, 4, TC-17-86, 11-4-86; Ord. No. 847-TC-155, §1, TC-204, 2-16-82; Ord. No. 2002-265-TC-224, §1, TC-13-02, 8-6-02)

Other professional or service offices, studios, or agencies not otherwise permitted in the office and institution and Residential Business Districts.

To permit professional or service offices, studios, or agencies in any Residential Business and *office and institution zoning districts*, not otherwise listed as allowable as a general or conditional use, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) No sales floor spaces, show-rooms, or display windows are open for or visible from the *street*.
- (2) No such use shall be permitted in an *office and institution district* if prohibited in that office district listing in Article C, nor shall such use be permitted in any Residential Business District if prohibited in the Residential Business District listing in Article C.
- (3) In the Residential Business District, the services are destined for consumption by pedestrian trade existing in the area, and the operation is not injurious to affected *residences* because of noise, traffic, or other conditions.
- (4) In the Residential Business District the maximum *floor area gross* requirement is met.

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- (5) In the *office and institutional districts*, the *floor area ratio* and *building lot coverage* requirements are met; see: office, agency or studio of a professional or business agent, or political, labor or service association, §10-2072.
- (6) In the *office and institution zones*, the operation is not injurious to *properties* in the *affected area* because of noise, traffic and other conditions, such as *floor area ratio*.

(Ord. No. 1997-137-TC-153, §2, TC-18-96, 6-17-97)

Outdoor storage of recyclable material.

To permit in the Industrial-1 and Industrial-2 Districts, except in any Airport Overlay District, an outdoor storage yard for *recyclable materials* which are to be reprocessed on-site or transported to other locations for recycling and reclamation, after the Board of Adjustment finds that the evidence presented at the hearing establishes each of the following:

- (1) There is a plan for shipping or reprocessing each class of *recyclable material* regularly, such that the size of the storage yard is minimized in relationship to the amount of *recyclable material* estimated to be received. In no event shall any *recyclable material* remain on-site for a period exceeding one (1) year.
- (2) No pile of stored material shall exceed twelve (12) feet in height. Height is to be calculated in the same manner as §10-2076(b).
- (3) The storage area is enclosed by a twelve-foot high *closed fence* or solid wall except along that portion of a *lot* boundary adjacent to railway tracks where a *loading area* exists. A *closed fence* or solid wall less than twelve (12) feet high shall be permitted if the Board of Adjustment determines that a lesser height will not have an adverse effect in the *affected area*. The *closed fence* or solid wall shall comply with the requirements of §10-2082.3(f).
Cross references: Fences and walls, §10-2085; sight triangles for fences, §10-2086.
- (4) The facility contains adequate measures to control windblown stored material.
- (5) No part of the storage yard is located within four hundred (400) feet of a *residential zoning district*, or the *lot* line of any *lot* containing any *dwelling*, *congregate care* or *congregate living structure*, or the *right-of-way* line of an existing or proposed *thoroughfare* or *major access corridor*.

- (6) A plan is approved by the *City* for permanent soil erosion control devices.
- (7) Off-street parking shall be provided in accordance with §10-2081.
- (8) The outdoor storage yard shall comply with all applicable State and Federal regulations.
- (9) The impact of the storage yard, including its size, equipment and machinery used, hours of operation, and appearance, will not be injurious to *property* or improvements in the *affected area*.
Cross reference: Reapproval for changes to a special use permit, §10-2144(e)(2). (Ord. No. 1992-87-TC-400, §7, TC-6-92, 11-4-92)
(Ord. No. 1997-137-TC-153, §101, TC-18-96, 6-17-97)

Outdoor storage yard for unlicensed, uninspected, wrecked, crushed, dismantled, or partially dismantled vehicles.

To permit in Industrial-1 and Industrial-2 Districts a storage yard for unlicensed, uninspected, wrecked, crushed, dismantled or partially dismantled vehicles after the Board of Adjustment finds that the evidence presented at the hearing establishes each of the following:

- (1) The maximum storage pile height shall not exceed twelve (12) feet. Height shall be calculated in the same manner as set forth in §10-2076(b).
- (2) The yard is operated by someone engaged in the wrecker or towing business.
- (3) The storage area, except along that portion of a *lot* boundary adjacent to railway tracks where a *loading area* exists, is enclosed by a *closed fence* or solid wall which shall be at least twelve (12) feet tall, unless the Board of Adjustment determines that a lesser height will not be adverse to *property* or improvements in the *affected area*.
Cross reference: Fences and walls, §10-2085. Sight triangles for fences, §10-2086.
- (4) Off-street parking shall be provided in accordance with §10-2081.
- (5) The storage yard is used exclusively for vehicle storage and that no parts from stored vehicles are sold at wholesale or retail on that site.
- (6) The proposed storage yard is not closer than one (1) mile (determined by straight line and not *street* distances) from another storage yard.

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- (7) The impact of the storage yard, including its size, equipment and machinery used, hours of operation, and appearance will not be injurious to *property* or improvements in the *affected area*.

Cross reference: Reapproval for changes to a special use permit, §10-2144(c)(2). (Ord. No. 1986 837-TC-271, §§ 1, 2, TC-5-86, 9-5-96; Ord. No. 1986 799-TC-267, §§28, 29, TC-21-85, 1-1-87; Ord. No.1993-134-TC-47, §§5-7 TC-1-93, 2-2-93)
(Ord. No. 1997-137-TC-153, §102, TC-18-96, 6-17-97)

Parking (off-street) reduction for conversion or alteration of a building.

To permit reduction in the number of required off-street parking spaces for the alteration or conversion of an existing *building* after the Board finds that the evidence presented at the hearing establishes each of the *following*:

- (1) The proposed use is directed primarily toward pedestrian trade existing in the area.
- (2) The character of existing development of *properties* within four hundred (400) feet prohibit the acquisition of land for parking.

(Ord. No. 1992-43-TC-397, §59, TC-10-92, 9-1-92)

Plant nursery, and fruit and vegetable stand.

To permit in the Rural Residential District, except in *primary reservoir watershed protection areas*, plant nurseries, fruit and vegetable stands, and related sales offices (wholesale or retail), after the Board finds that the evidence presented at the hearing establishes each of the *following*:

- (1) Sales offices *shall* be limited to one hundred (100) square feet of floor area per acre of land area, not to exceed one thousand (1,000) square feet of floor area.
- (2) Sales *shall* be limited to:
 - a. Plants produced or nurtured on the *premises*;
 - b. Hand-held nonmotorized garden tools;
 - c. Fertilizer, mulch, and similar items normally associated with nursery or gardening operations.
- (3) Signing *shall* be limited to one (1) unlighted announcement *sign* not to exceed twelve (12) square feet in area, or be higher than three and one-half (3½) feet above the ground elevation or in lieu thereof an equivalent-sized permanent vehicular *sign*.
- (4) No *building shall* be located nearer than fifty (50) feet from any *property* line.

- (5) Off-street parking *shall* be provided in accordance with §10-2081; provided that, a minimum of five (5) off-street parking places *shall* be provided.

- (6) No illumination when measured off the site, *shall* exceed four-tenths (0.4) maintained footcandle of lighting.

- (7) The use will not be injurious to *property* or improvements in the *affected area*.

(Ord. No. 105-TC-304, §10, TC-24-87, 1-10-88; Ord. No. 230-TC-202, §1, TC-247A, 11-15-83; Ord. No. 820-TC-84, TC-117, 7-20-78; Ord. No. 1997-137-TC-153, §103, TC-18-96, 6-17-97)

Recreational outdoor use - commercial.

To permit in *residential districts*, except in the *primary reservoir watershed protection area*, *recreational outdoor use - commercial* after the board finds that the evidence presented at the hearing establishes each of the *following*:

- (1) Recreation is limited to the *following* uses: driving ranges and golf courses; and *accessory uses* of miniature golf, putt-courses, swimming pools, tennis courts and associated buildings.

- (2) The use will not be injurious to *property* or improvements in the *affected area*.

- (3) The use is not noxious or offensive by reason of emission of odors, gas, fumes, vibration or noise.

- (4) The street capacity adjacent to the property to be so used is sufficient to safeguard the public health, comfort and convenience as may be required for the preservation of the general character of the neighborhood in which such use is to be conducted.

- (5) Off-street parking *shall* be provided in accordance with §10-2081.

- (6) No illumination, when measured off the recreation site, *shall* exceed four-tenths (0.4) maintained footcandle of lighting. All lighting *shall* be shielded from direct exposure to adjoining residential zones.

- (7) Only the sale of merchandise associated with the recreational use is permitted. No merchandise or advertisement thereof will be visible from the public right-of-way.

- (8) There *shall* be no *on-premise* external advertising or identification in any manner in a *residential district*, except for tract identification *sign(s)* approved by the Board of Adjustment that do(es) not exceed the standards of §10-2083.2, Tract Identification *Signs*.

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(9) The board *shall* set the time of operation.
(Ord. No. 1996-877-TC-130, §6, TC-2-96, 5-7-96; Ord. No. 2005-869-TC-268, §2, TC-11-05, 7-5-05)

Recreational use restricted to membership - not for profit.

To permit in Agricultural Productive, Residential Business, and residential districts, except in the primary reservoir watershed protection area, recreation uses restricted to membership after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) Recreation is limited to the following uses: athletic league fields, campgrounds, country clubs, docks, gymnasiums, health clubs and health spas, including clubhouse facilities, pedestrian and equestrian trails, play courts such as basketball, racquetball, and tennis courts, golf courses, driving ranges, play fields, playgrounds, swimming pools, tanning facilities, weight and exercise rooms.
- (2) The use will not be injurious to property or improvements in the affected area.
- (3) The use is not noxious or offensive by reason of emission of odors, gas, fumes, vibration or noise.

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- (4) The *street* capacity adjacent to the *property* to be so used is sufficient to safeguard the public health, comfort, convenience as *may* be required for the preservation of the general character of the neighborhood in which such *building* is to be placed or such use is to be conducted.
- (5) No swimming pool or wading pool, diving area, outdoor *play court* such as a tennis or basketball court, *play field*, *play* or equipment area, or other active recreational use nor any driveway or parking area for such facilities *shall* be established without first providing *transitional protective yards* which conform to §10-2082.9 for medium impact uses.
Cross reference: Fencing of outdoor swimming pools inside the *City* limits, §13-2028.
- (6) Off-street parking *shall* be provided in accordance with §10-2081.
- (7) No illumination, when measured off the recreation site, *shall* exceed four-tenths (0.4) maintained footcandle of lighting.
- (8) The land area of the use is not needed to satisfy the minimum site size of a development according to §10-2073.
- (9) Payments, if any, for the use of recreational facilities are made on an installment basis of not less than monthly, rather than on any pay for use, hourly, daily, or weekly basis.
- (10) The sale of merchandise is allowed as a *residential related service* restricted to members.

Recreational use restricted to membership - not for profit, is permitted in a *primary reservoir watershed protection area* in accordance with a special use permitted issued by the *City Council*, §10-2145.

Cross reference: Tract identification signs permitted, §10-2083.2. Recreational uses of the *City* of Raleigh in a *primary reservoir watershed protection area* are required to obtain a special use permit from the Board of Adjustment in accordance with §10-2145, standards for recreational use of a governmental entity in a *primary reservoir watershed protection area*. (Ord. No. 719-TC-83, TC-118, 6-2-78; Ord. No. 212-TC-111, TC-146, 12-4-79; Ord. No. 799-TC-267, §38, TC-21-85, 1-1-87; Ord. No. 415-TC-343, TC-1-89, §7, 8-1-89; Ord. No. 105-TC-304, §12, TC-24-87, 1-10-88; Ord. No. 1993-207-TC-59, §18, TC-12-93, 6-1-93; Ord. No. 1996-877-TC-130, §7, TC-2-96, 5-7-96; Ord. No. 1996-901-TC-131, §17, TC-3-96, 5-21-96)

Retail sales not otherwise listed as permitted in the Residential Business and Buffer Commercial Districts.

To permit *retail sales* not otherwise allowed as a general or conditional use in the Residential Business and Buffer Commercial Districts, after the Board finds that evidence presented at the hearing establishes each of the following:

- (1) The business is retail.
- (2) In the Residential Business District, the business handles sales of goods or services customarily destined for consumption by pedestrian trade existing in the area.
- (3) In the Buffer Commercial District, the business handles sales of goods customarily destined for family consumption.
- (4) The use will not be injurious to *property* or improvements in the *affected area*.

Riding stable.

To permit a horse riding stable including the boarding of horses in Rural Residential, Agricultural Productive, Shopping Center, Neighborhood Business, and Business Zone Districts, except in Primary Reservoir Watershed Protection Overlay Districts, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The use will not be injurious or *unhealthy* to *property* or improvements in the *affected area*.
- (2) No part of any *building* or structure in which animals are housed *shall* be closer than two hundred (200) feet from any existing *residence*, except for *property* owned or *occupied* by an *owner* or operator of the riding stable.
- (3) All horses connected with the riding stable *shall* be enclosed by appropriate fencing so that horses *shall* not be permitted to run at large.
- (4) Off-street parking *shall* be provided in accordance with §10-2081.
- (5) Only one (1) mature horse *may* be kept on a *lot* less than one (1) acre. For *lots* from one (1) to five (5) acres in size, a maximum of three (3) mature horses per acre *may* be kept. For *lots* greater than five (5) acres, up to ten (10) horses per acre *may* be boarded if the setbacks as listed in subparagraph (6) below are increased to two hundred (200) feet from the *property* line.
- (6) *Buildings*, stables and riding rings *may* not be placed closer than fifty (50) feet to any *property* line. However, the main manure storage area *shall* be no closer than one hundred fifty (150) feet to any *property* line.

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- (7) Lighting shall be shaded or directed so that light intensity will not disturb surrounding dwelling or congregate living or congregate care structures.
- (8) There shall be no on-premise external advertising or identification in any manner in a Rural Residential and Agricultural Productive District, except for one (1) unlighted announcement sign not exceeding nine (9) square feet in area and three and one-half (3½) feet in height or in lieu thereof an equivalent-sized permanent vehicular sign.
- (9) The board may require a setback for the grazing area from the property line to assure that such areas do not pose a nuisance or give rise to unsanitary or unsafe conditions with regard to adjacent properties.

Cross reference: Stables and holding facilities inside the City, §12-3031 et seq. Horse stables as an accessory to a dwelling(s), §10-2071, Schedule of Permitted Land Uses in Zoning Districts, (Ord. No. 46-TC-172, §2, TC-220, 12-21-82; Ord. No. 781-TC-151, §4, TC-198, 11-3-81; Ord. No. 230-TC-202, §1, TC-247A, 11-15-83; Ord. No. 153-TC-190, §9, TC-233, 7-29-83; Ord. No. 105-TC-304, §10, TC-24-87, 1-10-88)

Rooming house, boardinghouse, lodging house, tourist home.

To permit a rooming house, boardinghouse, lodging house or tourist home in Residential-10, Residential-15, Residential-20, Special Residential-30, Residential-30, Residential Business, and Office and Institution-1 Districts after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The dwelling unit was constructed originally as a single-family dwelling.
- (2) The total number of persons occupying the dwelling does not exceed the residential density permitted by this Code, §10-2073.
- (3) There is no exterior advertising except one (1) unlighted announcement sign not to exceed two (2) square feet in area.
- (4) No more than one (1) rooming house, boardinghouse, lodging house or tourist home in any one thousand two hundred (1,200) foot radius (determined by a straight line and not street distance) shall be permitted.
- (5) Off-street parking shall be provided in accordance with §10-2081.
- (6) The rooming house, boarding house, lodging house, or tourist home will not or is not injurious to property or improvements in the affected area.

- (7) That rooming houses, boarding houses, lodging houses or tourist homes approved after December 1, 1991, are required to apply for renewal of the special use permit by the Board of Adjustment within twelve (12) months following the date of approval. Failure to apply within the specified time period shall render the special use permit null and void.

Cross references: Special use permit issued by the City Council required when a given number/density of dwelling units is exceeded in Special Residential-30 District, §10-2145; minimum housing standards for rooming houses, §10-6123(b); equivalent dwelling unit, §10-2073.

Editor's note: This regulation first became applicable on December 1, 1991 (Ord. No. (1991) 867-TC-377) (Code 1959, §24-9(c); Ord. No. 523-TC-61, TC-92, 5-3-77; Ord. No. 438-TC-226, §7, TC-275, 11-12-84; Ord. No. 600-TC-242, §4, TC-13-85, 7-2-85; Ord. No. 867-TC-377, TC-14-91, 12-1-91)

School, church, or government building adaptively re-used as an office, agency or studio, operating on a not for profit basis, for a professional, business agent, political, labor or service association.

To permit the office(s), agencies, or studio of a professional or business, political, labor or service association, such as a business or trade organization, chamber of commerce, elected political subdivision, political, religious, social service, or youth organization, operating on a not for profit basis in an existing community facility building located in any residential district after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The community facility building was originally constructed and occupied by one (1) of the following specified uses: school; church; federal, state or local government.
- (2) The building is a permanent structure which cannot economically or reasonably be converted to residential uses or moved to an alternate site.
- (3) The use will not be injurious to property or improvements in the affected area.
- (4) There shall be no advertisement in a residential district except for one (1) unlighted announcement sign not to exceed six (6) square feet in area and three and one-half (3½) feet in height or in lieu thereof an equivalent-sized permanent vehicular sign.
- (5) There shall be no flood lighting which beams directly into nearby residential areas.
- (6) Off-street parking shall be provided in accordance with §10-2081.

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(7) *Transitional protective yards* which conform to §10-2082.9 for low impact uses *shall* be installed.

(8) When located within a Reservoir Watershed Protection Overlay District other possible impacts upon that watershed are no greater than those of the previous use.

(Ord. No. 230-TC-202, §1, TC-247A, 11-15-83; Ord. No. 318-TC-211, TC-257, 4-8-84; Ord. No. 318-TC-211, §§2, 3, TC-257, 4-8-84; Ord. No. 105-TC-304; §11, TC-27-87, 1-10-88; Ord. No. 799-TC-267, §37, TC-21-85, 1-1-87)

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Schools - private/parochial.

To permit a nongovernmental school or parochial school meeting the curricular teaching certification of instruction approved by the State Board of Education, in residential districts, except in an Airport Overlay District or primary reservoir watershed protection area, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The use will not be injurious to property or improvements in the affected area.
- (2) There shall be a minimum of five hundred (500) square feet of total land area per enrolled pupil.

This special use permit shall not be required if the school is approved by the Planning Commission or City Council in accordance with the provisions of §10-2072, Residential Institution in a residential zoning district, and the Planning Commission or City Council finds that there is a minimum of five hundred (500) square feet of total land area per enrolled pupil.

Cross reference: Site plan requirements for residential institutions, §10-2132.2(b)(5).
(Ord. No. 105-TC-304, §9, TC-24-87, 1-10-88; Ord. No. 622-TC-245, §4, TC-16-85, 8-6-85; Ord. No. 1992-43-TC-397, §60, TC-10-92, 9-1-92; Ord. No. 1999-616-TC-181, §82, TC-3-99, 8-3-99)

Special care facility.

To permit a special care facility in any residential district except in an Airport Overlay District or primary reservoir watershed protection area after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The use will not be injurious to property or improvements in the affected area.
- (2) The following minimum land areas per enrollee shall apply:
 - a. Rural Residential, Residential-2, and Residential-4 Districts - one thousand three hundred (1,300) square feet.
 - b. Residential-6, Manufactured Home, Special Residential-6 Districts - eight hundred (800) square feet.
 - c. Residential-10 and districts of lower residential classification - three hundred (300) square feet.

Notwithstanding the requirements in the preceding sentences, each facility may increase enrollment twenty (20) per cent to provide for absenteeism of enrollees of a special care facility.

- (3) The structure housing the secular facility is similar in appearance to the area.
- (4) Off-street parking shall be provided in accordance with §10-2081.
- (5) Access to the facility from nearby streets will be adequate based upon the projected number of participants to attend the facility.
Cross reference: Residential street and collector streets, Street, Sidewalk and Driveway Access Handbook, on file with the City Clerk.
- (6) The landscaping of the facility will adequately blend it into the area, screen its purely functional aspects from the street and absorb and deflect any excessive noise.
- (7) No excessive light will be generated at the facility in any manner which will annoy residents of the surrounding structures.
- (8) The Board of Adjustment may allow in any residential district one (1) unlighted announcement sign not to exceed two (2) square feet in area and three and one-half (3½) feet in height and an equivalent-sized permanent vehicular sign.
- (9) Only one (1) vehicle used in connection with the special care facility in residential zoning districts will be parked or stored on the premises, or residential street.
- (10) No special care facility shall be located within one thousand two hundred (1,200) feet (determined by straight line from property line to property line) of any other special care facility.

This special use permit shall not be required for the special care facility in a residential zoning district if the facility is approved by the Planning Commission or City Council in accordance with all the provisions of §10-2072, Residential Institution in a residential zoning district, and the Planning Commission or City Council find that standards (2) through (10) above are met.

(Ord. No. 2004-647-TC-248, §13, TC-4-04, 6-1-04; Ord. No. 2004-721-TC-260, §6, TC-16-04, 10-5-04)

Cross reference: Site plan requirements for residential institutions, §10-2132.2(b)(5).

Specialty school as a limited home business.

Except within an Airport Overlay District or primary reservoir watershed protection area, a specialty school is permitted in residential districts in accordance with a special use permit for a limited home business, issued under this section, §10-2144(b).

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Veterinary hospital in conjunction with a kennel/cattery.

To permit a *veterinary hospital*, as an adjunct use to a kennel/cattery in the Rural Residential and Agricultural Productive District, after the Board finds that the evidence presented at the hearing establishes each of the following:

- (1) The use will not be detrimental or injurious to property or improvements in the affected area.
- (2) The use is not noxious or offensive by reason of emission of odors and noise.
- (3) Off-street parking shall be provided in accordance with §10-2081.
- (4) The street capacity adjacent to the property to be so used is sufficient to safeguard the public health, comfort and convenience as may be required for the preservation of the general character of the neighborhood in which such a use is to be conducted.
- (5) No part of any building, structure or run in which animals are housed shall be closer than one hundred fifty (150) feet from any property line, except property owned or occupied by an owner or operator of the veterinary hospital; provided, that the minimum distance referred to above shall not apply if all portions of the facility in which animals are enclosed is located wholly within a building.
- (6) Only the sale of merchandise associated with the veterinary hospital is permitted. No merchandise will be visible from the public right-of-way. The principal function of the operation is the rendering of medical services and not the sale of merchandise.
- (7) There shall be no on-premise external advertising or identification in any manner in a Rural Residential and Agricultural Productive Districts, except for one (1) unlighted announcement sign not exceeding nine (9) square feet in area and three and one-half (3½) feet in height or in lieu thereof an equivalent-sized permanent vehicular sign.
- (8) No illumination, when measured off the site shall exceed four-tenths (0.4) maintained footcandle of lighting.
- (9) A special use permit from the Board of Adjustment has been obtained for a kennel/cattery for the property.

(Ord. No. 1996-855-TC-129, §6, TC-4-96, 4-2-96)

(1) Encroachments over front and rear yard areas.

- a. To permit encroachments in any zoning district over front and rear yard areas as determined by §10-2075(b), for the following types of structures:
 1. awnings, marquees, projecting signs, porches, decks, eaves, stairways and carports, completely open except for reasonable supports, to extend into or over more than twenty (20) per cent of the required district front yard or rear yard setback; and
 2. canopies no higher than fifteen (15) feet, and which are completely open except for reasonable supports, to extend into or over more than twenty (20) per cent of the required district front yard or rear yard setback.
Cross reference: Open structures allowed to extend into up to twenty (20) per cent of the front or rear yard setbacks; see Schedule of Permitted Land Uses Within Types of Yard Areas, §10-2075(e), note m.
- b. These encroachments are to be permitted only after the Board finds that the evidence presented at the hearing establishes each of the following:
 1. Special conditions and/or circumstances exist on the same block or nearest block adjacent thereto or across the same street therefrom.
 2. The special conditions and/or circumstances do not result from actions of the applicant, and therefore, strict application of the yard setbacks provisions would deprive the applicant of rights commonly enjoyed by other properties in the immediate vicinity and in the same zoning district.
 3. Granting the reduction is the minimum exception that will make possible the reasonable use on the land, building, or structure.
 4. Granting the reduction will not be injurious to property or improvements in the affected area.
 5. The encroachment is not into a minimum yard area established for a lot on a new block face, platted after application of this regulation*, in the Special

Yard encroachments.

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Residential-6, Residential-6, Residential-10, Residential-15, Residential-20, and Residential-30.

Editor's note: This regulation first became applicable on July 21, 1991 (Ord. No. 823-TC-371, §12, TC-11-91).

6. If the canopy is within thirty (30) feet of an adjacent *street*, highway, or expressway right-of-way, no *ground sign* shall be permitted on the *premise*.
7. The canopy, awning, *marquee*, *projecting sign*, deck or porch, if part of a planned nonresidential development, is consistent with approved *unity of development* guidelines, as required in §10-2132.2(d)(5).

Yard reductions.

As a prerequisite to the approval of a special use permit allowing any of the *following* district yard setback reductions the Board *shall* first find that the evidence submitted at the hearing establishes that such reductions will not be injurious to *property* or improvements in the *affected area*.

- (1) **Yard reductions at corners and next to open spaces.**

To permit yard reductions on *corner lots* or *lots* opposite or adjoining permanent open spaces, including parks and playgrounds.

- (2) **Front yard reduction.**

To permit reductions in *front yard* setbacks where there are irregularities in depths of existing *front yard* setbacks on a *block face* provided the reduction equals any one (1) of the depths of the existing *front yard* setbacks on that side of the *street*.

- (3) **Yard reductions for topography or solar access.**

To permit reductions in *front*, *side* and *rear yard* setbacks if necessary because of topography or solar access.

(Ord. No. 348-TC-216, TC-261, 5-20-84)

Editor's note: The provisions of former §10-2073(e)(4), which pertained to special exceptions for residential parking in redevelopment areas, included an expiration date of *May 20, 1989*. The subsection has been deleted at the direction of the *City*. Ord. No. 146-TC-107 (TC-3-79) removed §24-49(c)(3), which permitted, where a zoning boundary split a *lot*, a use from either district on the *lot*. In addition, the *following* special use permits were discontinued as part of Ordinance No. (1991) 869-TC-379: §10-2073(e) (1), (5), (10) and (11). The *following* special use permit was relocated to §10-2146.3(3)(b): §10-2073(e)(2). (Code 1959, §§24-49(1)(B)-(B); Ord. No. 348-TC-216, TC-261, 5-20-84; Ord. No. 2003-373-TC-231, §11, TC-23-02, 2-4-03)

- (c) **Limits on use classification, changes to approved special uses, and abandonment.**

- (1) Whenever the Board of Adjustment approves a special use permit, such approval *shall* not change the use classification of the *property* nor give it any status as a *zoning nonconformity*, such as is referred to in §10-2146.
- (2) Whenever the Board of Adjustment approves a special use permit, such approved special use *shall* not without the prior approval of the Board:
 - a. Change to another use for more than thirty (30) days; or
 - b. Increase its density or intensity; or
 - c. Enlarge, expand, or increase its size; or
 - d. Increase the requirements for off-*street* parking spaces; or
 - e. Substantially change the exterior appearance of the *building*; or
 - f. Add new outdoor equipment and machinery.

- (3) Any special use permit approved by the Board of Adjustment, including special use permits approved prior to the application of this subsection, that are either changed to another use for more than thirty (30) days, other than that for which the special use permit was issued, or discontinued or ceased for a continuous period of three hundred sixty-five (365) days or more is null and void and *may* not resume without the reapproval of the Board of Adjustment.

(Ord. No. 1992-87-TC-400, §8, TC-6-92, 11-4-92)

- (d) All special use permits approved by the Board of Adjustment *shall* contain a statement that such special use is contingent upon the payment of any applicable facility fees and the approval of either a *site plan* or *plot plan*, if required by this Code.

Editor's note: This provision was first applied to special use permits issued by Board of Adjustment on December 5, 1985.

(Ord. No. 684-TC-257, §4, TC-31-85, 12-3-85; Ord. No. 31-TC-296, §81, TC-16-87, 12-1-87)

Sec. 10-2145.

SPECIAL USE PERMITS APPROVED BY CITY COUNCIL.

Special use permits - alphabetical listing:

- Commercial surface parking lot as a principal use located within a Transit Oriented Development Overlay District.

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- Correctional/penal facility (governmental and non-governmental).
- Heliport.
- *Mulch or compost processing facility.*
- Outdoor stadium, outdoor theater, outdoor race track, of more than two hundred and fifty (250) seats, and outdoor movie theaters.
- Parking facility - off-site, for a residential institution in residential zoning districts.
- Recreational use of a governmental entity and not for profit private recreational camp, in a primary reservoir watershed protection area.
- Recreational use restricted to membership - not for profit, in a primary reservoir watershed protection area.
- Retail sales exceeding fifty thousand (50,000) square feet of floor area gross in a single establishment located within a Transit Oriented Development Overlay District.
- Retail sales - highway located within a Transit Oriented Development Overlay District.
- Telecommunication tower.

(Ord. No. 1992-87-TC-400, §7, TC-6-92, 11-4-92; Ord. No. 1992-88-TC-401, §25, TC-4-92, 11-4-92; Ord. No. 1993-133-TC-46, §16, TC-11-92, 2-2-93; Ord. No. 1993-134-TC-47, §8, TC-1-93, 2-2-93; Ord. No. 1993-187-TC-56, §12, TC-13B-93, 5-4-93; Ord. No. 1995-673-TC-111, §4, TC-12-95, 7-5-95; Ord. No. 1997-137-TC-153, §105, TC-18-96, 6-17-97; Ord. No. 1998-370-TC-167, §31, TC-3-98, 7-7-98; Ord. No. 2004-596-TC-245, §11, TC-14-03, 4-6-04; Ord. No. 2008-405-TC-312, §12, TC-3-08, 6-3-08; Ord. No. 2009-669-TC-328, §7, TC-8-09, 11-3-09)

Editor's note: Ord. No. 1995-673-TC-111, §84, 5, adopted July 5, 1995, set out provisions repealing "More than eight (8) dwelling or rooming units per floor for multi-family and group housing structures, townhouse, congregative care and congregative living structures, life care communities and condominium developments" from the listing of special use permits and also from §10-2145(b). "More than eight (8)..." as set out in §10-2145(b) derived from Ord. No. 319-TC-335, TC-29-88, adopted Jan. 26, 1989; Ord. No. 1997-137-TC-153, §105, TC-18-96, adopted June 17, 1997, set out provisions repealing the following special uses (derivation of same in parentheses): "Additional floor area ratio (F.A.R.) allowances for office buildings in Office and Institution-1 and -2 Districts" (Ord. No. 942-TC-283, TC-1-87; Ord. No. 1991-868-TC-378, §5, TC-9-91, adopted March 1, 1992; Ord. No. 1992-43-TC-397, §61, TC-10-92, Sept. 1, 1992; Ord. No. 1997-137-TC-153, §2, TC-18-96, June 17, 1997); "Downtown Residential Housing and Pedestrian Business Overlay Districts - additional density, conversions of buildings to dwellings, net lot area reduction for dwellings, and housing within underlying industrial zoning districts" (Ord. No. 366-TC-218, §5, TC-265, June 24, 1984; Ord. No. 509-TC-230, §4, TC-278, Sept. 5, 1985; Ord. No. 880-TC-277, §81-4, 8, TC-18-86, Oct. 27, 1986; Ord. No. 76-TC-302, §1, TC-23-87, Nov. 9, 1987; Ord. No. 310-TC-331, §81-3, TC-30-88, Feb. 12, 1988; Ord. No. 1992-88-TC-401, §27, TC-4-92, Nov. 4, 1992; Ord. No. 1996-931-TC-138, §9, TC-27-95, July 2, 1996); "Hotel and motel in Office and Institution-2 District" (Ord. 867-TC-276, §1, 5, TC-14-86, adopted Jan. 1, 1987; Ord. No. 691-TC-360, §1, TC-12-90, adopted Dec. 16, 1990; Ord. No. 1996-931-TC-138, §10, TC-27-95, adopted July 2, 1996); "Interim uses in Residential

Business Districts within redevelopment areas" (Ord. No. 735-TC-364, TC-2-91, adopted Feb. 24, 1991); "Outdoor storage of recyclable material" (Ord. No. 1992-87-TC-400, §7, TC-6-92, adopted Nov. 4, 1992); "Outdoor storage yard for unlicensed, uninspected, wrecked, crushed, dismantled, or partially dismantled vehicles" (Ord. No. 837-TC-271, §§1, 2, TC-5-86, Sept. 5, 1986; Ord. No. 799-TC-267, §§27, 28, TC-21-85, adopted Jan. 1, 1987; Ord. No. 1993-134-TC-47, §§5-7, TC-1-93, adopted Feb. 2, 1993); "Parking facility, off-site, in a Residential Business District for special use residential housing projects" (Ord. No. 166-TC-308, TC-2-88, adopted May 5, 1988; Ord. No. 1992-88-TC-401, §28, TC-4-92, adopted Nov. 4, 1992; Ord. No. 1994-520-TC-96, §4, TC-12-94, adopted Dec. 13, 1994); "Shopping centers and shopping areas in Thoroughfare and Industrial-1 and 2 Districts that are located within four hundred (400) feet of any major thoroughfare or major access corridor" (Ord. No. 869-TC-379, §7, TC-16-91, adopted Dec. 1, 1991); "Special Highway Overlay Districts - alternative designs" (Ord. No. 847-TC-273, §5, TC-16-86, adopted Sept. 2, 1987; Ord. No. 1993-133-TC-46, §§16, 28, 29, TC-11-92, adopted Feb. 2, 1993; Ord. No. 1995-760-TC-122, §47, TC-20B-95, adopted Nov. 21, 1995); "Special Residential-30, residential density greater than twenty (20) dwelling units per net acre or three (3) or more dwelling units on a lot" (Ord. No. 438-TC-226, TC-275, adopted Dec. 11, 1984; Ord. No. 600-TC-242, §4, TC-13-85, adopted July 2, 1985; Ord. No. 799-TC-267, §36, TC-21-85, adopted Jan. 1, 1987); "Thoroughfare District - alternative designs" (Ord. No. 799-TC-267, §21, TC-21-85, adopted Jan. 1, 1987; Ord. No. 1995-760-TC-122, §48, TC-20B-95, adopted Nov. 21, 1995); "Thoroughfare protective yard reductions for projects in Thoroughfare Districts traversed by more than one (1) mile of continuous public thoroughfare"; Ord. No. 1998-370-TC-167, §31, TC-3-98, adopted July 7, 1998, set out provisions repealing the special use "Additional residential density in Office and Institution-2, Shopping Center, and Thoroughfare Districts," which derived from Ord. No. 1985-509-TC-230, TC-278; Ord. No. (1985) 675-TC-254; Ord. No. 675-TC-254, §§5, 6, 7, TC-17-85, adopted May 1, 1986; Ord. No. 133-TC-305, §9, TC-27-87; Ord. No. 1991-868-TC-378, §5, TC-9-91, adopted March 1, 1992.

(a) Special Use Permits Approved.

In performing its functions and duties under this chapter, the City Council, after making the necessary findings, is authorized to issue special use permits to allow the enumerated buildings, uses and designs in the districts specified in subsection (b) below. The districts referred to herein apply to general use and conditional use districts unless the applicable conditional use district ordinance specifically states otherwise. The Planning Director shall determine the information required to be submitted for application for a special use permit. If the proposed buildings or uses require a preliminary site plan to be submitted for approval, the Planning Director may require submittal of a preliminary site plan, meeting the standards of §10-2132.2(d), prior to accepting a special use permit application.

(b) Special Use Permits Enumerated.

Commercial surface parking lot as a principal use located within a Transit Oriented Development Overlay District.

To permit a commercial surface parking lot as a principal use within a Transit Oriented Development

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Overlay District after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

1. The parking lot must be necessary to provide parking for specified projects that are located within and in conformance with the adopted transit station area plan, or for the *passenger transit station or stop*.
2. The parking lot is on an interim basis, not to exceed a period of five (5) years, and that more permanent parking supplies in the form of a parking deck, structure or garage are anticipated for later development which would offer replacement when the use approved herein is discontinued and a replacement use in conformance with the transit station area plan is erected on the site.
3. No parking lighting shall exceed twenty (20) feet in height.
4. All vehicular surface area is paved and is in conformance with §10-2081 unless specified otherwise by the applicable adopted transit station area plan and Transit Oriented Development Overlay District.
5. All vehicular surface area is landscaped in conformance with §10-2082.6 unless specified otherwise by the applicable adopted transit station area plan and Transit Oriented Development Overlay District.
6. The design and screening of the proposed surface parking lot, as viewed from adjacent streets and properties, is in accordance with the regulations of the applicable adopted transit station area plan and Transit Oriented Development Overlay District.
7. The proposed surface parking lot and site design is in accordance with the regulations of the applicable adopted transit station area plan and Transit Oriented Development Overlay District.
8. The site plan protects the public from unsafe and inefficient vehicular, pedestrian and bicycle circulation, parking, and loading/unloading operations.
9. Such parking lot shall not be injurious to property or improvements in the affected area.

(Ord. No. 2004-596-TC-245, §12, TC-14-03, 4-6-04)

Correctional/penal facility (Governmental and Non-governmental).

To permit a correctional/penal facility (governmental) in Office & Institutional, Buffer Commercial, Shop-

ping Center, Neighborhood Business, Thoroughfare, and Industrial Districts, and a correctional/penal facility (nongovernmental) in Industrial Districts, if the Council finds that the evidence presented at the hearing establishes each of the following:

- (1) There shall be no flood lighting which beams directly into nearby residential areas.
- (2) The street capacity adjacent to the site is sufficient to safeguard the public health, especially with regard to the size and frequency of commercial vehicles involved with the transportation of inmates and for the shipping and receiving of materials in connection with the facility.
- (3) Transitional protective yards which conform to §10-2082.9 for high impact uses shall be installed.
- (4) The use is in accord with development criteria established by City Council-adopted plans and policies such as the Comprehensive Plan and redevelopment plans, and if there is a conflict between plans and Code provisions, the more restrictive shall apply.
- (5) The use will not be injurious to property or improvements in the affected area.

(Ord. No. 1993-187-TC-56, §13, TC-13B-93, 5-4-93)

Heliport

To permit a heliport after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

1. Any structures must be so designed and placed that they will not be detrimental to adjoining properties nor shall the heliport be injurious to surrounding properties or to any properties within a one thousand (1,000) foot radius of the heliport site as measured from the center of the final approach and takeoff area.
2. In addition to any transitional protective yard for high impact uses that shall be required in accordance with §10-2082.9, evergreen shrub plantings adjacent to the security fence surrounding any ground-level heliport safety area shall be required to be provided. These plantings shall be required to obscure at least seventy-five (75) per cent of the security fence at the time of planting to a height of twenty-four (24) inches and all shrub plantings shall be expected to reach a height of five (5) feet or greater within five (5) years of planting.

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3. Proof of Air Space Clearance from the Federal Aviation Agency is required prior to the issuance of a certificate of occupancy or zoning permit.
4. In addition to the requirements of §10-2141 the applicant for a heliport special use permit shall notify by first class mail all property owners within a one thousand (1,000) foot radius of the center of the proposed final approach and takeoff area. This notice shall be posted at least thirty (30) days prior to the date of the hearing on the request. This notice shall contain the same information as the notice required by §10-2141(a)(4).
(Ord. No. 2008-405-TC-312, §13, TC-3-08, 6-3-08)

Mulch or compost processing facility.

To permit a mulch or compost processing facility within the Agriculture Productive, Industrial-1 and Industrial-2 districts after the City Council finds that evidence presented at the hearing establishes each of the following:

- (1) No part of the mulch or compost processing facility is located within a 300 hundred (300) foot radius (determined by a straight line and not street distance) of a residential zoning district, or the lot line of any lot containing any dwelling, congregate care or congregate living structure, church, synagogue or religious education building, school (public or private), specialty school or day care facility with the exception of a residence of a caretaker or watchman accessory to a permitted industrial use.
- (2) No storage pile or windrows shall exceed fifteen (15) feet in height or thirty (30) feet in width. The length of windrows shall not be restricted so long as emergency fire equipment can adequately navigate the site.
- (3) A plan is approved by the City for permanent soil erosion control devices. No storage pile or windrows shall be located within seventy-five (75) feet of any watercourse and a minimum 50-foot vegetated area shall be provided adjacent to any watercourse to prevent unfiltered runoff of organics into the watercourse.
- (4) The impact of the mulch or compost processing facility, including its size, equipment and machinery used, hours of operation, odor and appearance will not be injurious to property or improvements in the affected area.
(Ord. No. 2009-669-TC-328, §8, TC-8-09, 11-3-09)

Outdoor stadium, outdoor theater, outdoor amphitheatre, outdoor race track, of more than two hundred and fifty (250) seats, and outdoor movie theatres.

To permit outdoor stadiums, outdoor theaters, outdoor race tracks, and outdoor amphitheaters of more than two hundred fifty (250) seats, and outdoor movie theatres, in any residential, office and institution, Residential Business, Buffer Commercial, Shopping Center, Neighborhood Business, Planned Development Conditional Use Overlay District, and Business Zone, Thoroughfare, Industrial-1 and Industrial-2 Districts after the City Council finds that the evidence presented at the hearing establishes each of the following:

1. The facility and activities requested to be conducted therein will not have a substantial adverse impact on surrounding properties including without limitation, stormwater, dust, smoke or vibration.
2. The practical limits of public facilities and services such as stormwater, water and sewer lines, streets, fire, public safety, and trash collection are considered and respected.
3. The traffic generated to and from the site will not create unsafe or inefficient parking, loading, vehicular and pedestrian circulation patterns with consideration, among other things, to: the physical character of roads, the classification of roads, accident experience near the site, traffic volumes existing and projected from approved site plans and subdivisions, interference with any other driveway, and response time of nearby emergency services such as fire and hospital.
4. The visual separation of buffers are provided which lessen the perceived height and bulk of proposed structures as seen from nearby residential neighborhoods.
5. The nearby properties are protected from sound amplification and lighting.
6. The facility and activities conducted therein will not be injurious to property or improvements in the affected area.
7. The off-street parking in accordance with §10-2081 is provided in the amount of one (1) space for every five (5) seats or every five (5) persons of the designated capacity of the assembly place.

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8. The site is not located in a *primary watershed protection area*.

Stadiums, theaters, race tracks, and amphitheaters which were already in existence prior to application of this special use provision which otherwise conform to this chapter are not made nonconforming by this provision. Events and activities conducted in these existing facilities are likewise grandfathered from the effects of this ordinance; provided, the *property owner* can prove that the event and activity occurred within three (3) years immediately prior to application of this provision. However, any expansion of such facility which singularly or collectively exceeds five (5) per cent of the seating capacity existing at the time of application of the ordinance or the holding of any event or activity not conducted in the facility three (3) years immediately *preceding* application of this ordinance shall not be lawful unless and until this special use permit is issued for the expansion or new activity.

Editor's note: This special use permit was first made applicable on June 19, 1990 (Ord. No.(1990) - 607-TC-356, TC-8-90) (Ord. No. 1991-868-TC-378, §6, TC-9-91, 3-1-92; Ord. No. 1997-137-TC-153, §105, TC-18-96, 6-17-97)

Parking facility, off-site, in a Residential Business District for special use residential housing projects.

To permit in a Residential Business District parking spaces, off-site, on a different *lot* as the *principal building(s)* after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

- (1) Such parking facilities support a residential housing project approved by the *City Council* as part of a special use permit in the Downtown Residential Housing Overlay District.
- (2) Legal assurances are made that such parking facilities will be used solely for the specified *dwelling units* and that maintenance responsibilities for the parking facilities are clearly assigned.
- (3) Such parking facilities provide for safe traffic movements and safe pedestrian access to and from the *dwelling units*.
- (4) The project will not be injurious to *property* or improvements in the *affected area*.
- (5) The parking facilities meet all applicable requirements of this Code.
- (6) Such parking facility will tend to relieve traffic congestion on the *streets* at or near the *premises* in question or reduce the number of parked vehicles on residential *streets*.

Cross references: In the Residential Business District, off-street parking can also be permitted as a special use for interim uses within a redevelopment area, §10-2145; impact classification for required landscaping, transitional protective yard, §10-2082.9.

(Ord. No. 166-TC-308, TC-2-88, 5-5-88; Ord. No. 1992-88-TC-401, §28, TC-4-92, 11-4-92; Ord. No. 1994-520-TC-96, §4, TC-12-94, 12-13-94)

Parking facility - off-site, for a residential institution in residential zoning districts.

To permit in all *residential zoning districts* off-site, off-street parking spaces on a *lot* different from the *principal building* of a *residential institution*, after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

- (1) Such parking facility is located on a *lot* contiguous with that of the *principal building* or on a *lot* opposite the principal site, unless it can be demonstrated that other existing permanent parking arrangements in nonresidential districts are available and that such parking will be utilized.
- (2) Such parking facility is for a use permitted in the zoning district.
- (3) Such parking facility will tend to relieve traffic congestion on the *streets* at or near the *premises* in question or reduce the number of parked vehicles on residential *streets*.

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- (4) Points of egress from such parking facility will not adversely affect any use.
- (5) Such parking facility will not be injurious to *property* or improvements in the *affected area*.
- (6) Such parking facilities provide for safe traffic movements and safe pedestrian access to and from the *principal use*.
- (7) Legal assurances are made that such parking facilities will be used solely for the specified *buildings* and that maintenance responsibilities for the parking facilities are clearly assigned.
Cross reference: Impact classification for required landscaping, transitional protective yard, §10-2082.9 (Ord. No. 415-TC-343, TC-1-89, §6, 8-1-89; Ord. No. 1994-520-TC-96, §4, TC-12-94, 12-13-94)

Recreational use of a governmental entity and not for profit private recreational camp, in a *primary reservoir watershed protection area*.

To permit governmental recreation uses and not-for-profit, nongovernmental recreation camps to be located within the *primary reservoir watershed protection areas* after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

- (1) The use will not be injurious to *property* or improvements in the *affected area*.
- (2) The use does not pose direct or indirect adverse impact on the reservoir watershed by reason of location, arrangement, utilization of chemicals, stormwater runoff, or other considerations affecting the ability of the reservoir to meet its purposes as established by §10-2011(b)(3), Reservoir Watershed Protection Area Overlay District.

If the *City* is the applicant, the Board of Adjustment rather than the *City Council* shall make these findings. (Ord. No. 105-TC-304, §13, TC-24-87, 1-10-88)

Recreational use restricted to membership - not for profit, in a *primary reservoir watershed protection area*.

To permit in Agricultural Productive, Residential Business, and *residential districts*, located in a *primary reservoir watershed protection area*, *recreation uses restricted to membership not for profit* after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

- (1) Recreation is limited to the following uses: Athletic league fields, campgrounds, country clubs,

- docks, gymnasiums, health clubs and health spas, including clubhouse facilities, pedestrian and equestrian trails, *play courts* such as basketball, racquetball, and tennis courts, unlighted golf courses (including driving ranges as an accessory use), *play fields*, playgrounds, swimming pools, tanning facilities, weight and exercise rooms.
- (2) The use will not be injurious to *property* or improvements in the *affected area*.
- (3) The use is not noxious or offensive by reason of emission of odors, gas, fumes, vibration or noise.
- (4) The *street* capacity adjacent to the *property* to be so used is sufficient to safeguard the public health, comfort, convenience as may be required for the preservation of the general character of the neighborhood in which such *building* is to be placed or such use is to be conducted.
- (5) No swimming pool or wading pool, diving area, outdoor *play court* such as a tennis or basketball court, *play field*, *play* or equipment area, or other active recreational use nor any driveway or parking area for such facilities shall be established without first providing *transitional protective yards* which conform to §10-2082.9 for medium impact uses.
Cross reference: Fencing of outdoor swimming pools inside the *City Limits*, §13-2028.
- (6) Off-*street* parking shall be provided in accordance with §10-2081.
- (7) No illumination, when measured off the recreation site, shall exceed four-tenths (0.4) maintained footcandle of lighting.
- (8) The recreational facility in a watershed protection area, will:
 - a. Not adversely impact the reservoir watershed by reason of location, arrangement, utilization of chemicals, stormwater runoff, or other considerations affecting the ability of the reservoir to meet its purposes as established by §10-2011(b)(3), Reservoir Watershed Protection Overlay District.
 - b. Conform to all applicable provisions of §10-2056 of this Code.
- (9) The sale of merchandise is allowed as a residential related service restricted to members.
Cross references: Tract identification signs permitted §10-2083.2; recreational uses restricted to membership - not for profit outside a *primary reservoir watershed protection area* is permitted in *residential districts*, Agricultural Productive and Residential Business Districts in accordance with a special use permit, §10-2144.

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(Ord. No. 105-TC-304, §12, 1-10-88, TC-24-87; Ord. No. 1993-207-TC-59, §19, TC-12-93, 6-1-93; Ord. No. 1996-901-TC-131, §18, TC-3-96, 5-21-96)

Retail sales exceeding fifty thousand (50,000) square feet of floor area gross in a single establishment located within a Transit Oriented Development Overlay District.

To permit *retail sales exceeding fifty thousand (50,000) square feet of floor area gross* in a single establishment in a Transit Oriented Development Overlay District after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

1. The use is located within a station area core, as defined by the applicable adopted transit station area plan.
2. The architecture and design enhances the image of the transit station area as a unique and pedestrian-oriented development.
3. The use is located within a multi-story building with no single floor devoted to the use exceeding fifty thousand (50,000) square feet.
4. The site plan protects the public from unsafe and inefficient vehicular, pedestrian and bicycle circulation, parking, and loading/unloading operations.
5. The proposed use and site design is in accordance with the regulations of the applicable adopted transit station area plan and Transit Oriented Development Overlay District.
6. The business and activities conducted therein will not be injurious to *property* or improvements in the *affected area*.

(Ord. No. 2004-596-TC-245, §14, TC-14-03, 4-6-04)

Retail sales - highway located within a Transit Oriented Development Overlay District.

To permit a *retail sales - highway* use within a Transit Oriented Development Overlay District after the *City Council* finds that the evidence presented at the hearing establishes each of the following:

1. No *retail sales - highway* use shall be located within any *station area core*, as defined by the applicable adopted transit station area plan.
2. The design is in conformance with the transit station area plan and provides a necessary service to employees and residents within the transit station area plan due to the lack of such services in the surrounding area.

3. The architecture and design enhances the image of the transit station area as a unique and pedestrian-oriented development.
4. With the exception of petroleum product sales, no portion of the business shall be conducted outside of the building.
5. The outdoor service area for petroleum sales shall be as small as practical.
6. The design complies with all requirements of the transit station area plan with the exception of the requirement that *vehicular surface areas* shall not occupy more than the equivalent of one-third (1/3) of the linear frontage of the adjacent *building* or no more than sixty-four (64) linear feet of frontage, whichever is less.
7. The total *floor area gross* on the lot does not exceed five thousand (5,000) square feet.
8. The proposed use and site design is in accordance with the regulations of the applicable adopted transit station area plan and Transit Oriented Development Overlay District.
9. The site plan protects the public from unsafe and inefficient vehicular, pedestrian and bicycle circulation, parking, and loading/unloading operations.
10. The facility and activities conducted therein will not be injurious to *property* or improvements in the *affected area*.

(Ord. No. 2004-596-TC-245, §13, TC-14-03, 4-6-04)

Telecommunication tower.

To permit in all zoning districts, except Conservation [Management], telecommunication towers not otherwise meeting the standards of a general use or a conditional use; including relay stations, for commercial operations such as cablevision, radio telephones, radio and television stations after the City Council finds that the evidence presented at the hearing establishes each of the following:

- (1) Radio or television or similar reception for adjoining *properties* will not be disturbed or diminished.
- (2) The height of the tower does not exceed five hundred ten (510) feet
- (3) The lighting of the tower does not exceed the minimum standards of the Federal Aviation Administration (FAA) for red obstruction lighting system contained in Advisory Circular No. 70/7460-IF dated 27 September, 1978, as the same may be amended.

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(4) The minimum yard setback from the outside dimensions of the tower, not from guy anchors, are as follows:

- a. Twenty (20) feet from the *property* line of any adjoining *lot* or *lot* across a public *street* which is vacant and zoned a *nonresidential district* or any adjoining *lot* or *lot* across a public *street* which is developed without a *dwelling, congregare care* or *congregate living structure*, unless increased by subparagraph b. or c. below.
- b. One hundred (100) per cent of the tower height, but no less than fifty (50) feet, from the *property* line of either any *lot* which is developed at an average residential density of less than fifteen (15) *dwelling units* per acre or vacant *lot* located in a *residential zoning district*.
- c. Fifty (50) per cent of the tower height from the *property* line of any *lot* which is developed at an average residential density equal to or greater than fifteen (15) *dwelling units* per acre.

The setbacks required by subsections b. and c. above shall not be applicable to any residential *dwelling(s)* that is not a permitted use in the zoning district, or the *residence* of a caretaker or watchman accessory to a permitted industrial use.

If one or more existing telecommunications towers is to be removed concurrently and replaced by a new tower, then that portion of the required setback exceeding one hundred (100) feet in subsections b. and c. above may be reduced by fifteen (15) per cent for each additional telecommunication user in excess of the existing tower.

For towers exceeding a height of two hundred and fifty (250) feet, or where one or more existing telecommunications towers is concurrently being removed and replaced with a new tower containing additional telecommunication users, this setback may be reduced by the *City Council*. In the case of a replacement tower, the *City Council* shall make a finding that the lesser setback will reduce the number of towers in the area. In all cases, *City Council* shall also make a finding that the lesser setback will not be injurious to *property* or improvements in the *affected area*. In no case shall the setback be reduced to less than fifty (50) per cent of the tower height.

The provisions in this subsection are supplemental to the yard regulations in §10-2075 and do not lessen or diminish those regulations.

(5) The base of the tower and each guy anchor are surrounded by a fence or wall at least eight (8) feet in height unless the tower and all guy anchors are mounted entirely on a *building* over eight (8) feet in height. Except for fence and wall entrances, all fences and walls shall be screened with plant material so that no more than two-thirds (2/3) of the surface of the fence or wall is visible, within three (3) years after erection of the structure, from a public *street* or from any adjoining *lot* which contains a *dwelling, congregare care* or *congregate living structure*, or is zoned a *residential district*.

Cross reference: Fences and walls, §§10-2085 and 10-2086.

(6) The area adjoining *street* rights-of-way shall contain a minimum *street protective yard* of twenty (20) feet wide as measured perpendicular to the public *street* rights-of-way. This *street protective yard* shall comply with the requirements of §10-2082.5. No *street yard* shall be required along *street* frontage located a distance from the tower of more than twice the height of the tower.

In addition to this *street protective yard*, a *transitional protective yard* which contains the same plantings required in §10-2082.9 for low impact uses shall be installed within all the *yard areas* required in subparagraph (4) above, which adjoin a *lot* containing a *dwelling, congregare care*, or *congregate living structure*, or zoned a *residential district*. The installation of any fence, wall, planting or *earthen berm* shall not reduce or lessen this requirement.

In instances where a telecommunication tower is locating on a developed *lot* in accordance with §10-2088 of this Code, and the existing physical development on the *lot* precludes the full installation of the aforementioned *protective yards*, the

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City Council *may* approve an alternate method of compliance as set forth under the conditions of §10-2082.4 of this Code.

- (7) The output power from the tower *shall* not exceed federally approved levels for exposure to electronic magnetic force (EMF).
- (8) If determined by the *City* that the proposed tower is situated in a location which will benefit the *City's* telecommunication systems, then, the tower *shall* be engineered and constructed to accommodate the additional telecommunicating equipment beneficial to the public system.
- (9) If the proposed tower is located on *property* that is zoned a *residential district* at the time of the special use hearing, the tower *shall* be either less than seventy-five (75) feet in height or located no closer than one thousand and five hundred (1,500) feet (determined by straight line and not *street* distance) to a tower greater than seventy-five (75) feet in height which was constructed after the effective date of this ordinance.

If the proposed tower is located on *property* that is zoned a *nonresidential district* at the time of the special use hearing, the tower *shall* be either less than one hundred (100) feet in height or located no closer than one thousand (1,000) feet to a tower greater than one hundred (100) feet in height which was constructed after the effective date of this ordinance.

The *City Council may* approve the construction of a tower which does not meet the above standards if evidence is provided which demonstrates that reasonable effort has been made to lease space on an existing tower or that no existing tower will technically satisfy the applicant's specific needs.

Editor's note: This ordinance first became effective on August 6, 1995.

- (10) If the tower is located within an Historic Overlay District or Metro Park Protection Overlay District, the tower does not exceed the maximum *building* height allowed within the underlying zoning district.
- (11) No tower *shall* be approved unless evidence is presented that at least one telecommunication user will occupy the tower. If the tower is between one hundred (100) feet and one hundred fifty (150) feet in height, the tower *shall* be engineered and constructed to accommodate a minimum of two telecommunication users. If the tower equals or exceeds one hundred fifty (150) feet in height but is less than one hundred eighty (180) feet in height, the tower *shall* be engineered and constructed to

accommodate a minimum of three telecommunication users. If the tower equals or exceeds one hundred eighty (180) feet in height, but is less than 200 feet in height, the tower *shall* be engineered and constructed to accommodate a minimum of four telecommunication users. If the tower equals or exceeds two hundred (200) feet in height, the tower *shall* be engineered and constructed to accommodate a minimum of five telecommunication users.

- (12) Unless enclosed by a *closed fence* at least eight (8) feet in height, the exterior appearance of all *buildings*, located in a *residential district* look like a residential *dwelling*, including without limitation, pitched roof(s) and frame or brick veneer construction. For each potential telecommunication user to occupy the tower, there *shall* be a minimum of six hundred (600) square feet reserved on the plans for associated building(s) and equipment, unless the applicant provides evidence that less space is necessary.
- (13) That the applicant has provided evidence that the proposed tower meets FAA requirements, and is in accordance with all the tower requirements and standards of the Raleigh Durham Airport Authority.
- (14) Associated *buildings* located in any *residential district may* not be used as an employment center for any worker. This provision does not prohibit the periodic maintenance or periodic monitoring of equipment and instruments.
- (15) The use will not be injurious to *property* or improvements in the *affected area*.
- (16) Unless otherwise specified by this permit, that within six (6) months of approval of this special use permit, a grading permit, building permit, or zoning permit is obtained, and within one year of approval of this special use permit the tower is installed and operational, or the special use permit *shall* be void.

For any telecommunication tower approved after application of this regulation*, which is discontinued, unused, or unoccupied by the telecommunication user for a continuous period of three hundred and sixty-five (365) days or more, the tower *shall* be removed within thirty (30) days of notification by the Chief Zoning Inspector.

**Editor's note:* This regulation first became applicable on February 15, 2000 (Ord. No. 2000-732-TC-188, TC-17-99).

Cross reference: Discontinuance or nonuse of a telecommunication tower for three hundred sixty-five (365) days or more, §10-2145(c)(3).

(Ord. No. 724-TC-263, §1, TC-4-86, 2-4-86; Ord. No. 75-TC-177, §§2, 3, TC-228, 3-1-83; Ord. No. 664-TC-358, TC-10-90, 10-16-90; Ord. No. 1994-372-TC-72, §3, TC-3-94, 4-19-94; Ord. No. 1994-427-TC-76, §1, TC-6-94, 6-21-94; Ord. No. 1995-692-TC-113, §§6, 7, TC-15-95, 8-1-95; Ord. No. 2000-732-TC-188, TC-17-99, §§10-15, 2-15-00)

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(c) **Limits on use classification, changes to approved special uses and abandonment.**

- (1) Whenever the *City Council* approves a special use permit, such approval *shall* not change the use classification of the *property* nor give it any status as a *zoning nonconformity*, such as is referred to in §10-2146.
- (2) Whenever the *City Council* approves a special use permit, such approved special use *shall* not without the prior approval of the *City Council*:
 - a. Change to another use for more than thirty (30) days; or
 - b. Increase its density or intensity; or
 - c. Enlarge, expand, or increase its size; or
 - d. Increase the requirements for off-street parking spaces; or
 - e. Substantially change the exterior appearance of the *building*; or
 - f. Add new outdoor equipment and machinery.
- (3) Any special use permit approved by the *City Council*, including special use permits approved prior to the application of this subsection, that are either changed to another use for more than thirty (30) days, other than that for which the special use permit was issued, or discontinued or ceased for a continuous period of three hundred sixty-five (365) days or more is null and void and *may* not resume without the reapproval of the *City Council*.

(d) All special use permits approved by the *City Council* shall contain a statement that such special use is contingent upon the payment of any applicable facility fees and the approval of either a *site plan* or *plot plan*, if required by this Code.

Editor's note: This provision was first applied to special use permits issued by the *City Council* on January 1, 1992.
(Ord. No. 684-TC-257, §4, TC-31-85, 12-3-85; Ord. No. 31-TC-296, §81, TC-26-87, 12-1-87; Ord. No. 1992-87-TC-410, §8, TC-6-92, 11-4-92)

Sec. 10-2146.
NONCONFORMITIES.

Sec. 10-2146.1.
INTRODUCTION AND DEFINITIONS.

The policy of this chapter is to allow the continuation of *zoning nonconformities* except those covered by an amortization period and to allow ordinary maintenance, repair and *renovations of zoning nonconformities*. However, any alter-

ation; expansion; and extraordinary renovations, maintenance and repair; rebuilding, reconstruction, extensions, resumption, or change of use or relocation of a *nonconformity* will need a special use permit.

Activities which are allowed without a special use permit are listed in §§10-2146.2 or 10-2146.5. Activities not in §§10-2146.2 or 10-2146.5, if allowed at all, require a special use permit from the Board of Adjustment. See §10-2026.3. If an activity is not listed in §§10-2146.2 through 10-2146.5 it is not allowed. Before any special use permit is processed, the Board of Adjustment will determine whether the activity will be injurious to *property* or improvement in the *affected areas*. §10-2146.4 describes how the Board of Adjustment makes its determination. If a proposal will have an injurious impact, it will be denied. If it will not, a special use permit will be issued to allow it. However, conditions and safeguards *may* be attached to the special use permit to require that the *nonconformity* be brought into compliance with the regulations of this chapter or that any potential hazards or problems be mitigated.

Procedures and standards are established to insure that the rights and interests of the *owner* of the *zoning nonconformity*, of the *owners of properties* in the *affected area*, and of the public will be weighed in making these determinations.

Unless specifically stated otherwise, §10-2146.2 through §10-2146.4 are inapplicable to *nonconforming accessory uses or structures*, fences, signs, *vehicular surface areas*, private accessory points, and outdoor lighting which are regulated by §10-2146.5.

Certain terms used in §10-2146 *et seq.* are defined in §10-2002. The terms "altering", "expanding" and "changes" are not defined; as used in §10-2146 *et seq.* these terms *shall* be liberally construed. Other terms used in §10-2146 *et seq.* are defined as follows:

Casualty. A *casualty* is damage or destruction which is caused by the exercise of the power of eminent domain; man-made acts, such as riot, fire, accident, explosion; or flood, lightning, wind, or other calamity or act of nature.

Expansion of a zoning nonconformity. *Expansion of a zoning nonconformity* is any improvement that alters or expands or enlarges the land area, extent or intensity of a *zoning nonconformity*. *Expansions of a zoning nonconformity* include: the addition to, construction of, or enlargement of bay windows, attic or basement spaces, attached carports or storage buildings, canopies, *marquees*, exterior chimneys, decks, patios, porches, and exterior facilities or structures not otherwise allowed as renovations; the enclosing of decks, porches, and patios; or the installing of additional vehicular surfaces to serve a *zoning nonconforming use*, including *nonconforming principal use parking facilities*, or illuminating a *nonconforming sign*.