

# STAFF REPORT

## Amendments to the Unified Development Ordinance

October 6, 2020 Town Council Meeting



### Requested by Town Council:

1. **Amendments to various sections of the UDO in order to replace pronouns with non-gender specific terminology and to make minor modifications to wording necessary to incorporate such changes.**

#### 2.1.1 Town Council

...

##### B) *Interest*

...

If an objection is raised to a member's participation and that member does not **ask to be** recused ~~himself or herself~~, the remaining members shall by majority vote rule on the objection.

#### 2.1.2 Planning Board

...

##### E) *Interest*

...

If an objection is raised to a member's participation and that member does not **ask to be** recused ~~himself or herself~~, the remaining members shall by majority vote rule on the objection.

#### 2.3.15 Tree Removal and/or Pond Drainage Plan

...

##### B) *Applicability*

No person shall engage in tree removal and/or pond drainage activities unless ~~he or she~~ **such person** has applied for and has been issued a Tree Removal and/or Pond Drainage Permit, and all other applicable federal, state, and local permits have been issued.

...

#### 4.2.1 Use Table, General

...

##### G) *New or Unlisted Uses*

...

##### 3) *Effect of Planning Director Determination*

Upon review of the proposed use the Planning Director shall provide ~~his/her~~ a **written** determination ~~in writing~~ to the applicant.

...

#### 4.4.1.1 *Residential Uses, Security or Caretaker Quarters*

...

- 2) *Use.* The security or caretaker quarters use shall be for the exclusive use of and shall be occupied only by a guard, custodian, caretaker, owner, manager, or employee of the owner of the principal use, and ~~his~~ **the** family **of the same**. Such person shall be actively engaged in providing security, custodial, or managerial services upon the premises;

6.1.11.D *Riparian Buffers, Appeals of Stream Classification*

- ...
- 1) *Within the Neuse River Basin*  
When any affected party within the Neuse River Basin believes that the maps have inaccurately depicted surface waters, ~~he or she~~ **the affected party** shall consult the NC DEQ as set forth in 15A N.C.A.C. 2B.0233(3).  
...
  - 2) *Within the Jordan Lake Watershed*  
When any affected party within the Jordan Lake Watershed believes that the maps have inaccurately depicted surface waters, the Environmental Engineering Manager, or ~~his/her~~ designee, shall make decisions and interpretations regarding stream classifications in accordance with the protocol in Sec. 6.1.11.D.4 and all applicable state criteria and the best available scientific information.  
...
  - 3) *In all Remaining Areas Within Both the Primary Watershed Protection District and the Secondary Watershed Protection District*  
In all remaining areas, the Environmental Engineering Manager, or ~~his or her~~ designee, shall make decisions and interpretations regarding stream classifications in accordance with the protocol in Sec. 6.1.11.D.4 and all applicable state criteria and the best available scientific information.

6.1.12 *Stormwater Control Measures (SCMs)*

- F) *Compliance Prior to Receiving Plat Approval or Certificate of Occupancy*  
...  
Upon installation of the required improvements, the Environmental Engineering Manager or ~~his~~ designee shall inspect the SCM and the owner shall demonstrate that the required structure is in place, that it is operational, that it complies with all relevant portions of Sec. 6.1.12 *Stormwater Control Measures (SCMs)*, and shall submit to the Environmental Engineering Manager actual “as built” plans for the structure, which shall include the information listed in Article 6: *Overlay Districts*, and Section 1.06(c) Stormwater Drainage System of the *Town of Apex Standard Specifications and Standard Details*, certifying completion of the same.
- G) *Performance Guarantees*  
...
  - 2) *Performance guarantee.*  
...  
The owner’s ~~shall submit~~ his estimate of this amount **shall be submitted and is** subject to review, modification, and approval by the Environmental Engineering Manager.  
...
- H) *Maintenance and Maintenance Guarantee*
  - 1) *Duty to maintain and maintenance and defects guarantee.*  
...  
The owner’s ~~shall submit~~ his estimate of this amount **shall be submitted and is** subject to review, modification, and approval by the Environmental Engineering Manager.  
...

l) *Inspection*

...

- 2) *Inspection by Town of Apex.* All property within the Primary Watershed Protection District and/or the Secondary Watershed Protection District shall also be subject to inspection by the Environmental Engineering Manager or his designee.

6.1.13 *Modifications by Variance*

...

E) *Standards*

...

2) ...

- a) If the applicant complies with the requirements at issue, ~~he/she~~ **the applicant** can secure no reasonable return from, nor make reasonable use of, his/her **the subject** property.

7.2.5 Single-Family Residential Grading

...

B) *Single-Family Residential Subdivision Mass Grading*

...

- 6) When an owner of any parcel shall raise, lower, or alter the level of existing grade of a site by a fill or excavation, ~~he or she~~ **the owner** shall ~~at his or her~~ **bear the own** expense **to** protect all adjoining property, with the exception of off-site easement areas, from encroachment by such fill or from danger of collapse due to such excavation either by erection of engineered retaining wall(s) or by sloping the sides of such fill or excavation entirely within the confines of the development including off-site easement areas in a manner approved by the Town of Apex. (See Secs. 8.1.4 *Development Restrictions on Steep Slopes* and 8.1.6 *Retaining Structures*.)

...

C) *Single-Family Residential Subdivision Staged Grading*

...

- 6) When an owner of any parcel shall raise, lower, or alter the level of existing grade of a site by a fill or excavation, ~~he or she~~ **the owner** shall ~~at his or her~~ **bear the own** expense **to** protect all adjoining property, with the exception of off-site easement areas, from encroachment by such fill or from danger of collapse due to such excavation either by erection of engineered retaining wall(s) or by sloping the sides of such fill or excavation entirely within the confines of the development including off-site easement areas in a manner approved by the Town of Apex. (See Secs. 8.1.4 *Development Restrictions on Steep Slopes* and 8.1.6 *Retaining Structures*.)

7.5.13 Performance Guarantee in Lieu of Construction Prior to Acceptance of Final Plat

...

- C) Such guarantee shall be in an amount of not less than 125% of the estimated cost of the construction of the required improvements. The developer shall submit ~~his~~ **an** estimate of this amount subject to review, modification, and approval, which shall be by the Water Resources Director or Public Works and Transportation Director, as appropriate.

8.5.6 Evidence of Compliance

The Planning Director shall require such evidence of ability to comply with appropriate performance standards, mitigation measures, and conditions as set forth in this ~~s~~Section, as ~~he~~ **the Director** deems necessary prior to issuance of a ~~e~~Certificate of ~~z~~oning ~~e~~Compliance.

8.7.4 Sign Design and Color

...

C) *Uniform Color Scheme*

...

However, if the color content of a federally registered trademark or business logo is not consistent with the color limitations of this sub-section, or otherwise is in conflict with the uniform color scheme, then the Planning Director, at ~~his~~ **the Director's** discretion, shall:

...

12.2 Terms Defined

...

Planning Director

The Planning Director of the Town of Apex or ~~his or her~~ the Director's designee.

...

Subdivision Administrator

The Planning Director or, in ~~his or her~~ **the** Director's ~~absence~~, a designee.

13.6 Developer Agreement

...

Such agreement may provide for appropriate compensation to the developer for ~~his~~ **the developer's** participation in the financing and/or construction of the road.

**Requested by Planning Staff:**

**2. Amendments to Sec. 6.1.11.I *Riparian Buffers, Notification on Site Plan and Subdivision Plan and Recording of Information* and Sec. 12.2 *Terms Defined* in order to change two references to "stream buffers" to "riparian buffers".**

6.1.11 Riparian Buffers

...

I) *Notification on Site Plan and Subdivision Plan and Recording of Information*

Where required, ~~stream~~ **riparian** buffers shall be shown on all site plans and subdivision plans approved pursuant to Sec. 6.1.4 of this Ordinance. A certificate in the form established in the *Town of Apex Design and Development Manual* shall be lettered on the face of the site plan or the recorded subdivision map. Prior to approval of a Final Plat (with respect to a subdivision), issuance of a certificate of occupancy (with respect to a site plan), or commencement of a use, a developer shall first cause all information pertaining to required riparian buffers to be shown on the Final Plat for the property.

...

## 12.2 Terms Defined

...

### **Stream Riparian Buffer**

A natural or vegetated area through which storm-water runoff flows in a diffuse manner so that the runoff does not become channeled and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the bank of each side of the stream.

...

### **PLANNING STAFF RECOMMENDATION:**

Planning staff recommends approval of the proposed UDO amendments.

### **PLANNING BOARD RECOMMENDATION:**

The Planning Board heard these amendments at their September 14, 2020 meeting and unanimously recommended approval.

PLANNING BOARD REPORT TO TOWN COUNCIL  
Unified Development Ordinance Amendments

Planning Board Meeting Date: September 14, 2020



**Report Requirements:**

Per NCGS 160A-387, all proposed amendments to the zoning ordinance or zoning map shall have a written report provided from the Planning Board to the Town Council within 30 days of referral of the amendment to the Planning Board, or the Town Council may proceed in its consideration of the amendment without the Planning Board report. Furthermore, in no case is the Town Council bound by the recommendations, if any, of the Planning Board.

**Planning Board Recommendation:**

Motion: Motion to approve as presented.

Introduced by Planning Board member: Reginald Skinner

Seconded by Planning Board member: Tina Sherman

- Approval of the proposed UDO amendment(s)
- Approval of the proposed UDO amendment(s) with the following conditions:

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- Denial of the proposed UDO amendment(s)

With 7 Planning Board Member(s) voting "aye"

With 0 Planning Board Member(s) voting "no"

Reasons for dissenting votes:

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This report reflects the recommendation of the Planning Board, this the 14th day of September 2020.

Attest:

**Michael Marks** Digitally signed by Michael Marks  
Date: 2020.09.14 19:55:15 -04'00'

Michael Marks, Planning Board Chair

**Dianne Khin** Digitally signed by Dianne Khin  
Date: 2020.09.14 19:26:24 -04'00'

Dianne Khin, Planning Director



## TOWN OF APEX

POST OFFICE BOX 250  
APEX, NORTH CAROLINA 27502  
PHONE 919-249-3426

## PUBLIC NOTIFICATION OF PUBLIC HEARING

### AMENDMENTS TO THE UNIFIED DEVELOPMENT ORDINANCE (UDO)

Notice is hereby given of a public hearing before the Town Council of the Town of Apex for the purpose of soliciting comments relative to the following amendment(s) to the Unified Development Ordinance:

#### Requested by Town Council:

1. Amendments to various sections of the UDO in order to replace pronouns with non-gender specific terminology and to make minor modifications to wording necessary to incorporate such changes.

#### Requested by Planning Staff:

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**Public Hearing Location:** Apex Town Hall  
Council Chambers, 2<sup>nd</sup> Floor  
73 Hunter Street, Apex, North Carolina

#### Town Council Public Hearing Date and Time: October 6, 2020 6:00 PM

You may attend the meeting in person or view the meeting through the Town's YouTube livestream at: <https://www.youtube.com/c/townofapexgov>.

If you are unable to attend, you may provide comments no later than noon on Monday, October 5, 2020 by email ([public.hearing@apexnc.org](mailto:public.hearing@apexnc.org), 350-word limit) or voicemail (919-362-7300, 3-minute limit) according to the Remote Participation Policy at: <http://www.apexnc.org/DocumentCenter/View/31397/>. You must provide your name and address for the record. These comments will be read during the Town Council meeting.

If the Council meeting is held with at least one member attending virtually, written comments on the subject of the public hearing may be submitted between publication of any required notice and 24 hours after the public hearing and the Council's vote will occur at the Council's next regularly scheduled meeting.

The UDO can be accessed online at: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP  
Director of Planning and Community Development

Published Dates: September 11-October 6, 2020



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