

AN ORDINANCE TO AMEND CERTAIN SECTIONS OF THE UNIFIED DEVELOPMENT ORDINANCE

BE IT ORDAINED by the Town Council of the Town of Apex as follows:

Section 1. Various sections of the Unified Development Ordinance are amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

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.

Section 2. Sections 6.1.11.I and 12.2 of the Unified Development Ordinance are amended to read as follows with additions shown as bold underlined text and deletions shown as struck-through text:

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.

...

Section 3. The Planning Director and/or Town Manager are hereby authorized to renumber, revise formatting, correct typographic errors, to verify and correct cross references, indexes and diagrams as necessary to codify, publish, and/or accomplish the provisions of this ordinance or future amendments as long as doing so does not alter the terms of this ordinance.

Section 4. All ordinances or parts of ordinances in conflict with this ordinance are hereby repealed. If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to such section, paragraph, subdivision, clause or provision so adjudged and the remainder of the ordinance shall be deemed valid and effective.

Section 5. The ordinance shall be effective upon enactment on the _____ day of October 2020.

Introduced by Council Member _____

Seconded by Council Member _____

Attest: TOWN OF APEX

Donna Hosch, MMC, NCCMC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe
Town Attorney