

STAFF REPORT

Amendments to the Unified Development Ordinance

January 10, 2023 Town Council Meeting



Requested by Planning Staff:

1. Amendments to Secs. 4.2.2 *Use Table*; 4.3.5 *Use Classifications, Commercial Uses* and 4.3.6 *Use Classifications, Industrial Uses* in order to create the use “Warehousing fulfillment center”, change the definitions of “Truck terminal” and “Warehousing, general”, and to change the use “Wholesaling, general” to “Wholesaling distribution center”.

Use Type	Definition Section	Zoning Districts																					Standards	
		Residential										Business						Planned Development			Other			
		R A	R R	L D	M D	H D S F	H D M F	M H	M H P	M O R R	O & I	B 1	B 2	P C	L I	T F	M E C	T N D	P U D	C B	S D	S T C		
Industrial service																								
Warehousing, <u>general</u>	4.3.6.A.8														P	P					*	*		
<u>Warehousing fulfillment center</u>	<u>4.3.6.A.11</u>														<u>P</u>	<u>P</u>								
Woodworking or cabinetmaking	4.3.6.A.9														P	P					*	*		
<u>Wholesaling distribution center, general</u>	4.3.6.A.10														P	P								

4.3.5 Use Classifications, Commercial Uses

...

H) *Vehicle repair and service*

...

- 8) *Truck terminal. A facility for loading and unloading freight or package express from trucks ~~the dispatching, storage, and maintenance of large vehicles, such as but not limited to tractor trailers and dump trucks. Does not include “Warehousing fulfillment center”, “Warehousing, general”, and “Wholesaling distribution center”.~~*

4.3.6 Use Classifications, Industrial Uses

...

A) *Industrial service*

...

- 8) Warehousing, general

An establishment primarily engaged in the storage of materials, equipment, or products within a building, ~~for manufacturing use or for distribution to wholesalers or retailers, as well as activities involving significant movement and storage of products or equipment. Typical uses include motor freight transportation, moving and storage facilities, cold storage, warehousing and dead storage facilities, but~~

~~exclude self-service storage facilities and office-warehouse combinations. This use excludes “Wholesaling distribution center”, “Warehousing fulfillment center”, and “Self-service storage”.~~

...

- 10) ~~Wholesaling, general~~ **distribution center**
An establishment primarily engaged in the display, storage, distribution and sale of goods to other firms for resale, but excluding vehicle sales, wholesale greenhouses or nurseries, wholesale of gas and fuel, and wholesale building supplies. **selling of goods in large quantities to be retailed by others and/or the delivering of large quantities of B2B (business to business) products, such as but not limited to beverage distribution centers and electronics distribution centers. This use excludes “Vehicle sales and rental, heavy”, “Vehicle sales and rental, light”, “Building Supplies, wholesale”, “Gas and fuel, wholesale”, “Greenhouse or nursery, wholesale”, and “Warehousing fulfillment center”.**

- 11) Warehousing fulfillment center**
An establishment which serves as a third-party logistics (3PL) warehouse that receives, processes, and fills customer orders on behalf of eCommerce retailers, such as but not limited to Amazon Fulfillment Center, FulfillmentCompanies.net, or FedEx Fulfillment. This use is primarily B2C (business to consumer) in nature. This use excludes “Wholesaling distribution center” and “Warehousing, general”.

2. **Amendment to Sec. 6.1 Watershed Protection Overlay Districts** in order to change all references to “Environmental Engineering Manager” to “Stormwater Engineering Manager”.

3. **Amendments to Sec. 6.1.11 Riparian Buffers and 6.1.13 Modifications by Variance** in order to modify the single-family residential riparian buffer requirements and riparian buffer variance standards, and to provide updated references to state law.

6.1.11 Riparian Buffers

...

D) *Appeals of Stream Classification*

Because the Neuse River is protected by a state-wide buffer program, which is managed by the NC DEQ, the authority to hear appeals of stream classifications for that portion of the Town of Apex and its ETJ that lies within the Neuse River Basin, which shall be indicated on the Town of Apex’s “Watershed Protection Overlay District Map,” rests within the sole jurisdiction of the NC DEQ unless the Town of Apex is delegated the authority to maintain its Neuse Buffer Program locally. Therefore, appeals of stream classifications shall be handled in the following manner:

- 1) *Within the Neuse River Basin*
When any affected party within the Neuse River Basin believes that the maps have inaccurately depicted surface waters, the affected party shall consult the NC DEQ as set forth in 15A N.C.A.C. ~~02B 0233(3).~~ **0714(4).**

...

...

G) *Uses Permitted Within the Riparian Buffer*

This Section shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Sec. 6.1.11.E upon, a riparian buffer regulated by this Section. The Town shall issue an approval for new development only if the

proposed development will avoid impacts to riparian buffers regulated by this Section or, if an impact to any such buffer is proposed, in accordance with the requirements in Sec. 6.1.11.G.1 or 2 below, as applicable, the applicant has demonstrated that: (i) the proposed activity is exempt, (ii) the proposed activity is allowable or allowable with mitigation, and the requirements of this Section for proceeding such designated use have been met, or (iii) a variance authorizing the proposed activity has been obtained.

- 1) *Within Zones 1 and 2 of the Neuse River Basin*
Riparian buffers within the Neuse River Basin shall be maintained and protected per 15A NCAC ~~02B 0233.0714~~ **02B.02330714** Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers, as Readopted effective June 15, 2020, which is hereby incorporated by reference. Development activity may take place within Zone 1 or Zone 2 of a riparian buffer provided that the landowner has one of the following:
 - a) For any use, other than one specified as exempt, an authorization certificate that documents that the NC DEQ has approved an allowable use, or an allowable use with mitigation, as described in 15A NCAC ~~02B.02330714~~ **02B.02330714** Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian of Existing Riparian Buffers.
 - b) An opinion from the NC DEQ that vested rights has been established for that activity.
 - c) A letter from the NC DEQ documenting that a variance has been granted for the proposed activity.

...

Table 6.1.11.G.1

Use	Exempt*	Allowable*	Allowable with Mitigation*
...			
Recreational and accessory structures in Zones 2 and 3:			
• Sheds and gazebos in Zones 2 and 3, except along perennial waters in Neuse River Basin where high-density development option is utilized		X	
○ Total footprint less than or equal to 150 square feet per lot			
○ Total footprint greater than 150 square feet per lot			X
• Wooden slatted Slatted uncovered decks and associated steps, provided the use meets the requirements of Sec. 6.1.11.E and F of this Ordinance:			
○ Deck at least eight (8) feet in height in Zone 2 and no vegetation removed from Zone 1		X	
○ Deck less than eight (8) feet in height in Zone 2 or vegetation removed from Zone 1			X
○ Deck in Zone 3		X	
...			

Use	Exempt*	Allowable*	Allowable with Mitigation*
<p><u>Residential Properties: Where application of this Section would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in Zone 3 of the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence meets the requirements of Sec. 6.1.11.E and F of the UDO; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:</u></p> <ul style="list-style-type: none"> • <u>The residence or necessary infrastructure only impacts Zone 3</u> • <u>Impacts other than the residence or necessary infrastructure in Zone 3. Covered porches and pools are not considered necessary infrastructure.</u> 		X	X
...			

...

6.1.13 Modifications by Variance

A) *General*

Requests for minor and major variances from the standards of the Watershed Protection Overlay Districts shall be made to the Board of Adjustment, except for variance requests pertaining to impacts within Zone 1 and/or Zone 2 of a riparian buffer within the Neuse River Basin which shall be made to the Director of the NC DEQ as specified below in Sec. 6.1.13.B.1.b and B.2.c. Due to certain process differences in State statutes or rules for decision making and appeals based on which basin or watershed a proposed project is located, a separate variance provision is set forth below for each of the following basins or watersheds: (i) the Neuse River Basin, (ii) the Jordan Lake Watershed portion of the Cape Fear River Basin and (iii) the Cape Fear River Basin outside of the Jordan Lake Watershed.

Sec 6.1.13.F sets forth an alternative variance process that is available for, but not required to be used by, an applicant seeking a variance from Sec. 6.1 density requirements for a project located in the Secondary Watershed Protection District and/or from Town Buffer requirements. Town Buffers and State Buffers are defined in Sec. 6.1.14.C. The purpose of this alternative variance process is to provide additional design flexibility for a project that provides a unique or additional benefit to the Town or surrounding area that would not be available from a traditional development located in areas within the Town or its ETJ where the applicable requirements of Sec. 6.1 are not part of a State authorized program, or where separate State rules do not apply.

All applications for variances made to the Board of Adjustment shall be reviewed by the Board of Adjustment, which shall approve, approve with conditions (which may include mitigation requirements), or disapprove the variance after a public hearing noticed pursuant to Sec. 2.2.11 *Public Notification*, and conducted pursuant to Sec. 2.2.19 *Quasi-judicial Public Hearing Procedures*, based on the applicable standards in Sec. 6.1.13.E or F.

B) *Variances for Activities in the Neuse River Basin*

2) *Minor Variances*

...

b) *Minor Variance Requests that are to be Submitted to the NC DEQ.* A variance request for an activity in the Neuse River Basin shall be considered minor and a decision on such request shall be made by the NC DEQ when:

- (i) It pertains to activities that will impact Zone 2 of a riparian buffer located within the Neuse River Basin. However, if the impacted area is also within the Neuse River Basin's Primary Watershed Protection District and along perennial waters within a high-density development option area, the proposed impacts to the buffer also shall not exceed five (5%) percent of the buffer area. If such proposed activity within the Neuse River Basin requiring a variance for Zone 2 also includes impacts to Zone 3 that require a variance, then the Director of the NC DEQ shall consider the variance request as it pertains to Zone 2 impacts, and as specified in Sec. 6.1.13.B.1.a.iii a separate variance request shall be submitted to the Board of Adjustment pertaining to Zone 3 impacts.

Pursuant to 15A NCAC ~~02B.0714(10)(a)(iv)~~~~0233(9)(b)~~, a minor variance application for activities that will impact Zone 2 of a Neuse River Basin riparian buffer shall be submitted to the NC DEQ, and an appeal of a decision by the Director of the NC DEQ shall be to the Office of Administrative Hearings.

3) *Major Variances*

...

c) *Major Variance Requests to be Submitted Directly to the NC DEQ for Determination either by the Division or by the Environmental Management Commission.* A request for a variance for an activity in the Neuse River Basin shall be considered major, and pursuant to 15A NCAC ~~02B.0714(10)(a)(iv)~~ an application shall be filed directly with the NC DEQ, and the Division will either determine that the major variance request meets the applicable requirements and submit its preliminary findings to the Environmental Management Commission, or determine that such requirements have not been met when:

...

...

E) *Standards*

4) *General.* The standards set forth in Sec. 6.1.13.E.2-3 shall be applicable to all variance requests submitted to the Board of Adjustment, except for a request submitted pursuant to the alternative variance process in Sec. 6.1.13.F.

5) In order to approve an application for a variance permit, the Board of Adjustment shall make a finding of fact as to whether **there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements** ~~the standards of Sec. 2.3.8.D.1.3 Variance Permit, Standards area met.~~

- 6) ~~The Board of Adjustment shall also make findings of fact~~ **A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:**
- a) **If the applicant complies with the provisions of this Sec. 6.1.11, applicant can secure no reasonable return from, nor make reasonable use of, applicant's property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board of Adjustment shall consider whether the variance is the minimum possible deviation from the terms of Sec. 6.1.11 that shall make reasonable use of the property possible;**
 - b) **The hardship results from application of Sec. 6.1.11 to the property rather than from other factors such as deed restrictions or other hardship;**
 - c) **The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of Sec. 6.1.11 would not allow reasonable use of the property;**
 - d) **The applicant did not cause the hardship by knowingly or unknowingly violating this Sec. 6.1.11;**
 - e) **If in the Jordan Lake watershed, the applicant did not purchase the property after August 11, 2009, the effective date of 15A NCAC 02B .0267, and then request a variance;**
 - f) **The hardship is rare or unique to the applicant's property;**
 - g) ~~whether~~ **The variance is in harmony with the general purpose and intent of the Town's Watershed Protection Overlay Districts and preserves its spirit; and**
 - h) ~~whether~~ **In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.**

...

PLANNING STAFF RECOMMENDATION:

Planning staff recommends approval of the proposed UDO amendments.

PLANNING BOARD RECOMMENDATION:

The Planning Board heard these amendments at their December 12, 2022 meeting and unanimously recommended approval.

PLANNING BOARD REPORT TO TOWN COUNCIL

Unified Development Ordinance Amendments

Planning Board Meeting Date: December 12, 2022



Report Requirements:

Per NCGS §160D-604, all proposed amendments to the zoning ordinance or zoning map shall be submitted to the Planning Board for review and comment. If no written report is received from the Planning Board within 30 days of referral of the amendment to the Planning Board, the Town Council may act on the amendment without the Planning Board report. The Town Council is not bound by the recommendations, if any, of the Planning Board.

Planning Board Recommendation:

Motion: To recommend approval as presented.

Introduced by Planning Board member: Tina Sherman

Seconded by Planning Board member: Keith Braswell

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

☐ Denial of the proposed UDO amendment(s)

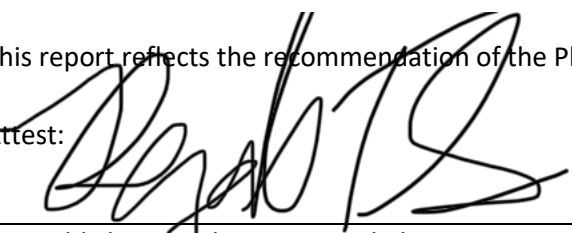
With 8 Planning Board Member(s) voting "aye"

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

Reasons for dissenting votes:

This report reflects the recommendation of the Planning Board, this the 12th day of December 2022.

Attest:



Reginald Skinner, Planning Board Chair

Dianne Khin,Directo•

PLANNING BOARD REPORT TO TOWN COUNCIL
Unified Development Ordinance Amendments

Planning Board Meeting Date: December 12, 2022



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With 8 Planning Board Member(s) voting "aye"

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

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Attest:



Reginald Skinner, Planning Board Chair

Dianne Khin

Digitally signed by Dianne Khin
Date: 2022.12.12 20:02:26
-05'00'

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)

Pursuant to the provisions of North Carolina General Statutes §160D-601 and to the Town of Apex Unified Development Ordinance (UDO) Sec. 2.2.11, 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 Planning Staff:

1. Amendments to Secs. 4.2.2 *Use Table*; 4.3.5 *Use Classifications, Commercial Uses* and 4.3.6 *Use Classifications, Industrial Uses* in order to create the use "Warehousing fulfillment center", change the definitions of "Truck terminal" and "Warehousing, general", and to change the use "Wholesaling, general" to "Wholesaling distribution center".
2. Amendment to Sec. 6.1 *Watershed Protection Overlay Districts* in order to change all references to "Environmental Engineering Manager" to "Stormwater Engineering Manager".
3. Amendments to Sec. 6.1.11 *Riparian Buffers* and 6.1.13 *Modifications by Variance* in order to modify the single-family residential riparian buffer requirements and riparian buffer variance standards, and to provide updated references to state law.

Public Hearing Location: Apex Town Hall
Council Chamber, 2nd Floor
73 Hunter Street, Apex, North Carolina

Town Council Public Hearing Date and Time: January 10, 2023 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 a written statement by email to public.hearing@apexnc.org, or submit it to the Office of the Town Clerk (73 Hunter Street or USPS mail - P.O. Box 250, Apex, NC 27502), at least two business days prior to the Town Council vote. You must provide your name and address for the record. The written statements will be delivered to the Town Council members prior to their vote. Please include the Public Hearing name in the subject line.

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

Dianne F. Khin, AICP
Director of Planning

Published Dates: December 19, 2022 – January 10, 2023



TOWN OF APEX

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

NOTIFICACIÓN PÚBLICA DE AUDIENCIAS PÚBLICAS

modificación de la Ordenanza de Desarrollo Unificado (UDO)

De conformidad con las disposiciones de los Estatutos Generales de Carolina del Norte §160D-601 y con la sección 2.2.11 de la Ordenanza de Desarrollo Unificado (UDO) del ayuntamiento de Apex, por la presente se notifican las audiencias públicas ante el Consejo Municipal del ayuntamiento de Apex a fin de solicitar comentarios relativos a la siguiente modificación de la Ordenanza de Desarrollo Unificado:

Solicitado por el personal de planificación:

1. Enmienda a las secciones 4.2.2 *Tabla de usos*; 4.3.5 *Clasificaciones de usos, Usos comerciales* y 4.3.6 *Clasificaciones de usos, Usos industriales* para crear el uso del "Centro de cumplimiento de almacenamiento", cambiar las definiciones de "Terminal de camiones" y "Almacenamiento, general", y cambiar el uso de "Venta al por mayor, general" a "Centro de distribución al por mayor".
2. Enmienda a la sección 6.1 *Distritos de superposición de protección de cuencas* para cambiar todas las referencias de "director de Ingeniería Ambiental" a "director de Ingeniería de Aguas Pluviales".
3. Enmienda a las secciones 6.1.11 *Zonas de amortiguación ribereñas* y 6.1.13 *Modificaciones por variación* para modificar los requisitos de las zonas de amortiguación ribereñas residenciales unifamiliares y las normas de variación de las zonas de amortiguación ribereñas, y para proporcionar referencias actualizadas a la legislación estatal.

Lugar de la audiencia pública: Ayuntamiento de Apex
Cámara del Consejo, 2º piso
73 Hunter Street, Apex, Carolina del Norte

Fecha y hora de la audiencia pública del Consejo Municipal: 10 de enero de 2023 6:00 PM


Puede asistir a la reunión de manera presencial o seguir la transmisión en directo por YouTube a través del siguiente enlace: <https://www.youtube.com/c/townofapexgov>.

Si no puede asistir, puede enviar una declaración escrita por correo electrónico a public.hearing@apexnc.org, o presentarla a la oficina del Secretario Municipal (73 Hunter Street o por correo USPS a P.O. Box 250, Apex, NC 27502), al menos dos días hábiles antes de la votación del Consejo Municipal. Debe proporcionar su nombre y dirección para que conste en el registro. Las declaraciones escritas se entregarán al Consejo Municipal antes de la votación. No olvide incluir el nombre de la audiencia pública en el asunto.

Se puede acceder a la UDO en línea en: <http://www.apexnc.org/233>.

Dianne F. Khin, AICP
Directora de Planificación

Fechas de publicación: 19 de diciembre de 2022 – 10 de enero de 2023


OWNERS OF APPEAL
 10000 COUNTRY CLUB ROAD
 APEX, NORTH CAROLINA 27502
 TEL: 919-461-9628

Pursuant to the provisions of North Carolina General Statutes §160A-061 and to the Town of Apex Unified Development Ordinance (UDO) Sec. 2.2.0, notice is hereby given of a public hearing before the Town Council of the Town of Apex to the purpose of soliciting comments and/or advice to the following amendment(s) to the Unified Development Ordinance:

Requested by Planning Staff:

- 1. Amendments to Sections 4.2.2 (to Table 4.2.5 Use Classifications), Commercial Uses and 4.3.6 (Use Classifications, industrial/uses) in order to use "Wholesaling/fulfillment centers", change the definition of "Truck terminals" and "Wholesaling centers", and to change the use "Wholesaling, general" to "Wholesaling distribution center".
- 2. Amendments to Sec. 4.3.1 (Wholesaling/fulfillment Center) definition in order to change all references to "Discretionary Engineering Manager" to "Stormwater Engineering Manager".
- 3. Amendments to Sec. 4.3.1.1 (Apex) and 4.3.1.2 (Apex) to add a new use "Wholesaling, general" in order to modify the single-family residential (single lot) buffer requirements and open space buffer variance standards, and to provide additional references to other lots.

Public Hearing Location: Apex Town Hall
 Council Chamber, 2nd Floor
 75 Town Center, Apex, North Carolina

Town Council Public Hearing Date/Time/Topic: 10/22/2022 - 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/watch?v=U33333333333333333333>

If you are unable to attend, you may provide a written statement by email to planning@apexnc.gov or submit it to the Office of the Town Clerk (25 Market Street - 5055 mail) - P.O. Box 205, Apex, NC 27502, at least 48 hours before your date to the Town Council meeting. You may also provide your comments and/or advice to the written statements will be delivered to the Town Council members prior to the vote. Please include the Public Hearing name in the subject line.

The UDO can be accessed online at: <http://www.apexnc.gov/udo>

Danner E. Khan, APD
 Director of Planning

Published Notice: December 18, 2022 – January 10, 2023

[illegible]

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- 10) **Wholesaling, ~~general~~ distribution center**
An establishment primarily engaged in the ~~display, storage, distribution and sale of goods to other firms for resale, but excluding vehicle sales, wholesale greenhouses or nurseries, wholesale of gas and fuel, and wholesale building supplies.~~ **selling of goods in large quantities to be retailed by others and/or the delivering of large quantities of B2B (business to business) products, such as but not limited to beverage distribution centers and electronics distribution centers. This use excludes “Vehicle sales and rental, heavy”, “Vehicle sales and rental, light”, “Building Supplies, wholesale”, “Gas and fuel, wholesale”, “Greenhouse or nursery, wholesale”, and “Warehousing fulfillment center”.**

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Section 2. Section 6.1 *Watershed Protection Overlay Districts* of the Unified Development Ordinance is amended in order to change all references to “Environmental Engineering Manager” to “Stormwater Engineering Manager”.

Section 3. Sections 6.1.11 *Riparian Buffers* and 6.1.13 *Modifications by Variance* 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

...

D) *Appeals of Stream Classification*

Because the Neuse River is protected by a state-wide buffer program, which is managed by the NC DEQ, the authority to hear appeals of stream classifications for that portion of the Town of Apex and its ETJ that lies within the Neuse River Basin, which shall be indicated on the Town of Apex’s “Watershed Protection Overlay District Map,” rests within the sole jurisdiction of the NC DEQ unless the Town of Apex is delegated the authority to maintain its Neuse Buffer Program locally. Therefore, appeals of stream classifications shall be handled in the following manner:

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development only if the proposed development will avoid impacts to riparian buffers regulated by this Section or, if an impact to any such buffer is proposed, in accordance with the requirements in Sec. 6.1.11.G.1 or 2 below, as applicable, the applicant has demonstrated that: (i) the proposed activity is exempt, (ii) the proposed activity is allowable or allowable with mitigation, and the requirements of this Section for proceeding such designated use have been met, or (iii) a variance authorizing the proposed activity has been obtained.

1) *Within Zones 1 and 2 of the Neuse River Basin*

Riparian buffers within the Neuse River Basin shall be maintained and protected per 15A NCAC ~~02B 0233.0714~~ **02B.0233.0714** Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian Buffers, **as Readopted effective June 15, 2020, which is hereby incorporated by reference.** Development activity may take place within Zone 1 or Zone 2 of a riparian buffer provided that the landowner has one of the following:

- a) For any use, other than one specified as exempt, an authorization certificate that documents that the NC DEQ has approved an allowable use, or an allowable use with mitigation, as described in 15A NCAC ~~02B.0233.0714~~ **02B.0233.0714** Neuse River Basin: Nutrient Sensitive Waters Management Strategy: Protection and Maintenance of Existing Riparian of Existing Riparian Buffers.
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○ Total footprint greater than 150 square feet per lot			X
• Wooden-slatted <u>Slatted uncovered</u> decks and associated steps, provided the use meets the requirements of Sec. 6.1.11.E and F of this Ordinance:			
○ Deck at least eight (8) feet in height <u>in Zone 2</u> and no vegetation removed from Zone 1		X	
○ Deck less than eight (8) feet in height <u>in Zone 2</u> or vegetation removed from Zone 1			X
○ <u>Deck in Zone 3</u>		<u>X</u>	

Use	Exempt*	Allowable*	Allowable with Mitigation*
...			
<u>Residential Properties: Where application of this Section would preclude construction or expansion of a single-family residence and necessary infrastructure, the single-family residence may encroach in Zone 3 of the buffer if all of the following conditions are met: (1) the residence is set back the maximum feasible distance from the top of the bank, rooted herbaceous vegetation, normal high-water level, or normal water level, whichever is applicable, on the existing lot; (2) the residence is designed to minimize encroachment into the riparian buffer; (3) the residence meets the requirements of Sec. 6.1.11.E and F of the UDO; and (4) if the residence will be served by an on-site wastewater system, no part of the septic tank or drainfield may encroach into the riparian buffer:</u> <ul style="list-style-type: none"> <u>The residence or necessary infrastructure only impacts Zone 3</u> <u>Impacts other than the residence or necessary infrastructure in Zone 3. Covered porches and pools are not considered necessary infrastructure.</u> 		X	X
...			

...

6.1.13 Modifications by Variance

A) General

Requests for minor and major variances from the standards of the Watershed Protection Overlay Districts shall be made to the Board of Adjustment, except for variance requests pertaining to impacts within Zone 1 and/or Zone 2 of a riparian buffer within the Neuse River Basin which shall be made to the Director of the NC DEQ as specified below in Sec. 6.1.13.B.1.b and B.2.c. Due to certain process differences in State statutes or rules for decision making and appeals based on which basin or watershed a proposed project is located, a separate variance provision is set forth below for each of the following basins or watersheds: (i) the Neuse River Basin, (ii) the Jordan Lake Watershed portion of the Cape Fear River Basin and (iii) the Cape Fear River Basin outside of the Jordan Lake Watershed.

Sec 6.1.13.F sets forth an alternative variance process that is available for, but not required to be used by, an applicant seeking a variance from Sec. 6.1 density requirements for a project located in the Secondary Watershed Protection District and/or from Town Buffer requirements. Town Buffers and State Buffers are defined in Sec. 6.1.14.C. The purpose of this alternative variance process is to provide additional design flexibility for a project that provides a unique or additional benefit to the Town or surrounding area that would not be available from a traditional development located in areas within the Town or its ETJ where the applicable requirements of Sec. 6.1 are not part of a State authorized program, or where separate State rules do not apply.

All applications for variances made to the Board of Adjustment shall be reviewed by the Board of Adjustment, which shall approve, approve with conditions (which may include mitigation requirements), or disapprove the variance after a public hearing noticed pursuant to Sec. 2.2.11 *Public Notification*, and conducted pursuant to Sec. 2.2.19 *Quasi-judicial Public Hearing Procedures*, based on the applicable standards in Sec. 6.1.13.E or F.

B) *Variances for Activities in the Neuse River Basin*

2) *Minor Variances*

...

b) *Minor Variance Requests that are to be Submitted to the NC DEQ.* A variance request for an activity in the Neuse River Basin shall be considered minor and a decision on such request shall be made by the NC DEQ when:

- (i) It pertains to activities that will impact Zone 2 of a riparian buffer located within the Neuse River Basin. However, if the impacted area is also within the Neuse River Basin's Primary Watershed Protection District and along perennial waters within a high-density development option area, the proposed impacts to the buffer also shall not exceed five (5%) percent of the buffer area. If such proposed activity within the Neuse River Basin requiring a variance for Zone 2 also includes impacts to Zone 3 that require a variance, then the Director of the NC DEQ shall consider the variance request as it pertains to Zone 2 impacts, and as specified in Sec. 6.1.13.B.1.a.iii a separate variance request shall be submitted to the Board of Adjustment pertaining to Zone 3 impacts.

Pursuant to 15A NCAC ~~02B.0714(10)(a)(iv)~~^{0233(9)(b)}, a minor variance application for activities that will impact Zone 2 of a Neuse River Basin riparian buffer shall be submitted to the NC DEQ, and an appeal of a decision by the Director of the NC DEQ shall be to the Office of Administrative Hearings.

3) *Major Variances*

...

c) *Major Variance Requests to be Submitted Directly to the NC DEQ for Determination either by the Division or by the Environmental Management Commission.* A request for a variance for an activity in the Neuse River Basin shall be considered major, and pursuant to 15A NCAC ~~02B.0714(10)(a)(iv)~~ an application shall be filed directly with the NC DEQ, and the Division will either determine that the major variance request meets the applicable requirements and submit its preliminary findings to the Environmental Management Commission, or determine that such requirements have not been met when:

...

...

E) *Standards*

- 4) *General.* The standards set forth in Sec. 6.1.13.E.2-3 shall be applicable to all variance requests submitted to the Board of Adjustment, except for a request submitted pursuant to the alternative variance process in Sec. 6.1.13.F.
- 5) In order to approve an application for a variance permit, the Board of Adjustment shall make a finding of fact as to whether **there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements** ~~the standards of Sec. 2.3.8.D.1.3~~ *Variance Permit, Standards* are met.
- 6) ~~The Board of Adjustment shall also make findings of fact~~ **A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:**
 - a) **If the applicant complies with the provisions of this Sec. 6.1.11, applicant can secure no reasonable return from, nor make reasonable use of, applicant's property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the Board of Adjustment shall consider whether the variance is the minimum possible deviation from the terms of Sec. 6.1.11 that shall make reasonable use of the property possible;**
 - b) **The hardship results from application of Sec. 6.1.11 to the property rather than from other factors such as deed restrictions or other hardship;**
 - c) **The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of Sec. 6.1.11 would not allow reasonable use of the property;**
 - d) **The applicant did not cause the hardship by knowingly or unknowingly violating this Sec. 6.1.11;**
 - e) **If in the Jordan Lake watershed, the applicant did not purchase the property after August 11, 2009, the effective date of 15A NCAC 02B .0267, and then request a variance;**
 - f) **The hardship is rare or unique to the applicant's property;**
 - g) ~~whether~~ The variance is in harmony with the general purpose and intent of the Town's Watershed Protection Overlay Districts and preserves its spirit; and
 - h) ~~whether~~ In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

Section 4. 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 5. All ordinances amending the official zoning district map adopted prior to the effective date of this ordinance that permit the “Warehousing, general” use shall be construed to permit both the “Warehousing, general” and “Warehousing fulfillment center” uses as defined herein.

Section 6. All ordinances amending the official zoning district map adopted prior to the effective date of this ordinance that permit the “Wholesaling, general” use shall be construed to permit the “Wholesaling distribution center” use as defined herein.

Section 7. 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 8. The ordinance shall be effective upon enactment on the ____ day of _____ 2023.

Introduced by Council Member _____

Seconded by Council Member _____

Attest:

TOWN OF APEX

Allen Coleman, CMC, NCCCC
Town Clerk

Jacques K. Gilbert
Mayor

Approved As To Form:

Laurie L. Hohe
Town Attorney