

## Article V ZONING

### Sec. 5.1 Introduction

The City of Trinity considers the zoning and development process to be a public/private collaboration with the community to create a better, more livable city.

The city's development ordinance includes options for General and Conditional Rezoning as well as an opportunity to reduce lot sizes through cluster development.

The city further encourages development with design-focused plans that prioritize the existing assets of a site, as indicated on a city-supplied Resource Map.

The Resource Map is supplied by the City as a convenience to developers and includes natural, cultural and environmental assets located within the City. The use of this map with an overlay of the proposed sketch plan or master plan is intended to prioritize the design and layout of a development and is preferred as part of a rezoning application submittal. Information included on the resource map is listed in Article 4 Section 4.3.H.4.5) Resource Map.

The use of the resource map is also intended to reflect the importance of water resources by encouraging the design to consider the water management aspects of the resource map side by side with land management.

### Sec. 5.2 Establishment of Zoning Districts and District Boundaries

#### A. Zoning Districts Generally

All the area within the zoning jurisdiction of the City of Trinity is hereby divided into zoning districts within which the use of land and water areas, the location, height, bulk and use of structures, the provision of parking and loading areas, and other development requirements are regulated as herein provided. If a parcel of land lies within the planning and development regulation jurisdiction of more than one local government, the local governments may by mutual agreement, pursuant and with the written consent of the landowner, assign exclusive planning and development regulation jurisdiction for the entire parcel to any one of those local governments. Such a mutual agreement pursuant to G.S. 160D-203 shall only be applicable to development regulations and shall not affect taxation or other non-regulatory matters. The mutual agreement shall be evidenced by a resolution formally adopted by the City Council and recorded with the Randolph County Register of Deeds within 14 days of the adoption of the last required resolution.

#### B. Zoning District Types

All land within the City's planning jurisdiction shall be classified as one or more general, conditional, or planned development zoning districts identified in Table XXX Zoning Districts Established.

##### 1. General Zoning Districts.

General zoning districts regulate the use of land and buildings through specific dimensional requirements, uses, and development standards. When zoned to a general zoning district, all standards and uses permitted for the district shall apply to the property.

##### 2. Conditional Zoning Districts. See also 5.2.C below.

Conditional Zoning Districts allow for the establishment of certain uses and standards that cannot be predetermined or controlled by General Zoning Districts. Each Conditional Zoning District is established through the approval of a site-specific plan of development and reasonable rules, regulations and conditions mutually agreed

upon by the petitioner and the City Council as part of the rezoning process.

**3. Overlay Districts.**

Overlay districts include regulations which apply to certain areas in addition to the regulations applicable to the underlying general, conditional or planned development district standards and requirements. Overlay districts are used to address a specific type of development, land use or character.

Land in any general, conditional, or planned development zoning district may also be classified into one or more overlay zoning districts.

**4. Conflicts With Overlay Districts.**

Where a conflict exists between overlay district standards and requirements and those of the underlying general or conditional zoning district, the more restrictive shall apply.

**5. Planned Development District.**

A planned development district is a process that establishes zoning regulations for a particular development, rather than a prescribed regulation that applies consistently to all sites. The regulation is individualized to a particular location and its unique characteristics. A planned development application is distinguished by the submittal of a comprehensive and detailed site plan and conditions that establish regulations applicable to the particular development at the time of rezoning.

Land in the City’s planning jurisdiction shall be classified or reclassified into a zoning district in accordance with the procedures and requirements set forth in Sections XXX (Amendments, Conditional Rezoning Distinguished, Planned Development), as appropriate.

**C. Zoning Districts Established.**

For the purpose of this ordinance, the City of Trinity is hereby divided into the following general, conditional, planned development and/or overlay districts. applicable standards in Chapter XXX.

| General Zoning District Name          | General and Corresponding Conditional District Abbreviation |
|---------------------------------------|---|
| Residential Agricultural              | RA/RA-CZ  |
| Restricted Residential                | RR/RR-CZ  |
| Suburban Residential                  | SR-CZ   |
| Urban Residential                     | UR-CZ   |
|                                       |   |
| Neighborhood Business                 | NB/NB-CZ  |
| General Business                      | GB/GB-CZ  |
| Regional Commercial                   | RC/RC-CZ  |
|                                       |   |
| Office and Institutional              | OI/OI-CZ  |
| Light Industrial                      | LI/LI-CZ  |
| Heavy Industrial                      | HI/HI-CZ  |
| Planned Development                   | PD  |
| Manufactured Home Overlay             | MHO   |
|                                       |   |
| Trin-Thom Development Zoning District | T-TTDZ  |

## **D. Conditional Zoning Districts.**

### **1. Establishment**

Conditional Zoning Districts are established as companion districts to the corresponding General District. Each General Zoning District has an accompanying Conditional Zoning District designated with the suffix: "CZ".

### **2. Intent**

Conditional zoning districts allow for the establishment of certain uses, which, because of their nature or scale, have particular impacts on both the immediate area and the community as a whole. The development of these uses cannot be predetermined or controlled by general district standards. Therefore, in addition to the general use zoning districts established in Chapter 3 of this Ordinance, each district shall have a corresponding conditional zoning districts which may be established in accordance with the provisions of this section. The conditional zoning district option allows for the development and use of a specific property, subject to specific standards and conditions imposed as part of the legislative decision creating the district, and mutually agreed-upon by both the City and the applicant(s).

All descriptions and definitions which apply to a general use zoning district also apply to the corresponding conditional zoning district.

Property may be placed in a conditional zoning district only in response to a petition by the owners or their agents of all of the property proposed to be included in the conditional zoning district.

### **3. Applicability**

There are circumstances when a general zoning district designation allowing a particular use would not be appropriate for a particular property even though the use itself could, if properly planned, be appropriate for the property consistent with the objectives of this Ordinance, any comprehensive plan that has been adopted and any other officially adopted plan that is applicable.

The rezoning process established in this section provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to additional conditions which ensure compatibility of the proposed use with the use and enjoyment of neighboring properties. A conditional zoning district allows a particular use or uses to be established only in accordance with specified standards and conditions tailored to each individual development project. This is a voluntary rezoning procedure that is intended for firm development proposals.

### **4. Relation to Underlying General Zoning District.**

The requirements of a conditional zoning district shall meet, or be more restrictive than, the requirements of the corresponding general zoning district with the exception of lot size, lot width and setbacks.

### **5. Process.**

The process for application, review and approval of conditional zoning districts is described in Article IV Procedures.

The Zoning Administrator shall determine boundary interpretations based on the criteria below. Appeals from the decision of the Zoning Administrator shall be made to the Board of Adjustment (NCGS 160D-405). Appeals from the decision of the Board of Adjustment shall be made to the Superior Court of Randolph County.

- A. An official zoning map depicting the actual location of the zoning districts is made a part of this Article and adopted by reference. The official zoning map, which is identified by the title "Zoning Map of the City of Trinity, North Carolina", shall be known as the "zoning map". Pursuant to NCGS 160D-105, current and prior official zoning maps shall be maintained in paper or digital format in the City of Trinity Planning Department for public inspection. Any state or federal maps incorporated by reference into the zoning map shall also be maintained.
- B. Current and prior Zoning district maps shall be maintained in paper or digital format for public inspection at City Hall.- (NCGS 160D-105).
- C. Copies – Copies of the zoning district map may be reproduced by any method of reproduction that gives legible and permanent copies and, when certified by the City Clerk in accordance with G.S. 160A-79, shall be admissible into evidence and shall have the same force and effect as would the original map.
- D. Due Consideration Given to District Boundaries.  
In the creation of the respective districts, by this ordinance, careful consideration is given to the suitability of each district for the particular uses and regulations applied thereto, and the necessary and proper grouping and arrangement of various uses and densities of population in accordance with a well-considered comprehensive plan for the physical development of the community.
- E. Rules Governing Interpretation of District Boundaries.  
Where uncertainty exists as to the boundaries of any zoning district as shown on the zoning map, the following rules shall apply:
  - 1. Where district boundaries are so indicated that they approximately follow lot lines, such lot lines shall be construed to be said boundaries.
  - 2. Where district boundaries are so indicated that they are approximately parallel to the center line of streets, alleys or highways, or the rights-of-way of same, the centerline of such district boundaries shall be construed to be said boundaries.
  - 3. Where a district boundary line divides a lot or tract in single ownership, the district requirements for the least restricted portion of such lot or tract shall be deemed to apply to the whole thereof, provided such extensions shall not include any part of a lot or tract more than thirty-five (35) feet beyond the district boundary line. The term "least restricted" shall refer to zoning restrictions.

## **Sec. 5.4 Application of Regulations**

### **A. Minimum Standards.**

The regulations established by this Article within each district shall be the minimum standards and shall apply uniformly to each class or kind of structure or land, except as

hereinafter provided.

**B. Zoning Affects Every Building and Use.**

No building or land shall hereafter be used, or its use changed, and no building or part thereof shall be erected, moved or altered except in conformity with the zoning district use, development standards, and requirements of this article and all other regulations of this Ordinance, as applicable.

**C. Reduction of Lot and Yard Areas Prohibited.**

No yard or lot existing at the time of passage of this ordinance shall be reduced in size or area below the minimum requirements set forth herein, except for street widening. Yards or lots created after the effective date of this ordinance shall meet at least the minimum requirements established by this ordinance unless approved as a planned development or cluster development.

**D. Relationship of Building to Lot.**

Every building hereafter erected, moved or structurally altered shall be located on a lot and in no case shall there be more than one (1) principal building and its customary accessory buildings on any lot, except in the case of a Planned Development. Developments that include multiple principal buildings as part of a single development shall be subject to a perimeter setback from all boundary lot lines and are exempted from setbacks from lot lines internal to the development, except where required by applicable building or fire codes.

**E. Required Open Space Not Used for Other Building**

No part of any yard, other open space, or off-street parking or loading space required for any building, structure or other use shall be considered to be a part of a required yard, open space, off street parking or loading space for any other buildings, structures or use unless explicitly provided to the contrary in this Ordinance.

**F. Road Access and Frontage (also see Article 8 Subdivisions)**

1. **Access Required.** No building shall be erected on a new lot created after the adoption of this Ordinance that does not have access, directly or by an easement, to a road whether publicly or privately maintained. All private roads shall be constructed and maintained under the specifications outlined in Section XXX.
2. **Frontage.** With the exception of lots fronting cul-de-sacs, all lots shall have a minimum of 50 (fifty) feet of frontage on a public or private street. Lots fronting on a cul-de-sac shall have a minimum frontage of 32.5 feet. Reserve strips controlling access to streets shall not be allowed within subdivisions approved after adoption of this Article.
3. **Alternatives to Access and Frontage**
  - a. **Exclusive Access Easement**

An exclusive access easement shall be the only access to a lot only in the following circumstances:

    - 1) An exclusive access easement shall be a minimum of 25 feet in width.

- 2) The minimum distance between an exclusive access easement and any other platted right of way shall be one hundred twenty-five (125) ft.
- 3) The centerline and width of an exclusive access easement must be shown on a plat recorded with the Randolph County Register of Deeds.
- 4) A maximum of one (1) single-family dwelling and one (1) accessory dwelling unit with uninhabited customary accessory structure(s) shall be accessed with an exclusive access easement.

**b. Flag Lots**

Flag lots are not permitted within the zoning jurisdiction of the City of Trinity.

**G. Lot Area in Right-of-Way.**

No land area of the lot which lies within the public street right-of-way may be used for the purposes of calculating lot area or any other lot dimensional requirements.

**J. Buildings and Land Used for Permitted Uses**

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

**K. Required Yards**

1. The land area between a lot line and the boundary of a required setback is considered to be a required yard.
2. The location of street (front), side, or rear yards on irregularly shaped lots shall be determined by the Zoning Administrator. Wherever possible, the Zoning Administrator shall interpret these boundaries in ways that minimize nonconformities.
3. Except where otherwise allowed by this Ordinance, required yards shall not be subject to encroachment by a building or structure.

**L. Setbacks From Streets**

No building shall be located closer to any street right-of-way or private street edge than the minimum street setback line established by this Ordinance.

**M. Cluster Development.**

**1. Establishment.**

Cluster development is established as a development option for a given general residential district whereby lots are clustered in a manner which facilitates the preservation of open space. Cluster development allows the same number of lots as would be permitted in a conventional subdivision within the underlying zoning district but allows those lots to be smaller than conventional subdivision lots within the district.

**2. Intent.**

Cluster development is intended to prioritize a site's resources by allowing lots to be

configured onto a smaller portion of the site while the remaining area is designated as preserved open space. Smaller lots can be configured around, rather than through, valuable resources such as stands of trees, water features and steep slopes. This development option is intended to create a smaller overall footprint of developed area in comparison to preserved area.

**3. Applicability.**

Cluster development is allowed in the RA, RR, and SR districts. Cluster development allows for more sensitive development of properties with topographic and environmental challenges and other site features such as those identified on the City of Trinity Resource Map.

**4. Relation to Underlying Zoning District.**

Within a clustered development, the general or conditional requirements of the corresponding residential zoning district, and all other requirements of this Ordinance shall apply with the exception of lot size.

**5. Process and Procedures.**

The procedures and processes for application, review and approval of cluster development is described in Article VIII Subdivision.

**Sec. 5.5 Description and Purposes of Districts**

All development within the zoning jurisdiction of the City of Trinity must meet the requirements of this Ordinance, including but not limited to Section XXX Standards Applicable to all Uses, Section XXX Standards Applicable to Particular Uses, Section XXX Permitted Use Table, Section XXX Table of Yard and Area Dimensions.

**Sec. 5.5.1 Residential Districts**

**A. Rural Agricultural (RA) Purpose.**

The RA district provides a place for agricultural operations and scattered non-farm residences on traditional rural lots. Only minor conventional residential subdivisions (three or fewer lots) are allowed in this district. Requests for higher intensity residential use or other uses, consistent with the Trinity Land Development Plan, are clustered through the rezoning process.

**B. Restricted Residential (RR) Purpose.**

The RR District is intended to maintain a development pattern where access to public water and sewer systems is not available. The district may be used to protect open space by clustering lots as an option. It is intended to preserve the rural community character sometimes lost in conventional development approaches by allowing greater flexibility and creativity in the design of the development with clustering lots and preserving open space.

**C. Suburban Residential (SR) Purpose.**

The SR district is intended to stabilize established residential neighborhoods by providing a place for medium density residential development in coordination with the type or kind of (public or private) water and sewer services.

**D. Urban Residential (UR)**

**1. Purpose.**

The UR district provides a place for higher-density residential development with a variety of housing types in compact walkable neighborhoods where public water and sewer systems are available. Variety of housing types and sizes. This district is primarily found on the north side of I85.

**2. Supplemental District Requirements.**

- a. Curb and gutter meeting the requirements of the City of Trinity Development Manual is required for all streets.
- b. Sidewalks meeting the requirements of the City of Trinity Development Manual are required along both sides of all streets.
- c. Open space meeting the requirements of Article 6 Section XX is required for all development in the UR district.

**Sec. 5.5.2 Non-Residential Districts**

**A. Neighborhood Business District (NB)**

**1. Purpose.**

The NB district is designed to accommodate retail, service and related businesses that serve the immediate community. The NB district is intended for sites with direct access to collector and arterial roads. NB districts are typically located at intersections, although mid-block sites may also be appropriate. The dimensional requirements for this district are similar to those of residential districts to foster compatibility with the character of surrounding neighborhoods.

**2. Supplemental District Requirements.**

Drive-through service is prohibited.

**B. General Business (GB) Purpose.**

The GB district is appropriate for properties which were zoned HC under the City of Trinity's previous zoning ordinance. The district includes standards that support the continued development and use of these sites in a manner that supports the recommendations of the City's comprehensive plan.

**D. Regional Commercial District (RC) Purpose.**

The RC district is designed to accommodate a wide range of retail and service developments meeting community and area shopping needs. The district is established on large sites to provide locations for major developments that contain multiple uses, shared parking and drives, coordinated signage, and high-quality landscaping. The district is intended for large sites which are suitable for major developments which contain multiple uses, shared parking and drives, coordinated signage, and high-quality landscaping.

**E. Office and Institutional District (OI)**

**1. Purpose.**

The OI district provides for public, semi-public and institutional business and professional office and service uses, both on scattered sites and within a campus setting.

**2. Supplemental District Requirements.**

Supporting uses shall be scaled and designed to serve the immediate area.

**F. Light Industrial District (LI) Purpose.**

The LI district is intended to accommodate lower-intensity manufacturing, industrial, and warehousing uses. Uses allowed in the LI district may generate some off-site impacts not typically associated with residential, institutional, commercial, and/or service establishments, but do not generally detract from the development potential of nearby properties.

**G. Heavy Industrial (HI) Purpose**

The HI district is intended to accommodate higher-intensity manufacturing, industrial, and warehousing uses. Uses allowed in the HI district may generate off-site impacts not typically associated with residential, institutional, commercial, and/or service establishments. Uses allowed in the HI district may require significant buffering and/or use-specific conditions to minimize impacts on nearby properties.

**Sec. 5.5.3 Trin Thom Development Zoning District-TTDZ.**

This district applies to a specific area of Trinity adjacent to the city of Thomasville. The district was established to ensure equitable development in accordance with a (YEAR) interlocal Agreement for Economic Development between the two cities. The area has been largely developed. The regulations for this district are included as Appendix XX.

**Sec. 5.5.4 Overlay Districts**

**A. MHO Manufactured Home Overlay District for Manufactured Home Subdivisions**

**1. Purpose.**

The MHO district is intended to accommodate the development of manufactured home subdivisions or parks within the City of Trinity.

**2. Supplemental District Requirements.**

**a. Criteria for Establishment of District.**

Manufactured homes may be permitted in a subdivision of single-family lots in a residential district, provided the MHO overlay district zoning is approved by the City Council. A minimum of ten (10) contiguous lots, meeting the dimensional requirements of the applicable zoning district, excluding public street right-of-way, is required to establish a manufactured home subdivision in a Manufactured Home Overlay District.

**b. Standards for Dwelling Units.**

Only manufactured dwellings meeting Class A criteria as defined in Article V Definitions of this Ordinance shall be permitted.

**c. Manufactured Homes Front Entrance Requirements.**

Every manufactured home site shall have a minimum 5 ft. x 10 ft. x 4 in. thick concrete slab at the front door area or a 8 ft. x 12 ft. treated lumber deck or porch built of treated lumber and built to North Carolina Building Code specifications at the front entrance.

**d. Rezoning.**

An application for a Manufactured home Overlay district shall be processed, considered and approved in the same manner as for a rezoning.

**e. Site Development and Parking.**

All manufactured home subdivisions shall be located on roads constructed to North Carolina Department of Transportation, Division of Highways, subdivision road standards.

**Sec. 5.6 Planned Development**

**A. Purpose and Intent**

The Planned Development (PD) district is established and intended to encourage innovative land planning and site design concepts that support a high quality of life and achieve a high quality of development, environmental sensitivity, energy efficiency, and other City goals. Planned Development shall be requested as a conditional zoning district.

**B. General Standards for All Planned Developments**

**1. How Established**

A planned development is established in accordance with the application requirements of Article 4 Section XXX Planned Development, the approval procedures for the approval of a conditional zoning map amendment, and the requirements of this section. The minimum size of a Planned Development shall be five (5) acres.

**2. Planned Development Conditions**

The conditions of a PD development district shall incorporate by reference or include, but not be limited to:

- a. A master plan meeting the requirements of Article 4 Section XX, including but not limited to proposed uses, density/intensity standards, dimensional standards, and development;
- b. Provisions addressing how water and wastewater will be provided to accommodate the proposed development;
- c. Provisions related to environmental protection and monitoring to include methodologies for how the requirements of the Water Management Ordinance will be met;
- d. Any other provisions the City Council determines are relevant and necessary to the development of the PD and agreed to by the developer, in accordance with applicable standards and regulations.

**C. Uses, Densities/Intensities**

The housing types and densities for residential development and the uses and intensities for non-residential development applicable in each development area of a PD district shall be as established in the master plan and shall be consistent with adopted policy guidance. Allowed uses shall be consistent with adopted policy guidance, the purpose of the particular PD district, and subject to any additional limitations or requirements set forth in Section XXX Development Standards Particular to Individual Uses. Nothing shall limit an applicant from seeking to modify an otherwise applicable use-specific standard in accordance with the standards in Section 3.5.2.C, Master Plan Required.

**D. Dimensional Standards**

The dimensional standards applicable in each development area of a PD district shall be as established in the master plan. The master plan shall include at least the following types of dimensional standards:

1. Minimum lot area;
2. Minimum lot width and frontage;
3. Minimum and maximum setbacks;
4. Maximum lot coverage;
5. Maximum building height;
6. Maximum individual building size;
7. Floor area ratio; and
8. Minimum setbacks from adjoining residential development or residential zoning districts.

**E. Development Standards**

The development standards applicable in each development area of a PD district shall be as established in the master plan. Development standards applicable to individual uses shall be as established in Section XXX Development Standards Particular to Individual Uses. The master plan shall include typical details for at least landscaping, parking, signage, and open space standards applicable to all development in the district.

**F. Compliance with Water Management Standards**

In no instance shall a planned development seek to modify, waive, or reduce any of the standards of the Water Management Ordinance.

**G. Development Phasing Plan**

If development in the PD district is proposed to be phased, the master plan shall include a development phasing plan that identifies the general sequence or phases in which the district is proposed to be developed, including how residential and non-residential development will be timed, how infrastructure (public and private) and open space will be provided and timed, and how development will be coordinated with the City's capital improvements program.

**H. On-Site Public Facilities**

**1. Design And Construction**

The master plan shall establish the responsibility of the developer/landowner to design and construct or install required and proposed on-site public facilities in compliance with applicable City, State, and federal regulations.

**2. Dedication**

The master plan shall establish the responsibility of the developer/landowner to dedicate to the public the right-of-way and easements necessary for the construction or installation of required and proposed onsite public facilities in compliance with applicable City, State, and federal regulations.

**I. Compliance With Subdivision and Site Plan Standards**

Property that is part of a Planned Development district is subject to the standards and regulations of subdivision platting, site plans, water management permits, zoning and building permits prior to the start of development. Requests for approval shall be made according to the relevant sections of Article 4 Procedures and shall meet the conditions of the Planned Development zoning approval.

**J. Amendments to Approved Master Plan**

Amendments or modifications to a master plan shall be considered in accordance with the standards in Article 4 Section H. XXX Amendments to Conditions.

**Sec. 5.7 Permitted Uses in Zoning Districts**

**A. Permitted Use Table**

Within the districts established by this Ordinance; land, building and structures shall only be used, and buildings and structures shall only be erected which are intended to be used for the uses, as listed in the Table of Permitted Uses, unless otherwise stated in Section XXX below. In the appropriate columns of the Table below, uses permitted by right in the various districts are indicated with a “P;” uses permitted only within a conditional zoning are indicated by a “C”; uses requiring a Special Use Permit are indicated by an “S;” uses requiring a Manufactured Home Overlay Zone are indicated with an “O.”

**B. Classification of New or Unlisted Uses.**

It is recognized that new types of land use will arise, and forms of land use not presently anticipated may seek to locate in the City of Trinity. In order to provide for such changes and contingencies, a determination as to the appropriate classification of any new or unlisted form of land use shall be made as follows:

1. The Zoning Administrator shall provide an interpretation as to the zoning classification such use should be placed. In making such interpretation, the Zoning Administrator shall consider all relevant characteristics of the proposed use, including but not limited to the following:
  - a. The actual or projected characteristics of the proposed use;
  - b. The volume and type of sales, retail, wholesale, etc. for commercial uses;
  - c. The size and type of items sold and nature of inventory on the premises;
  - d. Whether the activity involves residential dwelling use(s)
  - e. The hours of operation, type and number of customers and employees;  
The amount of parking needed and traffic estimates for the proposed use;
  - f. Any processing done on-site including assembly, manufacturing, warehousing, shipping and distribution;
  - g. Any dangerous, hazardous, toxic or explosive materials used or stored on the premises;
  - h. The nature and location of indoor or outdoor storage or display of merchandise (such as business vehicles, work-in-process inventory and merchandise, construction materials, scrap/junk, and raw materials, etc.);
  - i. The amount and nature of any nuisances generated, included but not limited to, noise, smoke, odor, glare, vibration, dust, fumes, toxic material or other emissions which may be deemed objectionable;
  - j. Any applicable requirements of the Water Management Ordinance; and
  - k. The possible effect the proposed use type may have on adjacent and neighboring properties, which should not be greater than that of other use types permitted in the

zoning district.

2. Standards for new and unlisted uses may be interpreted as those of a similar use with the use categories as a guideline. The most recent version of the North American Industry Classification System (NAICS) may also be used as a guide for the interpretation of similarity in uses. Uses that are not part of or substantially like an existing use type are prohibited.
3. Appeal of the Zoning Administrator's decision shall be made to the Board of Adjustment following the procedures in Article XXX.

**C. Zoning Districts not in Table**

**1. Uses in Planned Development.**

Uses permitted for planned development zoning districts are determined at the time of rezoning. The permitted use table may be used for reference, however uses and individual use standards not listed in the table may be requested for a planned development and approved with a rezoning.

**2. Uses in the Trin-Thom Development Zoning District (TT-DZD).**

Uses permitted within a trin-thom development zoning district are listed in Appendix XX

**Placeholder for Permitted Use Tables**

**Sec. 5.8 Yard, Area and Height Requirements**

**A. Front Yard Averaging**

The Zoning Administrator may permit the front yard of any lot to be less than the required front yard for the zoning district where all the following criteria are met: 1) the front yards on developed lots located within one hundred (100) feet of each of side of such lot (within the same block and zoning district) and fronting on the same road are less than the minimum required front yard; 2) the computed front yard for the undeveloped lot shall not be less than the average of the existing front yards on the developed lots; and the front yard on the undeveloped lot shall not be less than one-half (1/2) of the required front yard for the zoning district.

**B. Height Limitations.**

The height limitations of this ordinance shall not apply to church spires, belfries, cupolas, and domes not intended for human occupancy; monuments, water towers, observation towers, chimneys, masts, aerials and similar structures, smokestacks, conveyors, and flag poles, except as otherwise provided in the vicinity of airports.

**C. Visibility at Intersections.**

On a corner lot in any residential district no planting, structure, sign, fence, wall or obstruction to vision more than three (3) feet in height measured from the center line of the

street may be placed or maintained within the triangular area formed by the intersecting street right-of-way lines and a straight line connecting points on said street right-of-way lines, each of which is thirty-five (35) feet distant from the point of intersection.

**D. Table of Yard, Area and Height Requirements**

The dimensional requirements of Table XX (table below) shall apply to all uses allowed within the listed zoning districts, except where use-specific dimensional standards exist within Article VII. Deviations from the standards of Table XX may only be proposed through a preliminary plat submitted as part of the Conditional Zoning, Planned Development, or Cluster Development review processes.

With the exception of lots fronting cul-de-sacs, all lots shall have a minimum of 50 (fifty) feet of frontage on a public or private street. Lots fronting on a cul-de-sac shall have a minimum frontage of 32.5 feet. Alternatives are permitted per Section 5.4.F.3.

The requirements of the City of Trinity Water Management Ordinance and Randolph County Department of Public Health may result in larger lot sizes than those listed in Table XX.

**Table XX. Zoning District Dimensional Standards**

| District                                     | Min Lot Size (sq ft or acre)                                   | Min. Lot Width at Bldg. Line (ft) | Min. Front Yard Setback (ft) | Min. Side Yard Setback (ft)          | Min. Rear Yard Setback (ft) | Max. Building Height (ft) | Max. Floor Area (sq ft) if applicable |
|--|--|-----------------------------------|------------------------------|--------------------------------------|-----------------------------|---------------------------|---------------------------------------|
| <b>RA Residential/Agricultural</b>           | 2.5 acres  | 100                               | 40                           | 10 <sup>2</sup>                      | 25 <sup>6,8</sup>           | 35                        |                                       |
| <b>RR Restricted Residential</b>             | 40,000   | 100                               | 40                           | 10 <sup>2</sup>                      | 25 <sup>6,8</sup>           | 35                        |                                       |
| <b>SR – Suburban Residential<sup>1</sup></b> | 20,000   | 80                                | 30                           | 10 <sup>2</sup>                      | 25 <sup>6,8</sup>           | 35                        |                                       |
| <b>UR – Urban Residential<sup>1</sup></b>    | Single family<br>10,000  | 75                                | 30                           | 10 <sup>2</sup>                      | 25 <sup>6,8</sup>           | 35                        |                                       |
|  | Two-family<br>20,000   | 80                                | 30 <sup>d</sup>              | 10 <sup>2</sup>                      |                             |                           |                                       |
|  | Attached over two-family:<br>add 3,000 SF for each unit over 2 | 100                               | 15                           | 10’ between buildings                |                             |                           |                                       |
| <b>Neighborhood Business</b>                 | 20,000   | 80                                | 30                           | 10 <sup>2</sup>                      | 25 <sup>6,8</sup>           | 35                        | 4,000                                 |
| <b>General Business (GB)</b>                 | 20,000   | 80                                | 30                           | 10 (20 when adjacent to residential) |                             | 35                        | 15,000                                |

|   |  |    |                   |                 |                   |    |  |
|---|--|----|-------------------|-----------------|-------------------|----|--|
| <b>RC – Regional Commercial</b>                                       | N/A  | 50 | 15                | 5 <sup>9</sup>  | 20 <sup>6,8</sup> | 50 |  |
| <b>OI - Office &amp; Institutional Commercial/Professional Office</b> | N/A  | 75 | 25 <sup>5</sup>   | 8 <sup>2</sup>  | 20 <sup>6,8</sup> | 50 |  |
| <b>LI</b>   | 20,000   | 7  | 50 <sup>4,5</sup> | 15 <sup>2</sup> | 20                | 50 |  |
| <b>HI</b>   | 40,000   | 7  | 50 <sup>4,5</sup> | 20              | 20                | 50 |  |
| <b>PD - Planned Development</b>                                       | Dimensional requirements for PD are determined at the time of rezoning along with use and density standards. |    |                   |                 |                   |    |  |

- 1 Major residential development in the SR and UR districts require the availability of public water and sewer services. Corner lot add five (5') feet on street side.
- 2 Minimum required front yard setback shall be developed for sidewalks, grass and/or plants and the necessary entrance driveways.
- 3 Except for the necessary drives and walks, the front yard shall not include off-street parking, other than for visitors. All employee parking and loading shall be behind or beside the structure.
- 4 Front yard shall be landscaped in grass and ornamental shrubs and trees.
- 5 Detached accessory structures (including swimming pools) must be located behind the front building line of the principal building. And may be placed no closer than five (5') feet from the rear lot line.
- 6 In these zoned districts, the frontage on an individual lot on a public street shall not be below seventy-five (75') feet.
- 7 In all zoned districts, where a swimming pool is an approved accessory to a primary residence or other structure there shall be provided around the perimeter, an enclosed fence with a minimum height of four (4') feet, with all gates provided being self-closing and all vertical or horizontal openings being no more than four (4") inches, which would deter and/or prevent the accidental or unauthorized use of said swimming pool. Fences which enclose the rear yard of the property shall be approvable if they totally secure that area in and around the swimming pool structure.
- 8 One side lot line may be zero (0') feet while the opposite line may be no closer than fifteen (15') feet.

Notes:

- Fences shall be allowed in all yards, but any fence located in a front yard area shall neither exceed a height of four (4') feet nor impede vehicular visibility or movement at any intersection or driveway entrance nor shall it encroach upon the right-of-way of any street. Stockade type privacy fences in residentially zoned areas shall not exceed eight (8') feet in side and rear yard areas. All fences in side yard areas adjoining a public street shall be set back at least 5 feet from the right-o-way of the public street to provide adequate sight visibility for vehicular and pedestrian traffic.
- When subdividing large lots within older residential subdivisions as per Trinity Subdivision Regulations, it shall be demonstrated by the developer prior to plat approval by the Zoning Administrator, that all newly constructed dwellings will conform to the same setback as existing structures located on either side of the lot being subdivided.
- Placement of Manufactured Homes in the RM zone must conform to Section 7-11B Manufactured home Overlay District.
- Requirements of Trinity's Watershed Ordinance supersede the Zoning Ordinance in cases where the Watershed Ordinance is more restrictive.
- Line of sight landscaping shall not be allowed within any public right-of-way unless written permission is granted by the City of Trinity and the NC Department of Transportation.
  - Lot areas and setbacks shall be increased if required by County Health Department regulations.

- Lot areas in designated watersheds are controlled by the City of Trinity Watershed Ordinance.

## **Sec. 5.9 Zoning Vested Rights and Permit Choice.**

### **A. Zoning Vested Rights.**

- 1. Purpose.** Zoning “vested rights” as established under NCGS 160D-102, -108, and -108.1 ensures that a properly issued development approval will protect the applicant against zoning changes that will affect the allowable type and intensity of use.
- 2. Establishment of Vested Right.** A vested right is established with respect to any property upon the valid approval, or conditional approval, of one of the qualifying plans listed in Section XXX below. The Zoning Administrator shall identify if a submitted plan triggers a vested right and identify it as such upon approval. Such a vested right confers upon the landowner the right to undertake and complete the development and use of the property under the terms and conditions of the approved plan, including any amendments thereto.
- 3. Process to Claim Vested Right:** A person claiming a statutory or common law vested right may submit information to substantiate that claim to the Zoning Administrator. The Zoning Administrator shall determine if a vested right exists. The Zoning Administrator’s determination may be appealed to the Board of Adjustment. On appeal the existence of a vested right shall be reviewed *de novo*. In lieu of seeking such a determination, a person claiming a vested right may take an original civil action appeal to the Randolph County Superior Court.
- 4. Duration and Types of Statutory Vested Rights:**

The following types of approvals shall constitute a vested right when meeting the appropriate submittal and approval requirements of Article 4.

  - a. Building Permits – Six Months.** Pursuant to NCGS 160D-1111, a building permit expires six months after issuance unless work under the permit has commenced. If after commencement the work is discontinued for a period of twelve (12) months, the permit shall immediately expire. No work authorized by any building permit that has expired shall thereafter be performed until a new permit has been secured.
  - b. Other Development Approvals – One year.** Pursuant to NCGS 160D-403, unless otherwise specified by statute or local ordinance, all other development approvals expire one year after issuance unless work has substantially commenced. Expiration of a development approval shall not affect the duration of a vested right established under this section or vested rights established under common law.
  - c. Site-Specific Vesting Plans – Two years.** A site-specific vesting plan shall be vested for two years after it is approved. Amendments shall not extend the vesting period unless specified at the time of approval.
  - d. Multi-Phase Developments – Seven years.** A multi-phase development approved containing 25 acres or more and subject to a master development plan with committed elements including a requirement to offer land for public use as a condition of its master development plan approval.
  - e. Development Agreements- Indefinite.** A vested right of reasonable duration may be specified in a development agreement approved under NCGS 160D-1001.
  - f. Exceptions.** A vested right, once established as provided for by this section, precludes any zoning action by the City that would change, alter, impair, prevent,

diminish, or otherwise delay the development or use of the property as set forth in an approved vested right, except those explicitly outlined in NCGS 160D-108(f).

**5. Effect of Approval**

- a. A vested right shall confer upon the landowner the right to undertake and complete the development and use of said property under the terms and conditions of the site-specific vesting plan as provided for in this Article. Failure to abide by the terms and conditions placed upon such approval shall result in the forfeiture of the vested right previously accorded.
- b. A vested right, once established as herein provided, shall preclude any zoning action by the City which would change, alter, impair, prevent, diminish, or otherwise delay the development or use of the property as set forth in the approved site-specific development except under the following conditions:
  - 1) The affected landowner provides written consent to the City of his desire to terminate the vested right; or
  - 2) The City determines, after having advertised and held a public hearing, that natural or man-made hazards exist on or in the immediate vicinity of the property which pose a serious threat to the public health, safety, and welfare if the project were to proceed as indicated in the site-specific vesting plan; or
  - 3) Compensation is made by the City to the landowner for all costs, expenses, and other losses incurred including, but not limited to, all fees paid in consideration of financing, and all architectural, planning, marketing, legal, and any other consultant's fees incurred after approval together with interest thereon at the legal rate until paid; or
  - 4) The City determines, after having advertised and held a public hearing, that the landowner or his representative intentionally supplied inaccurate information or made material misrepresentations which made a difference in the approval by the City of the site-specific vesting plan; or
  - 5) Upon the enactment or promulgation of a State or Federal law or regulations which preclude development as contemplated in the site-specific vesting plan. In such a case the City may (after having advertised and conducted a public hearing) modify the affected provisions upon a finding that the change in State or Federal law has a fundamental effect on the plan.
- c. Once a vested right is granted to a particular site-specific vesting plan, nothing in this Article shall preclude the City from conducting subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided such reviews and approvals are not inconsistent with the original approval.

**6. Extension.**

City Council may extend the vested rights period from two (2) to five (5) years if it determines the extension is warranted considering all relevant circumstances including but, not limited to the size and phasing of the development, the level of investment, the need for development, economic cycles, and market conditions. If the landowner requests, a vesting period can be extended, subject to the approval process for the original vesting, for a period not to exceed five (5) years from the date of approval.

**7. Required Public Notice of Hearing.**

- a. Notice shall be mailed to the person or entity whose application, or request is the subject of the hearing; to the owner of the property that is the subject of the hearing

if the owner did not initiate the hearing; and to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing. In the absence of evidence to the contrary, the local government may rely on the county tax listing to determine owners of property entitled to mailed notice. The notice must be deposited in the mail at least 10 days, but not more than 25 days, prior to the date of the hearing.

- b. Within that same period, the local government shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on an adjacent street or highway right-of-way.

## **8. Expiration, Limitations, and Revocation**

- a. The vested right resulting from the approval of a site-specific vesting plan may be revoked by the City Council if the City Council determines that the landowner has failed to comply with the terms and conditions of the approval or with any other applicable portion of the Development Ordinance. The vested right shall otherwise expire at the end of the approval period established by Council.
  - b. A valid development approval shall not expire if work on the project has substantially commenced within the initial validity period. Substantial commencement of work shall be determined by the Zoning Administrator based on any of the following:
    - 1) The development has received and maintained a valid erosion and sedimentation control permit and conducted grading activity on a continuous basis and not discontinued it for more than thirty (30) days;
    - 2) The development has installed substantial on-site infrastructure; or
    - 3) The development has received and maintained a valid building permit for the construction and approval of a building foundation.
  - c. Even if work has substantially commenced, a development approval still expires if development work is intentionally and voluntarily discontinued for a period of not less than 24 consecutive months, as calculated and tolled pursuant to NCGS 160D-108.
  - d. A building permit issued by Randolph County pursuant to NCGS 160D-403, 1110 may not be revoked because of the running of time on a piece of property for which a site-specific vesting plan has been approved and the vested right period has not otherwise expired.
  - e. The establishment of a vested right on a piece of property for a site-specific vesting plan shall not preclude Council from establishing and enforcing on the property any additional regulations (adopted during the time the vested right was in effect) which are general in nature and applicable to all property subject to the regulations of this Ordinance.
  - f. Revocation of any site-specific vesting plan designation eliminates the vested right established by approval of the site-specific vesting plan designation but does not itself terminate any unexpired development permit or approval associated with the plan.
- B.** Petitioners for annexation under this section must file a signed statement declaring whether or not vested rights with respect to the properties subject to the petition have been established under G.S. 160D-108 or G.S. 160D-108.1. If the statement declares that such rights have been established, the city may require petitioners to provide proof of such rights. A statement which declares that no vested rights have been established under G.S. 160D-108 or G.S. 160D-108.1 shall be binding on the landowner and any such vested

right shall be terminated.

- C. **Permit Choice.** If an application for development approval has been made, and after the date of that application a development regulation changes or is proposed, the development permit applicant may choose the version of the regulation existing at the time of the application. The applicant may choose the existing regulation without waiting for final action on the proposed regulation change.

## **Sec. 5.10 Development Agreements**

### **A. Purpose**

The purpose of this Article is to establish standards and procedures for the City to enter into Development Agreements for long-term, large-scale developments, in recognition of the following findings and statements of intent:

#### **1. Large-Scale Development Projects and Long-Term Commitment of Resources**

Large-scale development projects often occur in multiple phases extending over a period of years, requiring a long-term commitment of both public and private resources.

#### **2. Potential Community Impacts**

Such large-scale developments often create potential community impacts and potential opportunities that are difficult or impossible to accommodate within traditional zoning processes.

#### **3. Careful Integration between Public Capital Facilities Planning, Financing, and Schedules**

Because of their scale and duration, such large-scale projects often require careful integration between public capital facilities planning, financing and construction schedules and the phasing of the private development.

#### **4. Stable Development Standards**

Because of their scale and duration, such large-scale projects involve substantial commitments of private capital by private developers, which private developers are unwilling to risk without sufficient assurances that development standards will remain stable through the extended period of the development.

#### **5. Nontraditional Development Types**

Because of their size and duration, such developments often permit communities and developers to experiment with different or nontraditional types of development concepts and standards, while still managing the impacts on the surrounding areas.

#### **6. Negotiating Flexibility**

To better structure and manage development approvals for such large-scale developments and ensure their proper integration into local capital facilities programs, local governments need the flexibility in negotiating such developments.

#### **7. Plan Consistency**

In negotiating for such developments, it is the intent of the City to remain consistent with the adopted plans, policies, and goals of the City as they relate to land use and capital improvements.

**B. Authority**

The City may enter into a Development Agreement with a developer, subject to the procedures and standards of this Article. In entering into such a Development Agreement, the City may not exercise any authority or make any commitment not authorized by general or local act and may not impose any tax or fee not authorized by otherwise applicable law. If more than one local government is made party to an agreement, the agreement must specify which local government is responsible for the overall administration of the Development Agreement.

**C. Concurrent Consideration**

A development agreement may be considered concurrently with a zoning map or text amendment affecting the property and development subject to the development agreement. A development agreement may be concurrently considered with and incorporated by reference with a sketch plan or preliminary plat required under Article 8 Subdivision or a site plan or other development approval required under this Ordinance. If incorporated into a conditional district, the provisions of the development agreement shall be treated as a development regulation in the event of the developer's bankruptcy.

**D. Relationship to Prior Development Approvals.** Although an application for a Development Agreement generally is submitted and reviewed before, or in conjunction with, the first development approval required for the proposed development (e.g., a Planned Development), such an application may be submitted and decided at any stage of the development. If the application is submitted after development approvals have been granted, either the Development Agreement should incorporate the terms and conditions of those prior approvals, or any approval of the Development Agreement shall be contingent upon any amendments to those prior approvals necessary to ensure conformance between the Development Agreement and applicable development approvals.

**E. Initiation**

An application for a Development Agreement may be initiated by any person who may submit applications in accordance with the provisions of this Article. Applications for development approvals may be made by the landowner, a lessee or person holding an option or contract to purchase or lease land, or an authorized agent of the landowner. An easement holder may also apply for development approval for such development as is authorized by the easement.

**F. Procedures**

**1. Application Contents**

An application for a Development Agreement shall include a proposed Development Agreement that shall, at a minimum, include all of the following:

- a. A legal description of the property subject to the agreement and the names of its legal and equitable property owners.
- b. The duration of the agreement.
- c. A development schedule, including commencement dates and interim completion dates at no greater than five-year intervals.
- d. The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.

- e. A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule to assure public facilities are available concurrent with the impacts of the development.
- f. If the Development Agreement provides that the City shall provide certain public facilities, the Development Agreement shall provide that the delivery date of such public facilities will be tied to successful performance by the developer in implementing the proposed development (such as meeting defined completion percentages or other performance standards).
- g. A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.
- h. A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.
- i. A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the City for the public health, safety, or welfare of its citizens.
- j. A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
- k. An indemnification and "hold harmless" clause whereby the developer/property owner holds the City and its agents harmless from liability for damages, injury, or death that may arise from the direct or indirect operations of the owner, developers, contractors, and subcontractors that relate to the project.

The proposed Development Agreement may include the following:

- a. A provision that the entire development or any phase of it be commenced or completed within a specified period of time.
- b. Other defined performance standards to be met by the developer.
- c. Other matters not inconsistent with law.

The application shall include a master plan that depicts the general configuration and relationship of the principal elements of the proposed development in relation to the natural and environmental resources of a site, including major uses, general building types, pedestrian and vehicular circulation, open space, public facilities, and phasing.

## **2. Review and Report by City Manager**

As part of the staff review of the application, the City Manager or designee may negotiate revisions to the proposed Development Agreement consistent with the provisions of Subsection G, Development Agreement Standards.

## **3. Review and Recommendation by Planning Board**

Following staff and Technical Review Committee review, preparation of a staff report, and provision of public notification in accordance with Subsection E.5, staff shall recommend one of the following:

- a. the City enter into the Development Agreement as submitted;
- b. the City enter into the Development Agreement application subject to modifications agreed to by the applicant, in writing; or
- c. the City does not enter into the Development Agreement.

**4. Review and Action by City Council**

Following Planning Board review, the City Council shall conduct a legislative public hearing on the application in accordance with public hearing guidance. Thereafter Council may vote:

- a. To enter into the Development Agreement as submitted;
- b. To enter into the Development Agreement, subject to modifications agreed to by the applicant, in writing;
- c. Not to enter into the Development Agreement; or
- d. Remand the application to the Planning Board for further consideration.

**F. Recording the Agreement**

The developer shall record the agreement with the Randolph County register of deeds within 14 days after the City and developer execute an approved development agreement. No development approvals may be issued until the development agreement has been recorded. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

Within 14 days after entering into a Development Agreement, the City shall record the agreement with the Randolph County Register of Deeds.

**G. Development Agreement Standards**

In consideration of the City’s participation in a Development Agreement, a development subject to the agreement must meet the following criteria:

**1. Planned Development.**

The information regarding the property subject to the Development Agreement shall contain details of the property and the planned development in accordance with NCGS 160D Article 10, Development Agreements.

**2. Phasing and Duration of Development.**

The development shall demonstrate phasing and participation in the proposed agreement which shall be of reasonable terms and shall be specified in the agreement.

**3. Impact on Capital Improvements.**

The development agreement shall demonstrate the impact of the development on existing and future provisions of capital improvements by the City, including at least one of the following: transportation, potable water, sanitary sewer, solid waste, stormwater management, educational, parks and recreational, and health systems and facilities.

**H. Effect of Development Agreement**

**1. Burdens and Benefits.**

The burdens of the Development Agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

**2. Rights and Obligations.**

Rights and obligations established by a Development Agreement shall not preclude or supersede rights and obligations established pursuant to other law regarding building

permits, site specific development plans, phased development plans or other provisions of law.

**3. Building Code.**

A Development Agreement shall not exempt the property owner or developer from compliance with the State Building Code.

**4. Subsequently Enacted Laws.**

Unless the Development Agreement specifically provides for the application of subsequently enacted laws, the laws applicable to development of the property subject to a Development Agreement are those in force at the time of execution of the agreement.

**5. Application of Subsequently Adopted Laws.**

Except for grounds specified in Section 160D-1(e) of the North Carolina General Statutes, the City may not apply subsequently adopted ordinances or development policies to a development that is subject to a Development Agreement.

**6. Change in State or Federal Law.**

If State or Federal law is changed after a Development Agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the Development Agreement, the City, by ordinance after notice and a public hearing, may modify the affected provisions, upon a finding that the change in State or Federal law has a fundamental effect on the Development Agreement.

**7. Vested Rights.**

This Ordinance does not abrogate any rights preserved by NCGS 160D-108, or that may vest pursuant to common law or otherwise in the absence of a Development Agreement.

**I. Approval of Debt.** If any of the obligations of the City in the Development Agreement constitute debt, the City shall comply, at the time of the obligation to incur the debt and before the debt becomes enforceable against the City, with any applicable constitutional and statutory procedures for the approval of this debt. The agreement shall be signed by the City Attorney, Finance Director, and City Manager.

**J. Periodic Review and Breach of Agreement**

**1. Annual Review.** During any period of time in which a development permit is active, the City staff shall review the development at least once every 12 months for compliance with the agreement. The developer shall be required to demonstrate good faith compliance with the terms of the Development Agreement. The failure to meet a commencement or completion date specified in the Development Agreement shall not, in and of itself, constitute a material breach of the agreement, but must be judged based upon the totality of the circumstances.

**2. Material Breach.** If the City finds and determines that the developer has committed a material breach of the terms or conditions of the Development Agreement, the City shall serve written notice of the breach upon the developer within a reasonable time after the periodic review. Such notice shall set forth with reasonable particularity the

nature of the breach and the evidence supporting the finding and determination and shall provide the developer with a reasonable time in which to cure the material breach.

3. **Failure to Cure Material Breach.** If the developer fails to cure the material breach within the time given, then the City may unilaterally terminate or modify the Development Agreement.
4. **Appeal.** The notice of termination or modification may be appealed to the Board of Adjustment for review and decision in accordance with (SECTION) Appeals.

#### **K. Amendments to Development Agreement**

1. **Mutual Consent.** A Development Agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.
2. **Major Modification.** Consideration of a proposed major modification of a Development Agreement shall follow the same procedures as required for initial approval of the agreement.
3. **Minor Modification.** The Zoning Administrator may approve minor modifications of the Development Agreement with the mutual consent of the other parties to the agreement, without following the same procedures as required for initial approval of the agreement, upon making written findings that the proposed modifications would not significantly change the use, intensity, or design of the development, would be consistent with the purposes and goals of the agreement, would comply with this Ordinance, and would not adversely affect the public health, safety, or general welfare.

#### **L. Assumption of Jurisdiction Over Development Agreements**

1. **City Assumes Planning Jurisdiction.** If the City assumes planning jurisdiction over property subject to a Development Agreement established by another jurisdiction, such development agreement shall be valid for the duration of the agreement, or eight years from the effective date of the City's assumption of planning jurisdiction over the subject property, whichever is earlier.
2. **Rights and Obligations.** The parties to the development agreement and the City shall have the same rights and obligations with respect to each other regarding matters addressed in the Development Agreement as if the property had remained in the previous jurisdiction.
3. **Modification or Suspension.** The City may modify or suspend the provisions of the Development Agreement if the City determines that the failure to do so would place the residents of the area subject to the Development Agreement, or the residents of the City's planning jurisdiction, or both, in a condition dangerous to their health or safety, or both.