

Agenda

Joint Public Hearing

Planning Board and Town Board of Commissioners

7 p.m. October 15, 2020

[Town of Hillsborough YouTube channel](#)

Due to current public health concerns, the Town Board and Planning Board are conducting a joint public hearing remotely on October 15, 2020 utilizing Zoom. Members of the both boards will be participating in the meeting remotely. Members of the public will be able to view and listen to the meeting via live streaming video on the [Town of Hillsborough YouTube channel](#). No decisions on the public hearing items will be made during this meeting. Written public comments may be submitted no later than noon on Monday, October 19, 2020 to be included in the record of the hearing and considered by the boards in making their decisions. In this new remote process, there are two methods for public comment. Detailed public comment instructions for each method are provided on the next page.

- Written submittals by website contact form
- Speaking during the remote public hearing (Preregistration is required.)

1. Call to order and confirmation of quorum

2. Agenda changes and approval

3. Open the public hearing

4. Special Use Permit request from Orange Rural Fire Department to develop 2 acres at 350 College Park Road as a public safety station occupied by Orange Rural Fire Department and Orange County Emergency Services (OC PIN 9873-24-1850).

5. Close public hearing and adjourn Town Board members

6. Convene regular meeting of the Planning Board

7. Potential amendments to the Unified Development Ordinance

- A. Amending and streamlining the Technical Review Committee process
- B. Clarifying waivers versus minor changes & modifications for SUPs and CUPs
- C. Adding flexibility to accommodate water and sewer utilities adjacent to sidewalks

Members of the public: Follow the directions that follow to participate in this meeting.

Assistant Town Manager/Planning Director Margaret Hauth
101 E. Orange St., PO Box 429, Hillsborough, NC 27278
919-296-9471 | margaret.hauth@hillsboroughnc.gov
www.hillsboroughnc.gov | @HillsboroughGov

Public Comment Instructions

Public Comment – Written

Members of the public may provide written public comment by submitting it via the Planning Board staff [contact form](#) by noon on the afternoon of the meeting.

When submitting the comment, include the following:

- The date of the meeting
- The agenda item (example: 5.C) you wish to comment on
- Your name, address, email and phone number

Planning Department staff will forward all comments received to all board members before 5 p.m. on the day of the meeting.

All written comments received before noon on October 19, 2020 will be accepted, shared with all board members, and included in the hearing record.

Public Comment – Verbal

Members of the public are asked to contact the Planning Department via the website [contact form](#) or phone no later than noon on the day of the meeting and indicate they wish to speak during the meeting.

When submitting the request to speak, include the following:

- The date of the meeting
- The agenda item (example: 5.C) you wish to speak on
- Your name, address, email and phone number
- The phone number must be the number you plan to call in from if participating by phone

Prior to the meeting, speakers will be emailed or otherwise provided a Zoom participant link to be able to make comments during the live meeting. Speakers may use a computer (with camera and/or microphone) or phone to make comments. Speakers using the phone for comments must use the provided PIN/Password number.

The public speaker's audio and video will be muted until the board gets to the respective agenda item(s). Individuals who have pre-registered will then be brought into the public portion of the meeting one at a time.

If a member of the public encounters any concerns prior to the meeting related to speaking, please contact Planning Director Margaret Hauth at 919-296-9471.

October 2020 Joint Public Hearing
Item Cover Sheet/Staff Report

Agenda Item #: 4

ATTACHMENTS:

- 1 –application & narrative
- 2 – waiver analysis
- 3 – Plan set (as separate file)

GENERAL INFORMATION:

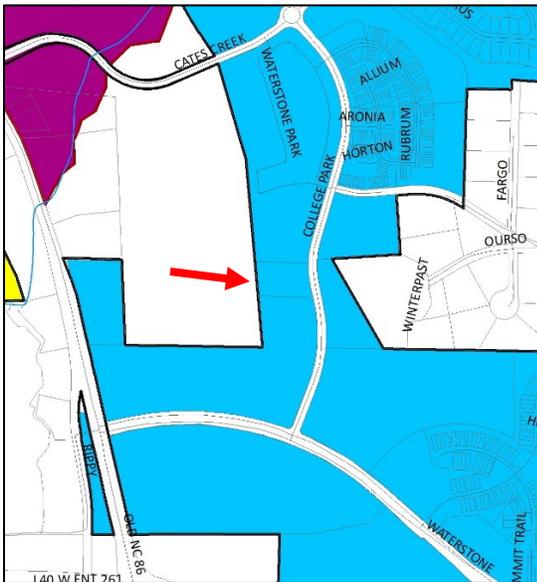
Project Title: Waterstone Fire and EMS Station

Purpose: Special Use Permit to develop 2 acres at 350 College Park Road as shared fire/EMS station for Orange Rural Fire Department and Orange County EMS

Background:

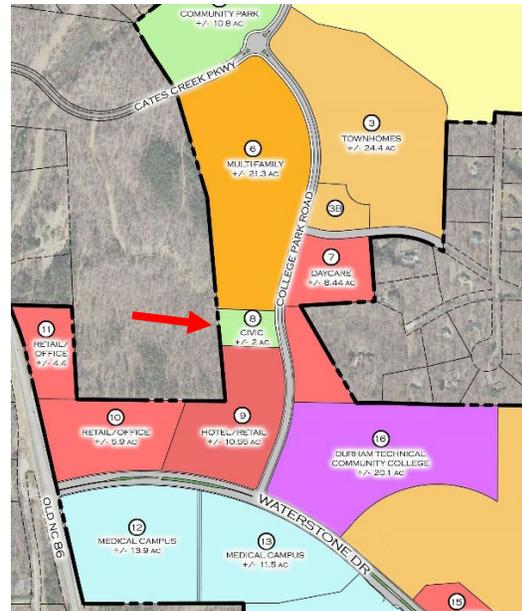
When Waterstone was reviewed in 2003/2004, the applicants dedicated a 2-acre site to the town for civic use. The intention was to build a fire and/or police station on the site. In 2020, the need for a new fire station is more significant and Orange County has expressed significant interest in collocating emergency service staff in the building as well.

Zoning Map



Blue – Entranceway Special Use
Purple – Economic Development District
Yellow – Residential 15

Waterstone Master Plan

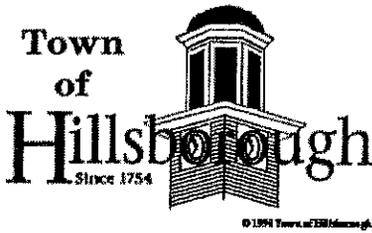


Conditions by Parcel from the Waterstone Master Plan:

- That the developer shall convey this 1.5 net acre Parcel to the Town prior to the commencement of improvements on any Parcel within Phase II of the Waterstone Master Plan.
- That the uses allowed on this Parcel shall be limited to, a Fire Station, Emergency Medical Service Facility and/or a Police Substation only. Other proposed municipal uses on this Parcel shall be approved in writing by the Waterstone Master Association.
- That the floor area permitted on this Parcel shall be determined and approved by the Town at the time that a Special Use Permit application is approved for its use.
- That the impervious surface on this Parcel shall be determined as part of the Special Use Permit process for this Parcel

Attached following the application and narrative is a statement of all the waivers requested, with staff comments added.

Special Use Permits require a quasi-judicial process. As of the date of the agenda packet, no one had contacted the town requesting standing or objecting to the remote process. The newspaper ads, site signage and mailed notices were all done on or near October 2.



REVISED 9/21/2020

APPLICATION FOR Special Use Permit

Planning Department
101 E. Orange Street / P.O. Box 429
Hillsborough, NC 27278

Phone: (919) 296-9471, Fax: (919) 644-2390
Website: www.hillsboroughnc.gov

Project Title: WATERSTONE FIRE AND EMS STATION

Address: 350 College Park Road, Hillsborough, NC 27278

PIN #
9873241850

Property Owner Name: Town of Hillsborough

Mailing Address: P.O. Box 429

Phone:
919.296.9471

City, State, Zip: Hillsborough, NC 27278

E-mail:

Applicant Name: Orange Rural Fire Department (Jeff Cabe, Chief)

Mailing Address: P.O. Box 1511

Phone:
919.732.7911

City, State, Zip: Hillsborough, NC 27278

E-mail:
jeff.cabe@orfd.net

Surveyor/Engineer: Grounded Engineering

Mailing Address: 4909 Liles Road

Phone:
919.621.3671

City, State, Zip: Raleigh, NC 27606

E-mail:
sean@grounded-engineering.com

Zoning: ESU

Adjacent Zoning: ESU

Acreage: 2.00

Phases: N/A

Water Service: Public Water Well

Sewer Service: Public Sewer Septic Tank

Existing Structures: N/A

Proposed Structures: 1 building for public safety services

Critical Areas:

- Flood
- Drainage / Stream
- Pond
- Steep Slopes
- Cemetery
- Easements
- Historic

	Bldg A	Bldg B	Bldg C	Bldg D	Bldg E	Complies
Expected Uses	Public Safety Services					
Expected Employees	23					
Hours of Operation	24 hours 7 days / week					
Phase	1					
Setbacks	20'-side, rear 50' front					
Impervious Surface						
Parking Spaces	29					
Number of Signs	1					
Height of Signs						
Building Height	27'-0"					

I/We certify that all of the information presented by me/us in this application is accurate to the best of my/our knowledge, information, and belief.

APPLICATIONS WILL NOT BE ACCEPTED WITHOUT SIGNATURE OF PROPERTY OWNER.

[Signature] 8-14-2020
 Applicant's signature date

Margaret Hauth 8/14/2020
 Property Owner's signature date
 on behalf of the town of Hillsborough

NARRATIVE

The subject site is currently undeveloped and consists primarily of wooded area. The proposed project includes the clearing of areas need to construct the proposed building, parking, and site infrastructure improvements.

UDO REQUIREMENTS FOR SPECIAL USE PERMITS:

Evidence that the applicant has consulted with the State Department of Cultural Resources to determine if there are known archeological resources in the vicinity of the site. If resources are expected based on the known database, the applicant shall complete a Phase 1 analysis as part of their Special Use Permit submittal.

RESPONSE: Based on the information provided by the NC Office of State Archaeology Natural and Cultural Resources website there are no active Archeological sites located in Orange County. We have contacted the State Office of Archaeology to confirm this information on their website is the most current information.

Staff note: The known historic roadbed in Waterstone bypasses tis site to the north.

A statement as to the applicant's preferred green building or sustainable building rating system for the project indicating the performance level intended to be met for the development site or structures in the application materials.

RESPONSE: The project will not be LEED certified but will incorporate LEED type materials.

A statement as to the applicant's expected water use for the daily operations of the site upon completion. Projects will be required to demonstrate water saving or reuse measures that will be employed (show baseline & their use).

RESPONSE: The project is currently in the Design Development Phase, this information will be finalized during the Construction Document phase.

A statement as to how the proposal satisfies the findings found in Section 3.8.3 (General Standards/Findings of Fact).

RESPONSE: The project has been designed to meet the requirements of the Section 3.8.3 of the town's Unified Development Ordinances.

(a) That the use or development is located, designed, and proposed to be operated so as to maintain the public health, safety, and general welfare.

The development of the subject parcel as a Fire and EMS station is intended to absolutely maintain public health, safety and general welfare by providing community emergency services.

(b) That the use or development complies with all required regulations and standards of this Ordinance, including all applicable provisions of Articles 4, 5, and 6 and all applicable regulations;

The proposed development has been designed to comply with applicable regulations and standards of the Town Ordinance, including all applicable provisions of Articles 4, 5, and 6 and all applicable regulations.

(c) That the use or development is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use or development is a public necessity; and

As a fire and EMS Station, the proposed development is a public necessity that will provide emergency services to the community.

(d) That the use or development conforms with the general plans for the physical development of the Town and is consistent with the Town's Comprehensive Plan.

The subject site has been previously designated for the proposed use and is consistent with the Town's Comprehensive Plan.

WAIVER 1 - Subsection 6.13 (parking, loading, and circulation), paragraph 6.13.3 (off-street parking provisions), table 6.13.3.5 (minimum number of parking spaces required), the minimum parking standard for a public safety use is 1 parking space per 250 sf of gfa.

Reason for need: based on the town standard, the required minimum number of parking spaces for the proposed building would be 52. This building is unique in that the emergency vehicles parking inside the building. The apparatus parking bays account for approximately 3,650 sf of the total building area. Additionally, this building is not expected to receive many visitors from the public and will primarily be used by employees only. As such, the proposed 29 parking spaces is expected to more than sufficient for this specific use.

Staff response: Not opposed to this waiver. During plan development, the two departments discussed parking need and provided feedback to the designers based on their current operations and considering growth an expansion. This request is similar to others approved by the town when the intended users of the building have experience with operations that imply a need for fewer spaces.

WAIVER 2 - Subsection 6.10 (landscaping - parking lot), paragraph 6.10.3 (landscape requirements), subparagraph 6.10.3.1, parking lots shall contain at least 1 shade tree for every seven parking spaces required for the site. These trees shall be located a sufficient distance from existing overhead utility lines to ensure the health of and growth of the tree.

Reason for need: based on the town standard, the required number of trees is based on the required number of parking spaces which as described in waiver request #1 is 52 parking spaces. With only 29 proposed parking spaces, providing eight (8) trees is not realistic. We propose providing 1 shade tree for every seven parking spaces provided on site, which would be five (5) trees.

Staff response: Not opposed to this waiver. It goes hand in hand with the request above. The ordinance language is tied to the required number of spaces, rather than the provided number of spaces, hence triggering the second waiver request.

WAIVER 3 - Subsection 6.13 (parking, loading, and circulation), paragraph 6.13.8 (off-street parking geometric requirements), table 6.13.8 (off-street standard parking geometric requirements), the minimum required aisle width for two-way traffic is 25'.

Reason for need: the proposed site design provides an aisle width of 24'. The subject site is constrained to the north by a stream buffer and has approximately 30' of fall across the site. We believe the reduction of the drive aisle is needed to allow for the construction of the proposed site improvements required for the public safety building while also minimizing impacts to the stream buffer. Given the proposed use and the limited number of daily vehicular trips for the site, we believe the proposed drive aisle width is sufficient for the subject site.

Staff response: Not opposed to this waiver. The north drive aisle is a driveway and not bounded by parking. The south drive aisle has parking on only one side. The aisle between the parking spaces is 25 feet.

WAIVER 4 - Subsection 4.5 (other zoning districts), paragraph 4.5.3 (requirements for watershed protection districts), subparagraph 4.5.3.8 (riparian buffers). Subparagraph 4.5.3.8.a (definition), riparian buffer is an area of land adjacent to perennial and intermittent streams, ponds, lakes, and reservoirs which, except as stated below, must remain undisturbed in its natural state.

Reason for need: the proposed grading work inside the stream buffer is only proposed in zone 2 (the outer 20'). The proposed grading is needed to allow for a reduction in the height of the proposed site wall in an effort to provide a safer condition for both vehicles and pedestrians on site.

Staff response: This waiver is not needed. This language only applies within the watershed zoning districts on the west side of town.

WAIVER 5 - Subsection 6.22 (tree protection standards), paragraph 6.22.4 (standards), subparagraph 6.22.4.2b, for sites with existing, pre-development tree coverage area that covers more than 25% but less than 50% of the site, maintenance of the tree coverage area is required.

Reason for need: the existing site constraints including the stream buffer, narrow lot width, and topographic challenges will not allow for the required tree coverage to be preserved.

Staff response: Not opposed to this waiver. The applicant is maintaining tree coverage on north and west portions of the site, where development transitions to lower intensity uses and currently undeveloped property. This site is expected to be the northern edge of more intense development within Waterstone.

WAIVER 6 - Subsection 6.10 (landscaping, parking lot), paragraph 6.10.3 (landscaping requirements), subparagraph 6.10.3.4, all planting medians or islands in parking lots shall be at least 10 feet x 10 feet measured from back of curb to back of curb (or pavement edge if the island is not curbed for stormwater purposes). When an island contains one or more shade trees, the island must have at least 300 square feet of unpaved space per shade tree.

Reason for need: in an effort to provide a physical separation between the parking spaces and the pathway of the emergency vehicles, a 5-foot wide landscape island has been provided at the head of the proposed parking spaces. The island is not being utilized to meet the shade tree requirement for the site and will only be landscaped with shrubs. Expanding the referenced landscape island to 10 feet in width would impede the travel pathway of the emergency vehicles as they return to the bays.

Staff response: Not opposed to this waiver. It is unusual for a site to have an island that doesn't need to have landscaping in it. The dimension is to provide a better growing environment.

WAIVER 7 - Subsection 6. (development standards), paragraph 6.7.8 (fenestration), subparagraph 6.7.8.7, larger scale design features such as garage doors shall be placed at the side or rear of the facility.

Reason for need: the overhead bay doors are required to face the street to allow emergency vehicles direct access to the street when responding to fire and ems calls. This access allows for faster response time to calls rather than locating the existing bay doors on the side of the building. Most of the site's space at the front of the building is utilized for vehicle access to the street as well as providing a vehicle return driveway for the trucks to pull around to the rear of the building to return to the bays.

Staff response: Not opposed to this waiver. The purpose and function of this building relies on forward facing doors.

WAIVER 8 - Subsection 6. (development standards), paragraph 6.7.10 (orientation/entrance location), subparagraph 6.7.10, I, all new primary buildings shall have entrances oriented toward, and accessible from the nearest public street.

Reason for need: due to the nature of the building's function. The priority at the front of the building given to the overhead bay doors and driveway to allow for immediate access for emergency vehicles to get to the street. Most of the site's space at the front of the building is utilized for vehicle access to the street as well as providing a vehicle return driveway for the trucks to pull around to the rear of the building to return to the bays. This prevents the emergency vehicles from having to back into the bays at the front apron off of the street. The space on the site is narrow and only allows for the site parking lot to be at the rear of the building. The building entrance naturally lends itself to be at the rear of the building as a majority of the staff and visitors will be driving to the site and accessing the building from the parking lot. Although the building entrance is at the rear of the building, we have provided a building facade that presents itself to the building users as a proper entry elevation and not an uninspired back entrance to the building.

Staff response: Not opposed to this waiver. The function of this building does not lead to much public interaction. Additionally, the bay doors are often open during daily operations, providing access for walk-up public. The "safe haven" entrance is on the rear of the building.

WAIVER 9 - Subsection 6. (development standards), paragraph 6.18.12 (total sign surface for wall mounted signs). Subparagraph 6.18.12.3, unless otherwise limited by the provisions of the section, the wall sign surface area permitted on any building facade shall be determined as follows:

- a) 0.5 square feet of wall sign surface per linear foot of building facade or
- b) thirty-two (32) square feet of wall sign surface area per building facade, whichever is greater

Reason for need: because the building's entrance is at the rear of the building, the design intent for the front elevation is to provide a presence at the front of the building that identifies each department represented in the building as well as provide a unified building sign. The main sign over the overhead bay doors provides the unified building sign that speaks to both of the departments residing in the building. The two individual department signs identify each department in the building. All three signs are necessary to provide important identification to the building and its departments as well as providing decorative elements to break up the mass of the architectural CMU walls.

The linear footage of the front facade of the building is 166 linear feet. The square footage for each sign is as follows:

1. Waterstone Fire and EMS Station is 59 square feet
2. The fire department logo is 57 square feet
3. The EMS logo is 62 square feet

The total for the signage at the front of the building is 178 square feet. The town signage requirement is $166 \times 0.5 \text{ sf} = 83$ square feet.

Staff response: Not opposed to this waiver. The building will be a focal point in the community. Due to site constraints a traditional freestanding sign is not proposed, although a town wayfinding sign will likely be added to the site.

From: [Terry Hackett](#)
To: [Justin Snyder](#)
Cc: [Margaret Hauth](#); [Heather Fisher](#); [Tom King](#)
Subject: Waterstone Fire Station Riparian Buffer Review Comments
Date: Wednesday, August 26, 2020 2:26:53 PM
Attachments: [image001.png](#)
[image003.png](#)

Justin,

I understand from Tom that you are reviewing this project for Planning. Since I will be out of the office next week, I wanted to go ahead and provide some comments regarding the project. As you are aware there is a stream located along the northern portion of the property. The proposed plan indicates that a portion of the riparian buffer will be disturbed by grading.

The town has jurisdiction over the stormwater management plan, but because this project utilizes public funds, jurisdiction over the riparian buffer reverts to the state. In June of this year, the state readopted the Neuse Riparian Buffer rules that apply to this project. I have reviewed the newly adopted rules as it relates to this project and the proposed plans. Here is what I note:

- The project is proposing grading within Zone 2 (the outer 25 feet) of the riparian buffer; slopes are proposed to be 3:1.
- The landscape plan states that this area will be seeded with tri-blend fescue and that the soils will be amended prior to seeding.
- The project will include a primary SCM with a discharge located outside the riparian buffer.

Under the state's updated riparian buffer rules, grading within Zone 2 is "deemed allowable" provided that the health of existing vegetation in Zone 1 is not compromised and the project meets applicable stormwater requirements.

Projects that are deemed allowable must be designed, constructed and maintained to minimize vegetation and soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring and maintenance activities.

Provided that the project does not compromise the health of the vegetation in Zone 1, meets all of the town's stormwater requirements, and is constructed and maintained as described above, the Zone 2 grading impacts may occur without written authorization from the state.

Heather is working on the stormwater management plan review for the project and will be forwarding comments when she is complete. She is copied here. I've copied Margaret as well since she had specifically asked about the riparian buffer jurisdiction for this project. Let me know if you have any questions.

Thanks,

Terry

October 2020 Planning Board meeting
Cover Sheet/Staff Report

Agenda Item #7

A. Amending and streamlining the Technical Review Committee process

We have been looking to streamline and improve the Technical Review Committee process for some time. While the ordinance specifies that Planning, Public Works, and Utilities are the 3 members, we regularly involve Stormwater, Fire Marshal, Public Space, Erosion Control, NCDOT, County Solid Waste, Building Inspections, and Environmental Health. We do this to ensure all review comments are provided at the beginning of a project, not at the end and to provide a forum to discuss conflicts.

These amendments keep the TRC process but shift the approval authority to the Planning Director. The suggested amendments are attached.

Request: Send these amendments to public hearing in January. We still need to do a comprehensive check of the ordinance to ensure we have captured all references to the TRC.

B. Clarifying waivers versus minor changes & modifications for SUPs and CUPs

As we continue to gain experience with waivers and board-approved permits, we think some clarification and distinction is needed between what is a waiver and what is a minor change. We are also looking at this to limit the need for projects to come back for modifications for truly minor deviations after the project is constructed.

I believe the intent of these waiver provisions were to allow an applicant to seek relief in advance for items they knew they couldn't meet or wanted to meet differently. Those are waivers and should be included in the public hearing before the project is authorized.

Once a project is approved and the engineers dig in on detailed design, minor tweaks and adjustments happen when compared to the board approved plans. In rare cases, this might lead to non-compliance with an ordinance provision. Where we require a 5' wide planted area, perhaps after all the grading is accommodated and measurements are attached to the survey there is only 4'9" left. Sometimes this problem isn't found until the as-built survey is prepared. Perhaps someone wasn't careful on the construction crew or perhaps they hit unexpected rock and shifted slightly. These sorts of minor non-compliance issues ought to be handled at the staff level. It seems overly rigid to trigger a new public hearing for 3".

Certainly, we have seen projects where applicants willfully make changes without consulting the town. No matter how much we harp on applicants & builders at every step in the process that the approved plans are a contract and binding, these changes still happen.

Some of these after approval changes are minor, some are major. That's when we move to the minor change and modification section. I think these suggested changes are a fair balance of flexibility and compliance.

The suggested amendments are attached.

Request: Send these amendments to public hearing in January. Similar amendments will be needed in Section 3.9 for Conditional Use Permits approved by the Board of Adjustment.

C. Adding flexibility to accommodate water and sewer utilities adjacent to sidewalks

We have found that two sections in 6.17.3.3 are proving challenging in some cases. Water and sewer lines are not universally run under the paved portion of the street and often run parallel where they can be accessed without closing the street. There are pros and cons of this installation method.

We are discussion amendments here to balance the interests of Public Space and Utilities and expect to have revised language ready for the January hearing.

- d) For non-residential lots with existing sidewalks or for sidewalks constructed as part of a new development, shade trees shall be located in the parcel front yard so as to shade the walkway without damaging it. The shade trees shall be installed 10' behind the sidewalk and be spaced no greater than 40' on center. This requirement shall not be applied to non-residential buildings built within 10' of the ROW or with a front courtyard or other site features that provide similar shading.
- e) For non-residential buildings built within 10' of the right-of-way shade trees shall be installed between the curb and sidewalk in accordance with town planting and right-of-way standards.

Request: If the board is willing to send conceptual amendments to public hearing, that would be much appreciated. There is al adequate time for us to bring this to the December meeting for formal review.

D. Item I also hope to have ready for discussion in December:

- a. **Streamlining of Design Standards**
- b. **A recommended replacement for Special Use District Zoning**

Request: This is for information only.

2.6 TECHNICAL REVIEW COMMITTEE

The Technical Review Committee is hereby established.

2.6.1 POWERS AND DUTIES

The Technical Review Committee is ~~authorized and directed to review and approve, conditionally approve or deny applications for Site Plan Approval pursuant to Section 3.13, Site Plan Review, of this Ordinance~~ ~~an advisory group of Town staff members and outside agencies (as necessary) who meet to review and comment on development applications, discuss other matters related to the Town's review and management of development,~~ and to perform such other duties as may from time to time be delegated to it by the Town Board.

In addition, the Technical Review Committee may also undertake the following duties:

- (a) Conduct pre-application conferences;
- (b) Provide expertise and assistance to the Planning Director in compiling and maintaining an Administrative Manual and in establishing application content requirements and a submission schedule for review of applications and appeals; and
- (c) Provide expertise and technical assistance to the Town's other decision-making bodies, upon request.

2.6.2 MEMBERSHIP

The Technical Review Committee shall consist of at least three (3) members – the Planning Director, the ~~Town Engineer~~ ~~Utilities Director,~~ ~~the Stormwater and Environmental Services Manager~~ and the Public Works Director, or their designees, ~~and others as may be appointed by the Town Manager.~~ Representatives from other Town, Orange County and State departments, as well as local service providers (e.g., Duke Energy), may be asked to participate in meetings.

2.6.3 ~~RULES OF PROCEDURE~~ MEETINGS

~~The Committee shall conduct its affairs consistent with the procedures in the Administrative Manual. Their actions shall be consistent with the procedural requirements of this Ordinance and state law.~~

The Technical Review Committee shall establish a regular meeting schedule meeting frequently enough to act as expeditiously as practicable on matters before it. The Planning Director may adjourn a regular meeting on determining there are no agenda items for consideration and may call emergency or special meetings as necessary.

Applicants may be invited to attend meetings as necessary to answer questions from, or provide clarifications requested by, Technical Review Committee members.

Written comments of Committee members shall be filed with the Planning Department and delivered to applicants with projects under review.

2.6.4 APPEALS

Appeals from decisions of the Technical Review Committee shall be to the Board of Adjustment. The procedures for appeals to the Board of Adjustment established by Section 3.11, *Appeals*, of this Ordinance shall apply to appeals from determinations made by the Technical Review Committee.

3.5 CREATION OF NEW LOTS/DIVISION OF LAND

3.5.4 MINOR SUBDIVISION

Property owners or agents must present a paper map to the Planning Department to review any division of land into 4 or fewer lots from a single tract of land in any five (5) year period. Such a division may only be approved by staff if no new public road is necessary to create the lots. If a new public road is proposed as part of the project, the ~~Planning Director shall refer the request to the Technical Review Committee (TRC) for final review and approval.~~ **subdivision shall be reviewed as a Conditional Subdivision. The Planning Director has the authority to refer any minor subdivision request involving a new or existing private road to the Technical Review Committee.** If no public or private road right of way or construction is part of the proposal, the Planning Director may approve the minor subdivision by signing the approval certificate on the recordable map.

The application will be processed according to the procedure details in Section 5.2.43, *Subdivisions, Minor*.

3.8 SPECIAL USE PERMIT

3.8.7 PRE-APPLICATION

Applicants ~~are encouraged to~~ shall meet with ~~Planning Director~~ **the Technical Review Committee** before filing a Special Use Permit application to review specific permit and application requirements.

3.9 CONDITIONAL USE PERMIT

3.9.5 PROCEDURE

3.9.5.2 Pre-application

Applicants ~~are encouraged to~~ shall meet with ~~Planning Director~~ **the Technical Review Committee** before filing a Conditional Use Permit application to review specific permit and application requirements.

3.11 APPEAL

3.11.2 APPLICABILITY

The Board of Adjustment shall hear an appeal taken by any person with standing pursuant to G.S. 160A-393(d) or the Town regarding a decision or determination made by the Planning Director, ~~the Technical Review Committee,~~ or the Historic District Commission, concerning the enforcement of this Ordinance in this Ordinance, within the times provided by this Ordinance.

An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the Planning Director certifies to the Board of Adjustment after notice of appeal has been filed that because of the facts stated in an affidavit, a stay would cause imminent peril to life or property or because the violation is transitory in nature, a stay would seriously interfere with enforcement of this Ordinance. In that case, enforcement proceedings shall not be stayed except by a restraining order, which may be granted by a court. If enforcement proceedings are not stayed, the appellant may file with the Planning Director a request for an expedited hearing of the appeal, and the Board of Adjustment shall meet to hear the appeal within fifteen (15) days after such a request is filed. Notwithstanding the foregoing, appeals of decisions granting a permit or otherwise affirming that a proposed use of property is consistent with this Ordinance shall not stay the further review of an application for permits or permissions to use such property; in these situations the appellant may request and the Board may grant a stay of a final decision of permit applications affected by the issue being appealed.

3.11.4.4 Notice of Public Hearing

Written notice shall be mailed to the aggrieved person (applicant), property owner involved in original case being appealed (if different), to the owners of all parcels of land abutting the parcel of land that is subject to the hearing (including those across a public or private street), to any other persons entitled to receive notice as provided by this Ordinance, and the Planning Director, ~~the Technical Review Committee,~~ or the Historic District Commission (as appropriate). The notice must be deposited in the mail at least ten (10) days, but not more than twenty-five (25) days before the hearing date. In computing such period, the day of publication is not to be included but the day of the hearing shall be included.

A notice of the request shall be placed on the site that is subject to the hearing or on an adjacent street or highway right-of-way at least ten (10) days, but not more than twenty-five (25) days before the hearing date.

3.13 SITE PLAN REVIEW

3.13.1 INTENT

It is the intent of this section to address the specific conditions and standards of evaluation for the review of site plans.

3.13.2 APPLICABILITY

Site Plan review is the general term used to describe review of projects other than (a) the construction of single family dwellings on lots zoned for single family uses and (b) uses requiring a Special Use or Conditional Use Permit, where Site Plan Review is built into the Special and Conditional Use Permit review processes.

The Site Plan Review process is applicable only to proposed development involving:

- (a) involving the disturbance of 10,000 square feet or more of land and/or involving
 1. the construction of new structures or additions in any general purpose non-residential zoning district consisting of more than 5,000 square feet of gross floor area, or
 2. additions to existing structures consisting of more than 2,500 square feet of gross floor area

in any general purpose residential or non-residential zoning district. Any development exceeding this threshold are in a general-purpose residential district is required to pursue a Conditional Use Permit in accordance with the standards and provisions established by Section 3.9, *Conditional Use Permit*, of this Ordinance; and

- (b) involving the disturbance of 3 acres or less and/or involving the construction of new structures or additions consisting of 10,000 square feet or less of gross floor area in any general purpose residential zoning district. Any development exceeding this threshold are required to pursue a Conditional Use Permit in accordance with the standards and provisions established by Section 3.9, *Conditional Use Permit* of this Ordinance

- (c) (b) involving the construction of attached dwelling units in any general-purpose zoning district that does not otherwise exceed a threshold above.

3.13.3 GENERAL STANDARDS/FINDINGS OF FACT

The following specific standards shall apply to the review of a site plan:

- (a) The use is a permitted use according to the Use Table for the district in which the property is situated.
- (b) The lot area satisfies the minimum requirement for the district, or, if legal nonconforming, is of sufficient size that all applicable provision of this ordinance are met without any variance or waiver.
- (c) The plan demonstrates compliance with all applicable provisions of this ordinance without variance or waiver.
- (d) A traffic impact analysis (TIA), if required by Section 3.1 of the Street Design Standards, demonstrates that the proposed site development will not cause a reduction in the Level of Service (LOS) at any intersection studied in the TIA, or that any measurable reduction in LOS has been or will be mitigated by site plan design features. (this section is too vague for staff application)

3.13.4 PROCEDURE

3.13.4.1 Authority to Apply

The owner of any property, or their authorized representative, may apply to the Planning Director for site plan approval.

3.13.4.2 Pre-application Conference

Before submitting an application for site plan approval, the applicant ~~should~~ shall first meet with the ~~Planning Director~~ **Technical Review Committee** to review ~~the~~ a proposed **concept** plan, ~~and~~ the requirements of this Ordinance **and other Town and requirements**.

3.13.5 APPLICATION REQUIREMENTS

The Planning Director shall provide forms for applications for site plan approval, which shall be submitted by the applicant. Applicants for site plan approval shall submit all information required to be submitted as set forth in the *Administrative Manual*, and any additional information needed to demonstrate and support compliance with the standards of evaluation. No application shall be accepted as complete unless accompanied by all required fees as set forth in the Schedule of Fees.

3.13.6 REVIEW PROCESS

3.13.6.1 GENERAL

The Planning Director shall review and, if the site plan submitted otherwise meets all of the standards of this Ordinance, approve site plans for uses permitted as of right in any general-purpose district. Approval or denial of the Site Plan shall be made within 30 days of the receipt of a complete application, where (a) less than 1 acre of land will be disturbed by the proposed development, (b) no new structure consists of more than 2,500 square feet of gross floor area, and/or (c) no addition to an existing structure consists of more than 5,000 square feet of gross floor area.

3.13.6.2 COMPLETENESS REVIEW

Upon receipt of a Site Plan Review application, the Planning Director shall first determine whether the application is complete, including the payment of all required application fees. The Planning Director shall have five working days in which to determine application completeness. If the Planning Director determines the application is not complete, he/she shall notify the applicant in writing of the reasons for such determination.

3.13.6.3 TECHNICAL REVIEW COMMITTEE

Upon determination that a complete application has been filed, the Planning Director shall have the authority to refer a the site plan to the Technical Review Committee if an application involves unusual circumstances, or potential impacts on public health, safety or general welfare, or on sensitive cultural, historic or natural resources in the opinion of the reviewer. Such referral shall be made in writing to the applicant and review entity, detailing the specific reason for the referral. The Technical Review Committee shall review the plan at its next regularly scheduled meeting. Written Committee review comments shall then be forwarded to the applicant.

~~3.13.6.4~~ The Technical Review Committee shall review, and, if the site plan submitted otherwise meets all of the standards established in this Ordinance, approve site plans for uses permitted as of right exceeding the threshold of 3.13.6.1.

~~3.13.6.5~~ The Planning Director shall have the authority to refer a site plan to the Technical Review Committee if an application involves unusual circumstances, or potential impacts on public health, safety or general welfare, or on sensitive cultural, historic or natural resources in the opinion of the reviewer. Such referral shall be made in writing to the applicant and review entity, detailing the specific reason for the referral.

~~3.13.6.6~~ The Technical Review Committee shall have the authority to refer a site plan to the Board of Adjustment if an application involves unusual circumstances, or potential impacts on public health, safety or general welfare, or on sensitive cultural, historic or natural resources in the opinion of the reviewer. Such referral shall be made in writing to the applicant and review entity, detailing the specific reason for the referral. A majority of Technical Review Committee members with reviewing jurisdiction of the application referred must concur with the referral.

3.13.6.7 If a Site Plan is denied for lack of compliance with provisions in Section 6 of this Ordinance, the applicant shall have the option to file an appeal with the Board of Adjustment consistent with Section 3.13.8, Appeal and with North Carolina General Statutes Section 160A-388(b1).

3.13.7 DECISIONS ON SITE PLAN APPLICATIONS

The Planning Director ~~and/or the Technical Review Committee~~ shall have the authority to approve site plans, or to deny site plan approval on the grounds that:

- ~~(a)~~ The site plan submitted fails to comply with any specific requirements of this Ordinance;
- ~~(b)~~ The site plan submitted fails to adequately protect residentially zoned property, or property in a residential use; or
- ~~(c)~~ The site plan submitted fails to provide safe conditions for pedestrians or motorists. All such decisions shall be made in writing, and the written decision shall be filed with the Planning Director and sent to the applicant by first class mail.

3.13.8 APPEAL

3.13.8.1 A decision of the Planning Director ~~or Technical Review Committee~~ on an application for a Site Plan Review may be appealed to the Board of Adjustment by an aggrieved party. Such appeal shall be made within thirty (30) days of filing of the decision in the office of the Planning Director or the delivery of the notice required in Section 3.13.7, Decision of Site Plan Applications whichever is later.

3.13.8.2 The official who made the decision to deny the Site Plan shall be present at the hearing as a witness. ~~If appeal is made from a decision of the Technical Review Committee, one or more members of the Technical Review Committee who voted to deny the Site Plan shall be present at the hearing as a witness.~~

3.13.8.3 The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the Town would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the Board of Adjustment shall continue the hearing to allow such party time to adequately prepare a response.

3.13.8.4 On appeal, an applicant may request waiver or modification to any provision in Section 6 (excluding Section 6.20), together with an explanation of why the waiver or modification is appropriate, including testimony as to why the proposed solution included in the application is equal or superior to the result achieved through the strict application of the provisions in Section 6. The Planning Director ~~and Technical Review Committee~~ may offer recommendations to the Board of Adjustment regarding any requested waiver or modification and the sufficiency of the evidence in support of granting the waiver or modification.

3.13.8.5 The Board of Adjustment may reverse or affirm, wholly or partly, or may modify the decision appealed from. The Board of Adjustment shall make any order, requirement, decision, or determination that ought to be made, including without limitation by granting waivers as set forth above.

3.13.9 VESTING

No statutory vested right is established by approval of a site plan.

3.13.10 MODIFICATIONS

Approval of modifications can be made to the approved Site Plan by applying the procedures and criteria found in Sections 3.9.15, Actions Required of Proposed Minor Changes and 3.9.16, Actions Required on Proposed Modifications of this Ordinance.

3.13.11 REVOCATION

Site Plan Approval may be revoked by the issuing authority following the same procedure and applying the same criteria as established for revocation of conditional use permits in Section 3.9.17, *Revocation* of this Ordinance.

3.13.12 EXPIRATION

Site plan approval expires twenty-four (24) months from the date of approval if a Zoning Compliance Permit has not been issued for the project.

3.8.4 APPLYING THE ORDINANCE TO DETERMINE COMPLIANCE WITH STANDARDS TO MAKE FINDINGS OF FACT

- 3.8.4.1** All of the requirements in this ordinance apply to applications for Special Use Permits.
- 3.8.4.2** Certain uses require specialized information, which is contained in Section 5, *Use Standards*. To the extent that an applicant seeks a Special Use Permit for a use not specifically listed in Section 5, the requirements in Section 5.2.48 shall apply.
- 3.8.4.3** To the extent that an applicant seeks a Special Use Permit for a parcel which does not have a specified development standard based on the zoning designation assigned to that parcel, the standard for the Office Institutional zoning district shall apply.
- 3.8.4.4** As Special Uses may have unique characteristics that may not be adequately addressed with development standards for routine uses, an applicant may request a waiver or modification to any provision in Section 6 (excluding Section 6.20), together with an explanation of why the waiver or modification is appropriate, including testimony as to why the proposed solution included in the application is equal or superior to the result achieved through the strict application of the provisions in Section 6. The Planning Director, Technical Review Committee and the Planning Board may offer recommendations to the Town Board regarding any requested waiver or modification and the sufficiency of the evidence in support of granting the waiver or modification. Any approval of a Special Use Permit shall specifically detail any and all waiver(s) or modification(s) granted to the applicant.

3.8.20 DEVIATIONS

After a Special Use Permit has been approved, the Planning Director is authorized to approve minor changes in the approved plans of Special Uses, as long as they are in harmony with action of the Town Board but the Planning Director shall not have the authority to approve changes that constitute a modification of the approved plans. A modification shall require approval of the Town Board. If the Planning Director is uncertain whether a requested deviation is a “minor change” or a “modification”, it shall be treated as a modification and referred to the Town Board for review and approval.

3.8.21 CRITERIA USED FOR DETERMINATION

The Planning Director shall use the following criteria in determining whether a proposed action is a minor change or a modification. For the purposes of this section “significant” shall imply a change this is important to character or appearance of the project and generally refers to items not easily quantifiable; “substantial” shall imply quantities, size, or impact.

- (a) Changes that are consistent with the original approval shall constitute a minor change. Consistency means the changes would not significantly alter the

development's general function, form, intensity, character, demand on public facilities, impact on adjacent properties, or other characteristic from that indicated by the original approval.

- (b) Changes to a specific condition imposed during the approval of a Special Use Permit, expansion of an approved waiver, or the request for a new waiver shall constitute a modification. A change that reduced the need for a granted waiver is a minor change.
- (c) Each of the following shall constitute a modification:
 - i. A substantial change in use.
 - ii. An expansion of building square footage of 20% or greater.
 - iii. A change in any quantifiable standard in this ordinance of ten percent or more. This includes but is not limited to increasing the number of dwellings, increasing or decreasing the amount of parking, increasing the removal of canopy trees, increasing the building height.
- (d) A substantial rearrangement of uses on a site which may impact adjacent or on site uses, open space and recreation provisions, vehicular and pedestrian access to and across that site, vehicular and pedestrian circulation on the site, or public or private infrastructure and utilities installations shall constitute a modification.
- (e) Any combination of minor changes that in the determination of the Planning Director, as substantial or significant and impact the project's consistency with the original approval.

3.8.22 APPLYING CRITERIA

Minor changes and modifications are reviewed only after a permit has been approved. The criteria shall be applied as follows:

- a) When the requested change creates a situation of non-compliance with a quantified standard in the ordinance but does not qualify as a modification under 3.8.21, staff may approve the request as a minor change without triggering a waiver.*
- b) When the requested change modifies a feature or required standard with an approved waiver, the relief granted in the waiver is fixed and not subject to flexibility in 3.8.21.*
- c) When the requested change is for relief similar to that in an approved waiver, but in a different location, that approved waiver cannot be applied to a different location. Staff may the requested change independently and determine if it is a minor change.*
- d) If the requested change qualifies as a modification under 3.8.21 and creates a non-complaint situation, it must be treated as a waiver and a modification.*

Also make the same changes in the Conditional Use Permit section.