City of Graham
Development Ordinances

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ARTICLE I. IN GENERAL

Section 10.1 Intent

The intent of the ordinances in this Chapter are to promote the health, safety and general welfare of the City of Graham and areas within its extraterritorial jurisdiction. The regulatory tools used for this purpose include but are not limited to the zoning ordinance, subdivision ordinance, flood damage prevention ordinance, and other ordinances adopted pursuant to authority granted by Article 19, Chapter 160A of the General Statues of North Carolina.

Section 10.2 Conflict of Interest

a.) A City Council member shall not vote on any rezoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.

b.) A member of a board appointed by the City Council under the Development Ordinance shall not vote on recommendations regarding any zoning map or text amendment where the outcome of the matter being considered is reasonably likely to have a direct, substantial, and readily identifiable financial impact on the member.(Section 10.2 added by City Council 7/11/06)

Section 10.3 Quasi-Judicial Proceedings

A member of the City Council or any appointed board required by law to meet in a quasi-judicial capacity shall not participate in or vote on any matter that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible conflicts include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection. (Section 10.3 added by City Council 7/11/06)

Section 10.4 Amendments in General; Non-Substantive Errors

a) Amendments to the text of this Chapter may be made in accordance with NCGS **§** 160A-364(a), or in the case of non-substantive editorial changes, may be made administratively by the City Planner, as described in subsection (b).

b) Non-Substantive Errors. The City Planner may correct typographical errors, numerical reference errors, spelling errors, errors in section or page numbering and may make similar non-substantive changes to the text of this Chapter without formal adoption by the City Council, provided the changes necessary to correct any errors do not change the meaning of the ordinance. Any correction made pursuant to this section must be documented to the City Council and made a part of the City Council's regular meeting minutes.(Section 10.4 added by City Council 1/8/2013)

Sections 10.5-10.15 Reserved

ARTICLE II. DEFINITIONS

Section 10.16 Definitions

For the purpose of this chapter certain terms and words are defined as follows:

Words used in the present tense include the future tense. Words used in the singular number include the plural, and words used in the plural number include the singular, unless the context of the particular usage clearly indicates otherwise. The word "person" includes a firm, association, organization, partnership, corporation, trust, and company as well as an individual. The word "lot" includes the word "plot" or "parcel." The word "building" includes the word "structure." The word "shall" is always mandatory and not directory. The word "may" is permissive. The words "used" or "occupied" as applied to any land or building shall be construed to include the words "intended," "arranged," or "designated to be used" or "occupied." The words "residential property" shall apply to land zoned for residential use and to other land occupied by residential structures. The words “map,” “zoning map,” or "Graham zoning map" shall mean the zoning map of the City of Graham, North Carolina. The words "article," "zoning ordinance," or "Graham zoning ordinance" shall mean the zoning ordinance of the City of Graham, North Carolina. The words "Graham planning area" or "planning area" shall mean the area within which the City of Graham exercises zoning authority. All other words not defined below shall have their customary dictionary definitions.

Accessory building - A subordinate building, the use of which is purely incidental to that of the main building, located on the same parcel or lot with such principal use or building.

Adult Establishment – See Sexually Oriented Business

Alley - A public or private thoroughfare which affords only a secondary means of access to abutting property.

Bar - An establishment primarily engaged in the retail sale of beer or wine for consumption on the premises. Such establishment must obtain an ABC license for on-premise beer or wine consumption only. The establishment may also be engaged in the retail sale of prepared food for on-premise consumption.

Bed and Breakfast - A private home offering bed and breakfast accommodations to eight or less persons per night for a period of less than a week.

Buffer - (Along a stream or other body of water) An area of natural or planted vegetation through which stormwater runoff flows in a diffuse manner so that the runoff does not form a channel and which provides for infiltration of the runoff and filtering of pollutants. The buffer is measured landward from the normal pool elevation of impounded structures and from the bank of each side of streams or rivers.

Building - Any structure enclosed and isolated by exterior walls or columns constructed or used for residence, business, industry, or other public or private purposes, or accessory thereto, and including tents, manufactured homes, freestanding billboards and signs, fences, and similar structures whether stationary or movable. The term "building" shall be construed as if followed by the words "or parts thereof."

Building, height of - The vertical distance from the mean elevation of the finished grade along the front of the building to the highest point of a flat roof, or to the deck line of a mansard roof, or to the mean height level between eaves and ridge for gable, hip, and gambrel roofs.

Building line - A line that establishes the minimum allowable horizontal distance between the lot line and the nearest portion of any structure on the lot.

Condominium – Two or more single units in a multi-unit structure with common areas and facilities, on one tract of land. Unit owners own only the interior portions of their unit and accessory space and have an undivided interest in the common areas and facilities. Condominium ownership may be created by initial development or by an owner or the co-owners of a structure by an express declaration of their intention to submit such property to the provisions of the "Unit Ownership Act," of North Carolina (Chapter 47A of the North Carolina General Statutes).

Congregate Care Facility - A facility providing shelter and services for ambulatory individuals at least 55 years of age who by reason of their age, functional impairment, or infirmity may require meals housekeeping and personal care assistance. Congregate care facilities do not include nursing homes or similar institutions devoted primarily to the care of the chronically ill or the incurable

Decommissioning Plan – A plan which has the following stipulations and is recorded at the Register of Deeds;

1. Defined conditions upon which decommissioning will be initiated (i.e., end of lease, condition of a potential public safety hazard, etc.)
2. Removal of all non-utility owned equipment, structures, fencing, roads, and foundations, etc.; and restoration of property to condition prior to development of the development.
3. The time-frame for completion of removal and decommissioning activities.
4. Signed statement from the party responsible for completing the Decommissioning Plan acknowledging such responsibility. *(Added 2/2/2016)*

Detention Pond - A pond which collects stormwater runoff, filters the water and releases it slowly over a period of hours or days. It does not have a permanent pool and is sometimes referred to as a dry pond or wet weather pond.

Development, Future – Any human-caused change to improved or unimproved real estate that requires a permit or approval from any agency of the city or county, including but not limited to buildings or other structures, mining, filling, grading, paving, excavation or drilling operations.

Dwelling, multifamily - A building or portion thereof, used or designated as a residence for three or more families living independently of each other and doing their own cooking therein, including apartment buildings.

Dwelling, single-family - A detached building designated for occupancy exclusively for one family. A manufactured home or "trailer" is not included in this definition, regardless of its degree of permanence or its attachment to the land.

Dwelling, two-family - A detached building designed for occupancy exclusively by two (2) families living independently of each other.

Dwelling unit - An enclosure of one or more rooms designed, occupied or intended for occupancy as separate living quarters, with cooking, sleeping and sanitary facilities provided therein. Units in dormitories, hotels, motels, shelters for the homeless or other structures designed for transient residents are not dwelling units.

Enforcement Officer. The City of Graham building inspector or his designee.

Electronic, Internet or Sweepstakes Gaming - any business or enterprise, whether as a principal or an accessory use, where persons utilize electronic machines, including but not limited to computers and gaming terminals, to conduct games of chance, including but not limited to sweepstakes, and where cash, merchandise or other items of value are redeemed or otherwise distributed, whether or not the value of such distribution is determined by electronic games played or by predetermined odds. Such businesses or enterprises have as a part of its operation the running of one or more games or processes with any of the following characteristics: (1) payment, directly or as an intended addition to the purchase of a product, whereby the customer receives one or more electronic sweepstakes tickets, cards, tokens or similar items entitling or empowering the customer to enter a sweepstakes, and without which item the customer would be unable to enter the sweepstakes; or, (2) payment, directly or as an intended addition to the purchase of a product, whereby the customer can request a no purchase necessary free entry of one or more sweepstakes tickets or other item entitling the customer to enter a sweepstakes. The term electronic gaming operations includes, but is not limited to, cyber-gambling establishments, internet cafés, internet sweepstakes, beach sweepstakes, video sweepstakes or cybercafés, who have a finite pool of winners. This does not include any lottery endorsed or permitted by the State of North Carolina.

Family - One or more persons occupying a premises and living as a single housekeeping unit, as distinguished from a group occupying a boarding house, lodging house, or hotel.

Family Care Home – A home that provides room and board, support and supervisory personnel and personal care and habilitation services for 2 to 6 resident persons with disabilities (as defined in NCGS **§** 168-21(2) or its successor) in a family environment.

Farmer's Market - A use that offers for sale fresh agricultural products directly to the consumer in a market setting that caters to the immediate community. Farmer's markets include multiple vendors who offer horticultural or agricultural products raised by the vendor for retail sale including, perennials, annuals bulbs, dried flowers, Christmas trees, handmade crafts, baked goods, fresh produce, meat, dairy, honey, cider, and similar products, excluding the sale of live animals.

Garage, private - A garage used for storage purposes only and having a capacity of not more than three automobiles or not more than one automobile per family household in the building to which such garage is accessory, whichever is greater, and in which space may be used for not more than one commercial vehicle; and in which space may be rented for not more than three (3) vehicles of other than occupants of the building to which such garage is accessory.

Greenway - Public open space owned and maintained by the local government which has been designated on an officially adopted greenway plan.

Group Care Facility – A facility with support and supervisory personnel that provides room and board, personal care or habilitation services in a group environment for more than 6 people. Examples include

homeless shelters, transitional housing shelters, substance abuse programs or halfway houses. This does not include “Family Care Homes.”

Group Home – A facility with support and supervisory personnel that provides room and board, personal care or habilitation services in a residential environment for not more than 6 people. This does not include “Family Care Homes.”

Hazardous or Toxic Substance - Any solid waste as defined in NCGS 130A-290(18), or any substance regulated under the Federal Toxic Substance Control Act of 1976, (PL 94-476), as amended from time to time, which because of its quantity, concentration, or physical chemical or infectious characteristic(s) may: 1) cause or significantly contribute to an increase in serious irreversible or incapacitating illness, or; 2) pose a substantial present or potential threat to the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Hazardous Waste Generator - Any person whose act or process produces hazardous waste or toxic substance identified or listed in Part 261 of the North Carolina Hazardous Waste Management Rules or whose act first causes a hazardous waste or toxic substance to become subject to regulation provided that, "generator" does not include a facility which accepts hazardous waste or toxic substances for the purpose of treatment, storage, or disposal, and in that process creates a different hazardous waste or toxic substance.

Hazardous Waste Long-Term Storage Facility - Any facility or any portion of a facility constructed for storage of the residuals of the treatment of hazardous waste, on or in land.

Hazardous Waste Management - The systematic control of the collection, source separation, storage, transportation, processing, treatment, recovery and disposal of hazardous wastes.

Hazardous Waste Treatment Facility - A facility which is established and operated for the recovery, recycling, treatment, storage during collection and prior to treatment, short-term storage after treatment, collection, processing, volume reduction, source separation, or transportation used exclusively in connection with the facility, of hazardous waste; and which facility includes several of the following equipment and processes: Incinerators, rotary kilns, drum handling, washing and crushing facilities, raw waste tank storage, reduction, neutralization, detoxification, wastewater treatment facilities including settling systems, aerobic digester, anaerobic digester, clarifiers, neutralization facilities, solidifying facilities, evaporators, reactions to facilitate "reuse" or recycling, analytical capabilities, and other similar appropriate technologies, activities and processes as may now exist or be developed in the future.

Historic Structure - Any structure that is: 1) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register; 2) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district; 3) individually listed on a state inventory of historic places; 4) individually listed on a local inventory of historic places in communities with historic preservation programs that have been certified (a) by an approved state program as determined by the Secretary of Interior or (b) directly by the Secretary of Interior in states without approved programs.

Home Occupation – A profession or occupation carried on by a person residing on the premises. Home occupations are permitted only as an incidental use inside the home and must operate within the following guidelines, without changing the essential residential character of the dwelling:

(1) A home occupation shall occupy no more than 25% of the gross floor area of a dwelling unit.

(2) There shall be no outdoor storage or visible evidence of equipment or materials used in the home occupation, unless the equipment or materials are of a type and quantity that could reasonable associated with the principal residential use. One commercial road-legal vehicle, with no more than three axles is permitted. A single trailer used for cargo/storage, but no construction or industrial equipment can be stored on the trailer for more than seven days.

(3) The home occupation must be conducted entirely within a dwelling unit. Up to one third or one hundred square feet (whichever is larger) of an accessory building may be used in connection with the business.

(4) Only one person may be employed who is not an occupant of the residence. Employees may not come to the residence for exterior work purposes, including pick-up of materials, vehicles, assignments, or similar purposes.

(5) Activities shall not generate traffic, parking, noise, odors or electrical interference beyond that normally occurring in the zoning district.

(6) Instruction in music, dancing, art or similar subjects shall be limited to no more than five students at a time.

(7) Sign Specifications: See Section 10-398 (2).

Impervious Surface Coverage - That portion of a lot covered by buildings, structures, paving or other impervious surface materials.

Interior Living Space - All area within the exterior walls of a single-family dwelling, excluding garages, utility space and storage within garages, and all un-glassed porches or stoops.

Junked Motor Vehicle - A motor vehicle that does not display a current license plate and is one or more of the following: 1) is partially dismantled of wrecked; or 2) cannot be self-propelled or moved in the manner in which it originally was intended to move; or 3) more than five years old and appears to be worth less than $100.00; provided that any motor vehicle used on a regular basis for business or personal use shall not be caused to be removed or disposed.

Junk yard and/or salvage operations – A lot, land or structure or part thereof used primarily for the storage of worn-out or wrecked automobiles and motor vehicles; for the collecting, processing, storage and/or sale of salvage paper, animal hides, rags, rubber, glass, scrap metal, lumber or other used building materials; or for the dismantling, storing and salvaging of machinery or vehicles or for the sales of parts thereof.

Landfill, Demolition and Construction Debris – A disposal site for stumps, limbs, leaves, concrete, brick, wood and uncontaminated earth. Disposal of any other types of wastes must be approved by the State Division of Health Services.

Landfill, Sanitary, Solid Waste – A site for solid waste disposal from residential, industrial or commercial activities

Lot – A parcel of land, not divided by streets, occupied or to be occupied by a building and its accessory buildings, or by a unified business or housing development and its accessory buildings, together with such open spaces as are required under the provisions of law, and having its principal frontage on a street or other means of access.

Lot, corner – A lot or portion of a lot at the junction of and abutting upon two or more streets.

Lot, depth of – The mean horizontal distance between the front and rear lot lines.

Lot, flag – An interior lot located to the rear of another lot, but with a narrow portion of the lot extending to a street.

Lot, Front Of – The front of a lot shall be considered to be that side of the lot which fronts on a street. In the case of a corner lot, the narrowest side fronting on a street shall be considered to be the front of the lot. In case the corner lot has equal frontage on two (2) or more streets, the lot shall be considered to front on that street on which the greatest number of lots front, or if un-platted, on that street on which the greatest number of buildings have been erected.

Lot, Interior – A lot other than a corner lot.

Lot Lines – The lines bounding a lot as defined herein.

Lot of Record - A lot which is part of a subdivision, a plat of which has been recorded in the office of the register of deeds of Alamance County, or a lot described by metes and bounds, the description of which has been so recorded.

Lot, Reversed Corner - A corner lot which does not front on the same street with the interior lots on the same side, as distinguished from the same end of the block.

Lot, Through - A lot having a frontage on two parallel or approximately parallel streets.

Lot, width of - The mean horizontal distance between the side lot lines.

Marquee - Any device or structure maintained or used as a canopy or sidewalk cover projecting from the side of any building over any public sidewalk, street, or other public place.

Manufactured Home - (See G.S.143-145(7)) A structure, transportable in one or more sections, which in the traveling mode is eight body feet or more in width, or 40 body feet or more in length, or, when erected on site, is 320 or more square feet; and which is built on a permanent chassis and designed to be used as a dwelling, with or without permanent foundation when connected to the required utilities, including the plumbing, heating, air conditioning and electrical systems contained in it. "Manufactured home" includes any structure that meets all of the requirements of this definition except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the U.S. Secretary of Housing and Urban Development and complies with the standards established under the National Manufactured Housing Construction and Safety Standards Act of 1976.

1) Class AA: A manufactured home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U. S. Department of Housing and Urban Development that were in effect at the time of construction and that satisfies the following additional criteria:

   (a) Is occupied only as a single family dwelling

   (b) Has a minimum width of 16 feet;

   (c) Has a length not exceeding four times its width, with length measured along the longest axis and width measured perpendicular to the longest axis at the narrowest part;

   (d) Has a minimum of 1000 sq. ft. of enclosed and heated living area;

   (e) Has the towing apparatus, wheels, axles, and transporting lights removed and not included in length and width measurements;

   (f) Is set up in accordance with standards established by the N. C. Department of Insurance. In addition, all manufactured homes moved into the City of Graham or its extraterritorial jurisdiction shall be skirted. A time limit of up to sixty (60) days shall be granted to install skirting. After the sixty-day period the building inspector shall inspect the skirting for compliance with this subsection. Skirting must be of a noncorrosive, durable material such as vinyl or other suitable material approved by the building inspector. The color shall be in keeping with the color scheme of the manufactured home. All removable hitches shall be removed.

   (g) Has exterior siding, comparable to the exterior siding commonly used in standard residential construction, consisting of one or more of the following: 1) vinyl or aluminum lap siding (whose reflectivity does not exceed that of flat white paint); 2) cedar or other wood siding; 3) wood grain, weather resistant press board siding; 4) stucco siding; or 5) brick or stone siding;

   (h) Has a roof pitch minimum vertical rise of three feet for each 12 feet of horizontal run;

   (i) Has a roof finish with a Class C or better roofing material that is commonly used in standard residential construction;

   (j) Has an eave projection of no less than six inches, which may include a gutter; and

   (k) Has stairs, porches, entrance platforms, ramps and other means of entrance and exit installed or constructed in accordance with the standards set by the North Carolina State Building Code, anchored securely to the ground. Wood stairs shall only be used in conjunction with a porch or entrance platform with a minimum of 24 square feet. The use of wood stairs alone is prohibited at any entrance.

2) Class A: A manufactured home meeting the AA requirements above with the following exceptions: the minimum square footage is 700 square feet rather than 1000 square feet and requirements b) and i) above are not applicable.

3) Class B: A manufactured home constructed after July 1, 1976 that meets or exceeds the construction standards promulgated by the U. S. Department of Housing and Urban Development that were in effect at the time of construction, and that meet or exceed criteria (f) and (h) for Class AA manufactured dwellings above.

4) Class C: Any portable manufactured housing unit built before July 1, 1976 that does not meet the definitional criteria of a Class A or Class B manufactured dwellings above. Class C manufactured homes are a nonconforming use in Graham. They may not be brought into the City's zoning jurisdiction, nor be moved from one location to another other than for the purpose of moving them out of the City's jurisdiction.

Manufactured Home Park - A group development site with required improvements and utilities for the long-term location of two or more manufactured dwellings for rental purposes, which development may include services and facilities for the residents.

Manufactured Home Space- A designated area of land within a manufactured dwelling park designed for the accommodation of a single manufactured dwelling in accordance with the requirements of this Ordinance.

Nonconforming Buildings – A nonconforming building is a building that was lawfully erected (or for which a vested right had been established) but that, as a result of adoption of or amendments to this ordinance or of the property coming under the jurisdiction of this ordinance or by governmental action in the acquisition of public rights-of-way, does not conform to the minimum setbacks, maximum height or other requirements specific to buildings (such as materials or colors) of the zoning district in which it is located.

Nonconforming Lots – A nonconforming lot is a lot that was lawfully created (or for which a vested right had been established) but that, as a result of adoption of or amendments to this ordinance or of the lot coming under the jurisdiction of this ordinance or by governmental action in the acquisition of public rights-of-way, does not conform to the minimum lot area or minimum lot width of the zoning district in which it is located.

Nonconforming Site Elements – A nonconforming site element is a physical feature of a site, such as parking, landscaping or signage, that was lawfully established (or for which a vested right had been established) on a property but that, as a result of adoption of or amendments to this ordinance or of the property coming under the jurisdiction of this ordinance or by governmental action in the acquisition of public rights-of-way, does not conform to the requirements for that site element.

Nonconforming Uses – A nonconforming use is a use of land or buildings that was lawfully established (or for which a vested right had been established) prior to the effective date of current use regulations or prior to coming under the jurisdiction of this ordinance, but does not conform to the permitted uses for the zoning district in which it is located.

Nursing Home – An establishment which provides full-time convalescent or chronic care, or both, who are not related by blood or marriage to the operator or who, by reason of advanced age, chronic illness or infirmity, are unable to care for themselves.

Opaque screen – Evergreen planting, or a durable wall or fence at least six feet in height but not greater than eight feet in height, except where a greater height is required by this chapter, which forms a solid

visual barrier. Evergreen plantings shall be planted at an initial height of at least three feet and shall be of such variety that an average height of six feet can be expected by normal growth no later than two years after the time of planting. Such plantings shall be permanently maintained in a condition which meets the requirements of this definition.

Planned Unit Development – An area of land under unified ownership or control to be developed and improved as a single entity under a unified development plan in accordance with and subject to the requirements of Graham's Planned Unit Development regulations.

Planning Board – The Graham planning board appointed by the City Council to carry out the duties set forth in G.S.160A-361.

Principal Structure or Building – A structure or building containing the lot's principal use.

Principal Use – The primary purpose or function that a lot serves or is intended to serve.

Recreational Vehicle – Any vehicle or similar portable structure mounted on wheels, designed and intended primarily for short-term (under two weeks) occupancy for dwelling or sleeping or other habitations, and also, including any such vehicle which does not contain as an integral part of its construction kitchen facilities and a completely equipped bathroom consisting of a flush toilet, lavatory and bathtub or shower.

Setback - The distance between a street line, and the required front building line of a principal structure or building, projected to the side lines of the lot.

Sexually Oriented Business - An adult arcade, adult bookstore or adult video store, adult cabaret, adult massage parlor, adult motel, adult motion picture theater, adult theater, escort agency, nude model studio, sexual encounter center, or any combination of the foregoing. As used in this Ordinance, the following definitions shall apply:

1) Adult Arcade (also known as "peep show") – Any place to which the public is permitted or invited wherein coin-operated or token-operated or electronically, electrically controlled still or motion picture machines, projectors, or other image-producing devices are maintained to show images to persons in booths or viewing rooms where the images so displayed depict or describe specified sexual activities and/or specified anatomical areas.

2) Adult Bookstore, Adult Video Store, or Adult Novelty Store – A commercial establishment which has: as one of its principal business purposes the sale or rental of any one of the following, or a substantial or significant portion of its stock in trade for sale or rental of any one of the following:

    a) books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes or video reproductions, slides, or other visual representations that depict or describe specified sexual activities and/or specified anatomical areas; or

    b) instruments, devices, or paraphernalia that are designed for use in connection with specified sexual activities.

A commercial establishment may have other business purposes that do not involve the offering for sale or rental of material depicting specified sexual activities or specified anatomical areas and still be categorized as Adult Bookstore, Adult Video Store, or Adult Novelty Store. Such other business purposes will not serve to exempt such commercial establishments from being categorized as an Adult Bookstore, Adult Video Store, or Adult Novelty Store so long as one of its principal business purposes is the offering for sale or rental for any form of consideration the specified materials which are characterized by the depiction or description of specified sexual activities or specified anatomical areas.

3) Adult Cabaret – A nightclub, bar, restaurant, or other commercial establishment that regularly features, exhibits, or displays as one of its principal business purposes:

   a) Persons who appear nude or semi-nude; or

   b) Live performances which are characterized by the exposure of specified anatomical areas and/or by specified sexual activities; or

   c) Films, motion pictures, videocassettes, slides, or other photographic reproductions that depict or describe specified sexual activities and/or specified anatomical areas.

4) Adult Massage Parlor - A commercial establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation of the human body is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist, or similar professional person licensed by the State. This definition does not include an athletic club, physical fitness center, school, gymnasium, or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service.

5) Adult Motel – A hotel, motel, or similar commercial establishment that:

   a) Offers accommodations to the public, for any form of consideration and provides patrons with closed-circuit television transmissions, films, motion pictures, videocassettes, slides, or other photographic reproductions that depict or describe specified sexual activities and/or specified anatomical areas as one of its principal business purposes; or

   b) Offers a sleeping room for rent for a period of time that is less than ten (10) hours; or

   c) Allows a tenant or occupant of a sleeping room to subrent the room for a period of time that is less than ten (10) hours.

6) Adult Mini Motion Picture Theater – An enclosed building with viewing booths designed to hold patrons which is used for presenting motion pictures, a preponderance of which are distinguished or characterized by an emphasis on matter depicting, describing, or relating to specified sexual activities or specified anatomical areas.

7) Adult Motion Picture Theater – A commercial establishment where, for any form of consideration, films, motion pictures, videocassettes, slides, or similar photographic

reproductions are regularly shown as one of its principal business purposes that depict or describe specified sexual activities and/or specified anatomical areas.

8) Adult Theater – A theater, concert hall, auditorium, or similar commercial establishment which regularly features, exhibits, or displays as one of its principal business purposes, persons who appear in a state of nudity or semi-nudity, or live performances that expose or depict specified anatomical areas and/or specified sexual activities.

9) Escort – A person who, for tips or any other form of consideration, agrees or offers to act as a date for another person, or who agrees or offers to privately model lingerie or to privately perform a striptease for another person.

10) Escort Agency – A person or business that furnishes, offers to furnish, or advertises to furnish escorts as one of its principal business purposes, for a fee, tip, or any other form of consideration.

11) Nude Model Studio – Any place where a person who appears nude or semi-nude, or who displays specified anatomical areas is provided to be observed, sketched, drawn, painted, sculptured, photographed, or similarly depicted by other persons who pay money or any other form of consideration. Nude Model Studio shall not include a preparatory school licensed by the State of North Carolina or a college, junior college, or university supported entirely or in part by public taxation; a private college or university which maintains and operates educational programs in which credits are transferable to a college, junior college, or university supported entirely or partly by taxation.

12) Nude or A State of Nudity – The appearance of a human anus, male genitals, or female genitals; or a state of dress which fails to opaquely cover a human anus, male genitals, or female genitals.

13) Semi-Nude – A state of dress in which clothing covers no more than the genitals, pubic region, and areola of the female breast, as well as portions of the body covered by supporting straps or devices.

14) Sexual Encounter Center – A business or commercial enterprise that, as one of its principal business purposes, offers for any form of consideration physical contact in the form of wrestling or tumbling between persons of the opposite sex, or activities between male and female persons and/or persons of the same sex when one or more of the persons is in a state of nudity or semi-nude.

15) Specified Anatomical Areas – Less than completely and opaquely covered human genitals, pubic region, buttock, or female breast below a point immediately above the top of the areola; or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

16) Specified Sexual Activities – Includes any of the following:

    a) Human genitals in a state of sexual stimulation, arousal, or tumescence; or

    b) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus, or female breasts; or

c) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy; or

d) Masturbation, actual or simulated; or

e) Masochism, erotic or sexually oriented torture, beating or the infliction of pain; or

f) Erotic or lewd touching, fondling, or other contact with an animal by a human being; or

g) Human excretion, urination, menstruation, vaginal or anal irrigation.

Sign - A sign is any words, lettering, parts of letters, pictures, figures, numerals, phrases, sentences, emblems, devices, design, trade names, or trademarks by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a business, a commodity, or product, which are visible from any public way and used to attract attention.

Site Specific Development Plan - A plan of land development submitted for approval by the City Council for the purpose of obtaining a vested right pursuant to NCGS 160A-385.1.

Solar Farm – A utility-scale commercial solar energy system, the full size of which (including all equipment, accessory buildings, and planting yards) is one acre or more. Solar Farm site plans shall require the approval of the TRC. *(Added 2/2/2016)*

Special Use Permit - A special use permit may be granted by the City Council or Board of Adjustment for a specified land use which is permitted in a given zoning district under ordinance provisions which authorize the use when the Board makes specified findings. Special use features introduce flexibility into the zoning ordinance so that uses that might otherwise be unsuitable in a district can be made satisfactory to the neighbors.

Stormwater Runoff - The direct runoff of water resulting from precipitation in any form.

Stream - A water course that collects surface runoff.

Stealth - The technology of, or the structure containing telecommunications or telephone communications antennae in a structure or building so that the antennae are disguised to look like something else. Examples include steeples, bell and clock towers, silos, pine trees, office buildings and others.

Street - A public thoroughfare which affords the principal means of access to abutting property. Furthermore, a street shall be considered a public right-of-way set aside for public travel if it:
(1) Has been accepted for maintenance by the State of North Carolina or by the City of Graham; or
(2) Has been established as a public street prior to the date of adoption of this article; or
(3) Has been dedicated to the City of Graham or the State of North Carolina for public travel by the recording of a plat of a subdivision which has been approved by the Graham planning board or by city council.

Street Line - A dividing line between a lot and a street right-of-way.

Thoroughfare Plan - A plan adopted by the governing body for the development of existing and proposed major streets that will adequately serve the future travel needs of an area in an efficient and cost effective manner.

Tower, Communications: A structure designed to support antennae used for transmitting or receiving telephone communications and or telecommunications.

Tower, Microwave - A structure designed to support antennae used for transmitting or receiving microwave communications and/or signals.

Tower, Radio and Television Transmission - A structure of wires, poles, rods, reflecting disc or similar devices used for transmitting or receiving television, or radio signals, excluding satellite dish antennae.

Townhouse – One or more structures containing a total of two or more units intended for owner occupancy, where ownership of the land beneath each unit runs with that unit, where units and the individually owned lands on which they rest do not meet conventional lot requirements for street frontage and yard sized and where walls between units are constructed in accordance with north Carolina State Building Code requirements.

Townhouse Lot - A parcel of land intended as a unit for transfer of ownership and lying underneath, or underneath and around a townhouse, patio home, or unit in nonresidential group development.

Toxic Substance - Any substance or combination of substances (including disease causing agents), which after discharge and upon exposure, ingestion, inhalation, or assimilation into any organism, whether directly from the environment or indirectly by ingestion through food chains, has the potential to cause death, disease, behavioral abnormalities, cancer, genetic mutation, physiological malfunctions (including malfunctions or suppression in reproduction or growth) or physical deformities in such organisms or their off spring or other adverse health effects.

Usable Open Space - A parcel or parcels of land or an area of water or a combination of both land and water designed for the recreational use and enjoyment of residents of the proposed development, not including streets or off-street parking areas. Not more than one-half of the required usable open space may be areas covered by water. Usable open space shall be substantially free of structures but may contain such improvements as are appropriate for the benefit of residents. A maximum of five percent of the area designated as usable open space may be covered by structures clearly related to the recreational use of the space. Except for such structures, all usable open space shall be unobstructed except for plants, lawn furniture, swimming pools, terraces, walkways, play equipment, etc., so arranged as to provide for the free movement of the people within the space. No portion of any such usable open space shall be located in any required yard area adjacent to a public street.

Variance. A modification or alteration of zoning requirements when strict enforcement of this ordinance would cause undue hardship because of circumstances unique to the individual property for which the variance is granted. Only the Board of Adjustment can do this after specific findings of fact.

Yard, Front - A front yard is an open unoccupied space on the same lot with a main building, extending the full width of the lot and situated between the front line of the lot and the front line of the building projected to the side lines of the lot. The depth of the front yard shall be measured between the front line of the building and the front line of the lot. Covered porches, whether enclosed or unenclosed, shall be considered as part of the main building and shall not project into a required yard.

Yard, Rear - A rear yard is an open space on the same lot with a main building, unoccupied except as hereinafter permitted, extending the full width of the lot and situated between the rear line of the lot and the rear line of the building.

Yard, Side - A side yard is an open unoccupied space on the same lot with a main building, situated between the side lines of the building and the adjacent side line of the lot, and extending from the rear lines of the front yard to the front line of the rear yard. If there be no front yard, the front boundary of the side yard shall be the front line of the lot and if there be no rear yard, the rear boundary of the side yard shall be the rear line of the lot.

Zoning Enforcement Officer - The City of Graham Chief Code Enforcement Officer or his designee.

Zoning Vested Right - A right pursuant to NCGS 160A.385.1 to undertake and complete the development and use of property under the terms and conditions of an approved site development plan, or as conferred by the granting of a special use permit.

(Section 10.16 amended 04/02/01, 10/07/03, 08/07/12, 1/8/2013, 11/5/2013, 2/2/2016)

ARTICLE III. PLANNING BOARD

Section 10.17 Created

There is hereby created a planning board, referred to in this article as the "board," to be composed of seven members**,** five members appointed by the city and two members appointed by the county commissioners to represent the extraterritorial area. All members of the board, before entering upon their duties, shall take and subscribe to the oath of office required to be taken by officials of the city.

(Section 10.21 amended by City Council 1/8/2013)

Section 10.18 Compensation of members

The members of the board shall serve without pay, except that the city council may provide a per diem for attendance at meetings. The planning board, as soon as practicable after its appointment, shall meet and organize by electing one of its members chairman, and shall also elect a secretary, who may be a member of the board, and shall meet thereafter at some designated place on the third Tuesday in each month for the transaction of its business, and more often if necessary.

Section 10.19 Voting

For any meeting of the planning board, a quorum shall consist of a majority of its members. Votes taken by the board shall “pass” when majority of those members present vote in favor of a motion.

Section 10.20 Terms; vacancies; removal

(a) The term of office of the members of the planning board shall be for overlapping terms of three years, notwithstanding appointments in effect at the time of adoption of this amendment. Vacancies occurring for any reason other than expiration of term shall be filled as soon as is reasonably possible after such vacancy occurs by the proper board making the appointment. Such appointment shall be for the period of the unexpired terms, or for a term that is up to two years longer if needed to prevent the termination of four or more terms in the same year. The Board shall elect a Chair and a Vice-Chair, each of whom will serve for one year or until he/she is re-elected or his/her successor is elected. Elections shall occur at the regularly scheduled November meeting of the Board. *(Amended 9/4/2001, 1/8/2013)*

(b) A member may be removed for cause by the City Council for reasons such as repeated absence. If a member is absent or expects to be absent for reasons of health or time out-of-town, that member may request that the absence(s) be excused. Before a member is removed for cause, s/he shall receive a letter from the Council describing the proposed action and giving the member an opportunity to state why the action should or should not be taken.

Section 10.21 Planning and Recommendations

The planning board shall study the resources and needs of the City, and shall recommend to the Council development of plans, maps, and policies for the comprehensive and systematic development of the City, and from time to time recommend revisions and updates to these plans. The planning board shall advise and comment on whether the proposed amendment is consistent with any comprehensive plan that has been adopted and any other officially adopted plan that is applicable. The planning board shall

provide a written recommendation to the governing board that addresses plan consistency and other matters as deemed appropriate by the planning board, but a comment by the planning board that a proposed amendment is inconsistent with the comprehensive plan shall not preclude consideration or approval of the proposed amendment by the governing board. The board may study and recommend ways and means to prevent and relieve congestion, either of population or traffic; to control fire hazards; to regulate signage for purposes of safety and aesthetics, to preserve the natural and historic features of the City, and to beautify the same. It may investigate, prepare surveys of and make recommendations on any matter which will in its opinion make the community a better place in which to live or work.

(Section 10.21 amended by City Council 7/11/2006)

Section 10.22 Zoning and Subdivision Review

The planning board shall review and make recommendations to the Council regarding all proposed amendments to the text of the Development Ordinance, subdivisions, and proposed zoning map amendments. All proposed amendments to the zoning ordinance or zoning map shall be submitted to the planning board for review, comment, and recommendation. If no written report is received from the planning board within 60 days of referral of the amendment to that board, the Council may proceed in its consideration of the amendment without the planning board report. The Council is not bound by the recommendations of the planning board.

(Section 10.22 amended by City Council 7/11/2006)

Section 10.23 Streets and House Numbering

The planning board may develop and recommend for adoption plans for streets and thoroughfares, and other public improvements. In addition, the board shall review and recommend to the council plans for street openings and acceptance and proposals to widen or relocate streets.

The planning board may name streets not previously named, may approve or reject names proposed by owners of additions or developments, may change the designation of streets where misapplications are found to exist and may change the names where names of streets are duplicated; provided, that before any street names are changed a public hearing will be held by the planning board and notification sent to the residents of the streets involved.

It may give numbers to houses and other buildings, may correct numbers improperly given or adopted and, when required, may have all houses properly numbered. All house number shall be a minimum of four (4) inches tall, visible from the street, and of a contrasting color to their background.

Section 10.24 Appropriations

The city council shall include in the annual budget an appropriation in such amount as may be deemed necessary to carry on the operation of the city's planning function including the planning board.

Section 10.25 – 10.35 Reserved

ARTICLE IV. ZONING

DIVISION 1. GENERAL PROVISIONS AND PENALTIES

Section 10.36 Ordinance revised

The zoning ordinance of the City of Graham as adopted by the city council on the eighteenth day of September, 1950, and as amended from time to time, is hereby revised, consolidated, and added to, in order that the zoning ordinance of the City of Graham shall from and after the effective date of re-adoption read as set forth in the following sections.

Section 10.37 Short title

This article shall be known as the "zoning ordinance" and the map herein referred to, which is identified by the title, "The Zoning Atlas of the City of Graham, North Carolina," shall be known as the "zoning map." *(Section 10.37 amended by City Council 10/07/2003)*

Section 10.38 Authority

The provisions of this article are adopted under authority granted by the General Assembly of North Carolina, Chapter 160A, Article 19.

Section 10.39 Purpose

The zoning regulations and districts as herein set forth are being adopted in accordance with a comprehensive plan and are designed to lessen congestion in the streets; to secure safety from fire, panic, and other dangers; to promote good health and the general welfare; to provide adequate light and ventilation, to prevent the overcrowding of land; to avoid undue concentration of population; and to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations are being made with reasonable consideration of the character of the districts and their peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the county.

Section 10.40 Jurisdiction

The regulations set forth in this article shall be applicable not only within the corporate limits of the City of Graham but also within the territory beyond the corporate limits over which the City exercises extraterritorial jurisdiction as provided by law**.**

Section 10.41 Application

The regulations set forth in this article shall apply to all land, every building and every use of land and/or building within the corporate limits of the City of Graham and its extraterritorial area, as now or hereafter fixed.

Section 10.42 Conflict with other laws

Wherever the regulations made under authority of this article require a greater width or size of yards, or require a lower height of building, or require a greater percentage of the lot to be left unoccupied, or impose other higher standards than those required in any other local ordinance or regulation, the provision of this article shall govern. Wherever the provisions of any local ordinance or regulation require a greater width or size of yard, or require a lower height of building, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by this article, the provisions of such local ordinance or regulation shall govern.

Section 10.43 Penalties

Misdemeanor. Violation of this ordinance shall constitute a misdemeanor, punishable as provided as G.S. 14-4.

Civil Penalty. Any violation of this ordinance shall also subject the offender to a civil penalty of $100. If the offender fails to pay the penalty within 10 days of receiving final written notice of a violation, the penalty may be recovered by the City in a civil action in the nature of a debt. A civil penalty may not be appealed to the Board of Adjustment if the offender received a final written notice of violation and did not appeal to the Board of Adjustment within a reasonable time. Each day that any violation continues after receipt of the final written notice of such violation shall constitute a separate violation and a separate offense for purposes of the penalties and remedies specified herein.

Action to Abate or Restrain. In addition to the penalties and remedies above, the City may institute any appropriate action or proceedings to prevent, restrain, correct or abate a violation of this ordinance

Section 10.44 Administration, enforcement generally

The zoning enforcement officer shall administer and enforce this article. He may be provided with the assistance of such other persons as the city manager may direct. If the zoning enforcement officer shall find that any of the provisions of this article are being violated, he shall notify in writing the person responsible for such violation, indicating the nature of the violation and order the action necessary to correct that violation. He shall order the discontinuance of illegal use of land, buildings, or structures; the removal of illegal buildings or structures or of additions, alterations, or structural changes thereto; or the discontinuance of any illegal work being done; and he shall take any other action authorized by this article to insure compliance with, or to prevent violation of, its provisions.

Section 10.45 Zoning permits required

No building or other structure shall be erected, moved, added to, or structurally altered without a zoning permit therefore issued by the zoning enforcement officer. No zoning permit shall be issued except in conformity with the provisions of this article, except after written order from the board of adjustment.

(1) Application for zoning permit. All applications for zoning permits shall be accompanied by plans in duplicate, drawn to scale, showing the actual dimensions and shape of the lot to be built upon and the exact dimensions and locations of the proposed building or alteration. The application shall include such other information as may be required by the zoning enforcement officer, including a description of all existing or proposed buildings or alterations; existing or proposed

uses of the buildings and land; the number of families, housekeeping units, or rental units the buildings are designed to accommodate; conditions existing on the lot; and such other matters as may be necessary to determine conformance with, and provide for the enforcement of this article. One copy of the plans shall be returned to the applicant by the zoning enforcement officer/planner after he shall have marked such copy either as "approved" or "disapproved" and attested to the same by his signature on such copy. The second copy of the plans, similarly marked, shall be kept in the office of the zoning enforcement officer.

(2) Expiration of zoning permit. If the work described in any zoning permit is not begun within 90 days from the date of issuance thereof, said permit shall expire; it shall be canceled by the zoning enforcement officer, and written notice of such cancellation shall be given to the persons affected. If the work described in any zoning permit has not been substantially completed within two years of the date of issuance thereof, said permit shall expire and be canceled by the zoning enforcement officer; and written notice thereof shall be given to the persons affected, together with notice that further work as described in the canceled permit shall not proceed unless and until a new zoning permit has been obtained.

(3) Right of appeal. If the zoning permit is denied, the applicant may appeal the action of the zoning enforcement officer to the Graham board of adjustment.

Section 10.46 Duties of zoning enforcement officer, board of adjustment and city council as to matters of appeal

It is the intention of this article that all questions arising in connection with the enforcement of this article shall be presented first to the zoning enforcement officer, that such questions shall come before the board of adjustment only on appeal from the zoning enforcement officer, and that from the decision of the board of adjustment recourse shall be to the courts as provided by law. It is further the intention of this article that the duties of the Graham City Council in connection with this article shall not include the hearing of appeals from the action of the zoning enforcement officer. The duties of the city council in connection with this article shall be only the duty of considering and passing upon any proposed amendment or repeal of this article.

Section 10.47 Certificate of occupancy required

(a) No land shall be occupied or used, or its use changed, except for farm purposes, and no building hereafter structurally altered, erected, or moved shall be used or its use changed, until a certificate of occupancy shall have been issued by the zoning enforcement officer stating that the building and/or the proposed use thereof complies with the provisions of this article.

(b) A certificate of occupancy, either for the whole or a part of a building, shall be applied for coincident with the application for a zoning permit and shall be issued within 10 days after the erection or structural alterations of such building, or part, shall have been completed conformity with the provisions of this article. A record of all certificates shall be kept on file in the office of the zoning enforcement officer.

Section 10.48 Exceptions; modifications

(a) Existing lots. Where the owner of a plot of land consisting of one or more adjacent lots at the time of the enactment of this article did not at that time own sufficient contiguous land to enable the lots

to conform to the minimum lot size requirements of this article, such plot of land may be used as a building site. The yard and other space requirements of the district in which the piece of land is located may be reduced, by the board of adjustment, by the smallest amount that will permit a house of minimum acceptable size to be built upon the lot.

(b) Building height and area exceptions.

(1) Height. Chimneys, cooling towers, elevators, bulkheads, scenery lofts, monuments, domes, church spires, parapet walls, water towers, transmission towers, aerials, necessary mechanical appurtenances, and similar structures may be erected to any height in accordance with ordinances of the City of Graham.

(2) Area

a. Every part of a required yard shall be open and unobstructed from its lowest level to the sky, except for ordinary projection of sills, belt courses, chimney flues, buttresses, ornamental features, and eaves, provided, however, that none of the aforesaid projections shall project into a minimum side yard more than one-third of the width of such side yard.

b. Open or lattice enclosed fire escapes, fire-proof outside stairways, and balconies opening upon fire towers projecting into a yard shall be permitted where so placed as not to obstruct light and ventilation.

Section 10.49 Zoning map

The "Zoning Atlas of the City of Graham, North Carolina," showing the boundaries of each zoning district, is hereby made a part of this article. The official zoning map of the City of Graham, North Carolina, shall be authenticated by the City Manager or his designee. Regardless of the existence of purported copies of the zoning map which from time to time are made or published, the official zoning map shall be located in the Graham Planning and Zoning Office, and shall be the final authority as to the current zoning status of land and water areas, buildings and other structures in the city and its extraterritorial area. *(Section 10.49 amended by City Council 10/07/2003)*

Section 10.50 New uses or construction

After the effective date of this article all new construction and the moving, altering and enlarging of existing structures shall conform to the use, area, and bulk regulations for the district in which they are, or are to be, located.

Section 10.51 Open space counted for each use

No part of a yard, court or other open space provided around any building or structure for the purpose of complying with the provisions of this article shall be included as a part of a yard or other open space required under this article for another building or structure

Section 10.52 Accessory buildings in rear yards

Accessory buildings may occupy up to 20 percent of the required rear yard.

Section 10.53 Reduction of yard and lot areas

No yard or lot existing at the time of passage of this article shall be reduced in size or area below the minimum requirements set forth herein. Yards and lot created after the effective date of this article shall meet at least the minimum requirements established by this article.

Section 10.54 Projections into public rights-of-way

No signs or other structures shall project beyond the curb line of any street.

Section 10.55 Vision clearance

In all use districts except the B-1 Business District no fence, wall, shrubbery, or other obstructions to vision between the heights of three feet and 16 feet shall be permitted within 20 feet of the intersection of the right-of-way lines of streets or of streets and railroads.

Section 10.56-10.65 Reserved

DIVISION 2. NONCONFORMITIES

Section 10.66 Applicability

The regulations of this division govern lots, uses, buildings and other aspects of development that came into existence lawfully but, as a result of adoption of or amendments to this ordinance or of land coming under the jurisdiction of this ordinance or by governmental action in the acquisition of public rights-of-way, do not conform to one or more requirements of this ordinance.

Section 10.67 Intent

The regulations of this division are intended to recognize the interests of property owners in continuing to use their property for lawful purposes; promote the reuse and rehabilitation of existing buildings; and, place reasonable limits on the expansion and alteration of nonconformities that have the potential to adversely affect surrounding properties or the community as a whole. Nothing in this division shall be deemed to prevent the maintenance or repair necessary to keep a building or site element in sound condition.

Section 10.68 Nonconforming Lots

Nonconforming lots may be used and structures thereon may be built or altered, subject to the following provisions or as otherwise provided for in this ordinance:

(1) All other requirements of this ordinance must be met or a variance may be granted by the Board of Adjustment as provided for in this ordinance.

(2) Where two or more lots of record with contiguous frontage are under common ownership, and one or more is a nonconforming lot, the lots shall be combined or recombined as necessary to form a conforming lot or lots. Where a nonconforming lot was created by public taking action or as a result of a court order, the combination or recombination of lots shall not be required.

Section 10.69 Nonconforming Uses

Nonconforming uses of land or buildings may be continued, subject to the following provisions or as otherwise provided for in this ordinance:

(1) If a nonconforming use ceases for any reason for a period of 180 days, or if a nonconforming use is changed to a conforming use for any period of time, any use of the land or buildings previously devoted to the nonconforming use shall thereafter be devoted to conforming uses.

(2) No nonconforming use shall be extended, expanded, enlarged or moved to occupy a different or greater area of land or buildings than was occupied by such use at the time it became nonconforming, provided that a nonconforming use may be extended throughout any parts of a building which were specifically designed and arranged for such use at the time it became nonconforming. The number of dwelling units of a nonconforming residential use shall not be increased.

(3) No building devoted to a nonconforming use shall be enlarged, extended or moved unless such building is thereafter devoted to a conforming use.

(4) Subsection 3 above does not apply to any nonconforming single family dwelling complying with the NC Residential Building Code. Said building may be enlarged, extended, moved, or reconstructed, subject to any and all other applicable requirements.

Section 10.70 Nonconforming Buildings

Nonconforming buildings may remain and be occupied, subject to the following provisions or as otherwise provided for in this ordinance:

(1) Any enlargement of a nonconforming building must conform to the dimensional requirements of the zoning district unless the Board of Adjustment grants a variance in accordance with the variance provisions of this ordinance. Any building or portion thereof may be altered to decrease its nonconformity.

(2) Should any nonconforming building as defined by the North Carolina Building Code or nonconforming portion of a building be destroyed, in whole or in part, by any means, to an extent of:

a. More than 60 percent of its replacement cost or bulk at the time of destruction, it shall not be reconstructed except in conformity with the provisions of this ordinance, with the exception of nonconforming buildings used as a single family dwelling and complying with the NC Residential Building Code, which may follow the provisions in subsection “b” below.

b. 60 percent or less of its replacement cost or bulk at the time of destruction, it may be reconstructed in the same location and up to the same dimensions as originally existed provided that a permit for reconstruction is obtained within one (1) year of the date of destruction and any requirements for flood damage prevention are met.

Section 10.71 Nonconforming Site Elements

Nonconforming site elements may remain and be continued, subject to the following provisions or as otherwise provided for in this ordinance:

(1) No action shall be taken which increases the degree or extent of the nonconformity of the nonconforming site element.

(2) Where this ordinance requires certain types of site elements to come into conformance with this ordinance, those requirements shall apply in addition to the provisions in this division.

(3) Nonconforming signs may not be relocated.

(4) A nonconforming sign that has been damaged by any cause may be repaired if the cost of the repair does not exceed 50% of the original value or replacement value, whichever is greater.

(5) All nonconforming signs, except outdoor advertising signs, must be brought into compliance or removed (including the entire sign and any or all supports) if any or all of the following occurs:

a. If damage to the sign exceeds 50% of its original value or replacement value, whichever is less;

b. If, apart from normal maintenance or replacement of existing panels, the sign display area is demolished, damaged, or removed to the extent where more than fifty percent (50%) of its display area is affected;

c. If the business or activity on the premises is discontinued for a continuous period of 180 days or more;

d. If additions or expansions of buildings, parking areas, or uses of open land occur that are greater than 3,000 square feet; or

e. If any change in the existing Land Use Classification of the property occurs.

(6) Nonconforming outdoor advertising signs may be converted to single-pole construction, upon obtaining a sign permit, so long as both the height and display surface area of the replacement sign do not exceed the greater of the height and display surface area of the sign replaced or the sign regulations for the applicable zoning district.

Sections 10.72-10.79 Reserved

(Article IV, Division 2 amended 11/5/2013)

DIVISION 3. AMENDMENTS AND REZONINGS

Section 10.80 Authorized

(a) The city council may amend, supplement, or change the text of this article and the zoning map according to the procedures in this division.

(1) Proposed changes or amendments may be initiated by the city council, the planning board, the board of adjustment, or by one or more interested parties, except for the reclassification of property to a conditional zoning district.

(2) An amendment for the reclassification of property to a conditional zoning district may be initiated by the owner of a legal interest in the affected property, any person having an interest in the property by reason of written contract with owner, or an agent authorized in writing to act on the owner's behalf.

(3) A text amendment to these regulations may be initiated by any person.

(Section 10.80 amended by City Council 10/5/2004)

Section 10.81 Application for rezoning

An application shall be in writing and shall be filed at the city hall with the zoning enforcement officer**.** For a rezoning request to be placed on the agenda, the application shall be filed on or before the 25th of the month before the planning board meeting at which consideration is desired**.** Each application shall contain an accurate description of the land involved, a statement of the zoning regulations and/or the district boundaries involved, and a statement of the proposed change of regulations, boundaries, or other ordinance provisions. See Section 10.85 for additional requirements for conditional zoning districts. For each application made by anyone other than one of the official boards, a fee fixed by the city council and kept on file in the office of the city clerk shall be paid to the City of Graham to cover the costs of advertising and other administrative expenses involved.

(Section 10.81 amended by City Council 10/5/2004)

Section 10.82 Action by planning board

The planning board shall consider and make recommendations to the city council concerning each proposed zoning amendment or change. Within 60 days after receiving an application for a zoning amendment or change, the planning board shall make a report to the city council of its recommendations concerning such application. The planning board may hold a public hearing on any application for a zoning amendment or change. At the public hearing, the planning board shall inform those persons present that the city council will hold a public hearing on the application.

Section 10.83 Action by city council

(a) The City Council shall conduct a public hearing on any proposed rezoning amendment to the ordinance or map, at which time parties in interest and citizens shall have an opportunity to be heard. Notice of the public hearing shall be given as follows:

(1) The owner of the considered property as shown on the Alamance County tax listing and the owners of all parcels of land abutting that parcel of land as shown on the Alamance County Tax listing shall be mailed a notice of the public hearing on the proposed amendment by first class mail at the last addresses listed for such owners on the Alamance County tax abstracts. This notice must be deposited in the United States Mail at least 10 but not more than 25 days prior to the date of the public hearing. The person or persons mailing such notices shall certify to the City Council that fact and such certificate shall be deemed conclusive in the absence of fraud.

(2) Provisions of Section 10.83 (a) (1) of the Development Ordinance shall not apply if more than fifty parcels of land are to be considered for rezoning at one time, and the City elects to use the expanded published notice. In this instance, the City may elect to either make the mailed notice provided for in Section 10.83 (a) (1) of the Development Ordinance or may as an alternative elect to publish notice of the hearing as required by law, but provided that each advertisement shall not be less than one-half of a newspaper page in size. The advertisement shall only be effective for property owners who reside in the area of general circulation of the newspaper which publishes the notice. Property owners who reside outside of the newspaper circulation area, according to the address listed on the most recent Alamance County tax listing for the affected property, shall be notified according to the provisions of Section 10.83 (a) (1) of the Development Ordinance.

(3) The City shall prominently post a notice of the public hearing on the site proposed for rezoning or on an adjacent public street or highway right of way. When multiple parcels are included within a proposed zoning map amendment, a posting on each individual parcel is not required, but the City shall post sufficient notices to provide reasonable notices to interested persons.

(4) A notice of the public hearing shall be given once a week for two consecutive calendar weeks in a newspaper of general circulation in the City of Graham. The notice shall be published for the first time not less than 10 days nor more than 25 days before the date fixed for a public hearing.

(b) Before taking such action as it may deem advisable, the city council shall consider-the planning board's recommendation on each proposed zoning amendment. If no recommendation is received from the planning board within 60 days after it has received an application for an amendment or change, the city council may act without such recommendation.

(c) A statement analyzing the reasonableness of the proposed rezoning shall be prepared for each petition for a rezoning to a conditional zoning district.

(d) Prior to adopting or rejecting any zoning amendment, the City Council shall adopt a statement describing whether its action is consistent with an adopted comprehensive plan and any other officially adopted plan that is applicable and explaining why the board considers the action taken to be reasonable and in the public interest.

(Section 10.83 amended by City Council 7/11/2006)

Section 10.84 Protest against amendment

(a) If any resident or property owner in the city, or within the city's extra-territorial jurisdiction, submits a written statement regarding a proposed amendment, modification, or repeal to a zoning ordinance to the clerk to the board at least two business days prior to the proposed vote on such

change, the clerk to the board shall deliver such written statement to the city council., If the proposed change is the subject of a quasi-judicial proceeding under G.S. 160A-388, the clerk shall provide only the names and addresses of the individuals providing written comment, and the provision of such names and addresses to all members of the board shall not disqualify any member of the board from voting.

(b) In case of a denial by the City Council for a requested change in zoning of a particular area, there shall be a six-month waiting period before another request may be presented for the same zone change of the same area.

(Section 10.84 amended by City Council 7/11/2006, 8/2/2016)

Section 10.85 Conditional Zoning Districts

A. Purpose. Conditional zoning districts are zoning districts in which the development and use of the property is subject to predetermined ordinance standards and the rules, regulations, and conditions imposed as part of the legislative decision creating the district and applying it to the particular property. The following zoning district categories are conditional zoning districts:

Conditional Residential District

Conditional Office and Institutional District

Conditional Business District

Conditional Industrial District

Conditional Mixed Use Residential District

Conditional Mixed Use Commercial District

A conditional zoning district allows particular uses to be established only in accordance with specific standards and conditions pertaining to each individual development project. Some land uses are of such a nature or scale that they have significant impacts on both the immediately surrounding area and on the entire community, which cannot be predetermined and controlled by general district standards. There are also circumstances in which a general district designation allowing such a use by right 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 these regulations, the adopted land use plan, and adopted district and area plans. The review process established in this section provides for the accommodation of such uses by a reclassification of property into a conditional zoning district, subject to specific conditions, which ensure compatibility of the use with the use and enjoyment of neighboring properties. A conditional zoning district is generally not intended for securing early zoning for a proposal, except when that proposal is consistent with an approved district or area plan or the proposal can demonstrate that public infrastructure needed to serve the development will be made available in a reasonable time period.

B. Plans and other information to accompany petition

1) Property may be rezoned to a conditional zoning district only in response to and consistent with a petition submitted by the owners of all of the property to be included in the district. A petition

for conditional zoning must include a preliminary site plan and supporting information and text that specifies the actual use or uses intended for the property and any rules, regulations, and conditions that, in addition to all predetermined ordinance requirements, will govern the development and use of the property. The following information must be provided, if applicable:

a) A boundary survey and vicinity map showing the property's total acreage, its zoning classification(s), the general location in relation to major streets, railroads, and/or waterways, the date, and north arrow;

b) All existing easements, reservations, and rights-of-way;

c) Areas in which structures will be located;

d) Proposed use of all land and structures, including the number of residential units and the total square footage of any nonresidential development;

e) All yards, buffers, screening, and landscaping required by these regulations or proposed by the petitioner;

f) All existing and proposed points of access to public streets;

g) Watershed locations and delineation of areas within the regulatory floodplain as shown on the Official Flood Insurance Rate Maps;

h) Proposed phasing, if any;

i) The location of existing and proposed storm drainage patterns and facilities intended to serve the proposed development; and

j) Generalized traffic, parking, and circulation plans.

2) The Planner has the authority to waive any application requirement where the type of use or scale of proposal makes providing that information unnecessary or impractical.

3) In the course of evaluating the proposed use, the Planner, Planning Board, or City Council may request additional information from the petitioner. This information may include the following:

a) Proposed number and general location of all structures;

b) Proposed screening, buffers and landscaping over and above that required by these regulations, as well as proposed treatment of any existing natural features;

c) Existing and general proposed topography, if available, at five-foot contour intervals or less;

d) The location of significant trees on the subject property;

e) Scale of buildings relative to abutting property;

f) Height of structures;

g) Exterior features of proposed development;

h) Any other information needed to demonstrate compliance with these regulations; and

i) Proposed number and location of signs.

4) The preliminary site plan and any supporting text shall constitute part of the petition for all purposes under this Section.

5) The Planner may require the petitioner to submit more than one copy of the petition and preliminary site plan in order to have enough copies available to circulate to other government agencies for review and comment.

C. Approval of conditional zoning district. Conditional zoning district decisions are a legislative process subject to judicial review using the same procedures and standard of review as apply to general use district zoning decisions. In considering any petition for a conditional zoning district, the Council shall act in accordance with Section 10.83, "Action by City Council." Conditional zoning district decisions shall be made in consideration of identified relevant adopted land use plans for the area, including, but not limited to, comprehensive plans, strategic plans, district plans, area plans, neighborhood plans, corridor plans, and other land-use policy documents.

D. Conditions to approval of petition. In approving a petition for the reclassification of property to a conditional zoning district, the Planning Board may recommend, and the City Council request, that reasonable and appropriate conditions be attached to approval of the petition. Any such conditions should relate to the relationship of the proposed use to surrounding property, proposed support facilities such as parking areas and driveways, pedestrian and vehicular circulation systems, screening and buffer areas, the timing of development, street and right-of-way improvements, water and sewer improvements, storm water drainage, the provision of open space, and other matters that the City Council may find appropriate or the petitioner may propose. Such conditions to approval of the petition may include dedication to the City, County or State, as appropriate, of any rights-of-way or easements for streets, water, sewer, or other public utilities necessary to serve the proposed development. The petitioner shall have a reasonable opportunity to consider and respond to any such conditions prior to final action by the City Council.

E. Effect of approval

1) If a petition for conditional zoning is approved, the development and use of the property shall be governed by the predetermined ordinance requirements applicable to the district's category, the approved preliminary site plan for the district, and any additional approved rules, regulations, and conditions, all of which shall constitute the zoning regulations for the approved district and are binding on the property as an amendment to these regulations and to the Zoning Map.

2) If a petition is approved, the petitioner shall comply with all requirements established for obtaining a building permit and certificate of occupancy. Only those uses and structures indicated in the approved petition and preliminary site plan shall be allowed on the subject property. Minor revisions may be authorized pursuant to Section 10.347(b)(4) Administrative Amendments

3) Following the approval of the petition for a conditional zoning district, the subject property shall be identified on the Zoning Map by the appropriate district designation.

4) Any conditional zoning district shall have vested rights pursuant to N.C.G.S. Section 160A-385.1 for the period of time established pursuant to Division 12, Vested Rights, of this Development Ordinance, except as such vested rights may be altered as allowed by N.C.G.S. Section 160A-385.1(e). Vested rights shall remain effective beyond the end of the period of time established pursuant to Division 12 of this Ordinance for any buildings or uses for which a valid building permit had been issued during the vested rights period, so long as such building permit is valid.

F. Review of approval of a conditional zoning district. It is intended that property shall be reclassified to a conditional zoning district only in the event of firm plans to develop the property. Therefore, no sooner than three years after the date of approval of the petition, the Planning Board may examine the progress made toward developing the property in accordance with the approved petition and any conditions attached to the approval. If the Planning Board determines that progress has not been made in accordance with the approved petition and conditions, the Planning Board shall forward to the City Council a report, which may recommend that the property be classified to another district.

(Section 10.85 added by City Council 10/5/2004, amended 11/5/2013)

Section 10.86-10.94 Reserved

DIVISION 4. BOARD OF ADJUSTMENT

Section 10.95 Creation; members; appointment; compensation

There shall be and is hereby created a board of adjustment, referred to in this division as the "board," consisting of five members of the City of Graham Planning Board. Three members shall be citizens and residents of the City of Graham and shall be appointed by the City Council; two members shall be citizens and residents of the area lying outside the corporate limits of the City of Graham (extraterritorial area) but within the Graham planning area and shall be appointed by the Alamance County Board of Commissioners in accordance with section 160A-362 of the General Statutes of North Carolina. Extraterritorial members shall have equal rights, privileges, and duties with the other members. The Council shall appoint the remaining two members of the City of Graham Planning Board as alternate members to serve on the board in the absence or temporary disqualification of any City member or to fill a vacancy pending appointment of a City member. Alternate members shall be appointed for the same term, at the same time, and in the same manner as City members. Each alternate serving on behalf of any City member has all the powers and duties of a City member. The members of the board shall receive no compensation for their services.

Section 10.96 Proceedings generally

(1) Officers. The board shall elect a chair and a vice-chair, each of whom shall serve for one year or until s/he is re-elected or his/her successor is elected. The board shall appoint a secretary who may be an officer or an employee of the city.

(2) Notice of Hearing. Notice of hearings conducted pursuant to this section shall be mailed to the person or entity whose appeal, 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; to the owners of all parcels of land abutting the parcel of land that is the subject of the hearing; and to any other persons entitled to receive notice as provided by this ordinance. In the absence of evidence to the contrary, the city 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. Within that same time period, the city shall also prominently post a notice of the hearing on the site that is the subject of the hearing or on adjacent street or highway right-of-way.

(3) Meetings. The board shall adopt rules for the conduct of its business. Meetings shall be held at the call of the chair and at such other times as the board may determine. A quorum for a meeting shall consist of a majority of the members of the board, not including vacancies. All meetings of the board shall be open to the public. The secretary shall keep minutes of the proceedings, showing the vote of each member upon each question or, if absent or failing to vote, indicating such fact. The board shall keep records of its examinations and other official actions, all of which shall be filed immediately in the office of the board and shall be a public record.

(4) Oaths. The chair or, in his/her absence, the vice-chair, and the clerk to the board are authorized to administer oaths to witnesses in any matter coming before the board. Any person who, while under oath during a proceeding before the board, willfully swears falsely is guilty of a Class 1 misdemeanor.

(5) Subpoenas. The board through the chair, or in the chair's absence anyone acting as chair, may compel the production of evidence and the attendance of witnesses by subpoena. To request issuance of a subpoena, persons with standing under G.S. 160A-393(d) may make a written request to the chair explaining why it is necessary for certain witnesses or evidence to be compelled. The chair shall issue requested subpoenas he or she determines to be relevant, reasonable in nature and scope, and not oppressive. The chair shall rule on any motion to quash or modify a subpoena. Decisions regarding subpoenas made by the chair may be appealed to the full board. If a person fails or refuses to obey a subpoena issued pursuant to this subsection, the board or the party seeking the subpoena may apply to the General Court of Justice for an order requiring that its subpoena be obeyed, and the court shall have jurisdiction to issue these orders after notice to all proper parties.

Section 10.97 Powers and duties generally

The board may hear and decide requests for variances and appeals of decisions of administrative officials charged with enforcement of the ordinance. As used in this section, the term "decision" includes any final and binding order, requirement, or determination. The board shall follow quasi-judicial procedures when deciding appeals and requests for variances. The board shall have the following powers and duties:

(1) Appeals. To hear and decide appeals where it is alleged there is error in any order, requirement, decision, or determination made by an administrative official in the enforcement of this article. The board shall hear and decide appeals decisions of administrative officials charged with enforcement of the development ordinance and may hear appeals arising out of any other ordinance that regulates land use or development, pursuant to all of the following:

(a) Any person who has standing under G.S. 160A-393(d) or the city may appeal a decision to the board of adjustment. An appeal is taken by filing a notice of appeal with the city clerk. The notice of appeal shall state the grounds for the appeal.

(b) The official who made the decision shall give a written notice to the owner of the property that is the subject of the decision and to the party who sought the decision, if different from the owner. The written notice shall be delivered by personal delivery, electronic mail, or by first-class mail.

(c) The owner or other party shall have 30 days from receipt of the written notice within which to file an appeal. Any other person with standing to appeal shall have 30 days from receipt from any source of actual or constructive notice of the decision within which to file an appeal.

(d) It shall be conclusively presumed that all persons with standing to appeal have constructive notice of the decision from the date a sign containing the words "Zoning Decision" or "Subdivision Decision" in letters at least six inches high and identifying the means to contact an official for information about the decision is prominently posted on the property that is the subject of the decision, provided the sign remains on the property for at least 10 days. Posting of signs is not the only form of constructive notice. Any such posting shall be the responsibility of the landowner or applicant. Verification of the posting shall be provided to the official who made the decision. Absent an ordinance provision to the contrary, posting of signs shall not be required.

(e) The official who made the decision shall transmit to the board all documents and exhibits constituting the record upon which the action appealed from is taken. The official shall also provide a copy of the record to the appellant and to the owner of the property that is the subject of the appeal if the appellant is not the owner.

(f) An appeal of a notice of violation or other enforcement order stays enforcement of the action appealed from unless the official who made the decision 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 the 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 official a request for an expedited hearing of the appeal, and the board shall meet to hear the appeal within 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 the 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 or building permits affected by the issue being appealed.

(g) Subject to the provisions of subsection (f) above, the board shall hear and decide the appeal within a reasonable time.

(h) The official who made the decision shall be present at the hearing as a witness. The appellant shall not be limited at the hearing to matters stated in the notice of appeal. If any party or the city would be unduly prejudiced by the presentation of matters not presented in the notice of appeal, the board shall continue the hearing. The board of may reverse or affirm, wholly or

partly, or may modify the decision appealed from and shall make any order, requirement, decision, or determination that ought to be made. The board shall have all the powers of the official who made the decision.

(i) When hearing an appeal pursuant to G.S. 160A-400.9(e) or any other appeal in the nature of certiorari, the hearing shall be based on the record below and the scope of review shall be as provided in G.S. 160A-393(k).

(j) The parties to an appeal that has been made under this subsection may agree to mediation or other forms of alternative dispute resolution.

(2) Variances. When unnecessary hardships would result from carrying out the strict letter of the ordinance, the board shall vary any of the provisions of the ordinance upon a showing of all of the following, except in the case of commercial development, which must first receive conditional approval from the TRC:

(a) Unnecessary hardship would result from the strict application of the ordinance. It shall not be necessary to demonstrate that, in the absence of the variance, no reasonable use can be made of the property.

(b) The hardship results from conditions that are peculiar to the property, such as location, size, or topography. Hardships resulting from personal circumstances, as well as hardships resulting from conditions that are common to the neighborhood or the general public, may not be the basis for granting a variance.

(c) The hardship did not result from actions taken by the applicant or the property owner. The act of purchasing property with knowledge that circumstances exist that may justify the granting of a variance shall not be regarded as a self-created hardship.

(d) The requested variance is consistent with the spirit, purpose, and intent of the ordinance, such that public safety is secured, and substantial justice is achieved.

No change in permitted uses may be authorized by variance. Appropriate conditions may be imposed on any variance, provided that the conditions are reasonably related to the variance. Any other ordinance that regulates land use or development may provide for variances consistent with the provisions of this subsection.

(3) Limitations. The board shall not have jurisdiction with respect to Section 10.85 Conditional Zoning Districts except as provided in this section. The board shall have jurisdiction with respect to conditional districts if the request pertains to a variance from specified minimum requirements of the zoning ordinance and is filed with the board prior to the approval of a conditional district. In addition, the board may also hear and decide on various petitions for approved conditional district plans on matters related to ordinance provisions which are not associated with specifically approved conditions of the plan that are more restrictive than minimum ordinance requirements. At no time shall the board have authority to consider a variance related to the number of or size of permissible signs in a conditional district.

Section 10.98 Decisions of board

(a) The concurring vote of four-fifths of the board shall be necessary to grant a variance. A majority of the members shall be required to decide any other quasi-judicial matter or to determine an appeal made in the nature of certiorari. For the purposes of this subsection, vacant positions on the board and members who are disqualified from voting on a quasi-judicial matter shall not be considered members of the board for calculation of the requisite majority of the members if there are no qualified alternates available to take the place of such members.

(b) The final decision of each matter decided by the board shall be by recorded resolution indicating the reasons for the decision, based on findings fact and conclusions of law, which shall be public record.

(c) A member shall not participate in or vote on any quasi-judicial matter in a manner that would violate affected persons' constitutional rights to an impartial decision maker. Impermissible violations of due process include, but are not limited to, a member having a fixed opinion prior to hearing the matter that is not susceptible to change, undisclosed ex parte communications, a close familial, business, or other associational relationship with an affected person, or a financial interest in the outcome of the matter. If an objection is raised to a member's participation and that member does not recuse himself or herself, the remaining members shall by majority vote rule on the objection.

Section 10.99 Quasi-judicial decisions and judicial review

(a) The board shall determine contested facts and make its decision within a reasonable time. Every quasi-judicial decision shall be based upon competent, material, and substantial evidence in the record. Each quasi-judicial decision shall be reduced to writing and reflect the board's determination of contested facts and their application to the applicable standards. The written decision shall be signed by the chair or other duly authorized member of the board. A quasi-judicial decision is effective upon filing the written decision with the clerk to the board. The decision of the board shall be delivered by personal delivery, electronic mail, or by first-class mail to the applicant, property owner, and to any person who has submitted a written request for a copy, prior to the date the decision becomes effective. The person required to provide notice shall certify that proper notice has been made.

(b) Every quasi-judicial decision shall be subject to review by the superior court by proceedings in the nature of certiorari pursuant to G.S. 160A-393. A petition for review shall be filed with the clerk of superior court by the later of 30 days after the decision is effective or after a written copy thereof is given in accordance with subdivision (1) of this subsection. When first-class mail is used to deliver notice, three days shall be added to the time to file the petition.

Section 10.100 Appeals from board

Any person or persons jointly or individually aggrieved by any decision of the board or any taxpayer, or any officer, department, board or bureau of the City of Graham shall have recourse to the courts as provided by law.

Section 10.101 Terms; removal

(a) The term of office of the members of the board shall run concurrent with their Planning Board term.

(b) A member may be removed for cause by the City Council for reasons such as repeated absence. If a member is absent or expects to be absent for reasons of health or time out-of-town, that member may request that the absence(s) be excused. Before a member is removed for cause, s/he shall receive a letter from the Council describing the proposed action and giving the member an opportunity to state why the action should or should not be taken**.**

Sections 10.102-10.109 Reserved

(Article IV, Division 4 amended 10/1/2013)

DIVISION 5. ZONING DISTRICTS

Section 10.110 Interpretation of boundaries

(a) In order to achieve the purposes of this Ordinance, all property within the jurisdiction of the City of Graham is divided into districts with the designations and purposes as listed below.

(b) Where uncertainty exists with respect to the boundaries of districts as shown on the zoning map, the following rules shall apply:

(1) District boundary lines indicated as approximately following property lines, lot lines, the centerlines of streets, alleys, railroads, easements, other rights-of-way, and creeks, streams, or other water channels, shall be construed to follow such lines.

(2) District boundary lines indicated as parallel to or extensions of features identified in subsection (1) above shall be so construed.

(3) In the absence of specified distances on the map, dimensions of distances shall be determined by scaling the distance on the zoning map.

(4) In circumstances not covered by subsections (1) through (3) above, the Board of Adjustment shall interpret the district boundaries of this article.

(Section 10.110 amended by City Council 10/07/2003)

Section 10.111 Zoning districts

The City of Graham and the extraterritorial area covered by this article are hereby divided into the following districts:

R-18 Residential District (low density).

R-15 Residential District (medium density)

R-12 Residential District (medium density)

R-9 Residential District (high density)

R-7	Residential District (high density)
C-R	Conditional Residential District
R-MF	Residential District (multifamily)
R-G	Residential District (general residential)
0-I	Office and Institutional District
C-O-I	Conditional Office and Institutional District
B-3	Business District (neighborhood business)
B-2	Business District (general business)
B-1	Business District (central business district)
C-B	Conditional Business District
I-1	Industrial District (light)
I-2	Industrial District (heavy)
C-I	Conditional Industrial District
HD	Historic District Overlay Zone
PUD	Planned Unit Development Overlay District
C-MXR	Conditional Mixed Use Residential District
C-MXC	Conditional Mixed Use Commercial District

(Section 10.111 amended by City Council 10/05/2004)

The boundaries of each district are indicated upon the Zoning Map of the City of Graham. The map and all notations, references, and other information shown thereon shall be as much a part of this article as if all were fully described herein. The uses permitted in each district are indicated in the Table of Permitted Uses, Section 10-135.

Section 10.112 R-18 Residential District (low density), purpose and description

The R-18 Residential District is established as a district in which the principal uses of land are for low-density residential and agricultural purposes. The district includes large areas not served by municipal water and sewer services. The regulations of this district are intended to protect the agricultural sections of the community from uses likely to render them undesirable for farms and future residential development, and to ensure that residential development not having access to public sewer and/or water will occur at sufficiently low densities to ensure a healthful environment. The R-18 Residential District is an exclusively single-family district, although accessory buildings, limited home occupations,

and public and private community uses will also be allowed for the convenience of the districts residents.

Section 10.113 R-15 Residential District (medium density), purpose and description

The R-15 Residential District is established as a district in which the principal use of land is for medium-density single-family purposes. Limited home occupations and public and private community uses are also allowed. The regulations of this district are intended to prohibit any use which, because of its character, would substantially interfere with the development of single-family residences in the district and which would be detrimental to the desired quiet and peaceful nature of these areas. It is expected that all dwellings in such a district will have access to public water supplies and public sewage disposal facilities. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.114 R-12 Residential District (medium density), purpose and description

The R-12 Residential District is established as a district in which the principal use of land is for medium-density single-family purposes. Limited home occupations and public and private community uses are also allowed. The regulations of this district are intended to prohibit any use which, because of its character, would substantially interfere with the development of single-family residences in the district and which would be detrimental to the desired quiet and peaceful nature of these areas. It is expected that all dwellings in these districts will have access to public water and sewer. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.115 R-9 Residential District (high density), purpose and description

The R-9 Residential District is established as a district in which the principal use of land is for single-family residences. The regulations of this district are intended to provide for those persons desiring single-family residences in relatively high-density neighborhoods. The regulations are intended to prohibit any use which, because of its character, would interfere with the residential nature of this district. Each parcel of divided property in this district shall contain not less than 9,000 square feet.

Section 10.116 R-7 Residential District (high density), purpose and description

The R-7 Residential District is established as a district in which the principal use of land is for single-family residences. The regulations of this district are intended to provide for those persons desiring single-family residences in relatively high-density neighborhoods. The regulations are intended to prohibit any use which, because of its character, would interfere with the residential nature of this district.

Section 10.117 R-MF Residential District (multifamily), purpose and description

The R-MF Residential District is established as a district in which the principal use of the land is for multifamily residences. The regulations of this district are intended to provide multifamily structures in relatively high-density neighborhoods. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.118 R-G General Residential District, purpose and description

The R-G General Residential District is established as a district in which the principal use of land is for single-family, two-family, manufactured home, and multifamily residences. The regulations of this district are intended to provide an area of relatively high density with a mixture of housing types. The regulations are intended to prohibit any use which, because of its character, would interfere with the nature of this district. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.119 O-I Office and Institutional District, purpose and description

The Office and Institutional District is established for professional services, offices and institutional services. This district is separated from other business zones because of the lower traffic volume generated and because of the special demands placed upon the City of Graham as the Alamance County seat. Uses permitted in this district are indicated in the Table of Permitted Uses,

Section 10.120 B-1 Central Business District, purpose and description

The Central Business District (B-1) is established as the centrally located trade and commercial service area of the community. The regulations of this district are designed to encourage the continued use of land for community trade and commercial service uses, and to permit a concentrated development of permitted uses while maintaining a substantial relationship between the intensity of land use and the capacity of utilities and streets. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.121 B-2 General Business District, purpose and description

The B-2 General Business Districts are generally located on the major thoroughfares and collector streets in the Graham planning area. They are intended to provide personal services and the retailing of durable and convenience goods for the community. Because these commercial uses are subject to public view and are important to the economy of the area, they should have ample parking, controlled traffic movement, and suitable landscaping. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.122 B-3 Neighborhood Business District, purpose and description

The B-3 Neighborhood Business District is established as a district in which the principal use of land is to provide for the retailing of goods and services to the adjacent residential neighborhoods. Neighborhood Business Districts are often compact in area. The regulations for this district are intended to provide for retail trades and services in designated shopping areas, with standards designed to protect abutting residential areas. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.123 I-1 Light Industrial District, purpose and description.

(a) The I-1 Light Industrial District is established for those areas of the Graham planning area in which the principal use of land is for industries operated in a manner that will not be obnoxious to adjacent residential or business districts. This district is designed to prohibit the use of land for heavy industry, or for any other use which would substantially interfere with the development of industrial uses permitted in this district. Uses permitted in this district are indicated in the Table of Permitted Uses.

Section 10.124 I-2 Heavy Industrial District, purpose and description

(a) The I-2 Heavy Industrial District is established to provide areas where the principal use of the land is for manufacturing and processing activities having special need of accessibility to major transportation facilities and utilities and other public services. It is the intent of this district to separate such activities from residential activities for their mutual benefit. Uses permitted in this district are indicated in section the Table of Permitted Uses.

Section 10.125 Historic District Overlay Zone, purpose and description

Historic District Overlay Zone. (See Division 9) This district overlays other zoning districts, the extent and boundaries of which are indicated on the City of Graham Zoning Map. The requirements of the underlying districts are not changed by the Historic District Overlay Zone, expect by specific exceptions found in Division 9, Historic District Overlay District.

Section 10.126 Planned Unit Development Overlay District

The purpose and intent of a planned unit development is to promote innovative design in development by providing flexibility in regard to permitted uses and bulk regulations. Graham's regulations are designed to promote the development of attractive, desirable communities of place, where residents and visitors can work and live in a development pattern that integrates residential and non-residential uses in a design that is accessible to pedestrians and encourages the use of alternative modes of transportation and shared parking and offers greater convenience to the residents of the City and its extraterritorial jurisdiction.

Section 10.127 Conditional Residential District

(a) Purpose – The Conditional Residential District is established to accommodate the development of planned residential communities that may incorporate some or all of the uses indicated in the C-R column of Section 10.135, Table of Permitted Uses, and subject to such conditions as may be referred to in Section 10.136, Notes to the Table of Permitted Uses and Section 10.149, Special uses listed. This district is intended to serve development that is ripe and not of a speculative nature.

(b) Development Standards – Residential development within the Conditional Residential Districts shall meet the minimum lot area, lot width, and yard requirements established for the R-9 district for single-family development and for attached and multifamily developments the requirements for the R-MF District shall be met. For developments five (5) acres and larger, open space must be set aside. Refer to Section 10.131 (e) Common open space; density bonus for a list of requirements. However, petitioners requesting a rezoning to a Conditional Residential District may place additional requirements and standards to the petition or request that certain standards identified in the petition for rezoning be decreased. It shall be the City Council's final decision to grant approval or denial of the rezoning in light of increased or decreased development standards presented to the Council. If no specific request is made by the petitioner to change the development standards or if the petition to rezone is silent on the point, it shall be understood that the general R-9 zoning district standards shall apply.

(Section 10.127 added by City Council 10/05/2004)

(Section 10.127 amended by City Council 7/11/2006)

(Section 10.127 amended by City Council 7/10/2007)

Section 10.128 Conditional Office and Institutional District

(a) Purpose – The Conditional Office and Institutional District is established to accommodate the development of planned office developments that may incorporate some or all of the uses indicated in the C-O-I column of Section 10.135, Table of Permitted Uses, and subject to such conditions as may be referred to in Section 10.136, Notes to the Table of Permitted Uses and Section 10.149, Special uses listed. This district is intended to serve development that is ripe and not of a speculative nature.

(b) Development Standards – All specific development standards for the general O-I Zoning District found within the City of Graham Development Ordinance and any other accepted or adopted policies of the City of Graham must be met. However, petitioners requesting a rezoning to a Conditional Office and Institutional District may place additional requirements and standards to the petition or request that certain standards identified in the petition for rezoning be decreased. It shall be the City Council's final decision to grant approval or denial of the rezoning in light of increased or decreased development standards presented to the Council. If no specific request is made by the petitioner to change the development standards or if the petition to rezone is silent on the point, it shall be understood that the general O-I zoning district standards shall apply.

(Section 10.128 added by City Council 10/05/2004)

Section 10.129 Conditional Business District

(a) Purpose – The Conditional Business District is established to accommodate the development of planned business developments that may incorporate some or all of the uses indicated in the C-B column of Section 10.135, Table of Permitted Uses, and subject to such conditions as may be referred to in Section 10.136, Notes to the Table of Permitted Uses and Section 10.149, Special uses listed. This district is intended to serve development that is ripe and not of a speculative nature.

(b) Development Standards – All specific development standards for the general B-2 Zoning District found within the City of Graham Development Ordinance and any other accepted or adopted policies of the City of Graham must be met. However, petitioners requesting a rezoning to a Conditional Business District may place additional requirements and standards to the petition or request that certain standards identified in the petition for rezoning be decreased. It shall be the City Council's final decision to grant approval or denial of the rezoning in light of increased or decreased development standards presented to the Council. If no specific request is made by the petitioner to change the development standards or if the petition to rezone is silent on the point, it shall be understood that the general B-2 zoning district standards shall apply.

(Section 10.129 added by City Council 10/05/2004)

(Section 10.129 amended by City Council 7/11/2006)

Section 10.130 Conditional Industrial District

(a) Purpose – The Conditional Industrial District is established to accommodate the development of planned industrial developments that may incorporate some or all of the uses indicated in the C-I column of Section 10.135, Table of Permitted Uses, and subject to such conditions as may be referred to in Section 10.136, Notes to the Table of Permitted Uses and Section 10.149, Special uses listed. This district is intended to serve development that is ripe and not of a speculative nature.

(b) Development Standards – All specific development standards for the general I-1 Zoning District found within the City of Graham Development Ordinance and any other accepted or adopted policies of the City of Graham must be met. However, petitioners requesting a rezoning to a Conditional Industrial District may place additional requirements and standards to the petition or request that certain standards identified in the petition for rezoning be decreased. It shall be the City Council's final decision to grant approval or denial of the rezoning in light of increased or decreased development standards presented to the Council. If no specific request is made by the petitioner to change the development standards or if the petition to rezone is silent on the point, it shall be understood that the general I-1 zoning district standards shall apply.

(Section 10.130 added by City Council 10/05/2004)

(Section 10.130 amended by City Council 7/11/2006)

Section 10.131 Conditional Mixed Use Districts (Conditional Mixed Use Residential and Conditional Mixed Use Commercial

(a) Purpose – The Conditional Mixed Use Districts are established to accommodate the development of planned communities that may incorporate a full range of housing types and in some instances compatible non-residential uses that provide goods, services, and employment to serve the community. In order to encourage high quality design and innovative arrangement of buildings and open space uses throughout the project, these districts provide flexibility from the conventional use and dimensional requirements of the general districts. Two Mixed Use Districts are established with varying degrees of development intensity to address the application of mixed use to various locations within the community. The developmental and location criteria for the districts are as follows:

(1) Conditional Mixed Use Residential (C-MXR) – This district permits residential mixed use development (dwellings and permitted accessory uses and structures) on tracts which are 5 acres or larger and residential mixed use and nonresidential use development on tracts which are 15 acres or larger. This district is permitted within the community along major thoroughfares, minor thoroughfares or collector streets having adequate access.

(2) Conditional Mixed Use Commercial (C-MXC) – This district permits major commercial, institutional and employment uses with a mix of residential uses. This district is applicable to developments 10 acres or larger and is intended to be located along major thoroughfares.

(b) Uses permitted by right – The following uses shall be permitted by right in the C-MXR and C-MXC districts provided that they meet all requirements of this part and all other requirements of these regulations:

(1) The C-MXR district shall allow for any uses as indicated in the C-MXR column of the Section 10.135, Table of Permitted Uses, and subject to such conditions as may be referred to in Section 10.136, Notes to the Table of Permitted Uses and Section 10.149, Special uses listed, provided that no more than 10 percent of the total project acreage is dedicated for commercial uses.

(2) The C-MXC district shall allow for any uses as indicated in the C-MXC column of the Section 10.135, Table of Permitted Uses, and subject to such conditions as may be referred to in Section 10.136, Notes to the Table of Permitted Uses and Section 10.149, Special uses listed, provided that no less than 15 percent of the total project acreage is dedicated for residential uses.

(c) Development standards for C-MXR and C-MXC districts: All uses in C-MX districts shall meet the following development standards:

(1) The minimum total project area for development in a Conditional Mixed Use District must be as follows:

C-MXR – 5 acres for exclusive residential

C-MXR – 15 acres for a mix of residential and commercial

C-MXC – 10 acres

(2) Residential development within the Conditional Mixed Use Districts shall meet the minimum lot area, lot width, and yard requirements established for the R-9 district for single-family development and the R-MF district for attached and multifamily development.

(3) Non-residential development within the Conditional Mixed Use Districts shall meet the minimum area, height, and yard requirements established for the B-2 district.

(d) Density limitations

(1) Residential development in Conditional Mixed Use Districts shall not exceed the maximum residential density indicated in the table below. The calculation of maximum density shall be based on the total project area minus any portion of the total project area to be devoted to non-residential uses. For the purpose of this calculation, public right-of-ways shall be deemed to be a residential use.

Table – Maximum Dwelling Units Per Acre

C-MXR – 8.0

C-MXC – 10.0

(2) Each phase of a multi-phase project within a Conditional Mixed Use District should be able to stand as an independent project. At no point in the development of a multi-phase project shall the density of residential development in a completed phase of the project area exceed the approved maximum density established by this section.

(3) At least 50 percent of the dwelling units in a C-MXR district shall be detached dwellings.

(e) Common open space; density bonus

(1) At least 10 percent of the total project area shall be set aside as common open space

(2) A density over and above the density otherwise allowed in the Conditional Mixed Use Districts may be approved by the City Council provided that the petitioner increase the percentage of the total project area to be devoted to common open space. This bonus may be granted only if specifically requested by the petitioner. Any such bonus shall consist of a one percent increase in the allowable density for every one percent of land area devoted to common open space in

addition to the 10 percent required under subsection (1) above, but in no event shall the bonus exceed 35 percent of the allowable density set out in the density table.

(3) All common open space shall be set aside and improved no later than the date on which Certificates of Occupancy are issued for the first 75 percent of the total number of dwelling units to be constructed within the project area.

(4) No more than 50 percent of all required common open space shall be covered by water.

(5) Any structures located in any common open space shall be accessory to recreational use of the open space and shall cover no more than five percent of all common open space.

(6) The required common open space shall be planned and improved so that it is accessible and usable by persons living in the project area. However, common open space containing natural features worthy of preservation may be left unimproved.

(7) All of the required common open space shall be either conveyed to the City of Graham if the City agrees to accept ownership of and to maintain the space or conveyed to one or more homeowners' associations created for the project area or with respect to outdoor recreation facilities, to the owner or operator thereof.

(8) Any conveyance to a homeowners' association shall be subject to restrictive covenants and easements reviewed by the Planner and recorded and filed at the time the subdivision plat for the project area is recorded. The covenants and easements shall provide for the establishment of a homeowners' association before any homes are sold. Where membership is mandatory for each homebuyer and any successive buyer, the association is responsible for liability insurance and local taxes on common open space and recreational facilities owned by it. Any fees levied by the association that remain unpaid will become a lien on the individual property, and the association shall be able to adjust the assessment to meet changing needs. The covenants and easements shall also prohibit future development of any common open space for other than open space or recreation proposed and shall provide for continued maintenance of any common open space and recreational facilities.

(9) Uses or activities prohibited in open space areas are cutting of healthy trees, regrading, topsoil removal, altering, diverting or modifying watercourse or bodies. Exceptions shall be in compliance with a land management plan or watershed management plan for the tract in question conforming to the customary standards of forestry, erosion control and engineering.

(f) Innovative development standards. The City Council may modify the following standards established in these regulations as part of the approval process for development of the property located in a Conditional Mixed Use District in order to accommodate a proposed development project:

(1) Street right-of-way.

(2) Street type and construction standards (including width) for public or private streets.

(3) Sidewalks, curbs, and gutters.

(4) Minimum lot size.

(5) Public street frontage.

(6) Setbacks and yards.

(7) Off-street parking.

(8) Lot width.

(g) Development standards of general applicability. Except as otherwise provided in this part, all uses and structures permitted in the Conditional Mixed Use District shall meet the applicable development standards set out in these regulations. Signs shall be permitted in the Conditional Mixed Use Districts in accordance with Article X.

(Section 10.131 added 10/05/2004, amended 8/2/2005)

Sections 10.132-10.134 Reserved.

DIVISION 6. PERMITTED USES

Section 10.135 Table of permitted uses

The following uses shall be permitted in the districts as indicated. Uses are permitted by right in each district which has an "X" in the column corresponding to that district. An "S" indicates that the use is permitted in the district only after a special use permit for the use has been granted by the city council. A “C” in the column indicates that a particular use(s) is permitted through the Conditional Rezoning process. A blank space in a column indicates that the use is prohibited in that district.

(Section 10.135 amended by City Council 10/05/2004)

(Table on following pages)

Table amended 5/2/2000, 11/7/2000, 9/4/2001, 4/2/2002, 8/6/2002, 10/02/2002, 9/02/2003, 10/07/2003, 5/4/2004, 10/05/2004, 7/11/2006, 7/10/2007, 5/6/2008, 1/8/2013, 8/6/2013, 8/2/2016)

Section 10.135 Table of Permitted Uses

Use Type	R-18	R-15	R-12	R-9	R-7	C-R	R-MF	R-G	O-I	C-O-I	B-3	B-2	B-1	C-B	I-1 (Note 19)	I-2 (Note 19)	C-I	C-MXR	C-MXC	LUC
ABC Store (liquor)												X	X	C					C	3
Accessory Uses, See Note 1	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Office Space, Less than 5 employees									X	C	X	X	X	C	X			C	C	3
Office Space, More than 5 employees									X	C		X	X	C				C	C	3
Alteration, Clothing Repair											X	X	X	C				C	C	3
Ambulance, Fire, Police, Rescue Station	S	S	S	S	S	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Amusement/Water Parks/Fairs/Carnivals												S			S	S	C			4
Animal Hospital/Commercial, with outdoor kennels or runs, provided all runs and pens are at least 50 ft. from any property line												S		C	X	X	C		C	3
Boutique Shops entirely within building									S	C	S	X	X	C	X			C	C	3
Large Items Store (appliances, hardware, furniture)												X	X	C	X		C		C	3
Athletic Fields, See Note 2	S	S	S	S	S	C	S	S	X	C	X	X		C	X	X	C	C	C	1
Auditoriums, Stadiums, and similar facilities where admission is charged or organized athletic events are held, See Note 2							S	S	S			S	S	C	S		C		C	4
Vehicle Accessory and Supply Sales												X		C	X		C	C	C	3
Vehicle assembling, painting, upholstering, rebuilding, reconditioning; body and fender work															X	X	C			4
Vehicle body and fender repair conducted within completely enclosed building												X		C	X	X	C		C	3
Vehicle Dealers/Rentals (new and used)												X		C	X	X	C		C	3
Vehicle repair shops, not including body or fender repair												X		C	X	X	C		C	4

Vehicle Towing Services, See Note 3												X		C	X	X	C			4
Bank, Savings and Loan, Credit Union, similar financial institutions									X	C	X	X	X	C	X	X	C	C	C	2
Bars (as principal use), See Note 4												X	X	C			C	C	C	3
Barber Shop, Beauty Shop, Nail Salon											X	X	X	C	X		C	C	C	3
Batting Cages, Outdoor, See Note 5															X	X	C			4
Bed and Breakfast (Tourist Home)	S	S	S	X	X	C	X	X	X	C	X	X	X	C				C	C	2
Billiard Halls, Bingo Games, Bowling Alleys, other public amusement establishments												X	X	C	X		C		C	3
Shops or Bulk Sales (with storage yard), See Note 6															X	X	C			4
Distribution Center															X	X	C			3
Bus station												S		C						3
Cabinet, woodworking and upholstery shops												X		C	X	X	C		C	3
Campgrounds, commercial												S			S	S	C			4
Car Wash, including Self Service, See Note 7											S	X	X	C	X	X	C		C	4
Cellular or Digital Communication Tower															S	S	C			5
Cemetery or Mausoleum. See Note 8	S							S				S		C	S	S	C			2
Religious Services	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X		C	C	C	2
Communication or Broadcasting Facility, without Tower											X	X	X	C	X	X	C		C	3
Community Centers/Banquet Hall, not including gymnasiums or stadiums	S	S	S	S	S	C	S	S	S	C	S	S	S	C	S	S	C	C	C	3
Contractors Offices, no outdoor storage									X		X	X	X	C	X	X	C		C	3
Convenience Store (with gasoline pumps >15' from property line)											X	X		C	X	X	C	C	C	3
Convenience Store (without gasoline pumps)									X		X	X	X	C	X	X	C	C	C	3
Day Care Center, Adult (Less than 6)							X	X	X	C	X	X		C	X		C	C	C	2
Day Care Center, Adult (6 or more)									X	C	X	X		C	X		C		C	2
Day Care Center, Child meeting licensing and safety standards							X	X	X	C	X	X		C	X		C	C	C	2
Day Care Center, Child, operated as home	X	X	X	X	X	C	X	X	X	C	X	X		C	X			C	C	2

occupation (5 or less), See note 20																				
Dwelling, Duplex					S		X	X												1
Dwelling, condominium			S	S	S	C	X	X		C				C				C	C	2
Dwelling, located in the second or higher story of a commercial structure, with adequate light, air and bathroom facilities									X	C	X	X	X	C				C	C	1
Dwelling, Multifamily , site plan required see Note 18						C	X	X		C				C				C	C	3
Dwelling quarters for operators, caretakers, etc. in or adjacent to buildings primarily for nonresidential use									X	C	X	X	X	C	X	X	C	C	C	3
Dwelling, Single Family Detached	X	X	X	X	X	C	X	X	X	C	X	X		C				C	C	1
Dwelling, Townhouse			S	S	S	C	X	X										C	C	2
Dry cleaning\Laundry (not self-service)												X		C	X	X	C	C	C	3
Electronic, Internet or Sweepstakes Gaming												S			S					5
Equipment Rental, Leasing or Repair (no outside storage)												X		C	X	X	C		C	3
Equipment Rental, Leasing or Repair (with outside storage), See Note 6															X	X	C			5
Explosives storage, long-term or temporary, in accordance with latest edition of National Fire Code																S				3
Family Care Facility (Family Care Home), See Note 21	X	X	X	X	X	C	X	X												1
Farms	X																			1
Farmer's Market (as Accessory Use, See Note 22)											X	X	X							
Food processing wholesale quantities, excluding slaughtering															X	X	C			4
Flea Market, provide no permanent outdoor display and all sale items and temporary signs are placed inside the permanent building on premises after 6:00 p.m.												S			S	S				3
Floor Covering, Drapery or Upholstery Sales											S	X	X	C	X		C		C	3
Florist											X	X	X	C				C	C	3

Funeral Home or Crematorium									X	C	X	X	X	C	X		C	C	C	2
Game Room, Video Game Room, Coin Operated Amusements												X	X	C					C	3
Garden Center or Retail Nursery							S	S				X		C	X	X	C		C	3
Golf Course, Miniature												X		C	X		C			3
Golf, swimming or tennis lodge or clubs	S	S	S	S	S	C	S	S	S			S		C	S	S	C	C	C	1
Government Office									X	C	X	X	X	C	X	X	C	C	C	2
Group Care Facility, See Note 23						C	S	S	S	C	S	S		C				C	C	3
Group Home, See Note 23	S	S	S	S	S	C	S	S	S	C	S	S		C				C	C	1
Hazardous Waste Facilities																				5
Home Occupation	X	X	X	X	X	C	X	X	X	C										1
Hospital	S	S	S	S	S	C	S	S	S	C	S	X		C	S	X	C	C	C	4
Hotel, Motel or Executive Suites												X	X	C	X		C		C	4
Jails									S			S			S	S				4
Junkyards, Salvage Yards																S				5
Laboratories for testing and research												X		C	X	X	C		C	3
Landfill, for Household and Commercial Waste, State Permitted – No Hazardous Waste (Reserved)																				5
Retail/Service With Outside Plant/Equipment Storage												X		C	X	X	C		C	3
Laundromat, Coin-Operated											X	X	X	C	X	X	C	C	C	3
Library, Art Gallery or Museum									X	C	X	X	X	C				C	C	2
Manufactured Dwelling Park								S												3
Manufactured Dwelling (Class AA) on Individual Lot								X												1
Manufactured Home Sales												S			S	S				3
Manufacturing and Industry (**assembling, manufacturing, compounding, repair or treatment of articles or merchandise)**																				
Ammunition**, Small Arms**																X				4
Animal Feeds																S				5

Apparel and Finished Fabric Products															X	X	C			4
Bakery Products															X	X	C			4
Batteries																X				4
Bottling Plant															X	X	C			4
Cement, concrete, lime, plaster, brick																X				4
Chemicals, Paints and Allied Products																X				4
Dairy Product Processing															X	X	C			4
Electrical Equipment															X	X	C			4
Fabricated Metal Products															X	X				4
Glass Products from Purchased Glass															X	X	C			4
Heating Equipment and Plumbing Fixtures															X	X	C			4
Household Appliances															X	X	C			4
Industrial and Commercial Machinery															S	X	C			4
Leather Products (no tanning)															X	X	C			4
Lighting and Wiring Equipment															X	X	C			4
Manufactured Housing and Wood Buildings															X	X	C			4
Medical, Dental and Surgical Equipment															X	X	C			4
Millwork, Plywood and Veneer															X	X	C			4
Optical Goods												X		C	X	X	C			4
Paperboard Containers and Boxes																X				4
Pharmaceutical Products															X	X	C			4
Photographic Equipment and Supplies															X	X	C			4
Plastic Products															X	X	C			4
Pottery and Related Products															X	X	C			4
Rubber Products																X				4
Sawmill																S				
Sign manufacture, fabricating												X		C	X	X	C			4
Soaps and Cosmetics																X				4

Textile Products (no dyeing and finishing)															X	X	C			4
Textile Products (with dyeing and finishing)																X				4
Massage Therapy, practitioner licensed by the State of NC									X	C	X	X	X	C	X		C	C	C	2
Medical, Dental or Related Office									X	C	X	X	X	C	X		C	C	C	2
Medical or Dental Laboratory									X	C		X	X	C	X		C	C	C	3
Motion Picture Production												X		C	X		C			4
Municipal Facilities	S	S	S	S	S	C	S	S	X	C	X	X	X	C	S	S	C	C	C	3
Museum or Art Gallery									X	C	X	X	X	C				C	C	2
Night clubs, dance halls (see note 4)												X	X	C			C		C	3
Nursing Home, Rest Home, Convalescent Home	S	S	S	S	S	C	X	X	S	C	S	X		C				C	C	3
Park, Public	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Parking lots serving uses permitted in the district where located, See Note 11	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	3
Parking lots or access driveways serving uses not permitted in district where lot is located			S	S	S	C		S	S	C	S	S	S	C	S	S	C	C	C	4
Pet Store/Grooming No Outside Animal Storage/Care												X	X	C	X		C		C	3
Petroleum and Petroleum Products Storage/Sales, <100,000 gallons												S		C	X	X	C			4
Petroleum and Petroleum Products Storage/Sales, >100,000 gallons																X				5
Photography Studio											X	X	X	C	X		C	C	C	3
Physical Fitness Center, Health Club, Gym									X	C		X	X	C	X		C	C	C	3
Planned Unit Development (PUD)	O	O	O	O	O		O	O	O		O	O	O		O	O				3
Post Office											X	X	X	C	X		C	C	C	4
Printing and Publishing Operation/Photocopying												X	X	C	X	X	C		C	3
Public utility warehouses, storage yards, repair areas															X	X	C			4
Racetracks for automobiles, motorcycles															S	S				5
Radio, Television Stations without Towers											X	X	X	C	X	X	C		C	3
Recycling Facility, Commercial															S	S				4

Restaurant (with drive-thru)												X		C	X	X	C		C	3
Restaurant (without drive-thru)												X	X	C	X		C		C	3
Retail Sales No Outside Storage or Sales											S	X	X	C	X		C	C	C	3
Roadside stands, temporary, for sale of agricultural products produced on premises; not in right-of-way								X	X	C	X	X	X	C	X	X	C	C	C	1
Roadside Stands & Outdoor Sales, Temporary (Prohibited)																				
Sewage Treatment Plant,																X				5
School, Elementary or Secondary	S	S	S	S	S	C	S	S	S	C	S	X		C				C	C	1
School, commercial, vocational									S	C	S	X	X	C	X	X	C	C	C	1
School, music, art, martial arts, or dancing											X	X	X	C	X		C	C	C	1
Septic Tank Installation and Servicing Businesses															X	X	C			3
Sexually Oriented Business												S			S					5
Shooting Range, Indoor															X	X	C			3
Shooting Range, Outdoor																S				4
Solar Farm (See Note 24)						C				C				C	X	X	C	C	C	2
Stable, including riding facilities	S														S	S	C			1
Storage Yard, See Note 13															X	X	C			5
Tanning Salon									X	C		X	X	C				C	C	3
Tattoo Business												X			X	X				3
Taxidermist												X		C	X		C		C	3
Temporary Construction or Real Estate Office, Storage Facilities – use to be terminated upon completion of construction	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	n/a
Theater (indoor)												X	X	C	X		C	C	C	3
Tire Recapping and Retreading (Principal use)															X	X	C			3
Tire Sales												X		C	X		C		C	3
Towers, Radio, Television, Cellular and Digital Communication															S	S	C			5
Truck and Utility Trailer Rental and Leasing												X		C	X	X	C			4

Trucking or Freight Terminal, Storage, Repair, Wash, or Stop															S	S	C			4
Unattended facilities for public utilities, See Note 16	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	2
Utility building sales, sales of storage sheds and trailers												X			X	X	C			
Unified Business Development, Heavy									S	C		S	S	C	S		C	C	C	3
Unified Business Development, Light									X	C		X	X	C	X		C	C	C	3
Utility Substation, See Note 17	X	X	X	X	X	C	X	X	X	C	X	X	X	C	X	X	C	C	C	2
Veterinary Service, Large Animal	X																			2
Warehouse (general storage, enclosed, non-hazardous)															X	X	C			4
Warehouse, Mini (self-storage)												S		C	X	X	C			3
Waste Incinerators (including Medical)																				5
Water Treatment Plant															X	X	C			5
Wholesale Distribution and Trade Not Otherwise Listed												X		C	X	X	C			3

Section 10.136 Notes to the Table of Permitted Uses

1. **Accessory Uses in Residential Districts -** Accessory uses in residential districts such as garages, utility buildings are restricted to rear yards or side yards unless the required setback can be maintained. For a noncommercial greenhouse that is an accessory use, the heating plant for the greenhouse must be located within 60 feet of the front property line or within 10 feet of any other property line. In addition, in theR-18 district, one private stable on a lot at least 20,000 square feet in area is permitted, provided the stable is located at least 60 feet from the front property line and not less than 10 feet from any other property line.

   On lots occupied by multifamily dwellings, the following accessory buildings shall be permitted, provided their exteriors harmonize with the multifamily structures.

   a. Garages, located as required in section Table of Area, Height, and Yard Regulations.

   b. Coin laundries, offices, and recreational buildings to serve residents of the multifamily development, provided they do not intrude into any minimum required yard.

   c. Equipment storage buildings located as required in section Table of Area, Height, and Yard Regulations.

2. **Athletic Fields, Auditoriums, Stadiums -** All athletic fields shall have access to a collector or higher capacity street.

3. **Automotive Towing Service -** The auto towing area must be screened with a six-foot high opaque fence in addition to the required planting yard. No outdoor storage or salvaging is permitted.

4. **Bars, Night Clubs, Dance Halls (as a principle use) –** All locations must meet the requirements of NCSS 18B-901, Issuance of [ABC] permits. Where the property on which a bar is located abuts residential property, screening including a minimum six-foot high opaque fence along the entire length of the property of the abutting residence(s). The main entrance of the building shall be toward a street zoned predominantly for nonresidential uses. Parking areas related to the establishment shall be located no closer than 30 feet to the property line of abutting residences. *(Amended by City Council on 10/7/03, 5/5/2016)*

5. **Batting Cages (outdoor); Golf Driving Ranges -** Fencing, netting, or other control measures shall be provided around the perimeter of the batting or driving area to prevent balls from leaving the area.

6. **Building Supply Sales, Equipment Rental and Leasing (with storage yard) -** Outside storage shall be completely screened from view with opaque fencing.

7. **Car Wash -** Building(s) shall be at least 75 feet from any property line which adjoins residential or office-institutional zoned property. A minimum six-foot high opaque fence shall be provided adjacent to all residentially zoned property. Hours of operation shall be between 8:00 a.m. and 8:00 p.m. when adjoining developed residentially zoned property. Adequate provision shall be made for safe and efficient disposal of waste and runoff.

8. **Cemetery/Mausoleum –** A cemetery or mausoleum as a principal use shall comply with state law requirements for minimum contiguous acres. Principal access must be from a collector street or higher capacity street.

9. [Reserved]

10. **Machine Shop -** In I-1 no punch presses over 20 tons rated capacity, drop hammers or automatic screw machines are permitted.

11. **Parking Lots Serving Uses Permitted in the District Where Located -** A special use permit is required for a parking lot in a residential district when it serves a non-residential establishment.

12. **Satellite Dish (Freestanding Accessory Use) -** All supporting cables and anchors shall be contained on the property where the satellite dish or tower is located, In residential districts, structures larger than 24 inches in diameter can only be placed in a rear yard or side yard behind the building lot line. Structures less than 24 inches in diameter are not subject to these restrictions.

13. **Storage Yard -** Outside storage is permitted as a principal or accessory use if completely enclosed by opaque fencing at least six feet high.

14. **Swimming Pools (community nonprofit) -** Minimum fence height six feet, made of chain link with wood slats, chain link with a planted border at least five feet in height, or other opaque materials. All N.C. Division of Health regulations to be followed.

15. **Swimming Pools (as accessory uses) -** Pools and appurtenances shall be located in the rear or side yard and may not be located within five feet of interior rear or side lot lines. Pools which are not an integral part of the principal building shall be located a minimum of ten feet from the principal building. *(Section 10.136(15) amended by City Council on 5/1/2012)*

16. **Unattended facilities for public utilities -** Unattended facilities for public utilities shall be added to all use districts under the following conditions:

    a. The structure shall be used only for housing electronic equipment (no storage). These structures shall have no water and sewer facilities. The maximum size shall be 12 feet by 20 feet by 8 feet high.

    b. Dimensional requirements: minimum setback 20 feet; side and rear yards 15 feet; minimum lot area 3,000 square feet; minimum lot width 50 feet.

    c. All utilities shall be placed underground.

    d. The site shall be landscaped in character with the surrounding neighborhood. The structure shall be screened with suitable evergreens. Natural ground cover should be left on the site where possible.

    e. Two off-street parking spaces and ample turnaround area shall be provided.

    f. Detailed site and landscape plans shall be submitted to the city.

17. **Utility Substations Including Transformer Stations, Pump and Lift Stations, etc. -** The entire facility shall have a security fence at least six feet high unless it is secured and is built of brick or concrete. If the installation abuts a residence, it must be at least 50 feet from the residence and screened from the residence with a thick buffer of evergreen shrubbery or trees, which will grow at least six feet tall. Equipment producing noise in excess of 70 decibels shall be located no closer than 100 feet from the nearest residence.

18. **Development Standards for Multifamily Developments in R-MF and R-G, Site Plans Required**

    (1) Lot Coverage - The total ground area covered by the buildings and all accessory buildings including any roofed area, shall not exceed 40 percent of the total lot area.

    (2) Open Space

        (i) Usable open space. A minimum of 10 percent of the total land area of any lot containing three or more dwelling units shall be usable open space, as defined in Article II Definitions. On lots where the required usable open space is less than 20,000 square feet, such space should be approximately square but in no case shall the length of such required space be more than twice its average width. On lots where the required usable open space is 20,000 square feet or more, the minimum dimension of such space shall be at least 100 feet, and the minimum size space allowable as meeting a part of the required usable open space shall be 20,000 square feet.

        (ii) Private usable open space. The total usable open space as required in subparagraph (a) immediately above may be reduced by 50 percent if a minimum of 500 square feet of private usable open space is provided for each dwelling unit. Such space shall be directly accessible and adjacent to the dwelling unit it serves, and shall be so arranged and screened to prevent public traffic through such space and provide reasonable privacy from public view. Such space shall be suitable for recreational activity and shall be unobstructed except for plants, lawn furniture, and play equipment. Private terraces and walkways may be included in such open space. Parking areas, vehicle drives, and storage areas shall not be included in such open space. The minimum dimension of any such private open space shall be at least 15 feet.

    (3) Separate Zoning Lot - A multifamily dwelling shall not be placed behind and on the same zoning lot as a single family detached dwelling.

    (4) Access to Fire protection - To permit adequate fire protection, all portions of every building shall be located within 500 feet of a public street that furnishes direct access to the property unless the fire chief determines that fire hydrants and service drives will offer adequate protection.

    (5) Traffic Circulation - All common driveways shall have approved traffic circulation and shall be kept available for emergency and service use by any public vehicle.

    (6) Parking Access - Off-street parking spaces shall be located within 200 feet of each building in an amount proportional to the number of dwelling units in each building. No parking area with five or more spaces shall be located closer than IO feet to a dwelling wall with windows or doors.

(7) Screening of utility areas. Utility areas such as clothes drying yards and outdoor storage areas in multifamily developments shall be provided with an opaque screen along any side of such areas which would be visible from a public street or adjoining residentially, zoned properties. No such utility areas shall be located in the area between a building and a street bordering the development. Screens are not to be brightly colored multicolored, or otherwise obtrusive; colors and textures harmonious with nature and nearby residential structures are recommended.

(8) Required site plan. 10 site plans shall be submitted with the following information:

i. Vicinity map showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.

ii. Location, size and type of all buildings, existing and proposed, on or near the property.

iii. Grading plan.

iv. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.

v. Proposed parking and loading areas.

vi. Landscape plan prepared according to the Graham Landscape Ordinance.

vii. Proposed provision of utilities.

viii. Location, size, height, orientation and lighting information on all signs.

ix. Layout and orientation of all buildings.

19. **Performance Standards for All Uses in the I-1 and I-2 Zoning Districts**

In order to retain a character consistent with the description of the I-I and I-2 zoning districts, the following performance standards will be applied for all uses in the districts:

a. *Dust, dirt, fly ash or other air pollutants.* There shall be no emission of dust, dirt, fly ash, gases, fumes, vapors or other air pollutants into the atmosphere that could cause damage to the public health, or to animals, vegetation, or other forms of property.

b. *Electrical interference.* There shall be no electrical disturbances affecting the operation of any equipment other than that of the creator of such disturbances.

c. *Heat and glare.* There shall be no heat or glare perceptible to human senses at the property line of any use creating heat or glare.

d. *Landscaping.* See landscaping requirements on File in the office of the city clerk and inspection department.

e. *Enclosure.* All processing shall be within a building.

f. *Liquid or solid waste.* There shall be no discharge of any liquid or solid waste into any stream except as authorized by the State of North Carolina.

g. *Noise.* The sound-pressure level of sound radiated from an establishment, measured at the lot line, shall not exceed the values in any octave band of frequency that are specified in the table below. The sound-pressure level shall be measured with a sound level meter and an associated octave band analyzer conforming to standards prescribed by the American Standards Association.

Frequency Band (cycles per second)	*Decibels*
20- 75	69
75- *150*	57
150- 300	52
300- 600	46
600- 1200	42
1200- 2400	37
2400- 4800	33
4800-10,000	30

h. *Odor* There shall be no objectionable odors perceptible to the human senses at or beyond the property line of any use that may create odors.

i. *Radioactivity.* There shall be no radioactive emission that would be dangerous to health.

j. *Smoke*. There shall be no emission into the atmosphere of smoke from any operation of a shade darker than Number one on the Ringelmann Smoke Chart as published by the United States Bureau of Mines, except that smoke of a shade not darker than No. 3 on said chart may be emitted for not more than 2 minutes in any thirty-minute period.

k. *Traffic* There shall be no industrial vehicular traffic on any minor residential street.

1. *Vibration.* There shall be no vibration perceptible to human senses at the property line of any use that may create vibration.

20. **Day Care Center, Child, operated as home occupation (5 or less)** – Centers shall meet the standards established by the North Carolina Department of Health and Human Services. At least 200 square feet per child of completely enclosed fenced outside play area, not including drives, parking areas or land otherwise unsuitable, shall be provided. *(Section 10.136(20) amended 9/2/2003)*

21. **Family Care Facility –** A Family Care Facility (Family Care Home) shall not be located within a one-half mile radius of an existing Family Care Facility (Family Care Home). An "Existing Family Care Facility (Family Care Home)" for the purposes of this section shall mean one that has obtained a 180-day zoning compliance letter. *(Section 10.136(21) amended 6/3/2008)*

22. **Farmer's Markets, as accessory uses –** Farmer's Markets as accessory uses in the B-2, B-3 districts and churches are subject to parking requirements in Section 10.242. Vendors are responsible for obtaining all licenses and permits required for sale of their product. (*Section 10.136(22) amended 9/1/2009)*

23. **Group Care Facilities and Group Homes, Development Standards** – Off-street parking, as required by Section 10.240, shall be located to the side and/or rear of the building. Group Care Facilities and Group Homes should be located in areas where employment, goods and services can readily be reached by a variety of means of transportation. Access to transit, a sidewalk network and/or close proximity to employment, goods, and services are encouraged for approval of a special use permit unless the applicant can satisfactorily demonstrate that the intended residents of the group home or facility do not require this service. For halfway houses, there shall be on-site supervision at all times by persons employed by or volunteers trained by the agency operating the halfway house. Rules of conduct shall be established and enforced by the agency operating a halfway house. These rules shall prohibit the use or possession of drugs, alcohol or weapons, as well as disorderly conduct. (*Section 10.136(23) added 1/8/2013)*

24. **Solar Farms** – Power inverters and other sound producing equipment shall be no less than 150' from any property line. All solar farms shall be enclosed with a minimum of six feet high security fencing. Solar farms shall be constructed with at least a Type C planting yard, and shall abide by higher requirements when applicable. The height of no panel can exceed fifteen feet. A setback of 100 feet is required for any installation adjacent to a residential use or a residentially zoned parcel. Prior to final approval of the Electrical Permit, a Decommissioning Plan (see definitions) shall be submitted to the City. (*added 2/2/2016)*

DIVISION 7. SPECIAL USES

Section 10.137 Purpose of special use regulations

Permitting special uses adds flexibility to the Zoning Ordinance. Subject to high standards of planning and design, certain property uses are allowed in districts where these uses would not otherwise be acceptable. By means of controls exercised through the Special use Permit procedure, property uses that would otherwise be undesirable in certain districts can be developed to minimize any undesirable effects they may have on surrounding properties.

Section 10.138 Special uses shown in Table of Permitted Uses

Each use for which a special use permit is required is indicated in the Table of Permitted Uses, by an "S" in the column for a particular zoning district. The "S" indicates that such use may be placed in that zoning district only after a special use permit has been approved by the city council and issued by the zoning enforcement officer.

Section 10.139 Application for a Special Use Permit

Applicants for a special use permit are advised to confer with the Planner before formal application for a permit in order to ascertain what information must accompany the formal application. Applications for special use permits shall be submitted to the Planner. Depending on the character and size of the proposed use, a plot plan or a preliminary site plan may be required showing any or all of the following information, in addition to the specific conditions set forth under each special use:

a. Vicinity map, showing the location of the property in relation to existing and proposed streets, streams, railroads and other major physical features.

b. Location, size and type of all buildings, existing and proposed, on or near the property.

c. Grading plan.

d. Proposed points of vehicle ingress and egress, together with the proposed pattern of internal circulation.

e. Proposed parking and loading areas.

f. Landscape plan, showing the number, location, size and name of each plant species; and the proposed ground cover, especially on slopes, banks, and ditches. If the special use permit is approved, the landscape plan shall be carried out within one year of the date of issuance of the certificate of occupancy; landscaping shall be permanently maintained thereafter.

g. Proposed provision for utilities.

h. Location, size, height, orientation, and lighting information on all signs.

Section 10.140 Timing of Submissions

The applicant must submit the required plans and request for a special use permit on or before the 25th day of the month preceding the planning board meeting at which consideration is desired.

Section 10.141 Role of Planning Board

The planning board shall review applications for special use permits, together with accompanying plans, maps, and drawings. The planning board may recommend that the city council (1) deny the special use permit, or (2) approve the special use permit subject to the conditions for individual special uses, or (3) approve the special use permit subject to the conditions for individual special uses and other reasonable conditions recommended by the planning board. The planning board may also recommend modifications of the original plans.

Section 10.142 Role of Historic Resources Commission

As provided for in Section 10.205, the Historic Resources Commission is authorized to review and comment on special use applications for proposed uses within any historic district or historic landmark. Recommendations and comments from the commission shall be relayed directly to the City Council for consideration along with the Planning Board's recommendations.

Section 10.143 Role of City Council

For each application for a special use permit the City Council shall hold a public hearing, notice of which shall be published in the same manner as required for a hearing on an amendment to this article. When deciding a special use permit, the City Council shall follow quasi-judicial procedures as required by law. At the public hearing the City Council shall review the application for a special use permit, together with accompanying plans, maps, and drawings. Recommendations of the planning board shall be heard. The

City Council may (1) deny the special use permit, or (2) grant the special use permit subject to the conditions for individual special uses, or (3) grant the special use permit subject to the conditions specified for each use listed in Section 10.149 (Special uses listed) and to other reasonable conditions the council imposes upon the permit. There shall be competent, material and substantial evidence in the record to support the Council's findings of facts and conclusions. No vote greater than a majority vote shall be required for the City Council to issue special use permits. Vacant positions on the City Council and members who are disqualified from voting on a quasi-judicial matter shall not be considered 'members of the City Council' for calculation of the requisite majority.

(Section 10.143 amended 7/11/2006)

Section 10.144 Findings

In granting a special use permit, the council shall find that all of the conditions listed below have been met, or it shall be denied.

(1) That all applicable regulations of the zoning district in which the use is proposed are complied with.

(2) That conditions specific to each use, identified by this Ordinance are complied with.

(3) That the use will not materially endanger the public health or safety if located where proposed and developed according to the plan as submitted.

(4) That the use will not substantially injure the value of adjoining property or that the use is a public necessity.

(5) That the location and character of the use if developed according to the plan as submitted will be in harmony with the area in which it is to be located and in general conformity with the plan of development for the Graham planning area.

(6) That satisfactory provision has been made for the following, when applicable: vehicle circulation, parking and loading, service entrances and areas, screening, utilities, signs and lighting, and open space.

Section 10.145 Conditions added by Council, Limitations

In granting a Special Use Permit, the Council may designate only those conditions, in addition to those already contained in this ordinance or proposed by the applicant, that will, in its opinion, assure that the use in its proposed location will be harmonious with the area. Examples of such additional conditions include landscaping or buffer provisions, conditions related to on-premises signage, conditions to reduce traffic congestion and other conditions directly related to the land use impact of the use on the area. The city council may modify the original plans to reflect such conditions which shall be entered into the minutes of the meeting at which the permit is granted.

Section 10.146 Conditions run with land

All special use conditions shall run with the land and shall be binding on the original applicants, their heirs, successors and assigns. In voting on a request for a special use permit, a vote by the majority of the City Council membership shall be required to grant the request.

Section 10.147 Appeal

No appeal may be taken to the board of adjustment from the action of the city council in granting or denying a special use permit. The city council's action on an application for a special use permit, like the council's action on an application for an amendment to the ordinance, shall be reviewable by the courts as provided by law.

Section 10.148 Invalidation

In the event of failure to comply with the plans approved by the city council or with any other condition imposed by the city council upon the special use permit, the pen-nit shall immediately become void and of no effect. No further building permits or certificates of occupancy shall be issued, and completed structures shall be regarded as nonconforming uses. A special use permit shall become null and void 24 months after the date of its issuance unless construction is begun during the twenty-four-month period.

Section 10.149 Special uses listed

The special uses listed on the following pages shall be permitted only after approval according to the process outlined in the preceding sections, and after the required findings have been made. All conditions specified for the individual uses, in addition to any conditions added by the council shall be complied with. Special use permits shall only be granted for uses specified in this ordinance.

(Section 10.149 amended 4/2/2002, 8/6/2002, 10/1/2002, 10/7/2003, 5/4/2004, 8/6/2013, 11/5/2013, 2/4/2014)

Use: Adult Establishment/Sexually Oriented Business

Special Use Districts: B-2 and I-1

Definition: See Sexually Oriented Business in Section 10.16, Definitions

Setbacks:

1. No sexually oriented business shall be located closer than 1000 feet to another adult establishment.

2. No sexually oriented business shall be located closer than 1000 feet to a residence or residentially zoned district.

3. No sexually oriented business shall be located closer than 1000 feet to a public or private elementary or secondary school, child day care center or nursery school, public park, church, or community college.

4. No sexually oriented business shall be located closer than 500 feet from a bar or night club.

All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed adult establishment is to be located to the nearest point of the lot line or boundary of the closest adult establishment, residence, residentially zoned district, public or private elementary or secondary school, child day care center or nursery school, public park, church, community college, bar, or night club.

Other Restrictions:

1. There shall not be more than one (1) sexually oriented business in the same building, structure, or portion thereof. Additionally, no other principal or accessory use may occupy the same building, structure, property, or portion thereof with any sexually oriented business.

2. Flashing lights or fluttering devices designed and used to attract attention are not permitted.

3. Sound amplification shall not be directed outside any building or structure occupied by a sexually oriented business.

Additional Information to Be Provided by Applicant: In addition to information normally provided in the course of applying for a special use permit, the applicant shall provide:

1. His/her name, address, and age, or if a partnership, the names, addresses, and ages of the persons who constitute such partnership, or if a corporation, the names, addresses, and ages of its directors, officers, and principal stockholders. Each application shall also include the names, ages, and addresses of all present employees.

2. A complete statement of all convictions of any person whose name is required to be given in Number 1 above for any crime other than traffic violations.

Action By City

1. The city staff shall be given 30 days from receipt of a completed application form to verify the information contained in the application prior to any further steps being taken, including placing the application on the Planning Board agenda.

2. The city staff shall verify that the applicant, or any person having a legal or beneficial interest in the establishment, or any employee, has not been convicted of any crime involving sexual misconduct, including -but not limited to, N. C G. S. 14-177-14-202.1, 14-203 -14-208, or any local, state, or federal law related to racketeering or the possession, sale, or distribution of a controlled substance.

3. No permit shall be issued to an applicant whose information reveals anyone with a legal or beneficial interest or an employee having a record of conviction of a crime.

Revocation of Special Use Permit:

Failure to comply with the conditions of a special use permit is a violation of this ordinance. In addition, as provided in Section 10. 148 failure to carry out any conditions relating to a special use permit shall be cause for the revocation of the permit. Failures of compliance include but are not limited to: misstatements of fact contained in an application discovered after issuance of the permit; the applicant's allowing persons or corporations to own an interest in or be employed by the business after issuance of the permit whose ownership or employment would have originally prevented issuance of the permit; violation of a zoning, building, or fire prevention ordinance by the permittee.

Use: **Antique and Other Specialty Shops in Structures Designed for Residential Use**

Special Use Districts: **O-1**

General Restrictions

1. No more than two salespersons may be employed on the premises at any given time.

2. No flashing lights or fluttering designed and used to attract attention shall be permitted.

3. No lights shall be so arranged as to direct light into any residence.

4. If the shop is within 100 feet of any dwelling, other than that of the shop operator, the shop shall not operate between the hours of 6:00 p.m. and 9:00 a.m.

Use: **Car Wash**

Special Use Districts: **B-3 District**

General Restrictions

1. No flashing lights or fluttering devices designed and used to attract attention shall be permitted.

2. No outdoor storage of any equipment, merchandise, or rubbish shall be permitted.

3. All floodlights shall be turned off at the close of business or at 11:06 p.m., whichever is earlier.

4. No lights shall be so arranged as to direct or reflect light into any residence.

5. No curb cut shall be less than 25 feet from the intersection of any two street curb lines. Curb cuts shall not be wider than 25 feet. No more than two curb cuts shall be permitted on each abutting street.

6. An opaque screen at least eight feet in height shall be provided along each property line adjoining a district zoned residential.

Use: **Condominiums**

Special Use Districts: **R-12, R-9 and R-7**

1. A preliminary site plan shall be submitted.

2. The dimensional requirements for multifamily developments shall apply.

3. The off-street parking requirements for multifamily developments shall apply.

Use: **Duplex Dwelling Unit**

Special Use District: **R-7**

Minimum of 11,000 square feet for each two dwelling units required.

Minimum of 80 feet road frontage required. On corner lots this frontage shall be measured on the side with the shortest width.

Use: **Electronic, Internet or Sweepstakes Gaming.**

Special Use Districts: **B-2 and I-1, except not permitted in any of these districts if in a unified business development**

Setbacks:

1. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 1000 feet to another Electronic, Internet or Sweepstakes Gaming establishment.

2. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 1000 feet to a public or private elementary or secondary school, child day care center or nursery school, public park, church, or community college.

3. No Electronic, Internet or Sweepstakes Gaming establishment shall be located closer than 500 feet from a bar or night club.

All measurements shall be made by drawing straight lines from the nearest point of the lot line where the proposed Electronic, Internet or Sweepstakes Gaming establishment is to be located to the nearest point of the lot line or boundary of the closest Electronic, Internet or Sweepstakes Gaming establishment , residence, residentially zoned district, public or private elementary or secondary school, child day care center or nursery school, public park, church, community college, bar, or night club.

Other Restrictions:

1. There shall not be more than one (1) Electronic, Internet or Sweepstakes Gaming establishment in the same building, structure, or portion thereof. Additionally, no other principal or accessory use may occupy the same building, structure, property, or portion thereof with any Electronic, Internet or Sweepstakes Gaming establishment.

2. Flashing lights or fluttering devices designed and used to attract attention are not permitted.

3. Sound amplification shall not be directed outside any building or structure occupied by an Electronic, Internet or Sweepstakes Gaming establishment.

4. Alcohol may not be consumed or sold on any premises with Internet or Sweepstakes Gaming.

1. Any building and/or zoning permits issued for the Internet or Sweepstakes Gaming operation shall be subject to annual review to ensure compliance with all relevant regulations and conditions.

2. No person under the age of eighteen (18) will be allowed in the establishment, and age must be verified for each customer at the time of entry into the establishment.

City's Review of Special Use Permit Application

1. The city staff shall be given 30 days from receipt of a properly completed application to verify the information contained in the application before further steps are taken. The staff shall verify that:

    a. The application must contain no misstatement of fact

b. The applicant has not been convicted of a felony within the past three years, and if convicted of a felony before then, has had citizenship restored.

c. The proposed site meets building and fire prevention codes and the property complies with zoning requirements.

Revocation: A special use permit issued pursuant to this section may be evoked by action of the council it finds that:

1. A misstatement of fact contained in the application is discovered after issuance of the permit.

2. The permittee has violated or allowed to be violated any provision of this subsection.

3. The permittee violates any zoning, building, or fire prevention ordinance.

4. The permittee operates any unlawful game of chance at which any money, property or other thing of value is bet, whether the same be in stake or not, including but not limited to: “numbers”, “tickets”, Pyramid and chain schemes, faro bank and tables, punchboards, slot machines, vending machines, or game tables.

Use: **Golf courses**

Special Use Districts: **R-18, R-15, R-12, R-9, I-1 and I-2**

Development Standards:

1. Every green shall be at least 150 feet from any property lines.

2. All buildings shall be at least l00feet from a property line.

3. Lighting shall be shielded so that direct light is not cast onto adjacent property.

Use: **Golf, swimming, and tennis clubs**

Special Use Districts: **R-18, R-15, R-12 and R-9**

Development Standards

1. Every green shall be at least 150 feet from a property line.

2. Tennis courts shall be at least 75 feet from interior lot lines.

3. Buildings and swimming pools shall be at least 100 feet from interior lot lines.

4. Lighting shall be so shielded as to cast no direct light upon adjacent property.

Use: **Lodges, Civic, Social and Fraternal Organizations, not used for Parties at Night**

Special Use Districts: **R-18, R-15, R-9, R-MF, R-G and O-1**

Development Standards:

1. The site shall be at least one acre in size.

2. Structures, activities and parking areas shall be located at least 40 feet from property lines.

3. Lighting shall be shielded so that it does not cast direct light on adjacent property. Public address systems and sound amplification shall be contained within buildings.

4. Music that is audible at the property lines of adjacent residential property shall not be permitted.

Use: **Lodges or Other Buildings Rented or Used for Parties at Night**

Special Use Districts: **R-18**

Development Standards

1. The site shall be at least three acres in size.

2. Structures, parking areas and activity areas shall be located less than 40 feet from any property line.

3. Lighting shall be shielded so that it does not cast direct light on adjacent property.

4. Public address systems and sound amplification shall be contained within buildings.

5. An opaque screen shall be provided within the forty-foot space adjacent to the side and rear lot lines.

Use: **Manufactured Home Parks**

Special Use Districts: **RG**

Manufactured home parks shall be permitted as a special use upon evidence that a desirable environment for family living will result. To this end, consideration will be given to amenities of the site plan such as the degree of privacy afforded to each unit, protection from adjacent commercial and industrial activities, recreational facilities, landscaping and avoidance of traffic congestion.

Classification of Units Permitted: Class AA, A or B manufactured homes are permitted in parks. Consistent with the definitions of Class AA, A and B manufactured homes, units in manufactured home parks shall be set up in accordance with standards established by the N. C. Department of Insurance. All removable hitches shall be removed.

Minimum Area: six acres The site may be divided by a public street, provided that each adjacent portion of the site shall contain at least two acres, and the average horizontal dimension shall be at least 120 feet.

Setback of Park: Each boundary of the park must be at least 200 feet from any permanent residential building located outside the park unless separated by a natural or artificial barrier.

Buffer: A greenbelt planting strip, at least 20 feet wide shall be located along all perimeter boundaries of the manufactured home park not bordering a public street. The greenbelt shall include an opaque screen. No manufactured home or other structure and no driveway shall be located in the buffer.

Development Standards:

1. Minimum dimensions of sites:
   7,000 square feet area for each area
   50 feet width for each site
   20 foot setback for each unit from a private driveway or public street
   15 foot side yard along each side of every site
   20 foot rear yard, but not required where site abuts a green belt on rear

2. Placement of Units: Placing manufactured homes side by side with their long axles parallel should be avoided unless the distances between them are substantially increased above the minimums specified herein.

3. Parking: A minimum of two spaces per lot shall be provided

4. Roads: All spaces shall abut upon a paved roadway at least 20 feet wide. Specifications for pavement shall be the same as for city maintained streets. Roads shall have unobstructed access to a public street, alley or highway. The city will inspect roads during roadway construction to assure that paving standards are met.

5. Walkways: Walkways at least three feet wide shall be provided from the manufactured home spaces to the service buildings.

6. Drainage: The park shall be located on a well-drained site, properly graded to ensure rapid drainage and freedom from standing water.

7. Utilities: Electrical, telephone, cable television, and other utilities shall be constructed underground. Necessary easements of at least 10 feet must be provided. Electricity shall meet requirements in current edition of the National Electrical Code.

8. Recreation area: A minimum of 5,000 square feet of usable, developed recreation area shall be provided for every manufactured home park. The area shall be at least 100 square feet per manufactured home space. (Area must not be used for septic tank fields or contain features such as ditches that limit access and use.)

9. Lighting of roads and walkways: All roadways and walkways within a park shall be hard-surfaced and lighted at night with electric lamps of not less than 100watts each, spaced at intervals of no more than 100 feet, or equivalent lighting as approved by the city. Such lighting shall be the responsibility of the park owner.

10. Water, sewer: Manufactured home parks shall provide city water and sewer to all facilities and to each manufactured home space. A single meter shall be provided for the entire park.

11. Garbage receptacles: The park owner shall provide for adequate, regular methods of waste disposal and collection. Either sanitary bulk containers (dumpsters) or individual garbage containers for each space may be used. If individual garbage containers are provided, private waste collection companies are allowed to enter the park to collect waste at each space. If bulk containers are provided, they must be located within 300 feet of each manufactured home space. The bulk container shall be kept in a sanitary condition at all times.

12. Register: The operator of a manufactured home park shall keep a register containing the names of all occupants, the date of arrival and the license number of the automobile and manufactured home. The register shall be available at all reasonable times for inspections by representatives of the City.

13. Accessory Buildings: Permitted accessory buildings include:
    - Coin laundries, offices, and recreational buildings to serve residents of the manufactured home park only, provided they are not within 50 feet of any manufactured home and do not intrude into any required yard.
    - Equipment storage buildings located as required in the Table of Area, Height, and Yard Regulations
    - An administrative office.

    a. Accessory service buildings shall be well lighted at all times of the day and night; shall be well ventilated, with screened openings; shall be constructed of such moisture-proof material, including painted woodwork, as shall permit repeated cleaning and washing; and shall be maintained at a temperature of at least 62 degrees Fahrenheit from October first through May first. The floors of service buildings shall be of water-impervious material.

    b. No building shall be located closer than 30 feet to any manufactured home.

    c. All service buildings and the grounds of the park shall be kept clean and free from any condition that will menace the health of any occupant or the public or constitute a nuisance.

    d. Maintenance of service buildings shall be the responsibility of the owner of that manufactured home park

14. Fire protection: The park shall meet the most recently adopted standards for adequate fire protection established by the National Fire Protection Association.

15. Skirting: All manufactured homes moved into the City of Graham or its extraterritorial jurisdiction, shall be skirted. A time limit of up to sixty (60) days shall be granted to install skirting. After the sixty-day period, the building inspector shall inspect the skirting for compliance with this section. Skirting must be a noncorrosive, durable material such as vinyl or other suitable material approved by the building inspector. The color shall be in keeping with the color scheme of the manufactured home. All removable hitches shall be removed.

<u>Preliminary Site Plan:</u> In applying for a special use permit the developer of a manufactured home park shall submit plans and specifications showing compliance with the Development Standards listed above. The preliminary site plan shall include or show:

1. A legal description of the property shown and referenced to major streets and tax map number, drawn to scale, clearly showing the extent and area to be used for manufactured home park purposes.

2. The number, size and locations of all manufactured home spaces.

3. Location of underground water, sewer, and gas lines; electric and telephone wires

4. Location and specifications for water taps, sewage disposal connections and other facilities on each manufactured home space.

5. Location of all buildings, proposed or existing, in the area to be used as a manufactured home

6. Location of all roads, driveways and walkways serving the park and each space

7. The original and finished grade of the property.

8. The location by insert map showing true north.

9. A plan for providing fire protection and safety, where applicable.

10. A plan for providing fire protection and safety, where applicable.

11. Plans shall specify the method of garbage disposal

Approval must be obtained from the appropriate state and local agencies for construction of the systems if required.

Use: **Manufactured home sales**

Special Use Districts: **B-2, I-1, I-2**

<u>Development Standards:</u>

1. The site shall be at least one acre in size.

2. No manufactured home sales lot may be located closer than 5,000 feet to another manufactured home sales lot.

3. At least 60 percent of property shall be open land.

4. All setback requirements of the zoning district shall be observed.

5. No manufactured home shall be located closer than 20 feet to the nearest other manufactured home or structure.

6. Off-street parking shall be one parking space per two manufactured homes, minimum of five parking spaces.

7. No manufactured home sales lot shall be located in a flood zone area as shown on the city's FEMA maps.

8. Sales office must be constructed in order to comply with N.C. State Building Code, which includes modular construction, as defined by the North Carolina Department of Insurance.

Use:	**Mini warehouses**
Special Use Districts:	**B-2**
Lot size:	Between two acres (minimum) and five acres (maximum)
Maximum Height:	20 feet, not exceeding one story
Storage:	No outside storage is permitted
	Storage of hazardous, toxic or explosive substances is prohibited
Operation:	No business activity other than the rental of storage units shall be conducted on the premises
	One dwelling unit shall be allowed on the same lot for use as a caretaker dwelling.
Lighting:	Lights shall be arranged so that no light or glare is directed into a residence
Screening:	An opaque screen at least eight feet high shall be provided along each property line adjoining a residentially zoned district.

Use: **Parking Lot in O-I District to Serve a Use Not Permitted in O-1**

Special Use Districts: **O-1**

Development Standards:

1. Nighttime parking shall be permitted only after attending by the city council that nighttime use will not adversely affect nearby properties.

2. If provided, lighting shall be arranged so that no direct or reflected light shall be a nuisance to other properties or persons.

Use: **Parking Lot or Driveway Serving a Use not Permitted in the District**

Special Use Districts: **R-12, R-9 and R-7**

Development Standards:

1. The parking lot shall adjoin or lie directly across the street from the property served.

2. The parking lot shall be paved with an all-weather surface.

3. Lighting shall be arranged so that direct or reflected light is not a nuisance to other properties.

4. The parking lot shall not extend more than 200 feet into a residential district unless a finding, described below, is made by the city council.

Findings by Council:

1. The city council shall permit nighttime parking only after a finding that nighttime use will not adversely affect nearby properties.

2. The city council shall permit extensions of parking lots more than 200 feet into a residential district only after a finding that extension to a specified greater distance will not adversely affect nearby properties.

3. An opaque screen shall be provided where the city council finds such a screen necessary to protect nearby property.

Use: **Recycling Processing Centers**

Special Use Districts: **I-1 and I-2**

Development Standards:

1. No recycling facility shall locate within a 500 foot radius of any residentially or office and institutionally zoned property.

2. No outside storage of materials is permitted

3. The facility shall be operated in a wholly enclosed building except that if the facility is adjacent to railway tracks, loading into a railway car may take place outside the building provided no materials remain on the loading area for more than 24 hours.

Use: **Telecommunications Towers (Cellular, PCS, Radio, TV, etc.)**

Special Use Districts: **I-1 and I-2**

Setback and Height Requirements:

I. Non-residential districts - The minimum distance from the base of the tower to the nearest property line shall be equal to or greater than the height of the tower. The city council shall have the option to waive this provision upon receiving documentation from the petitioner that the tower is engineered such that in the event of collapse, the tower will fall upon itself within the property boundaries upon which it is located. This option may require the establishment of a setback equivalent to a fall zone easement certified by a professional engineer registered in North Carolina. In any case, the minimum setback for a tower and all appurtenant structures shall be 25 feet from the nearest property line.

2. Proximity to right-of-way - No free standing or guyed tower may be constructed closer than the tower's height from any public right-of-way.

Appurtenant Structures for Tower Operations:

An appurtenant structure constructed for the purpose of housing equipment related to tower operations may accompany each tower. Such structures shall be unmanned and be limited to 240 square feet of gross floor space for each tower and co-locator (e.g. 3 users on a tower equals three times 240 square feet for accessory structures). Setback for these structures shall be at least 15 feet from any property line.

Fencing and Screening:

1. The base of the tower, including but not limited to equipment and/or storage structures, along with any guy wires shall be enclosed by a commercial grade chain link fence (or fence of equal or greater quality) a minimum of eight feet in height.

2. A vegetative screen shall be planted around the security fencing consisting of at least two staggered rows of evergreen shrubs on five feet centers, at least five feet tall at the time of planting, unless existing vegetation or topography is determined to provide screening at least as effective as the planted screen.

Preliminary Site Plan:

The applicant shall present a preliminary site plan showing:

1. Siting and size of existing and proposed structures and descriptions of the color and nature of all exterior materials;

2. Existing trees and plantings as well as new plantings required for fencing and screening;

3. Existing and proposed topography at a contour interval of five feet;

4. Any officially designated floodways and floodplains;

5. Locations of access easements and parking areas.

Letters from Permitting and Regulatory Agencies

The applicant shall provide letters from all applicable government regulatory agencies such as the FCC, FAA and Burlington Airport authority verifying that the agency's requirements have been met.

Power output and EMF Emissions:

The output for towers shall not exceed federally approved levels for exposure to electronic magnetic force. The petitioner shall also certify that the tower operations will not interfere with normal radio and television reception in the vicinity.

Tower Lights

Towers shall be provided with warning lights pursuant to FAA and FCC guidelines.

Minimum Distance between Towers:

Towers established pursuant to this ordinance and greater than 75 feet in height shall be located no closer than one mile from another tower greater than 75 feet in height. The council shall have the option to waive this provision if it is determined that a less objectionable site can be established at a closer location, or that other sites are not suitable for proper coverage.

Co-location:

1. Co-location of telecommunications operations on towers is encouraged to maximize use of towers and to reduce the number of towers serving the city and its environs. Co-location on a previously approved tower is permitted without an additional special use permit, provided all conditions of the previously approved permit are complied with. Co-location on a building or substantial structure such as a water tower or electric transmission tower is permitted without a special use permit. However, all applicable provisions of the zoning ordinance shall be met, and the authorized City official should review plans.

2. Towers less than 150 feet in height shall be adequately designed and of sufficient height to accommodate at least one additional user. Towers greater than 150 feet in height shall be designed to accommodate multiple additional users. The applicant for special use permit to construct a new tower shall submit plans indicting the intent to allow shared use of the tower, the number of shared users allowed, and how other users are to be accommodated. The applicant shall also present documentation that no suitable existing facilities within the coverage area are available to the applicant. Evidence may be in the form of maps, letters from adjacent tower owners, or calculations. Facilities include other towers, elevated tanks, or other structures. In addition, a professional engineer shall present documentation that the tower has sufficient structural integrity to accommodate more than one user.

Cessation in Use:

If the wireless telecommunications towers ceases to be used for this purpose, then the tower owner shall dismantle and remove the tower and accessory structures from the site, within 120 days from the date the tower is taken out of service. The tower owner shall notify the Planner when any transmission tower is placed out of service. This Special Use Permit expires 120 days after the date that any transmission tower is taken out of service. Prior to final approval of the Electrical Permit, a Decommissioning Plan (see definitions) shall be approved by the City. (*amended 5/3/2016)*

Historic District:

Towers are not permitted in a designated historic district or on property on which a designated historic landmark is located. In addition towers shall not be constructed within 350 feet of a designated historic district or an historic landmark. "Historic" means a district or landmark, which has been nominated, to the National Register of Historic Places.

Outside Storage:

Outside storage is not permitted on the tower site.

Use: **Townhouse Developments**

Special Use Districts: **R-12, R-9 and R-7**

1. A preliminary site plan shall be submitted. It shall number and show the location and dimensions of the sites within the development along with other information required by the City.

2. The dimensional requirements for multifamily developments shall apply.

3. The off-street parking requirements for multifamily developments shall apply.

Use: **Trucking or Freight Terminal, Truck Sales, Truck Storage, Repair, Wash, or Maintenance, and Truck Stop or Auto Plaza**

Special Use Districts: **B-2 (Truck Sales only), I-1, and I-2**

1) A traffic impact analysis/study, prepared by a qualified professional engineer registered to practice in North Carolina, shall be submitted with an application for a Special Use Permit. The purpose of the study is (a) to ensure that the proposed use does not adversely affect the transportation network, (b) to identify any traffic problems associated with access from the site to the existing transportation network, (c) to delineate solutions to potential problems, and (d) to present improvements to be incorporated into the proposed facility.

2) Where applicable, points of ingress and egress shall be shared between adjoining uses that are similar in nature to any road maintained by the City of Graham or the North Carolina Department of Transportation.

Use: **Unified Business Development and Shopping Center**

Special Use Districts: **O-I, B-2, B-1, I-1 and I-2**

Description: A unified business development consists of one or more principal structures or buildings, together with accessory structures or buildings, containing two or more stores, service establishments, offices, or other permitted uses. A development of this type is planned, organized, and managed to function as a unified whole and featuring all of the following: 1) common driveways, 2) common parking, 3) common signage, and 4) common landscaping plan. Examples are shopping centers, retail centers, office parks, and business parks having the characteristics listed above. Such unified business developments may include outparcels for lease or for sale, which may be intersected by public streets. Any such unified business development may be organized as a condominium or in a manner analogous to that of a townhouse development (with ownership of parcels beneath the building units and with parking and driveways being in common area owned and maintained by an Owners Association).

Condominium and Townhouse Unified Business Developments: Any unified business development that is proposed to be organized as a condominium or townhouse development must follow the procedures established for condominium and townhouse uses, as specified in Section 10.149. However, the provisions for Dimensional Requirements: Off-Street Parking and Loading Requirements in each of these sections shall not be used in the site plan layout, but will be based on the standards for the underlying zoning district. If a nonconforming building is converted into a condominium or townhouse

development, the Declaration and Final Plat shall disclose such nonconformity and explain potential consequences of such nonconformity in case of substantial damage to the building.

Access to Street or Thoroughfare: Such developments shall abut a major thoroughfare, minor arterial, or collector street (existing or proposed) as shown on the Burlington-Graham Thoroughfare Plan. Access to the street or thoroughfare shall be by mean of a service road, or direct access, keeping in mind the need to control congestion on and into the thoroughfare or street.

Administrative Approval: When the anticipated traffic load is less than 250 vehicles per day, the approval for this UBD may be treated as a "Unified Business Development, Light" and be considered use by right by the City Planner, or referred to Council as they so choose. However, if the traffic increases beyond this amount, or is anticipated to increase beyond this amount, the applicant must come before the City Council to be approved, or the parcel must have only one use. *(added 5/3/2016)*

Uses to be Enclosed: Required Screening:

1. All uses shall be completely enclosed in buildings except for plant sales, sidewalk cafes, and permitted drive-in uses.
2. An opaque screen shall be provided wherever, in the city council's judgment, such screening is necessary to shield adjacent residential districts.

Uses Permitted in Unified Business District:

B-2 and I-1

1. All uses permitted in the B-2 District are permitted except for the following uses, which are not permitted: residential dwellings; animal hospital; automobile sales; car wash; amusements/water parks; bottling or dairy plant; commercial campgrounds; camping vehicle parks; contractor's storage yards (offices are permitted); day care centers (child and adult); farm equipment sales, storage and repair; funeral homes; golf courses (all types); hospitals; kennels; laundries, except self-service; lodges; manufactured home sales; nursing homes; plumbing shops; sign shop; stonecutting; monument manufacture and sales; tattoo business; tire recapping and retreading (principal use); truck sales; veterinarian; wholesale distributors.

2. Drive-in establishments offering goods or services directly to customers in parked cars shall be permitted only when the locations of buildings and access drives have been approved by the city council.

3. All business establishments shall be retail or service establishments dealing directly with the public.

4. Dry cleaning businesses are allowed with the following provisions: (a) No Hazardous Air Pollutants (HAP's), Resource Conservation and Recovery Act (RCRA) hazardous waste, or Occupational Safety & Health Administration (OSHA) labeled toxic substances allowed on premises and (b) no dry cleaning chemical storage allowed on premises.

O-I and B-1

All uses permitted in the underlying districts are allowed within those districts.

I-2

All uses permitted in the underlying district are allowed within the Heavy Industrial District. *(added 5/3/2016)*

Sections 10.150-10.159 Reserved

DIVISION 8. RESERVED

Section 10.160-10.184 Reserved *(Planned Unit Development removed 8/2/2016)*

DIVISION 9. HISTORIC DISTRICT OVERLAY ZONE

Section 10.185 Purpose

The Courthouse Square Historic District, referred to in this division as the "district," is one of the most valued and important assets of Graham. It is established for the purpose of protecting and conserving the heritage of Graham, Alamance County and the state; for the purpose of safeguarding the character and heritage of the district by preserving the district as a whole and any individual property therein that embodies important elements of its social, economic, cultural, political or architectural history; for the purpose of promoting the conservation of such district for the education, pleasure and enrichment of residents of the district and Graham, Alamance County, and the state as a whole; for the purpose of fostering civic beauty; and for the purpose of stabilizing and enhancing property values throughout the district as a whole, thus contributing to the improvement of the general health and welfare of Graham and the residents of the district.

Section 10.186 Historic District Overlay Zone Established

The Courthouse Square Historic District is hereby established as a district which overlaps and overlays existing zoning districts, the extent and boundaries of which are as indicated on the official zoning map.

Section 10.187 Uses Conform to Underlying District

The Courthouse Square Historic District overlays several zoning districts. All uses permitted in any such zoning district shall be permitted in the historic district according to the procedures established in this ordinance.

Section 10.188 Dimensions Conform to Underlying District, Exceptions

Dimensional requirements shall be the same as those for the underlying zoning districts, except that:

1. No structure or part thereof shall extend nearer to or be required to be set back further from the front lot line than the average distance of the setbacks of the nearest principal buildings within 200 feet on each side of such building and fronting on the same side of the street.

Section 10.189 Criteria to Determine Appropriateness

The Historic Resources Commission shall develop and publish design guidelines that reflect and support the special character of the Courthouse Square Historic District. These guidelines shall be used by the Historic Resources Commission when deciding upon certificates of appropriateness for structures in the district.

Section 10.190 Certain Changes to Structures not Prohibited

Nothing in this division shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the historic district which does not involve a substantial change in design, material, or outer appearance thereof, nor to prevent the construction, reconstruction, alteration, restoration, or demolition of any such feature which the building inspector or similar official shall certify is required to protect the public safety to correct an unsafe or dangerous condition.

Sections 10.191 – 10.199 Reserved

DIVISION 10. HISTORIC RESOURCES

Section 10.200 Purpose

The purpose of this division is to recognize and preserve Graham's historical heritage. It provides that Graham's heritage might be safeguarded by preserving any district or landmark that embodies important elements of Graham's culture, history, architectural history or prehistory and promotes the use and conservation of those districts and landmarks for the education, pleasure and enrichment of the residents of and visitors to Graham.

Section 10.201 Historic Resources Commission

(a) Creation. The Graham Historic Resources Commission is hereby established, referred to in this division as the "commission."

(b) Purpose, Authority and Powers. The commission shall seek to promote, enhance and preserve the character of historic districts and historic landmarks. The commission is authorized and empowered to undertake such actions reasonably necessary to the discharge and conduct of its duties and responsibilities as outlined in this division and Article 19, Part 3C of Chapter 160A of the General Statutes of North Carolina, including but not limited to the following:

(1) Undertake and maintain an inventory of properties of historical, prehistorical, architectural and/or cultural significance;

(2) Recommend to the Planning Board and City Council areas to be designated by ordinance as "historic districts" or that designation of any historic district or any part thereof be revoked or removed for cause;

(3) Recommend to the City Council individual structures, buildings, sites, areas, or objects to be designated by ordinance as "historic landmarks" or that designation of any historic landmark be revoked or removed for cause;

(4) Prepare and publish guidelines and criteria for the review of certificates of appropriateness for all designated historic districts and historic landmarks;

(5) Prepare and publish rules of procedure;

(6) Review and act upon applications for certificates of appropriateness;

(7) Establish criteria, procedures and guidelines by which designated city staff may review and approve certificates of appropriateness for minor works;

(8) Enter, solely in performance of its official duties and only at reasonable times, upon private lands for examination or survey thereof. However, no member or agent of the commission may enter any private building or structure without the express consent of the owner or occupant thereof;

(9) Prepare and recommend the adoption of a preservation element as part of the City's comprehensive plan;

(10) Propose to the city council changes to this division or any related ordinance and to propose new ordinances or laws relating to the total program for the development of the historic resources of the city and its environs;

(11) Cooperate with other city boards or commissions or with agencies of the city or other governmental units, including federal and state governments, to offer or request assistance, aid, guidance, or advice concerning matters under its purview or of mutual interest;

(12) Conduct an educational program with respect to historic districts and landmarks within its jurisdiction;

(13) Undertake programs of information, research, or analysis relating to any matters under its purview;

(14) Request the zoning enforcement officer to take such action as may be appropriate to prevent the construction, reconstruction, alteration, restoration, moving or demolition of buildings, structures, appurtenant fixtures, outdoor advertising signs or other significant features in any historic district or historic landmark in violation of the provisions of this division.

(15) Negotiate at any time with the owner of a building, structure, site, area, or object for its acquisition or its preservation, when such action is reasonably necessary or appropriate; and,

(16) To exercise such other powers and perform such other duties as are required elsewhere by this division, the General Statutes of North Carolina or by the city council.

(c) Members, Officers and Meetings

(1) Members. The commission shall be composed of seven (7) members appointed by the Graham City Council. All members shall be residents of the territorial zoning jurisdiction of Graham and shall have demonstrated special interest, experience or knowledge in history, architecture, archaeology, or a related field. Members shall serve overlapping terms of four years. The City Council shall strive to fill any vacancy within 60 calendar days. Individuals appointed to fill vacancies on the commission shall serve out the term of the member whom they replace.

(2) Attendance at meetings. Any member who misses more than two consecutive regular meetings or more than half the regular meetings in a calendar year shall lose his or her status as a member of the commission and shall be replaced or reappointed by the City Council. Absence due to sickness, death or other emergencies of like nature shall be recognized as approved absences and shall not affect the member's status on the commission except that in the event of a long illness or other such cause for prolonged absence, the member shall be replaced.

(3) Chair and Vice-Chair. Members of the commission shall elect a chair at the last regular meeting of each calendar year. The chair shall decide all points of order and procedure, subject to the rules of procedure, and shall appoint any committees found necessary to investigate any matters before the commission. A vice-chair shall be elected in the same manner and for the same term as the chair and shall serve as acting chair in the absence of the chair.

(4) Meetings. The commission shall establish a regular meeting time, and shall meet at least quarterly and more often as it shall determine and require. All meetings shall conform to the North Carolina open meetings law (G.S. Chapter 143, Article 33C). The commission shall adopt and publish rules of procedure for the conduct of its business.

(5) Minutes of meetings. The commission shall keep permanent minutes of all its meetings. The minutes shall record attendance of its members, its resolutions, findings, recommendations, actions and the reasons for its actions. The minutes of the commission shall be a public record.

(6) Quorum and Voting. A quorum shall consist of a majority of the members of the commission. The vote of a majority of those members present shall be sufficient to decide matters before the commission, provided a quorum is present. No commission member shall participate in the decision of any matter in which he has a personal financial interest.

(7) Annual report. An annual report shall be prepared and submitted to the City Council at or before its regular March meeting. Such report shall include a comprehensive and detailed review of the activities, problems and actions of the commission, as well as any budget requests and/or recommendations.

Section 10.202 Designation of Historic Districts

(a) Criteria for Designation. Historic districts shall be of special significance in terms of their history, prehistory, architecture and/or culture, and possess integrity of design, setting, materials, feeling and association.

(b) Procedures

(1) Any person authorized to propose amendments to the text of this ordinance may propose that an area be designated as an historic district. Said proposal must include the following information related to the proposed district:

a. A description and map of the district boundaries;

b. An investigation and report describing the significance of the buildings, structures, features, sites or surroundings included in the district; and,

c. The proposed text amendment to this ordinance that will create and govern the district, which shall specify criteria to be used in reviewing certificates of appropriateness.

(2) Upon receiving a complete proposal, staff shall forward items (a) and (b) above to the State Historic Preservation Officer, North Carolina Department of Cultural Resources. If the Department does not submit written comments or recommendation in connection with the report within 30 days following receipt by the Department of the report, the commission, Planning Board and City Council shall be relieved of any responsibility to consider such comments.

(3) Consideration by the Historic Resources Commission. The commission shall consider the proposal and any timely comments received from the State Historic Preservation Officer or his or her designee at its first possible regular meeting. If necessary, the commission shall work with the proposer to make any revisions to the proposed text amendment that it deems necessary. At or before the second regular meeting at which the proposal is considered, the commission shall forward the proposal to the Planning Board along with a recommendation to either approve or deny the proposed text amendment.

(4) The proposal will then proceed in the same manner as amendments to the text of this ordinance.

Section 10.203 Designation of Historic Landmarks

(a) Criteria for Designation. No property shall be recommended for designation as an historic landmark unless it is deemed and found by the commission to be of special significance in terms of its historical, prehistorical, architectural, or cultural importance, and to possess integrity of design, setting, workmanship, materials, feeling and/or association.

(b) Procedures

(1) Pre-Application Conference. Before submitting an application, applicants are encouraged to schedule a pre-application conference with the City Planner to discuss the procedures, standards and regulations of designation of an historic landmark.

(2) Application. A complete application shall be filed with the City Planner at least 45 calendar days before the next meeting of the commission. A complete application shall include a report on the historic, architectural, prehistorical, educational or cultural significance of each building, structure, site, area or object proposed for designation, and a historic landmark designation fee fixed by the City Council. The report shall include the suggested minimum standards set forth by the State Historic Preservation Office and as otherwise required by the commission.

(3) Within 5 calendar days of receiving a complete application, staff shall forward said application to the State Historic Preservation Officer, North Carolina Department of Cultural Resources. If the Department does not submit written comments or recommendation in connection with the application within 30 days following receipt by the Department of the report, the commission and City Council shall be relieved of any responsibility to consider such comments.

(4) Consideration by the Historic Resources Commission. The commission shall consider the application and any timely comments received from the State Historic Preservation Officer or his or her designee at its first possible regular meeting, and shall hold a public hearing on the proposed designation ordinance. The public hearing shall be advertised in the same manner as zoning amendments, except that a notice posted on the site is not required. The commission shall have two consecutive regular meetings at which to consider the proposed designation. Only designations that are recommended for adoption shall be forwarded to the City Council.

(5) Consideration by City Council. The City Council shall hold a public hearing on the proposed designation ordinance. The public hearing shall be advertised in the same manner as zoning amendments, except that a notice posted on the site is not required. The City Council may adopt the designation ordinance as proposed, adopt with any amendments it deems necessary, or reject the proposed designation ordinance.

(6) If the designation ordinance is adopted, the owners and occupants of each designated landmark shall be given written notification of such designation. A copy of the designation ordinance and all amendments thereto shall be filed with the City Clerk, Chief Building Inspector, Alamance County Register of Deeds, and Alamance County Tax Office.

(c) Standards for Designation Ordinance. The designation ordinance shall include, at a minimum, the following information for each property to be designated:

(1) Identification of the property;

(2) Specification of the exact boundaries of the designation;

(3) Specification of the property's features that are included in the designation, such as exteriors of buildings and other structures, interior features (if any), and significant landscape, archaeological or natural features;

(4) Certification that the requirements of state law have been met;

(5) The main facts supporting the finding that the property has special historical, prehistorical, architectural or cultural significance; and,

(6) Designation of the property as a historic landmark pursuant to state law.

Section 10.204 Certificates of Appropriateness

(a) Applicability. A certificate of appropriateness shall be required for (1) any changes in the external appearance of existing structures; (2) design of new structures; and (3) for demolition or relocation of existing structures within locally designated historic districts and/or locally designated historic landmarks within Graham's territorial jurisdiction. Specifically:

(1) No exterior portion of any building or other structure (including masonry walls, fences, light fixtures, steps and pavement, or other appurtenant features) nor above-ground utility structure nor any type of sign shall be erected, altered, restored, moved or demolished until after a certificate of appropriateness has been approved. Such certificate must be issued prior to the issuance of a building permit or other permit granted for the purposes of constructing, altering, moving or demolishing structures, which certificate may be issued subject to reasonable conditions necessary to carry out the purposes of this division. A certificate of appropriateness shall be required whether or not a building or other permit is required. Any building permit or such other permit not issued in conformity with this Section shall be invalid.

(2) The city and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating any changes in the character of street paving, sidewalks, trees, utility installations, lighting, walls, fences, structures and buildings on property, easements, or streets owned or franchised by the city or public utility companies.

(b) Procedures

(1) Application. A complete application shall be filed with the City Planner at least 10 calendar days before the next meeting of the commission. The commission shall, by uniform rule in its rules of procedure, require data and exhibits as are reasonably necessary to determine the nature of the application. Nothing shall prevent the applicant from filing with the application additional relevant information bearing on the application.

(2) Public Notice. The staff shall notify by mail, not less than one week before the meeting at which the matter is to be heard, the affected property owners within 100 feet on all sides of the subject property for applications which involve a use by right or within 500 feet on all sides of the subject property for applications which involve a special use permit.

(3) Review and Approval. The commission shall take action on the application and in doing so shall apply any officially adopted review criteria or guidelines. The commission's action on the application shall be approval, approval with modifications, or denial. The applicant and affected property owners shall be given an opportunity to be heard at the meeting at which the application is presented. If the commission fails to take final action at or before the second regular meeting at which the application is considered and within no more than 180 days from the date the application is filed, the application shall be deemed to be approved.

(4) If the application is approved, the secretary for the commission shall transmit a certificate of appropriateness in letter form, clearly describing the nature of the work which has been approved. A copy of the letter shall be forwarded to the city department which is responsible for its enforcement.

(5) If the application is denied, a new application affecting the same property may be submitted only if substantial change is made in plans for the proposed construction, reconstruction, alteration, restoration or moving. The entire application process shall begin anew once an application is resubmitted.

(c) Delay in Demolition or Relocation. An application for a certificate of appropriateness authorizing the relocation, demolition or destruction of a designated landmark or a building, structure or site within the district may not be denied except as provided in subsection (d) below. However, the effective date of such a certificate may be delayed for a period of up to 365 days from the date of approval. The maximum period of delay authorized by this section shall be reduced by the commission where it finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use of or return from such property by virtue of the delay. During such period, the commission shall negotiate with the owner and with any other parties in an effort to find a means of preserving the building or site. If the commission finds that a building or site within a district has no special significance or value toward maintaining the character of the district, it shall waive all or part of such period and authorize earlier demolition, or removal. If the commission has voted to recommend designation of a property as a landmark or designation of an area as a district, and final designation has not been made by the City Council, the demolition or destruction of any building, site, or structure located on the property of the proposed landmark or in the proposed district may be delayed by the commission for a period of up to 180 days or until the City Council takes final action on the designation, whichever occurs first.

(d) An application for a certificate of appropriateness authorizing the demolition or destruction of a building, site, or structure determined by the State Historic Preservation Officer as having statewide significance as defined in the criteria of the National Register of Historic Places may be denied except where the commission finds that the owner would suffer extreme hardship or be permanently deprived of all beneficial use or return by virtue of the denial.

(e) Appeal. An appeal from the commission's action in granting or denying a certificate of appropriateness may be taken to the board of adjustment.

(f) Compliance

(1) The zoning enforcement officer shall enforce compliance with the terms of the certificate of appropriateness. Failure to comply with a certificate of appropriateness shall be a violation of this article. The discontinuance of work or the lack of progress toward achieving compliance with a certificate of appropriateness for a period of six months shall be considered as a failure to comply with a certificate of appropriateness.

(2) Nothing contained in this division shall prohibit, impair, or limit in any way the power of the city to prevent the construction, reconstruction, alteration, restoration, or removal of buildings, structures, appurtenant fixtures, or outdoor signs in any historic district or historic landmark in violation of the provisions of this division. The enforcement of any remedy provided herein shall not prevent the enforcement of any other remedy or remedies provided herein or in other ordinances or laws.

Section 10.205 Commission Recommendation on Special Use and Conditional Rezoning

When an application for a special use permit or conditional district rezoning within an historic district or historic landmark has been submitted, the Historic Resources Commission shall review the application and forward its comments and recommendations to the City Council within 30 days of the filing of the application.

Section 10.206 – 10.239 Reserved

DIVISION 11. OFF STREET PARKING

Section 10.240 Off-street parking

(A) In all districts, except the B-1 district, when a building is constructed, or at the time a principal building is enlarged or increased in capacity, or before conversion from one type of use to another, permanent off-street parking space in the amount specified by this section shall be provided. Adequate maneuvering space to allow vehicle entrance into each parking space shall also be provided. The off-street parking spaces required by this section shall he entirely outside any street right-of-way and shall not be used for any purpose except parking. Such parking may be provided in a parking garage or properly graded open area. A parking space shall consist of an area at least nine feet wide and at least 18 feet deep.

(1) Certificate of parking requirements. Each application for a zoning permit submitted to the zoning enforcement officer as provided for in this article shall include information as to the location and dimensions of off-street parking and loading space and the means of ingress and egress to such space. This information shall be in sufficient detail to enable the zoning enforcement officer to determine whether or not the requirements of this section are met.

(2) Remote parking spaces. Except for dwelling units, if the off-street parking space required by this article cannot reasonably be provided on the same lot on which the principal use is located, such space may be provided on any land as long as it is in a zoning district in which such parking is permitted.

(3) Parking requirements. The number of off-street parking spaces required in the table below shall be considered as the minimum or maximum, as appropriate and the developer shall evaluate his own needs to determine if they differ from this table. Requirements based on number of employees shall apply to the highest number of employees present during any regular work period or shift.

(4) Driveways.

(a) New driveways within the corporate limits for all uses shall be surfaced with an all-weather material with edges clearly delineated. Gravel shall be prohibited for the first 10-feet of the driveway.

(b) Driveways shall not exceed twenty-five (25) feet in width unless wider driveways are shown on a City Council approved site plan or plot plan.

(c) Except for driveways, no additional curb cuts or vehicle access points shall be permitted.

(d) Where two or more driveways are located on the same lot, the minimum distance between such drives shall be thirty (30) feet or one third (1/3) of the lot frontage, whichever is greater. If the driveway fronts a State Road, the minimum distance between such driveways may be increased depending on comments from NCDOT.

(e) No driveway shall be located closer than twenty-five (25) feet to any street intersection. If the driveway fronts a State Road, the minimum distance between such driveways and the street intersection may be increased depending on comments from NCDOT.

(f) Parked vehicles shall not block pedestrian walkways.

USE	
RESIDENTIAL AND RELATED	**MINIMUM NUMBER OF REQUIRED OFF-STREET RESIDENTIAL PARKING SPACES**
Dwelling, one-family detached	2 spaces
Dwellings, two-family	2 spaces per dwelling unit
Dwellings, multifamily	One and one-half for each one-bedroom unit, and each two-bedroom unit, plus 2 for each 3 or more bedroom units – See Section 10.241 for additional parking requirements for multifamily developments
Dwellings, multifamily sponsored by public or nonprofit agency for restricted-income families or elderly persons	One parking space for each dwelling unit
Group Care Facilities and Group Homes	One space for each two residents of driving age and ability, plus one space per employee
Home occupations	One space in addition to residential requirements
Manufactured homes on individual lots	Two spaces per manufactured home
Manufactured home parks	Two parking spaces per manufactured home if parking is provided on each manufactured home plot. In the alternative, Parking may be provided in off-street parking lots providing at least 1 ½ spaces per manufactured home plot [are] served; no required parking space shall be more than 100 feet distant from the dwelling unit it serves or on the opposite side of the street from the dwelling unit it serves.
NONRESIDENTIAL	**MAXIMUM NUMBER OF REQUIRED OFF-STREET COMMERCIAL/INDUSTRIAL PARKING SPACES**
Amusements, commercial	One space for each 4 persons in designed capacity
Animal hospital, veterinarian	Four spaces for each doctor, plus one for each employee
Auditoriums, gymnasiums. Stadiums, etc.	One space for each 4 seats, plus one space for each 40 square feet of floor space where movable seats are used
Banks, savings and loans, financial institutions	One space for each 200 square feet gross floor area used by the public, plus one space for each 600 square feet other gross floor area, plus waiting space for at least four cars at each drive-in banking device or restaurant drive-thru
Building material storage, contractor's yards	Two spaces, plus one space per employee
Building supply sales	One space for each 600 square feet gross area
Churches	One space for each seven seats
Community centers, libraries, art galleries, museums	One space for each 200 square feet gross floor area used by the public
Day nurseries and kindergartens	One space for each employee
Fairs, circuses, carnivals, sideshows	One space for each 600 square feet gross area

USE	
Food, and beverage storage and distribution, food processing	Two spaces for each three employees
Funeral homes	One space for each four seats in chapel (or parlor, if no chapel)
Golf, swimming and tennis clubs	One space for each four persons in designed capacity
Government buildings	One space for each 200 square feet gross floor area used by the public, plus one space for each 600 square feet other gross floor area
Greenhouses, commercial and plant nurseries	Three spaces, plus one space for each employee
Hospitals	One space for each two beds, plus one space for each doctor and each nurse, plus one space for each four other employees
Hotels, motels, tourist home	One space for each rental unit
Electronic, Internet, or Sweepstakes Gaming	One parking space per two terminals
Laboratories, research facilities	Two spaces for each three employees
Laundry, Commercial	Two spaces for each three employees, plus one space for each 200 square feet gross floor area used by the public
Lodges, clubs	One space for each four persons in designed capacity
Medical, dental and paramedical offices and clinics	Four spaces for each doctor, plus one space for each other employee
Nursing homes, convalescent homes, homes for the aged	One space for each four beds, plus one space for each doctor and each nurse, plus one space for each four other employees
Offices	One space for each 200 square feet gross floor area used by the public, plus one space for each 600 square feet other gross floor area
Radio, television studio	One space for each employee
Restaurant (including drive-thru)	One space per employee, plus one space per 100 square feet gross floor area used by the public
Retail establishments, high volume, such as grocery stores, drug stores, department stores, etc.	One space for each 200 square feet gross floor area
Retail stores, low volume, such as furniture stores, machinery sales, manufactured home sales, carpet stores, etc.	One space for each 600 square feet gross floor area
Schools, commercial, vocational, music, art, dancing	One space for each employee, plus one space for each four persons in design capacity
Schools, elementary	One space for each employee
Schools, high schools	One space for each employee, plus three spaces for each classroom
Service establishments dealing frequently with the public, such as barber shops, beauty shops, etc.	One space for each 200 square feet gross floor area

USE	
Service establishments dealing infrequently with the public, such as repair services, secretarial services, etc.	One space for each 600 square feet gross floor area
Service stations, no repair area	One space per employee, plus off-street waiting space for at least two cars in each line
Service stations, with repair area	One space per employee, plus two spaces for each repair bay (in addition to the bay itself); plus off-street waiting space for at least two cars in each line
Theaters, indoor	One space for each four seats
Transportation terminals, freight	Two spaces for each three employees
Transportation terminals, passenger	One space for each 200 square feet gross floor area
Vehicle Sales	One space for each 600 square feet gross floor area
Vehicle Accessories/Repair/Wash	One space for each 200 square feet gross floor area
Warehouses and Industrial Buildings	One space for each employee

(Amended 11/7/2000, 5/4/2004, 7/11/2006, 1/8/2013, 1/5/2016, 7/5/2016, 11/1/2016)

(B) Accessible Parking Spaces, from North Carolina Building Code

(1)

ACCESSIBLE PARKING SPACES

TOTAL PARKING SPACES PROVIDED	REQUIRED MINIMUM NUMBER OF ACCESSIBLE SPACES
1 to 25	1
26 to 50	2
51 to 75	3
76 to 100	4
101 to 150	5
151 to 200	6
201 to 300	7
301 to 400	8
401 to 500	9
501 to 1,000	2% of total
1,001 and over	20, plus one for each 100, or fraction thereof, over 1,000

(2) Van Spaces. For every six or fraction of six accessible parking spaces, at least one shall be a van-accessible parking space. See section 1106 NC Building Code for more detail. *(Amended 1/5/2016)*

Section 10.241 Additional Multi-Family Parking Requirements

(a) No required parking space shall be more than 200 feet distant from the dwelling unit it serves measured in horizontal travel.

(b) Adequate vehicular access shall be provided for garbage and trash pickup, parcel deliveries, and maintenance and service vehicles.

(c) No parking or loading areas or vehicle maneuvering areas shall be located in a required front yard or in a required side yard on a corner lot.

(d) All parking spaces, drives, and vehicle maneuvering spaces shall be paved with a dustless all-weather material, such as asphalt or concrete, capable of carrying, without damage, the heaviest vehicle loads that can reasonably be anticipated on such surface.

Section 10.242 Combining Uses

The required parking space for a number of separate uses may be combined in one lot, but the required space assigned to one use may not be assigned to another for use during the same hours.

Section 10.243-10.244 Reserved *(amended 11/1/2016)*

DIVISION 12. AREA HEIGHT AND YARD REGULATIONS

Section 10.245 Table of area, height, and yard regulations

All buildings and structures constructed, altered or expanded after the addition of this section shall comply with the pertinent area, height, and yard requirements as specified in the following table. Numbers in parentheses in the table refer to notes following the table. These notes are hereby made a part of the table.

(Table on following pages)

Table revised 1/4/2000, 5/2/2000, 11/7/2000, 9/4/2001

Section 10.245 Area, Height, and Yard Regulations

	Minimum Lot Area (Square Feet)						*Minimum Yard Size (Feet From Property Line)*		
Zoning District	**Single Family Dwelling**	**Two-Family Dwelling**	**Multi-Family Dwelling**	**Minimum Lot Width (Feet)**	**Maximum Building Height**	**Yard Depth Front**	**Side Yard Width**	**Side Yard Width Abutting Street**	**Rear Yard Depth**
R-18 (See Section 10.249)	18,000			100	35 feet	40 (See Note 9)	15	20 (See Note 2)	20% of the lot depth (1)(2)
R-15 (See Section 10.249)	15,000			90	35 feet	40 (See Note 9)	10	20 (See Note 2)	20% of the lot depth (1)(2)
R-12 (See Section 10.249)	12,000			80	35 feet	30 (See Note 9)	10	20 (See Note 2)	20% of the lot depth (1)(2)
R-9	9,000			60 for single family dwelling	35 feet	30 (See Note 9)	8	15 (See Note 2)	20% of the lot depth (1)(2)
R-7	7,000			60 for single family dwelling	35 feet	30 (See Note 9)	8	15 (See Note 2)	20% of the lot depth (See Notes 1 and 2)
R-MF	7,000	11,000	15,000 for 3 dwelling units; 17,000 for 4 dwelling units; add 1,500 for each dwelling unit in excess of 4	60 for single-family dwelling; 80 for two-family dwelling; 95 for multi-family dwelling	35 feet for single-family and two family dwellings	30 for single family and two family dwellings; 25 for multi-family dwellings (See Note 9)	8 for single-family and two family dwellings. For multifamily, 25 feet minimum, see Sec. 10.247	15 for single-family and two family dwellings. For multifamily, 25 feet minimum, see Sec. 10.247	20% of the lot depth for single-family and two-family dwelling; (See Notes 1 and 2) For multi-family, 25 feet minimum, see Sec. 10.247.

	Minimum Lot Area (Square Feet)						*Minimum Yard Size (Feet From Property Line)*		
Zoning District	**Single Family Dwelling**	**Two-Family Dwelling**	**Multi-Family Dwelling**	**Minimum Lot Width (Feet)**	**Maximum Building Height**	**Yard Depth Front**	**Side Yard Width**	**Side Yard Width Abutting Street**	**Rear Yard Depth**
R-G (See Notes 3, 9)	7,000	11,000	15,000 for 3 dwelling units; 17,000 for 4 dwelling units; add 1,500 for each dwelling unit in excess of 4	60 for single-family dwelling; 80 for two-family dwelling; 95 for multi-family dwelling	35 feet for single family and two family dwellings	30 for single family and two family dwellings; 25 for multi-family dwellings (See Note 9)	8 for single and two family dwellings. For multifamily, see Sec. 10.247	15 for single and two family dwellings. For multifamily, see Sec. 10.247	20% of the lot depth for single and two family dwelling (See Notes 1 and 2; For multifamily, see Sec. 10.247
O-I (See Notes 9 and 10)	7,000	11,000		Sufficient width for building and required side yards	35 feet where more than ½ the frontage on the same side of the same block is zoned residential (See Note 4)	20 if lot is within 200 feet of a residential district, zero elsewhere (See Notes 5 and 6)	20 adjacent to a lot zoned residential (See Notes 5 and 6)	20 (See Notes 5 and 6)	20 adjacent to a lot zoned residential (See Note 5)
B-1						1 foot for each 2 feet of building height over 50 feet	10 adjacent to a lot zoned residential (See Note 5)	None	10 adjacent to a lot zoned residential (See Note 5)
B-2 (See Note 10)	7,000	11,000		50 (See Note 9)		40 (See Notes 5, 6, and 9)	20 adjacent to a lot zoned residential (See Notes 5 and 6)	20 (See Notes 5 and 6)	20 adjacent to a lot zoned residential (See Note 5)
B-3 (See Note 10)	7,000	11,000		60 (See Note 8)	35 feet and not over 2 stories	20 (See Notes 5 and 6)	20 adjacent to a lot zoned residential, 10 elsewhere (See Notes 5 and 6)	20 (See Notes 5 and 6)	20 (5)

	Minimum Lot Area (Square Feet)						*Minimum Yard Size (Feet From Property Line)*		
Zoning District	**Single Family Dwelling**	**Two-Family Dwelling**	**Multi-Family Dwelling**	**Minimum Lot Width (Feet)**	**Maximum Building Height**	**Yard Depth Front**	**Side Yard Width**	**Side Yard Width Abutting Street**	**Rear Yard Depth**
I-1 (See Note 10)				Sufficient width for building and required side yards		50 feet for buildings; parking areas shall be set back at least 10 feet from the property line	50 adjacent to a lot zoned residential or any residence on a lot otherwise zoned; 20 elsewhere	50	50 adjacent to a lot zoned residential or any residence on a lot otherwise zoned; 20 elsewhere
I-2 (See Note 10)				Sufficient width for building and required side yards		100 feet for buildings; parking areas shall be set back at least 50 feet from the property line	50 adjacent to a lot zoned residential or any residence on a lot otherwise zoned; 20 elsewhere	50	50 adjacent to a lot zoned residential or any residence on a lot otherwise zoned; 20 elsewhere

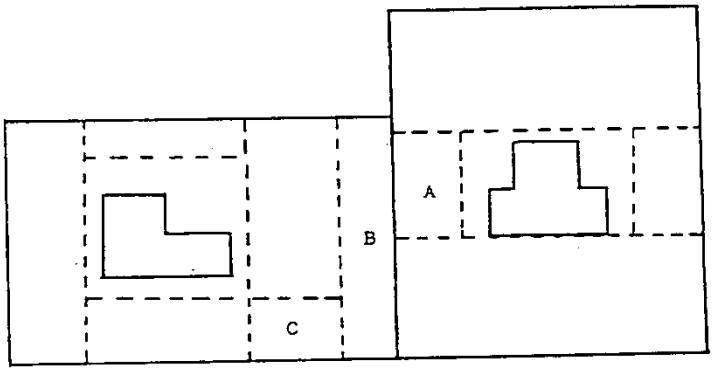
Section 10.246 Notes to the Table of Area, Yard and Height Requirements

1. Accessory buildings located in the rear yard may not be located within five feet of interior rear or side lot lines. If the rear line of a lot and the side line of an adjoining lot zoned residential are the same in whole or in part, any accessory building on the first lot shall lie at least as far from the common lot line as the distance specified by this article as the minimum required side yard width for the adjoining lot.

   A. Minimum side yard specified by this article.

   B. Area in which no accessory building shall be located (same width as A).

   C. Another area in which no accessory building shall be located (see (2) below).



2. Where the side yard of a lot abuts a street and the adjoining lot fronts on that street, no accessory building shall be located in that portion of the rear yard lying closer to that street than the distance specified by this article as the minimum side yard width.

3. Requirements for manufactured homes on individual lots are the same as for single-family dwellings.

4. For permitted residential dwellings, the requirements of the R-9 residential district shall apply.

5. For buildings over fifty 50 feet in height, one foot of additional front yard depth is required for each two feet of height over 50 feet.

6. The first five feet may be developed only for sidewalk, grass and plants; it may not be used for off-street parking.

7. (reserved)

8. In no case shall a rear yard depth greater than 75 feet be required.

9. On any street except South Main Street (North Carolina Highway 87), Harden Street (North Carolina Highway 54), Elm Street, Hanover Road, East Gilbreath Street, Pine Street. South Maple Street to Gilbreath Street, and South Marshall Street, the minimum required front yard depth shall be 10 feet less than shown herein if:

   a. The average front yard depth of the two closest dwellings fronting on the same side of the street and within 500 feet of the lot in question is 10 or more feet less than the indicated minimum front yard depth, or

b. The average front yard depth of all dwellings fronting on the same street and within 500 feet of the lot in question is 10 or more feet less than the indicated minimum front yard depth.

10. Screening

(a) O-I, B-2, and B-3 Districts – business uses whose property lines abut a district zoned residential shall erect an opaque screen at least six feet high designed so as to obstruct the view from surrounding residential property. Screens are not to be brightly colored, multicolored, or otherwise obtrusive. Colors and textures harmonious with nature and nearby residential structures are recommended. If a planted screen is used, it shall consist of evergreen shrubs or trees which at maturity will meet the required height.

(b) I-1 and I-2 Districts –a buffer strip shall be planted along the side or rear property line of any use that abuts any property in a residential zone. The strip shall be at least 10 feet wide planted with an opaque screen of evergreen shrubs or trees which at maturity will be between eight and 12 feet high.

(Section 10.246 amended 11/7/2000, 2/4/2014)

Section 10.247 Building Spacing Requirements for Multifamily Residential Buildings (Townhouses, Condominiums and Apartments)

(a) Minimum Spacing of Buildings: If a zoning lot is developed for multifamily or townhouse residential buildings, the following method shall be used to determine the minimum spacing of buildings.

(b) Front Yard Setbacks: On lots of more than 40,000 square feet which contain three or more dwelling units, all buildings shall observe front yard setback requirements from any street on which the lot abuts.

(c) Calculation of Triangle: For all yards, including those on the project perimeter, each wall of every dwelling shall have a minimum yard space in the shape of an imaginary isosceles triangle. The base of the triangle shall be a line connecting the extreme ends of the wall of the building and whose altitude shall be the length of the base line multiplied by a factor related to the height of the dwelling as provided in Table 10.247 below and illustrated in the accompanying figures. There shall be a minimum distance of 15 feet between any walls of one-story buildings and 20 feet between two-story buildings. Any wall over 10 feet long shall be treated as a separate wall.

(Section 10.247 amended 1/4/2000, 11/5/2013)

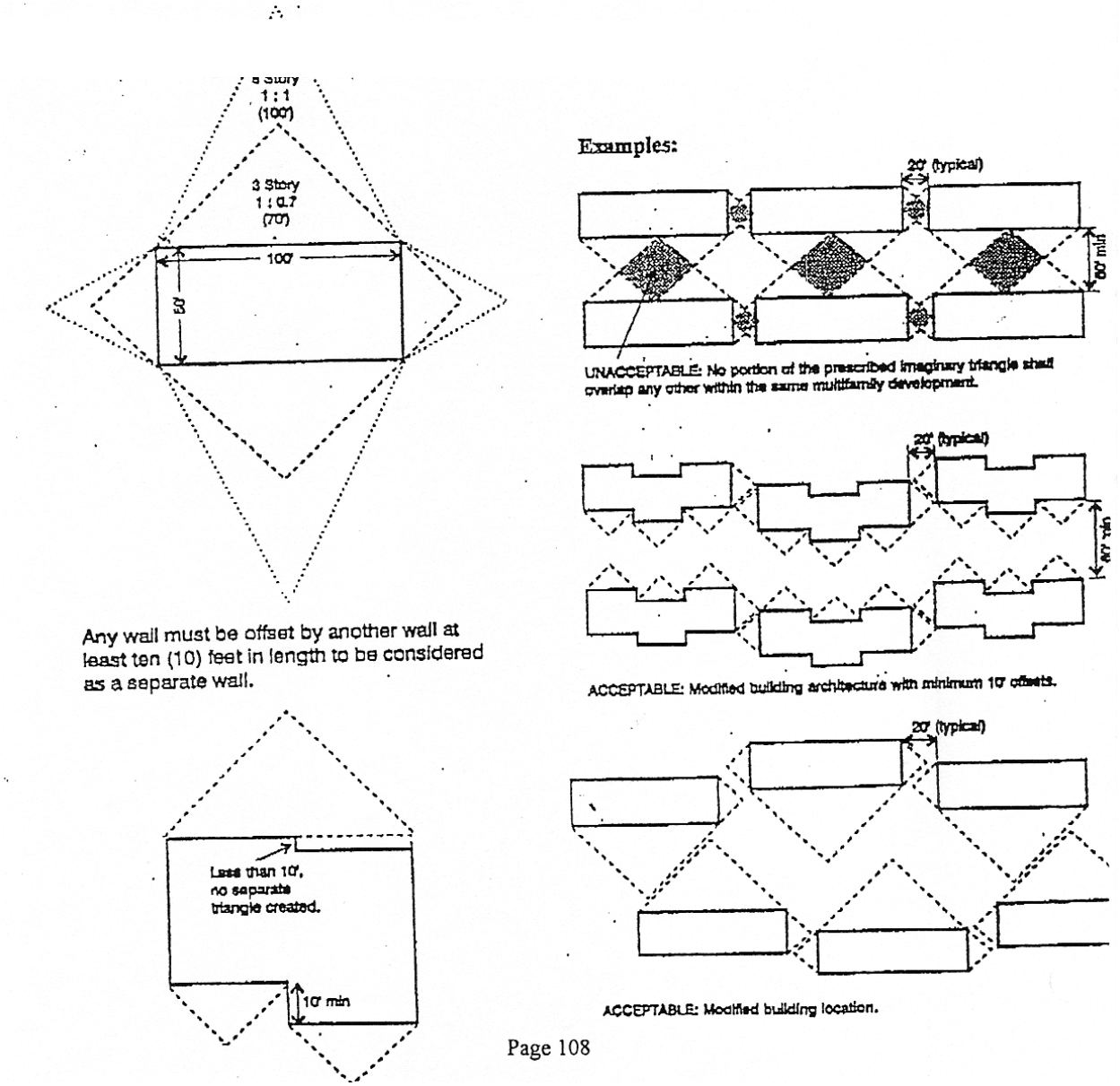
Table 10.247

Number of stories	Factors to multiply base of triangle to obtain altitude
1	.4
2	.5
3	.6
4 or more	.7

Building Spacing Requirements for Multifamily Residential Buildings, Townhouses, Condominiums and Planned Unit Developments that Include Multifamily Buildings

Spacing Buildings Using Triangles

How to calculate triangles. An imaginary isosceles triangle defined by connecting the extreme ends of the wall or portions of the wall as the base of the triangles, and calculating the altitude by multiplying the base by a factor related to height as provided in Table 247.



(c) Overlapping triangles prohibited. The yard spaces thus established by the isosceles triangles shall not overlap the yard space for any other wall of the same or any other dwelling.

(d) Alternative compliance. A developer may propose spacing for buildings that varies from the strict application of the provisions of this section in order to accommodate the unique character of the site or to use innovative design. Application for alternative compliance shall include a site plan

following the requirements specified by the Planning Department and any additional architectural plans, elevations, or perspective drawings to illustrate the proposed buildings design and/or placement alternative. Alternative compliance shall be approved by the City Council only upon a finding that the building architecture and site plan fulfills the following criteria as well or better than would strict conformance with the requirements of this Ordinance:

(1) The project provides adequate air and light to the development and surrounding properties.

(2) Through the use of a variety of fenestration patterns, building façade offsets, roofline treatments, and other architectural features, the perceived bulk, scale and length and width of the building is congruous with surrounding buildings.

(3) The development provides for orderly and easy movement of traffic and pedestrians.

(4) The project will not be injurious to property or improvements in the affected area.

(5) The project is in accordance with all development criteria and land use plans of the City of Graham.

Section 10.248 Double Counting of Yard, Lot Area, Loading Area or Parking Area

No space which has been counted as part of a yard, lot area, parking area or loading area required under this Ordinance for one building or use shall be counted to satisfy or comply with a yard, lot area, loading area or parking area requirement for any other building or use, except where shared parking is permitted. The minimum required yards, lot area or parking or loading area for any building or use existing or under construction at the time of the passage of this Ordinance shall not be encroached upon or counted to satisfy the requirements for any other building or use.

Section 10.249 Open Space Provision for R-12, R-15, and R-18 Zoning Districts

Section 10.249.1 Intent

The intent of this provision is to allow for the development of open space residential subdivisions by right within the R-12, R-15, and R-18 zoning districts. These provisions seek to encourage the development of compact neighborhoods and rural compounds that set aside significant natural vistas and landscape features for permanent conservation.

Section 10.249.2 Definitions

Open Space is defined as any area that is not divided into private or civic building lots, streets, rights-of-way, parking, or easements established for the purposes other than open space conservation.

Section 10.249.3 General Requirements

1) Whenever this section is silent to a development standard the standards established for the conventional development pattern in the zoning district shall be followed.

2) The open space regulations are only applicable to new subdivisions that are 5 or more acres. At the time the subdivision is brought before the City, the developer must inform the Staff that they wish to pursue an open space residential subdivision.

Section 10.249.4 Open Space Standards

(a) In any of the single-family residential zoning districts indicated below, a developer may create lots that are smaller than those required by the zoning district if such developer complies with the provision of this section and if the lots created are not smaller than the minimums set forth in the following table:

Zone	Open Space Minimum Square Feet
R-18	16,000
R-15	13,000
R-12	10,000

(b) The appropriate setback requirements found in Section 10.245 shall apply to open space residential subdivisions.

(c) Minimum lot widths for each zoning district shall be amended as follows:

Zone	Open Space Minimum Lot Width
R-18	80
R-15	70
R-12	60

(d) The amount of usable open space that must be set aside shall be determined by:

(1) Subtracting from the standard square footage requirement set forth in Section 10.245 the amount of square footage of each lot that is smaller than that standard:

(2) Adding together the results obtained in (1) for each lot.

(e) The provisions of this section may only be used if the usable open space set aside in a subdivision comprises at least 20,000 square feet of space that satisfies the definition of usable open space set forth in Section 10.249.2.

Section 10.249.5 Open Space Criteria

(a) In selecting land to be set aside as usable open space the developer shall choose areas from the following categories in descending order of importance before designating other land for open space use.

(1) Designated buffer areas together with any floodway and floodplain they are buffering.

(2) Land within 30 feet of other bodies of water or watercourses.

(3) Other flood hazard areas or land with slopes greater than 15%.

(4) Other hazard areas or environmentally sensitive areas such as noise and privacy buffers for surrounding properties and neighborhoods.

(5) Lands that will protect important view sheds and/or trees along existing roads and provide privacy for the development.

(6) Other areas within the proposed development.

(b) Under no circumstances may a right-of-way, easement (excluding those for public purposes), setback requirement, or a portion of a subdivided lot be considered as part of the open space requirement.

(c) Open Space areas shall be legally and easily accessible to the residents of the development from which the required open space is taken.

Section 10.249.6 Uses or Activities Permitted In Open Space Areas

(1) Conservation of land in its natural state (for example, woodland, fallow field or managed meadow).

(2) Agricultural uses, including raising of crops or livestock.

(3) Passive recreation, including but not limited to trails, picnic areas, community gardens and lawn areas.

(4) Active recreation areas such as golf courses, swimming areas, playing fields, playgrounds, courts and associated parking. These areas shall be designed to enhance the required open space area.

(5) Pasture for recreational horses.

(6) Easements for drainage, access (i.e. greenways, bike trails, etc.), sewer or water lines, or other public purposes.

(7) Storm water management facilities for the proposed development or for a larger area in compliance with a watershed management plan.

Section 10.249.7 Uses or Activities Prohibited In Open Space Area

Uses or activities prohibited in open space areas are cutting of healthy trees, regrading, topsoil removal, altering, diverting or modifying watercourses or bodies. Exceptions shall be in compliance with a land management plan or watershed management plan for the tract in question conforming to the customary standards of forestry, erosion control and engineering.

Section 10.249.8 Ownership and Maintenance of Open Space

(a) Ownership of open space may be handled through one (1) or more of the following and all open space land will be permanently restricted from future development through deed restriction.

(1) A homeowner's association;

(2) Transfer to a private conservation organization;

(3) Dedicated to the City of Graham.

(b) Unless the City agrees to accept the dedication, usable open space that is required to be provided by the developer shall remain under the control of a homeowner's association or similar organization that satisfies the criteria listed below. If the required open space is not publicly dedicated it shall be available to all residents of the development under reasonable rules and regulations. The regulations shall be established to encourage and govern the use of the open space by the residents without payment of separate optional fees or charges other than membership fees in a homeowner's association.

(c) The association or agency identified as having the right of ownership and control over the required open space shall be responsible for the continuing upkeep and proper maintenance of the same.

(d) Natural features are generally to be maintained in their natural condition but may be modified to improve their appearance, function or overall condition. Permitted modifications may include:

(1) Reforestation;

(2) Woodland Management;

(3) Meadow Management;

(4) Buffer Area Landscaping;

(5) Streambank Protection; and

(6) Wetlands Management.

(e) In no event will a radical change in open space be permitted so as to destroy what may have been an initial sales feature for surrounding homeowners, for example, the removal of all timber, etc. The cost and responsibility of maintaining open space and any facilities located thereon shall be borne by the property owner and/or homeowners association, unless the City of Graham agrees to accept the dedication of the property.

(Section 10.249 through 10.249.8 added 9/4/2001)

Section 10.250-10.254 Reserved

DIVISION 13. VESTED RIGHTS

Section 10.255 Vested Right Conferred

(a) Obtaining a Vested Right. A developer may obtain a vested right as provided by G.S. 160A-385.1 to commence a project at a future date. A vested right is obtained:

(1) automatically when a conditional district rezoning is granted by virtue of City Council approval,

(2) automatically when a special use permit is granted by virtue of approval of a special use by the appropriate body, and

(3) when the City Council approves a site specific development plan submitted by a developer in conjunction with an application for a zoning permit with vested rights.

(Section 10.255 amended 10/5/2004)

(b) Term. The right to commence a project authorized by any of the above means vests from the date the applicable permit is authorized and remains vested for two years.

(c) Zoning Permit Required. A zoning permit is required before commencing work on any project in which a vested right exists.

(1) The Zoning Enforcement Officer shall issue the zoning permit for a project in which the vested right has been conferred by a special use permit or a conditional use permit.

(2) In any other case, an applicant shall apply for a zoning permit with vested rights as outlined in Section 256 below.

Section 10.256 Application for a Zoning Permit with Vested Rights

(a) Submission of Site Specific Development Plan. The applicant shall submit 10 copies of a site specific development plan drawn to scale describing with reasonable certainty the type and intensity of use of the specific parcel or parcels of land. The plan shall include:

(1) boundaries of the site;

(2) significant topographical and other natural features affecting development of the site;

(3) location on the site of the proposed buildings, structures and other improvements;

(4) dimensions, including height of the proposed buildings and other structures;

(5) location of all existing and proposed infrastructure on the site including water, sewer, roads and walkways; and

(6) such other information as the Zoning Enforcement Officer may determine to be necessary in order to determine the specifics of the plan

(b) Public Hearing. Upon receipt of a properly prepared site specific development plan, the Zoning Enforcement Officer shall arrange to bring the plan before the City Council in the manner of a public hearing. Completed plans shall be received a minimum of 15 days before the public hearing at which the proposed vested rights plan is scheduled to be considered by the Council.

In considering an application for a zoning permit with vested rights, the City Council shall give due regard to whether issuance of the permit would serve the purpose and intent of this ordinance, secure public safety and welfare and do substantial justice. If the Council should find, after public hearing, that the proposed permit should not be granted, the permit should be denied.

(c) Findings. In granting a zoning permit with vested rights the City Council shall make the following affirmative findings:

(1) the use requested is among those permitted in the district in which the property is located and complies with all the requirements of this and other applicable ordinances;

(2) the requested permit is either essential or desirable for the public convenience or welfare;

(3) the requested permit will not impair the integrity or character of the surrounding or adjoining districts and will not be detrimental to the health, safety, or welfare of the community;

(4) adequate utilities, access roads, drainage, sanitation and/or other necessary facilities have been or are being provided.

In granting a zoning permit with vested rights, the City Council may impose such additional restrictions and requirements upon the permit as it may deem necessary in order that the purpose and intent of this ordinance are served, public welfare secured and substantial justice done. Approval of a site specific development plan with the condition that a variance or modification be obtained shall not confer a vested right unless and until the necessary variance or modification is obtained. If all requirements and conditions are accepted by the applicant, the Council shall authorize the issuance of the permit; otherwise the permit shall be denied. Any permit so authorized shall remain vested for two years from the date of the action granting the Permit.

(d) Violations. Any violation of a term of condition involved the granting of a zoning permit with vested rights shall be treated the same as a violation of this ordinance and shall be subject to the same remedies and penalties as any such violation. In addition, the City Council may, after public hearing, revoke any such vested rights for failure to abide by any such term or condition.

Section 10.257 Other Ordinances Apply

The establishment of a vested right shall not preclude the application of overlay zoning which imposes additional requirements but does not affect the allowable type or intensity of use, or ordinances or regulations which are general in nature and are applicable to all property subject to land use regulation, including, but not limited to, building, fire, mechanical, electrical and plumbing codes.

Section 10.258 Changes or Amendments

No change or amendment to any zoning permit with vested rights shall be made except after public hearing and except as provided for in this ordinance for the original issuance or such permit. If, at the time of consideration of a proposed change or amendment to an existing permit, the permit or proposed change or amendment could not be lawfully made under ordinance conditions existing at that time, the proposed change or amendment shall be denied. In addition, in no case shall there be an extension of the two-year time period for which the development right is vested. Nothing herein shall exempt plans related to the permit from subsequent reviews and approvals to ensure compliance with the terms and conditions of the original approval, provided that such reviews and approvals are not inconsistent with the original approvals.

Section 10.259 Status of Expiration of Term

A right, which has been vested, shall terminate at the end of the two-year vesting period with respect to buildings and uses for which no valid building permit applications have been filed. Upon issuance of a building permit, the provisions of G.S. 160A-418 and G.S. 160A-422 shall apply except that a building permit shall not expire or be revoked because of the running of time while a vested right under this Article is outstanding. Any development constructed pursuant to a zoning permit with vested rights for which the vested term has expired and which is not in conformance with all the terms of the ordinance because of changes made in the provisions of this ordinance, including the zoning map, after the issuance of the permit shall be subject to the provisions of this ordinance relating to non-conformities the same as any other nonconformity.

Section 10.260 Annexation Declaration

Any landowner who signs an annexation petition to the city pursuant to G.S. 160A-31 or G.S. 160A-58.1 shall, as part of that petition, file a signed statement declaring whether or not vested rights with respect to the property subject to the petition have been established under G.S. 160A-385.1 or G.S. 153A-344.1. 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 by law shall be binding on the landowner and any such vested right shall be terminated.

Sections 10.261 – 10.269 Reserved

ARTICLE V. LANDSCAPING REQUIREMENTS

Section 10.270 Purpose and Scope

(a) This article establishes minimum standards for the design of landscapes for uses other than single family and two-family residential dwellings so as to improve Graham and its planning area aesthetically, economically and environmentally. This Article improves the appearance of the community through the provision of and the preservation of trees in order to better control soil erosion; reduce the hazards of flooding; stabilize the groundwater tables; absorb carbon dioxide; supply oxygen; provide shade for cooling; screen noise, dust, glare; and preserve protect and enhance the natural environment.

(b) The planting yard regulations are intended to minimize potential conflicts between abutting developments. The purpose of planting yards is to ensure that a natural area of appropriate size and density of plantings is located between zoning districts and/or trees.

Section 10.271 Definitions

Caliper. A standard trunk diameter measurement for nursery grown trees taken six inches above the ground for up to and including four-inch Caliper size, and twelve inches above the ground for larger sizes.

Critical Root Zone (CRZ). A circular region measured outward from a tree trunk representing the essential area of the roots that must be maintained in order for the tree's survival. The critical root zone is one foot of radial distance for every inch of tree DBH, with a minimum of eight feet.

DBH. Diameter at breast height is the tree trunk diameter measured in inches at a height of 4.5 feet above the ground.

Deciduous. Those plants that annually lose their leaves.

Drip line. A vertical line extending from the outermost edge of the tree canopy or shrub branch to the ground.

Evergreen. Those plants that retain foliage throughout the year.

Evergreen screen. A plant growing to over 20 feet in height at maturity that retains foliage year round that is planted to provide a dense vegetative screen for purposes of visual mitigation between zoning districts or differing property uses.

Section 10.272 Applicability

(a) Exemptions: These requirements shall not apply to:

1) Single family detached dwellings or two-family dwellings on their own lots;

2) Multi-family developments containing eight (8) or fewer dwelling units on a single zoning (building) lot;

3) Properties within or surrounded by the Central Business (B-1) zoning district that exercise the use of zero-foot lot line. *(Section 10.467 amended by City Council on 11/3/2009)*

4) Property lines abutting railroad rights-of-way and utility easements in excess of sixty (60) feet in width; and

5) Property lines abutting dedicated street right-of-way which has remained unopened for a period of at least fifteen (15) years.

(b) Application: These requirements shall apply to the following:

1) New Principal Building or Use: Principal buildings or open uses of land constructed or established after the adoption of this Ordinance.

2) Changes in Use: Changes in use which result in an increase of two (2) or more in the Land Use Classification number. The requirements of this Section shall be applicable to the entire zone lot.

3) Expansions or Reconstruction: Expansions which will result in a parking or building square footage increases of more than three thousand (3,000) square feet for developments existing on the effective date of this Ordinance. In such cases the landscaping requirements shall apply only to the expansion.

4) Publicly Owned Buildings: Publicly owned buildings, municipal or other utility structures and installations, parks and open air uses, but not including utility rights-of-way or easements.

(c) Reduction in Parking Requirements for Pre-Existing Developments: To allow compliance with the landscaping regulations, the number of required off-street parking spaces may be reduced by the Enforcement Officer up to ten (10%) percent.

Section 10.273 Planting Yards

(a) Required Planting Areas: The following areas are required to be landscaped:

1) Street planting yards;

2) Parking lots (excluding vehicle loading, storage, and display areas); and

3) Side and rear yards (Referred to as Type A, B, C and D planting yards)

(b) Planting Area Descriptions:

1) Street Planting yard: A planting area parallel to a public street designed to provide continuity of vegetation along the right-of-way and a pleasing view from the road. No more than fifteen (15%) percent of the street planting yard may be used for walkways or signs. Parking, merchandise display and off-street loading are prohibited in the street planting yard.

2) Parking Lot Plantings: Planting areas within and adjacent to parking areas designed to shade and improve the attractiveness of large areas of pavement.

3) Type A Planting Yard: A high density screen intended to block substantially visual contact between adjacent uses and create spatial separation. A Type A Planting Yard reduces lighting and noise which would otherwise intrude upon adjacent uses.

4) Type B Planting Yard: A medium density screen intended to partially block visual contact between uses and create spatial separation.

5) Type C Planting Yard: A low density screen intended to partially block visual contact between uses and create spatial separation.

6) Type D Planting Yard: A peripheral planting strip intended to separate uses, provide vegetation in densely-developed areas and enhance the appearance of individual properties.

Section 10.274 Planting Yard Determination

To determine the planting yards required by this Ordinance, take the following steps:

(a) Identify the classification of the proposed or expanded land use and of any existing or proposed adjacent land use(s) by using the Table of Permitted Uses, Table 10-135. A land use is an existing use on an adjacent property when a building permit is issued. If a zone lot contains uses with different land use classification, select the higher numbered classification, then

(b) Use the Planting Yard Chart, Table 10.274, to determine the appropriate letter designation for each planting yard, then

(c) Match the letter designation obtained from the Planting Yard Chart with the Planting Rate Chart, Table 10.274a, to determine the types and numbers of shrubs and trees required.

TABLE 10.274
PLANTING YARD CHART

E-X-I-S-I-T-I-N-G A-D J-A-C-E-N-T U-S-E(S)

Land Use Classification	1	2	3	4	5	Undeveloped
1	*	*	*	*	*	*
2	C	D	D	D	D	D
3	B	B	D	D	D	D
4	A	A	C	D	D	D
5	A	A	B	C	D	D

*No Planting Yard Required

TABLE 10.274a PLANTING YARD RATE CHART						
				Planting Yard Rates		
Yard Type	**Minimum Width (ft.)**	**Min. Avg. Width (ft.)**	**Maximum Width (ft.)**	**Canopy Tree Rate**	**Understory Tree Rate**	**Shrub Rate**
Street Yard	8	8	25	2/100 lf[b]	NC[c]	17/100 lf
Type A Yard	40[a]	50[a]	75	4/100 lf/oc	10/100 lf/oc	33/100 lf/oc
Type B Yard	25[a]	30[a]	50	3/100 lf	5/100 lf	25/100 lf
Type C Yard	15[a]	20[a]	40	2/100 lf[b]	3/100 lf	17,100 lf
Type D Yard	5	5	10	-	2/100 lf	18/100 lf
Parking Lot	NA	NA	NA	1/12 parking spaces[b]	NC[c]	NA

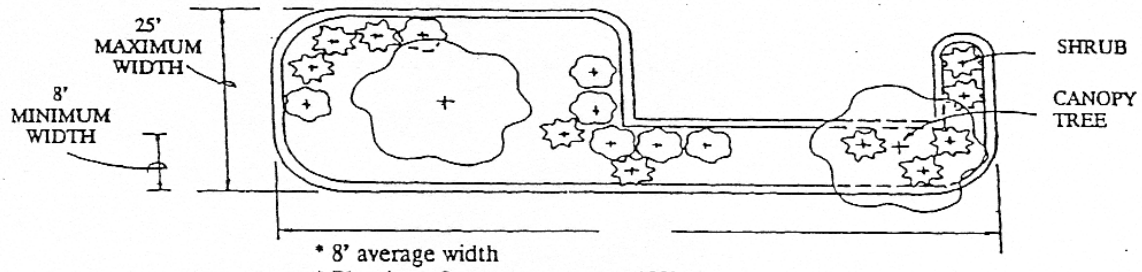
lf: linear feet: oc: on center

[a] Walls, a minimum of five (5) feet in height, constructed of masonry, stone, or pressure treated lumber or an opaque fence, a minimum of five (5) feet in height, may be used to reduce the widths of the planting yards by ten (10) feet.

[b] In street yards, Type C and Type D planting yards, and parking lots understory trees may be substituted for canopy trees at the rate of two (2) understory trees for each required canopy tree.

[c] One understory tree may be substituted for each required canopy tree if the Technical Review Committee determines that there would be a major conflict with overhead utility lines.

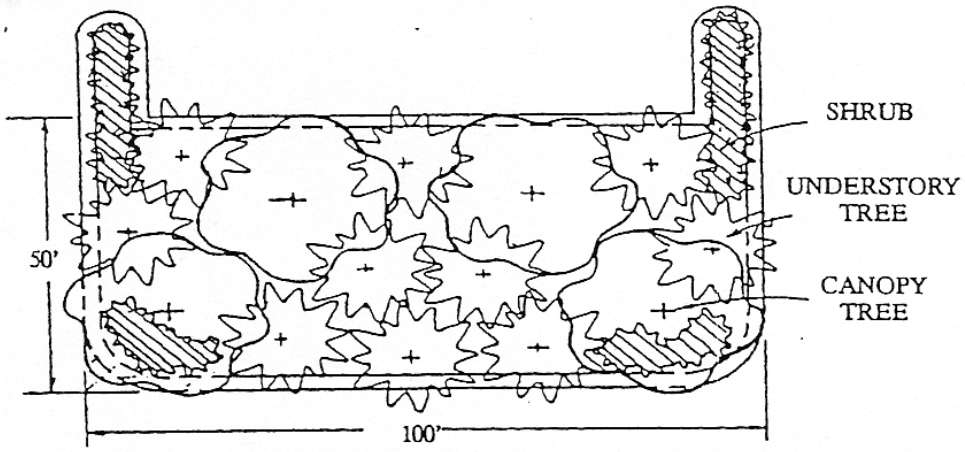
NOTE: On Lots of Record less than fifty-five thousand (55,000) square feet in area, no development shall be required to place required landscaping on greater than fifteen (15%) percent of the site.



* 8' average width
* Plantings: 2 canopy trees per 100'
17 shrubs per 100'

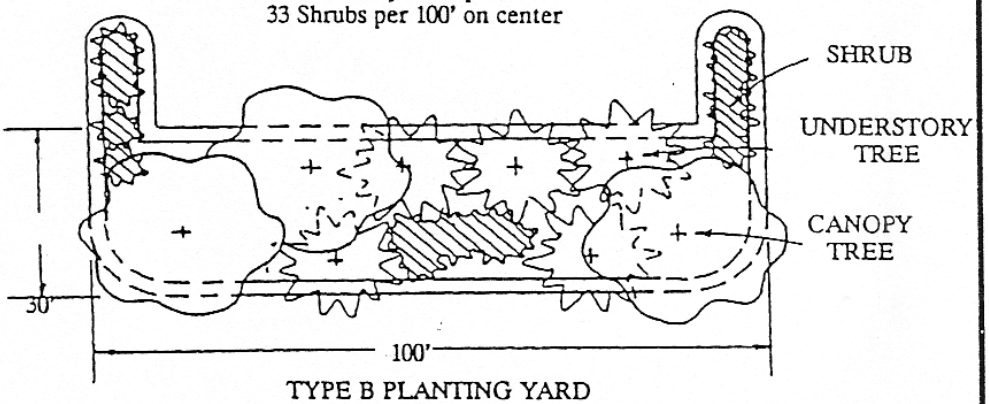
FIGURE 6–F
STREET PLANTING YARD

NO SCALE



TYPE A PLANTING YARD

* 40' minimum, 75' maximum width
* Plantings: 4 Canopy trees per 100' on center
10 Understory trees per 100' on center
33 Shrubs per 100' on center

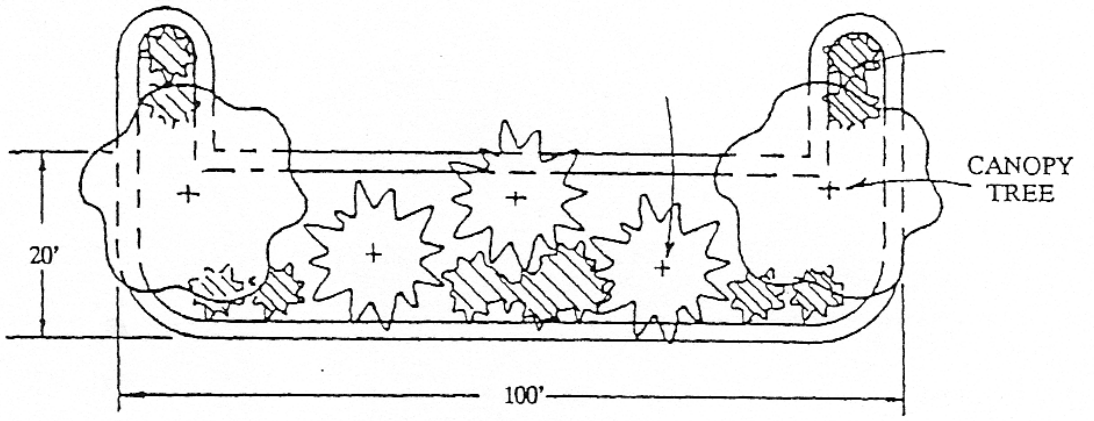


TYPE B PLANTING YARD

* 25' minimum, 50' maximum width
* Plantings: 3 Canopy trees per 100' on center
5 Understory trees per 100' on center
25 Shrubs per 100' on center

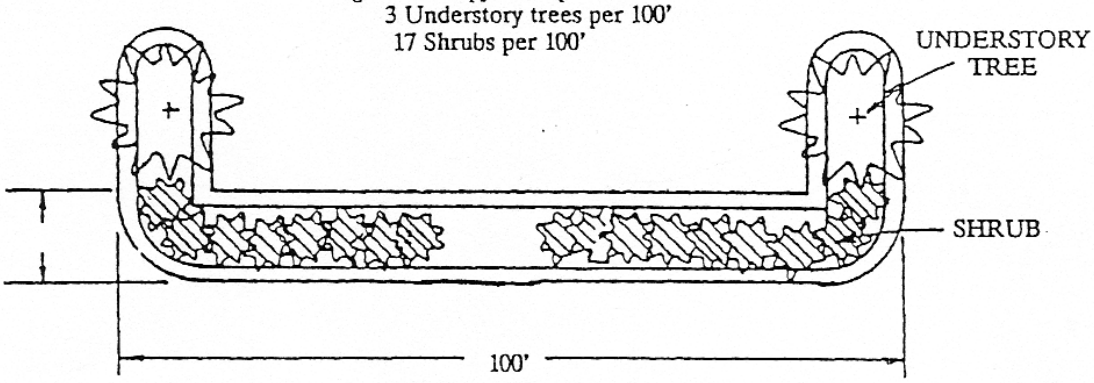
Figure 6–G
PLANTING YARD TYPE A & B

NO SCALE



TYPE C PLANTING YARD

* 15' minimum width, 40 ' maximum width
* Plantings: 2 Canopy trees per 100'
3 Understory trees per 100'
17 Shrubs per 100'



TYPE D PLANTING YARD

* 5' minimum width, 10' maximum width
* Plantings : 2 Understory trees per 100'
18 Shrubs per 100'

Figure 6–H
PLANTING YARD TYPES C & D

NO SCALE

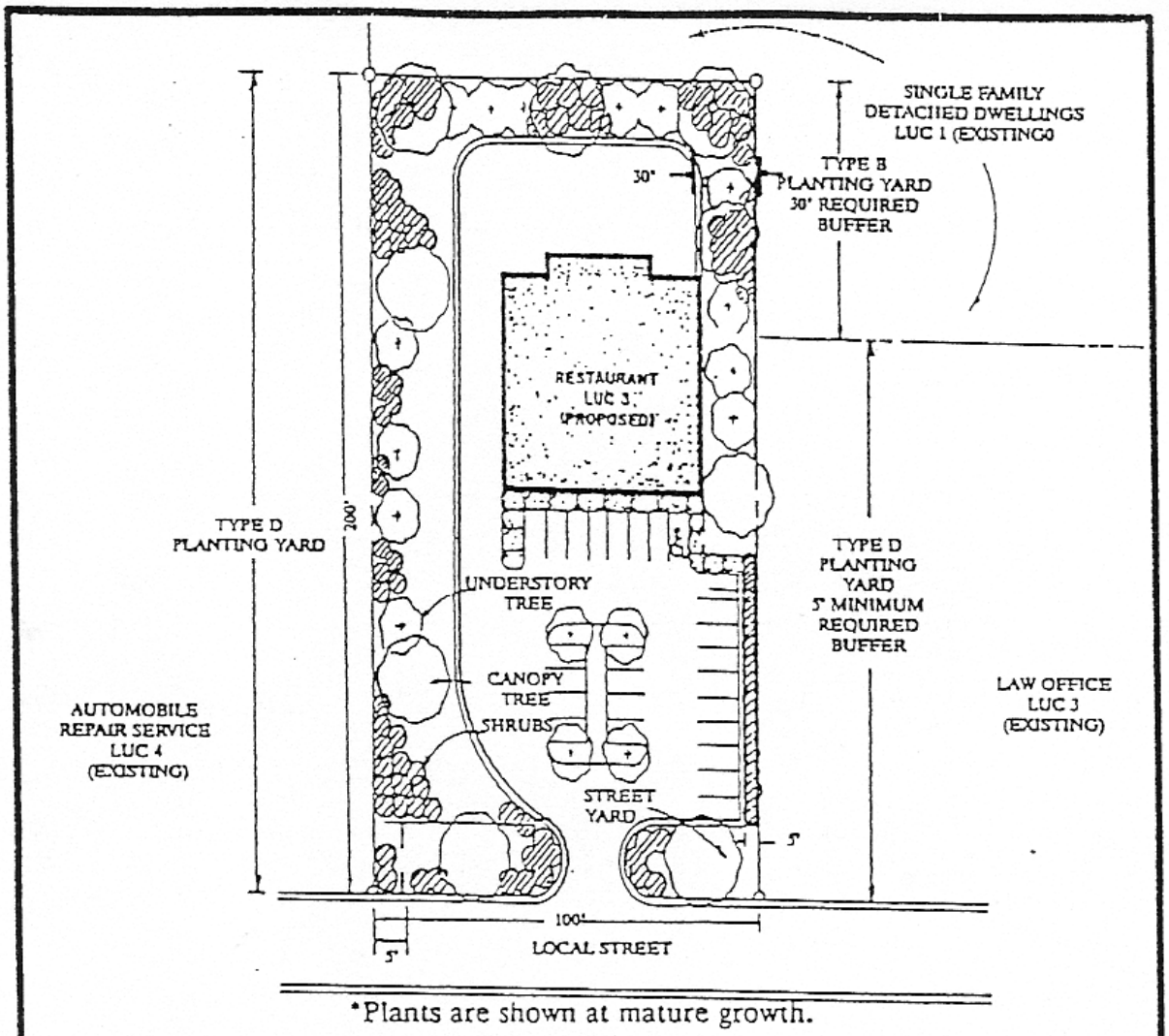


Figure 6–I
APPLICATION OF LANDSCAPING REQUIREMENTS

NO SCALE

Section 10.275 Landscaping Design and Maintenance Standards

(a) Calculation of Street Planting Yards: Street planting yard rate and width calculations shall exclude access drives.

(b) Plant Species: Species used in required street planting yards, parking lots and planting yards shall be of a locally adapted nature.

(c) Dimension of Planting Areas: Each planting area containing trees, including those located in parking lots, shall have a minimum inside dimension of seven feet and be at least 200 square feet in area.

(d) Grouping: For the Type B, C, and D planting yards, shrubs and trees may be grouped or clustered; however, not more than 50% of each required plant material may be grouped or clustered. The

remainder of the materials shall be distributed throughout the planting yard. There shall be at least one row of evergreen shrubs or evergreen understory trees in all Type A planting yards.

(e) Parking Lot Spacing: Required canopy tree areas shall be distributed throughout parking lots and shall be located within or adjacent to parking lots as tree islands, at the end of parking bays, inside medians, or between rows of parking spaces. Trees located within planting yards cannot be credited toward the parking lot landscaping requirements.

(f) Canopy Tree Size: Canopy trees must be a minimum of eight feet high and two inches in caliper, measured six inches above grade, when planted. When mature, a canopy tree should be at least 40 feet high and have a crown width of 30 feet or greater.

(g) Understory Tree Size: Understory trees must be a minimum of 40 inches high and one inch in caliper, measured six inches above grade, when planted. When mature, an understory tree should be between 15 and 40 feet high.

(h) Shrub Size: All shrubs shall be expected to reach a minimum height of 36 inches and a minimum spread of thirty 30 inches within three years of planting.

(i) Berm Size: Any berm shall have a minimum height of three feet, a minimum crown width of three feet and a side slope no greater than 3:1.

(j) Wall Planters: Wall planters shall be constructed of masonry, stone, or pressure treated lumber stamped for ground contact (AWPB LP-22 1980 or equivalent). The minimum height of the wall planter shall be 30 inches. The minimum height of shrubs in the wall planter shall be six (6) inches. The effective planting area of the wall planter shall be four (4) feet in width. If the wall planter is to contain trees, the effective planting width shall be seven (7) inches.

(k) Encroachments Permitted in Required Planting Yards: The following are permitted in required planting yards provided there is no interference with any sight area:

1) Landscaping features, including but not limited to ornamental pools, planting boxes, sculpture, arbors, trellises, and birdbaths.

2) Pet shelters, at-grade patios, play equipment, outdoor furniture, ornamental entry columns and gates, flag poles, lamp posts, address posts, HVAC equipment, mailboxes, outdoor fireplaces, public utility wires and poles, pumps, wells, fences, retaining walls, or similar structures.

3) Cornices, steps, canopies overhanging eaves and gutters, window sills, bay windows or similar architectural features, chimneys and fireplaces, fire escapes, fire balconies, and fire towers may project not more than two and one-half (2 1/2) feet into any required planting yard, but in no case shall be closer than three (3) feet to any property line.

(l) Setback Less than Planting Yard: If the required building setback is less than the required planting yard width, the building setback shall control, reducing the required planting yard width only alongside the building. The planting rate of the required planting yard shall still apply.

(m) Location of Planting Material Outside Shade of Building: Where a building is located less than ten (10) feet from a property line, and the planting yard would be heavily shaded by buildings on both

sides of the property line, the required trees and shrubs may be planted outside the shaded area to improve survivability.

(n) Obstructions: Landscaping shall not obstruct the view of motorists using any street, driveway or parking aisle.

(o) Location: Required trees and shrubs shall not be installed in street rights-of-way. Required trees and shrubs may be placed:
in water quality conservation easements,
in electric utility easements below overhead lines, and
in drainage maintenance and utility easements.

(p) Plant Protection: Whenever planting areas are adjacent to parking lots or drives, the planting areas shall be protected from damage by vehicles, lubricants or fuels.

(q) Maintenance: The owner is responsible for maintaining all required plant materials and planting areas in good health and appearance. Any dead, unhealthy or missing plants must be replaced within one-hundred and eighty (180) days with vegetation which conforms to the initial planting rates and standards. When plant material is severely damaged due to unusual weather conditions or other acts of God, the owner shall have two (2) years to replant.

Section 10.276 Procedures

(p) Landscaping Plan Required: Before obtaining a grading permit or a building permit, an applicant must receive approval of a landscaping plan from the Enforcement Officer, of a landscaping plan prepared in accordance with the City's Standards.

(b) Installation of Plant Materials

(1) Installation of plant material shall occur before issuance of a Certificate of Compliance.

(2) If at the time of a request for a Certificate of Compliance, the required planting areas are not complete and it can be determined that:

(3) plant materials are unavailable,

(4) completion of the planting areas would jeopardize the health of the plant materials, or

(5) weather conditions prohibit completion of the planting areas, then the Enforcement Officer may defer the installation of plant materials. The developer shall submit a copy of a signed contract for installation of the required planting areas and may be required to post a surety equal to the amount of the contract. In no instance shall the surety be for a period greater than 180 days. The Enforcement Officer may issue a Temporary Certificate of Compliance but shall not issue a Certificate of Compliance until the planting areas have been completed and approved.

Section 10.277 Alternate Methods of Complying

(a) General Provisions:

(1) Alternate landscaping plans, plant materials or planting methods may be used where impractical situations would result from application or landscaping requirements. Such situations may result from utility easements, streams, natural rock formations, topography, lot configuration, or where other physical conditions exist, or where other site conditions exist such as unified development design or other unusual site conditions.

(2) The Enforcement Officer may approve an alternate plan which proposes different plant materials, planting yard widths or methods provided that quality, effectiveness, durability and performance are equivalent to that required by this Ordinance.

(3) The performance of alternate landscaping plans must be reviewed by the Enforcement officer to determine if the alternate plan meets the intent and purpose of this Ordinance. This determination shall take into account the land use classification of adjacent property, number of plantings, species, arrangement and coverage, location of plantings on the lot, and the level of screening, height, spread, and canopy of the plantings at maturity.

(4) Decisions of the Enforcement Officer regarding alternate methods of compliance may be appealed to the Board of Adjustment.

(b) Lot of Record Provisions: For zone lots less than one hundred (100) feet in width the following provisions may be applied:

(1) For zone lots less than one hundred (100) feet and greater than eighty (80) in width where Type D Planting yards are required, one (1) Type D planting yard may be eliminated from the landscaping plan if the Enforcement Officer finds that strict application of the requirements of this Section prevents reasonable use of the property. However, the plantings required for this yard shall be installed in remaining planting yards.

(2) For zone lots less than eighty (80) feet in width where Type D planting yards are required, two (2) Type D planting yards may be eliminated from the landscaping plan if the Enforcement Officer finds that strict application of the requirements of this Section prevents reasonable use of the property. All required plants for these yards shall be installed in remaining planting yards.

Section 10.278 Provisions for Preserving Existing Trees

(a) General: Any existing tree or group of trees which stands within or near a required planting area and meets or exceeds the standards of this Ordinance may be used to satisfy the tree requirements of the planting area. Protection of tree stands, rather than individual trees, is strongly encouraged.

(b) Protection of Existing Trees: To receive credit, trees must be protected from direct and indirect root damage and trunk and crown disturbance. The following standards shall apply:

(1) The protected area around trees shall include all land within the canopy drip line.

(2) Construction site activities such as parking, material storage, soil stock piling and concrete washout shall not be permitted within tree protection areas.

(3) Protective fencing shall be installed around tree protection areas prior to any land disturbance. Such fences shall be at least four (4) feet high and may consist of snow fence or polyethylene safety fencing. Fencing shall remain in place until construction is complete and other landscaping has been installed.

(c) Dead or Unhealthy Trees: No credit will be allowed for any dead tree, any tree in poor health or any tree subjected to grade alterations. The death of any tree used for preservation credit shall require the owner to plant new trees equal to the number of credited trees.

(d) Rate of Credit: Credits shall be allowed at the rate of one canopy tree for every three (3) inches of circumference measured at four and one-half (4.5) feet above grade. Credits shall be subtracted from the total number of canopy and understory trees required in the same planting yards where the tree is located. In every case, however, there shall be at least one canopy tree for every fifty (50) linear feet of street planting yard, existing or planted.

Sections 10.279 – 10.289 Reserved

ARTICLE VI. APPEARANCE COMMISSION

Section 10.290 Created; duties

There is hereby created a commission to be known as the Graham appearance commission. The duties and functions of the commission shall be as follows:

(1) The appearance commission shall be an advisory board to the mayor and city council and shall have no administrative duties.

(2) The appearance commission is established for the purpose of promoting, planning, advising and encouraging the citizens of Graham to participate in providing for an appreciation of aesthetic values.

(3) The appearance commission may accept gifts or bequests with the approval of city council.

Section 10.291 Membership; appointments

The appearance commission shall be composed of 15 members, appointed by the city council. The commission shall consist of a minimum of 14 residents of the city; one member may be a nonresident of the city who resides in its planning and zoning jurisdiction.

Section 10.292 Officers; voting

The appearance commission shall elect a chairman, a vice-chairman and a secretary from its membership. Each member shall have the right to vote on any question

Section 10.293. Meetings

The appearance commission may adopt a suitable time and place for its meetings.

Section 10.294. Removal

A member of the appearance commission may be removed by the city council for cause and upon the recommendation of at least 10 members of the commission, provided that any member who misses two consecutive meetings without cause may be removed by the city council.

Section 10.295. Term of office

Terms of office for commission members shall be four years. Nothing in this section shall affect the terms of members first appointed. Members may be appointed to succeed themselves.

Sections 10.296-10.309 Reserved

ARTICLE VII. TREES

DIVISION 1. GENERALLY

Section 10.310 Definitions

As used in this article:

Park trees shall mean trees, shrubs and bushes in public parks having individual names, and all areas owned by the city, or to which the public has free access as a park.

Street trees shall mean trees, shrubs and bushes on land lying within rights-of-way on either side of all streets, avenues or ways within the city.

Section 10.311 Purpose

(a) The purpose of this article is to regulate the planting, maintenance and removal of trees On city-owned public property and rights-of-way within the city and on city-owned property wherever located. In order to protect and conserve trees on public property and rights-of-way, this article provides for the pruning, treatment and removal of trees and shrubs as is deemed necessary by the city council or a person acting under the authority of the city council. This article is also intended to provide for the trimming or removal of trees on public land when they obscure street lights, interfere with utility lines or constitute a hazard to pedestrian or vehicular traffic, or otherwise endanger the public health, safety or welfare.

(b) Another purpose of this article is to encourage the protection of trees and express the city's intent to use trees to create a more natural and amenable human environment. This article is not intended to be punitive nor to cause hardship to any person who uses the utmost care and diligence to protect trees within the city or on city property.

(c) This article shall further provide for the establishment of an advisory committee known as the tree board, which shall be responsible for promoting trees and tree care throughout the city and for developing a city tree plan.

Section 10.312 Work on city-owned trees generally-License; bond

It shall be unlawful for any person to engage in the business or occupation of pruning, treating or removing street or park trees within the city without first applying for and procuring a license. The license fee, in an amount fixed from time to time by the city council and kept on file in the office of the city clerk, shall be paid annually in advance; provided, however, that no license shall be required of any public service company, city employee, or contractor hired by the city doing such work in the pursuit of the public service endeavors thereof. Before any license shall be issued, each applicant shall first file evidence of possession of liability insurance in minimum amounts established by the City for bodily injury and property damage indemnifying the city or any person injured or damaged resulting from the pursuit of such endeavors as herein described. *(amended 5/3/2016)*

Section 10.313 Same-Permit

It shall be unlawful for any person to prune, treat or remove any street trees or park trees within the city without first filing an application and procuring a permit from the city manager or his/her designee. The city maintains the right to review the application and the tree(s) in question in determining whether or not to issue a permit.

Section 10.314 Removal of stumps

All stumps of street and park trees shall be removed below the surface of the ground so that the top of the stump shall not project above the surface of the ground.

Sections 10.315-10.319 Reserved

DIVISION 2. TREE BOARD

Section 10.320 Created; composition; qualifications

There is hereby created a tree board for the city, which shall consist of five (5) members, citizens and residents of this city, who shall be appointed by the mayor with the approval of the city council. The members of the tree board shall be members of the appearance commission. The city horticulturist shall be an ex officio member of the tree board.

Section 10.321 Compensation

Members of the tree board shall serve without compensation.

Section 10.322 Operation

The tree board shall adopt rules for transaction of its business and shall keep a record of its members' attendance and of its resolutions, discussions, findings and recommendations, which record shall be a public record. The tree board shall set a regular schedule for meetings, and the chairman may call a special meeting upon request of a majority of members of the board. A majority of the members shall be a quorum for the transaction of business.

Section 10.323 Duties

(a) It shall be the responsibility of the tree board to study, investigate, counsel, develop, update annually and administer a written plan for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs in parks, along streets and in other public areas. The plan will be presented annually to the city council and upon its acceptance and approval shall constitute the official comprehensive tree plan for the city.

(b) The tree board, when requested by the city council, shall consider, investigate, make findings, report and recommend upon any special matter or question coming within the scope of its work.

(c) The tree board shall furthermore serve as an advisory board to the city council with the following duties and responsibilities:

(1) To facilitate the planting, growth and protection of trees within the city.

(2) To foster the communication among the citizens of Graham that would provide the needed protection of trees and to coordinate active measures to support their health and growth within the city.

(3) To conduct a tree survey of existing trees along streets and on public property within the city.

(4) To investigate available grants, loans or contributions from other Governmental agencies, public or private corporations or individuals; and to recommend the expenditure of any proceeds toward the accomplishment of the board's purpose.

(5) To conduct continuing research, planning and feasibility studies required to support the purpose stated herein.

(d) The tree board shall also be responsible for developing an official street tree species list comprised of three groups of trees: Small trees, medium trees and large trees. No trees other than those included in the list may be planted as street trees without permission of the city tree board.

(e) The tree board shall be responsible for establishing guidelines for the spacing of city trees in accordance with the three species size classes in the official street tree species list. These guidelines will cover spacing between street trees, the distance street trees may be planted from curbs or curblines and sidewalks, the distance street trees may be planted from any street comer, the location of the street trees relative to overhead and underground water lines, sewer lines, transmission lines or other utility, and any other areas involving the spacing of street trees, park trees or city-owned trees.

(f) The tree board shall submit an annual report of its activities and recommendations to the city council and shall submit copies of its minutes and proceedings of its regular and special meetings.

Section 10.324 Public tree care

The city shall have the right to plant, prune, maintain and remove trees, plants and shrubs within the lines of all streets, alleys, avenues, lanes, squares and public grounds as may be necessary to ensure public safety or to preserve or enhance the symmetry and beauty of such public grounds. The tree board may remove, or cause to be removed, any publicly owned tree or part thereof which is in an unsafe condition or which by reason of its nature is injurious to sewers, electrical power lines, gas lines, water lines or other public improvements, or is affected with any disease, insect or other pest. This section does not prohibit the planting of street trees by adjacent property owners, providing that the selection and location of said trees is in accordance with the guidelines for planting and spacing developed by the tree board. The tree board may reserve the right to approve plantings in right-of-ways.

Section 10.325 Review by council

The city council shall have the right to review the conduct, acts and decisions of the city tree board. Any person may appeal from any ruling or order of the tree board to the city council, which may hear the matter and make final decision.

Section 10.326 Term; vacancies

The appointed members of the tree board shall have three year terms, except that the term of two of the members appointed to the first board shall be for one year and the term of two members of the first board shall be for two years. In the event that a vacancy occurs during a member's term, his successor shall be appointed for the unexpired portion of the term

Section 10.327 Interference with board

It shall be unlawful for any person to prevent, delay or interfere with the city tree board or any of its agents while engaging in planting, cultivation, mulching, pruning, spraying or removing of any street trees, park trees or trees on public grounds, as authorized in this article.

Section 10.328 Tree topping

It shall be unlawful as a normal practice, except as described in this section, for any person, firm or city department to top any street tree, park tree or other tree on public property. Topping is defined as the severe cutting back of limbs to stubs larger than three inches in diameter within the tree's crown to such a degree as to remove the normal canopy and to disfigure the tree. Trees severely damaged by storms or other causes, or certain trees that interfere with or are an imminent threat to utility wires or other obstructions where other pruning practices are impractical, may be exempted from this article at the determination of the city tree board.

Sections 10.329–10.334Reserved

ARTICLE VIII. SUBDIVISIONS AND SITE PLANS

DIVISION 1. SUBDIVISION PROCEDURES

Section 10.335 Purpose

The purpose of the subdivision regulations as herein set forth are to provide for the orderly growth and development of the city; for the coordination of transportation networks and utilities within proposed subdivisions with existing or planned streets and other public facilities; for the provision of adequate recreation areas serving residents of the immediate area; for the provision of rights-of-way or easements for street and utility purposes; and, for the distribution of population and traffic in a manner that will avoid congestion and overcrowding and will create conditions that substantially promote public health, safety and the general welfare.

Section 10.336 Applicability; exemptions

(a) Except as expressly exempted below, no land located either partially or wholly within the territorial jurisdiction of the City of Graham shall be subdivided until a final plat, approved in accordance with the procedures set out in this ordinance, shall have been approved by the City and filed and recorded with the Alamance County Register of Deeds.

(b) The following are exempt from the provisions of this article, unless otherwise provided:

(1) The combination or recombination of portions of previously subdivided and recorded lots where the total number of lots is not increased and the resultant lots are equal to or exceed the standards of the applicable zoning district.

(2) The division of land into parcels greater than ten (10) acres where no street right-of-way dedication is involved.

(3) The public acquisition by purchase of strips of land for the widening or opening of streets or for public transportation system corridors.

(4) The division of a tract in single ownership whose entire area is no greater than two acres into not more than three (3) lots, where no street right-of-way dedication is involved and where the resultant lots are equal to or exceed the standards of the applicable zoning district.

Section 10.337 Classes of Subdivisions

The following classes of subdivisions are hereby established:

(1) Subdivision, minor. A subdivision that divides a tract or parcel of land into no more than four (4) residential lots and does not involve the construction or extension of any public street or utility.

(2) Subdivision, major. A subdivision that is not a minor subdivision.

Section 10.338 Procedures for Minor Subdivisions

(a) Pre-Application. Before submitting a final plat, applicants are encouraged to contact the Planner to discuss the procedures, standards and regulations required for approval.

(b) Review and Approval. The applicant shall submit two (2) reproducible copies and one (1) paper copy of the final plat, along with a digital copy in a format suitable to the City, prepared according to the specifications for final plats in Section 10.340, a fee fixed by the City Council, and any applicable recording fees. The Planner shall review and find that the proposed minor subdivision either does or does not meet the requirements of this ordinance, the City's Code of Ordinances and State Law. If approved, the Planner shall cause the final plat to be recorded and shall file one (1) reproducible copy of the final plat with the City.

Section 10.339 Procedures for Major Subdivisions

(a) Pre-Application Conference. Before submitting an application, applicants are encouraged to schedule a pre-application conference with the Planner to discuss the procedures, standards and regulations required for approval.

(b) Preliminary Subdivision Plan Approval; Phasing; Revisions; Sunsetting

(1) Application. A complete application shall be filed with the Planner on or before the 25th of the month before the regular meeting of the Planning Board at which approval is sought. The application shall include, in addition to other reasonable requirements as may be requested by the Planning Board, the following:

a. The proposed name of the subdivision

b. The location thereof with respect to existing streets and other land features as shown upon a small-scale vicinity map

c. Name and address of the person to whom notice of hearing or other communication shall be sent

d. Name and address of owner(s) of the subdivision

e. A preliminary plan of the subdivision complete with north arrow and date, prepared by a design professional licensed in North Carolina. It shall show, at a minimum:

1. Location, width and other dimensions of all existing streets and other important features such as parks, railroads, watercourses and exceptional topography, within and contiguous to the tract to be subdivided

2. Existing contours as established through the use of an instrument of hand-level accuracy or better, at an interval of two (2) feet

3. The location, width and other dimensions of blocks, lots, parks and other open spaces

4. The design, size, location, grade and elevation of all proposed sanitary sewers, water mains and stormwater facilities, and accessories to each

5. Dimensions of streets

6. Addresses of all existing lots

f. A preliminary subdivision plan review fee fixed by the City Council

(2) Action by Technical Review Committee. The Technical Review Committee shall have the opportunity to review the application, suggest necessary and reasonable changes to the application to achieve the purpose and requirements of this ordinance, and make a recommendation to the Planning Board.

(3) Action by Planning Board. The Planning Board shall review the application and make a recommendation to the City Council, in accordance with Section 10.22.

(4) Action by City Council. The City Council shall review the application and either approve or deny the application based on the following criteria:

a. The plan complies with all applicable requirements of this ordinance, City specifications, the City's Code of Ordinances and State Law.

b. The plan conforms to all applicable plans adopted or endorsed by the City.

c. The plan fulfills the purpose and intent of this ordinance and this article.

(5) Phasing. A subdivision may be developed in phases provided that a general phasing plan shall be noted on the preliminary subdivision plan, with phase lines following reasonable and logical boundaries, and each phase able to "stand alone" in regard to utilities, fire protection, streets and stormwater management. Lot numbers should not be duplicated within different phases of the same subdivision.

(6) Revisions to an Approved Preliminary Subdivision Plan

a. Minor revisions to an approved preliminary subdivision plan that reflect the same basic street and lot configurations as shown on the original approval may be approved by the Planner at his or her discretion.

b. Any request for a revision to an approved preliminary subdivision plan that increases the number of buildable lots, decreases the amount of common open space or changes the road layout shall be initiated and processed as a new application for preliminary subdivision plan approval.

(7) Sunsetting of an Approved Preliminary Subdivision Plan. Within five (5) years after approval of the preliminary subdivision plan, the preliminary subdivision plan approval shall be automatically voided for any portions of the preliminary subdivision plan that have not received final plat approval and have not been recorded in the Alamance County Register of Deeds,

unless a written request for an extension has been made to the Planner prior to the expiration period. Only one extension may be granted for a period not to exceed three (3) years.

(c) Approval and Construction of Improvements

(1) Application. The developer shall submit satisfactory plans and specifications for completing all required improvements of the entire subdivision or a specified phase thereof, documentation of any required applications or permits from other permitting authorities, and a construction plan review fee fixed by the City Council. For the purpose of this section, improvements shall mean any streets, utilities, landscaping or other features designed for public or common use or enjoyment, whether planned for public or private maintenance. Plans and profiles for public infrastructure shall accurately locate and describe said infrastructure and shall be prepared in accordance with standards provided by the City.

(2) Review and Approval. The Technical Review Committee shall review all submitted plans and specifications to ensure that they meet all applicable requirements and conform to the approved preliminary subdivision plan, and shall have the authority to require any modifications to the technical specifications that the Committee deems necessary.

(3) Construction of Public Improvements

a. Upon approval or issuance of all required construction drawing plans, profiles, specifications and permits, for the entire subdivision or a specified phase thereof, the developer shall, at a cost borne completely by the developer, construct all required public improvements.

b. As an alternative to completing construction of all required public improvements prior to the approval of a final plat, a developer may request to use a construction surety, as follows:

1. After the subdivision, or a specified phase thereof, has been certified by the City as having sufficient improvements to provide functional fire protection (with the roadways graded to final grade and water supplies for fire-fighting equipment), the developer may post a security instrument, in the form of a Surety Bond, Letter of Credit, or other form of guarantee that provides equivalent security to a surety bond or letter of credit, in an amount equal to 125% of the estimated construction cost of the required improvements which remain incomplete and including the cost of preparing as-built drawings, and with surety and conditions satisfactory to the City providing for and securing to the City the actual construction and installation of said improvements. The surety shall be accompanied by a detailed, itemized list of all required improvements that stand incomplete and a schedule for the completion of said improvements. (*amended 1/5/2016)*

2. The surety may be renewed or extended for a period of up to three (3) years from the date it was initially accepted, provided that each renewal or extension within the three (3) year period shall be for an amount equal to 125% of an updated estimated cost of construction for the remaining required improvements at the time of the renewal or extension and including the cost of preparing as-built drawings, and shall be accompanied by a detailed, itemized list of all required improvements that stand incomplete and a schedule for completion of said improvements. (*amended 1/5/2016)*

(4) Construction of Private Improvements. Where private improvements were required as a condition of approval of a preliminary subdivision plan, the developer shall, at a cost borne completely by the developer, construct or bond all required private improvements prior to the issuance of any certificate of occupancy, or as otherwise agreed upon by the developer and City Council as part of the approval of the preliminary subdivision plan. If the developer chooses to bond these improvements, the procedures for posting a security instrument outlined in subsection (3)b. above shall be followed, except that the cost of preparing as-built drawings shall not be included.

(d) Final Plat Approval; Building Permits; Certificates of Occupancy; Acceptance of Public Improvements

(1) Application. Once all required improvements have been completed or a construction surety has been accepted by the City for the portion of the subdivision for which final approval is being sought, the developer may submit an application for approval of a final plat. The final plat shall be prepared by the developer for certification and filing according to the specifications for final plats in Section 10.340. The application shall include two (2) reproducible copies and one (1) paper copy of the final plat, along with a digital copy in a format suitable to the City, a final plat review fee fixed by the City Council, and any applicable recording fees.

(2) Review and Approval. The Planner shall review the application and, upon satisfaction that it meets all requirements of this ordinance and of the approved preliminary subdivision plan, shall approve the final plat. The Planner shall cause the final plat to be recorded and shall file one (1) reproducible copy of the final plat with the City.

(3) No building permit may be issued for any building or structure located within an approved preliminary subdivision until a final plat for that phase of the subdivision on which the building permit is sought has been approved and recorded in accordance with the procedures and requirements of this section, with the exception of townhouse lots, which may be issued a building permit prior to approval of a final plat for the sole purpose of establishing the field location of common walls.

(4) No certificate of occupancy may be issued for any building or structure within the subdivision until the City certifies that all public improvements for that phase of the subdivision within which a certificate of occupancy is sought have been installed as required and are functional, with the exception of the last layer of asphalt, stormwater treatment facilities, sidewalks and street trees, which may remain incomplete provided that a construction surety has been posted in accordance with Section 10.339(c)(3)b. A certificate of occupancy may be issued even though minor deficiencies and defects remain provided that the deficiencies or defects do not render the improvements dysfunctional, the improvements provide the full level of fire protection, and the developer has provided the City with a construction surety (as provided for in Section 10.339(c)(3)b) for the deficiencies and defects.

(5) Acceptance of Public Improvements. The approval of a preliminary plan or the approval or recording of a final plat shall not be deemed to constitute the acceptance by the City of Graham or the public of any street or other ground, public utility line or other public facility shown upon the plat. Any public improvements that are to be accepted by the City for public maintenance shall first be inspected by the City. Upon recommendation of the City Manager, the City Council shall adopt a resolution stating the City's acceptance of the public improvements for public

maintenance. Such resolution shall contain the names of any streets and any other sufficient identifying information. Prior to final acceptance by the City of any public improvements, the developer shall submit the following to the City:

a. A complete set of as-built drawings, to include two (2) paper sets and one (1) digital copy, reflecting all changes made during construction, all labeled as "As-Built Drawings" and certified by the Project Engineer of record. The drawings shall include, but are not limited to, the following information:

    1. 8.5" x 11" valve/manhole location drawings.

    2. All water valve and sewer manhole locations with no less than two (2) reference dimensions from permanent features, final invert and top elevations of manholes, lengths and slope of sanitary sewers, dimensions and details of wastewater pumping stations, location of all pipe materials identified by type and size, and accurate locations of all water and sewer taps including meter boxes and cleanouts.

    3. Actual rim, top of grate, top of curb, invert elevations of all sewer and stormwater manholes, catch basins and junction boxes, and all valve and blow off tie downs to at least two (2) permanent markers.

b. A detailed, itemized list of all public infrastructure costs, providing the lengths, dimensions, descriptions and actual construction costs of any and all water and sanitary sewer facilities, and other capital assets to be maintained by the City, such as roads, sidewalks, bridges, dams, curb-and-gutter, stormwater facilities, etc.

c. A warranty or guarantee for public infrastructure for a period of one (1) year from the date of the City's acceptance for public maintenance.

(6) The City reserves the right to hold or revoke building permits, or withhold certificates of occupancy, or withhold or revoke subdivision approvals up and until the time at which all required improvements have been completed and accepted.

Section 10.340 Specifications for Final Plats

In addition to the requirements of G.S. 47-30 and the Alamance County Register of Deeds, the following shall be required, as applicable, on any final plat reviewed and recorded by the City of Graham:

(1) Existing corporate boundaries, if within the boundaries of the plat

(2) All easements and reservations, with labels and dimensions

(3) Addresses for all lots that are part of the subdivision, and for all surrounding lots that have an address

(4) City of Graham Certification

    a. For major subdivisions: Approval date and signature by the City Planner

b. For minor subdivisions: “Approved by the City Planner as a Minor Subdivision in accordance with the *City of Graham Development Ordinance*.”

c. For those exempt from the provisions of this article: “No approval required by the *City of Graham Development Ordinance*.”

(5) If more than two (2) sheets are required, an index sheet of the same dimensions showing the entire subdivision on a reduced scale and delineating the areas shown on the other sheets.

Section 10.341 Procedures for Non-Subdivision Maps or Plats

For any map or plat, other than subdivision plats, which is required by State Law to contain a City certification, the applicant shall submit two (2) reproducible copies prepared according to the specifications for final plats in Section 10.340 and any applicable recording fees. The Planner shall review the map or plat for conformity with any applicable provisions of this ordinance, the City’s Code of Ordinances or State Law. If approved, the Planner shall cause the final plat to be recorded and shall file one (1) reproducible copy of the final plat with the City.

Section 10.342 Additional Procedures for Subdivisions with Common Areas

In addition to any other applicable procedures, this section shall apply to any subdivision that includes common areas or facilities for maintenance serving more than one dwelling lot.

(1) Before the sale of any structures in the development, the developer shall file proposed bylaws of a non-profit owners' association containing covenants and restrictions governing common areas, the owners' association and sites. The covenants and restrictions shall include provisions for the following:

a. All owners of sites in the development, both original purchasers and each successive purchaser, shall be members.

b. The owner's association shall be responsible for payment of premiums for liability insurance, local taxes, maintenance of facilities located on the common areas, payment of assessments for public and private capital improvements made to or for the benefit of the common areas, and, if applicable, maintenance and repair to the exterior of all structures located within the development.

c. It shall be further provided that upon default by the owners association in payment to the entitled governmental authority of ad valorem taxes levied against the common areas or assessments for public improvements to the common areas, which default shall continue for a period of six months, each owner of a site in the development shall become personally obligated to pay to the taxing or assessing governmental authority a portion of such taxes or assessments in an amount determined by dividing the total taxes and/or assessments due to the governmental authority by the total number of sites in the development. If the sum is not paid by the owner within 30 days following receipt of notice of the amount due, the amount shall become a continuing lien on the site of the owner, his heirs, devises, personal representatives, and assigns. The taxing governmental authority may either bring an action at law against the owner personally obligated to pay the same or may elect to foreclose the lien against the lot of the owner.

d. The owners' association shall be empowered to levy assessments against the owners of sites within the development for the payment of expenditures made by the owners' association for the items set forth in the preceding subparagraph, and any such assessments not paid by the owner against whom such are assessed shall constitute a lien on the site of the owner.

e. Easements over the common areas for access, ingress, and egress from and to public streets and walkways and easements for enjoyment of the common areas, as well as for parking, shall be granted to each owner of a site.

f. Any and all common walls between individual residences shall be party walls and provisions for the maintenance thereof and restoration in the event of destruction or damages shall be established.

g. Common areas shall not be subdivided or conveyed by the owner's association.

(2) The owner's association shall be organized and in legal existence before the sale of any structures in the development.

(3) Any common areas or facilities shall have fee-simple title conveyed to the owners' association. For townhouse subdivisions, all areas within the development other than public street rights-of-way, areas dedicated to the City and home sites shall be designated as common areas.

Section 10.343 Penalties

Any person who subdivides land in violation of this article or transfers or sells land by reference to, exhibition of, or any other use of a plat showing a subdivision of the land before the plat has been properly approved under this article and recorded in the office of the Alamance County Register of Deeds, may be subject to penalties as described in G.S. 160A-375.

Sections 10.344 – 10.345 Reserved

DIVISION 2. SITE PLAN PROCEDURES

Section 10.346 Applicability

(a) Before any building, structure or parking facility is constructed, installed, expanded or extended, with the exception of single family detached dwellings and their accessory structures, or as otherwise required by this ordinance, a site plan must be submitted to and approved in accordance with the procedures outlined in Section 10.347.

(b) For certain types of improvements, a plot plan may be required and shall follow the procedures outlined in Section 10.348. Types of improvements that may require a plot plan include the following:

(1) The construction or expansion of single family detached homes

(2) The construction, installation or expansion of single family residential accessory structures that require a building permit

(3) Zoning requests that do not require a site plan but where compliance with setbacks, parking, landscaping or other spatial standards must be demonstrated

(4) The installation or construction of freestanding or outdoor advertising signs

Section 10.347 Procedures for Site Plans

(a) Pre-Application Conference. Before submitting an application, applicants are encouraged to schedule a pre-application conference with the Planner to discuss the procedures, standards and regulations required for approval.

(b) Preliminary Site Plan Review; Phasing; Administrative Amendments

(1) Application. A complete application shall be filed with the Planner. The application shall include a site plan prepared by a qualified person in an acceptable manner, showing sufficient and detailed information to demonstrate compliance with all applicable regulations, and a preliminary site plan review fee fixed by the City Council. If appropriate, the preliminary site plan can also serve as the preliminary subdivision plan. If a preliminary site plan is not required, the applicant may choose to not submit a preliminary site plan.

(2) Action by Technical Review Committee. The Technical Review Committee shall have the opportunity to review the application, suggest necessary and reasonable changes to the application to achieve the purpose and requirements of this ordinance, and make a recommendation to the Planner or Planning Board, as appropriate.

(3) Phasing. A site may be developed in phases provided that a general phasing plan shall be noted on the preliminary site plan, with phase lines following reasonable and logical boundaries, and each phase able to “stand alone” in regard to utilities, fire protection, streets and stormwater management.

(4) Administrative Amendments.

a. Administrative amendments for minor revisions to a preliminary site plan that was approved by the City Council may be approved by the Planner. An administrative amendment must be requested by the applicant in writing, signed by all required persons, and be accompanied by an administrative amendment review fee fixed by the City Council. The decision of the Planner must be in writing stating the grounds for approval or denial. If denial, the applicant may appeal the decision to the Board of Adjustment, as provided for in this ordinance. The standard for approving a requested minor revision shall be that the revision does not significantly alter the site plan or its conditions, that it does not increase the number of structures or dwellings units, and that the change does not have a significant impact upon abutting properties. The following revisions may be considered minor:

1. Up to a 10% increase or any decrease in gross floor area of a building

2. Up to a 10% reduction in the approved setbacks from exterior property lines

3. Relocation of parking areas, internal driveways or structures where such relocation occurs more than 100 feet from exterior property lines

4. Relocation of access driveways within up to 50 feet of the approved location when warranted by site-specific conditions

b. All other revisions to a preliminary site plan that was approved by the City Council shall be considered major and shall be considered a new application.

c. An adjacent property owner shall be entitled to appeal the approval of an administrative amendment to the City Council within fifteen (15) days of knowledge of the approval. Even absent knowledge of the approval, the approval shall be final after thirty (30) days.

(c) Final Site Plan Review; Construction of Improvements; Certificate of Occupancy

(1) Application. Prior to the issuance of any building permits or to the construction or installation of any improvements, the developer shall submit to the Planner a final site plan for the entire site or a specified phase thereof, along with construction drawings for any required improvements, any other plans required for review, documentation of any required applications or permits from other permitting authorities, and a final site plan review fee fixed by the City Council. All plans shall be prepared by a design professional licensed in North Carolina and shall be drawn to a scale that is legible. If more than two (2) sheets are required, an index sheet of the same dimensions shall be required.

(2) Review and Approval. The Technical Review Committee shall review all submitted plans and drawings to ensure that they meet all applicable requirements and conform to the approved preliminary site plan, and shall have the authority to require any modifications to the technical specifications that the Committee deems necessary.

(3) If any public improvements are required, the construction of public improvements shall follow the procedures in Section 10.339(c)(3) and the acceptance of said improvements shall follow the procedures in Section 10.339(d)(5).

(4) A Certificate of Occupancy shall not be issued for any building or structure on the site until the City verifies that all required improvements have been constructed in accordance with the approved site plan and construction drawings and specifications, or a construction surety for allowable incomplete public and/or private improvements (as provided for in Sections 10.339(c)(3)b, (c)(4) and (d)(4)) has been accepted by the city, and that all other requirements have been met.

(5) Where this ordinance requires the installation of a public sidewalk, the applicant may request to make a payment in lieu of constructing the required sidewalk. The payment shall be in an amount equal to the estimated cost of construction of the required sidewalk, which would include the cost of all materials, labor and engineering. The payment shall be used at the discretion of the City to construct or install new pedestrian infrastructure, with priority given to projects identified in an adopted plan. The City Planner, with guidance from the TRC, shall decide upon requests for this payment-in-lieu option.

Payment in lieu is not permitted if it is located adjacent to any existing sidewalk, adjacent to sidewalk appearing on a proposed development plan, adjacent to any sidewalk planned for construction within one year or any sidewalk planned for construction except where less than 150 feet of sidewalk is required. *(Amended 1/5/2016)*

Section 10.348 Procedures for Plot Plans

(a) Application. A plot plan, prepared in an acceptable manner, shall be submitted to the City.

(b) Review and Approval. The appropriate City staff shall review the application against the requirements of this ordinance and other applicable standards and requirements.

Section 10.349 Additional Procedures for Condominiums

In addition to any other applicable procedures, this section shall apply to any condominium development.

(1) The applicant shall submit two (2) reproducible copies and one (1) paper copy of the final condominium plat, prepared according to the specifications for final plats in Section 10.340, a copy of a declaration establishing unit ownership, a copy of the bylaws governing administration, and any applicable recording fees. The declaration shall comply with the following requirements:

    a. The declaration shall be a complete legal document prepared strictly in accordance with the North Carolina Unit Ownership Act (G.S. 47A, Article 1).

    b. The plans of buildings to be attached to the declaration when recorded shall be prepared in accordance with the North Carolina Unit Ownership Act (G.S. 47A, Article 1).

    c. The declaration and bylaws shall contain a statement that common expenses include ad valorem taxes, public assessments or governmental liens levied on common areas, if any.

(2) The Planner shall review and find that the proposed condominium either does or does not meet the requirements of this ordinance, the City's Code of Ordinances and State Law. If approved, the Planner shall cause the final condominium plat to be recorded and shall file one (1) reproducible copy of the final plat with the City.

Sections 10.350 – 10.351 Reserved

DIVISION 3. SUBDIVISION AND SITE PLAN STANDARDS

Section 10.352 Applicability

Unless specifically exempted or where other regulations require a higher standard, all subdivisions and site plans shall meet the minimum standards of this division.

Section 10.353 Lot Standards

This section does not apply to site plans.

(1) Lots that are occupied or are intended to be occupied shall meet the minimum requirements of Section 10.245 Area, Height, and Yard Regulations and the minimum lot depth shall be one

hundred ten (110) feet, with the exception of townhouse lots, which shall have a minimum width of twenty (20) feet.

(2) Flag lots shall contain only one (1) single family dwelling and its uninhabited accessory structures and meet the following standards:

a. The maximum flagpole length shall be three hundred (300) feet;

b. The minimum flagpole width shall be thirty (30) feet, except in cases where an existing structure and its required side yard could not be accommodated, then the width shall be at least 15 feet and capable of being used for ingress and egress;

c. The minimum lot size shall be one (1) acre;

d. Each flag lot shall have a separate access drive; and,

e. The minimum front yard setback shall apply to all the yards of a flag lot.

(3) For residential lots that are not served by public sewer, the minimum lot size shall be approved by the director of the Alamance County Health Department for the purpose of providing adequate area for the on-site treatment of sanitary sewage, and in no case shall be less than eighteen thousand (18,000) square feet.

(4) Every lot shall have frontage on a public street, with the exception of townhouse lots, which shall have legal access to a public street.

(5) Every side lot line extended shall be perpendicular to the centerline of the fronting street if such centerline is a tangent or radial to the centerline if such is a curve; however, the side lot lines may be adjusted to the contour of the land if necessary to produce usable lots.

Section 10.354 Block Standards

This section does not apply to minor subdivisions or to site plans.

(1) Residential blocks should allow for two (2) tiers of residential lots, except where single tier lots are required to accommodate single-loaded streets where across from a public park or open space, to allow for unusual topographical conditions, or when adjacent to the outer perimeter of a subdivision.

(2) Blocks shall not exceed one thousand (1,000) feet in length; provided that for sufficient reason the Planning Board may approve longer blocks upon such conditions as it shall prescribe.

Section 10.355 Access Standards

This section does not apply to minor subdivisions or to site plans, with the exception of (6) below.

(1) Street and alley layouts shall conform to transportation plans adopted by or endorsed by the City, insofar as practical, and should be designed in order to provide multiple routes for pedestrian and vehicular trips from, to and within the subdivision.

(2) Any residential subdivision with more than twenty-five (25) lots must provide at least two (2) points of vehicular ingress and egress from existing and surrounding streets, unless unique circumstances make this impractical.

(3) The street layout shall be designed to provide for future access to and not impose undue hardships upon adjacent property. Where a subdivision adjoins unsubdivided land, stub streets within the new subdivision shall be extended and constructed to the boundary of the abutting property to meet maximum block length standards and provide for a continuous street network. The length of stub streets shall not exceed the depth of one buildable lot or shall conform to the standards for dead-end streets. Where a stub street exists on abutting property, the street system of any new subdivision must connect to the stub street to form a through street.

(4) Dead-end streets are discouraged, but where provided they shall be no longer than five hundred (500) feet unless, upon certain conditions, the Planning Board recommends approval of extending a dead-end street more than five hundred (500) feet. Any dead-end street must meet the City's standards and specifications and provide adequate turnaround for emergency and curbside service vehicles.

(5) An alley shall be provided in all business districts and shall be a through alley, provided, however, all business lots are accessible to such alley. The minimum right-of-way width of an alley shall be twenty (20) feet. A developer may reserve the air rights over alleys in business or industrial districts provided a fifteen-foot clearance is maintained above the grade of such alley.

(6) Where a site fronts on a street with an existing sidewalk, or where a site is required to construct a sidewalk, development must provide safe, direct, convenient and accessible pedestrian access between the public sidewalk and buildings on the site.

Section 10.356 Street Standards

This section does not apply to minor subdivisions or to site plans.

(1) Streets shall be straight but may be adjusted to the contour of the land or other terrain features if necessary to produce streets of reasonable gradient and usable lots.

(2) Streets shall be designed and constructed in accordance with the street cross-sections located in Appendix C of this ordinance and the standard specifications of the City. Streets include the roadway, curb-and-gutter, sidewalk, street lights, bridges and/or culverts, and any other related improvements.

(3) Street names shall conform to street-naming practices of the City, and where streets are continuations of existing streets, the existing street name shall be used.

Section 10.357 Utility Standards

(1) All new lots created within the City's corporate limits shall have access to public water and sewer service, except in exceptional circumstances where unique topography or other unique circumstances would make this unfeasible.

(2) All major subdivisions not within the City's corporate limits, where public water and/or sanitary sewer facilities are available at the boundary of the development, shall connect to the public water and/or sanitary sewer systems and provide such service to every lot within the subdivision.

(3) Where a major subdivision provides public water and/or sanitary sewer service, water and/or sanitary sewer line stubs shall be provided to the property line at the same location where street stubs are provided.

(4) All new water, sanitary sewer and stormwater facilities shall be designed and constructed in accordance with the standard specifications of the City and requirements of the State.

(5) The minimum width of any utility easement necessarily located along either a side or rear lot line shall be fifteen (15) feet.

(6) Utility wires are encouraged to be placed underground.

Sections 10.358 – 10.359 Reserved

ARTICLE IX. FLOOD DAMAGE PREVENTION

Section 10.360 Statutory authorization; findings of fact

The Legislature of the State of North Carolina has in Part 6, Article 21 of Chapter 143; Parts 3, 5, and 8 of Article 19 of Chapter 160A; and Article 8 of Chapter 160A of the North Carolina General Statutes, delegated to local governmental units the responsibility to adopt regulations designed to promote the public health, safety, and general welfare of its citizenry.

Therefore, the City Council of the City of Graham, North Carolina, does ordain as follows:

Section 10.361 Findings of fact

(1) The flood prone areas within the jurisdiction of the City of Graham are subject to periodic inundation which results in loss of life, property, health and safety hazards, disruption of commerce and governmental services, extraordinary public expenditures of flood protection and relief, and impairment of the tax base, all of which adversely affect the public health, safety, and general welfare.

(2) These flood losses are caused by the cumulative effect of obstructions in floodplains causing increases in flood heights and velocities and by the occupancy in flood prone areas of uses vulnerable to floods or other hazards.

Section 10.362 Statement of purpose

It is the purpose of this ordinance to promote public health, safety, and general welfare and to minimize public and private losses due to flood conditions within flood prone areas by provisions designed to:

(1) restrict or prohibit uses that are dangerous to health, safety, and property due to water or erosion hazards or that result in damaging increases in erosion, flood heights or velocities;

(2) require that uses vulnerable to floods, including facilities that serve such uses, be protected against flood damage at the time of initial construction;

(3) control the alteration of natural floodplains, stream channels, and natural protective barriers, which are involved in the accommodation of floodwaters;

(4) control filling, grading, dredging, and all other development that may increase erosion or flood damage; and

(5) prevent or regulate the construction of flood barriers that will unnaturally divert flood waters or which may increase flood hazards to other lands.

Section 10.363 Objectives

The objectives of this ordinance are:

(1) to protect human life and health;

(2) to minimize expenditure of public money for costly flood control projects;

(3) to minimize the need for rescue and relief efforts associated with flooding and generally undertaken at the expense of the general public;

(4) to minimize prolonged business losses and interruptions;

(5) to minimize damage to public facilities and utilities (i.e. water and gas mains, electric, telephone, cable and sewer lines, streets, and bridges) that are located in flood prone areas;

(6) to help maintain a stable tax base by providing for the sound use and development of flood prone areas; and

(7) to ensure that potential buyers are aware that property is in a Special Flood Hazard Area.

Section 10.364 Definitions

Unless specifically defined below, words or phrases used in this ordinance shall be interpreted so as to give them the meaning they have in common usage and to give this ordinance its most reasonable application.

"Accessory Structure (Appurtenant Structure)" means a structure located on the same parcel of property as the principal structure and the use of which is incidental to the use of the principal structure. Garages, carports and storage sheds are common urban accessory structures. Pole barns, hay sheds and the like qualify as accessory structures on farms, and may or may not be located on the same parcel as the farm dwelling or shop building.

"Addition (to an existing building)" means an extension or increase in the floor area or height of a building or structure.

"Appeal" means a request for a review of the floodplain administrator's interpretation of any provision of this ordinance.

"Area of Shallow Flooding" means a designated Zone AO on a community's Flood Insurance Rate Map (FIRM) with base flood depths determined to be from one (1) to three (3) feet. These areas are located where a clearly defined channel does not exist, where the path of flooding is unpredictable and indeterminate, and where velocity flow may be evident.

"Area of Special Flood Hazard" see "Special Flood Hazard Area (SFHA)"

"Basement" means any area of the building having its floor subgrade (below ground level) on all sides.

"Base Flood" means the flood having a one (1) percent chance of being equaled or exceeded in any given year.

"Base Flood Elevation (BFE)" means a determination of the water surface elevations of the base flood as published in the Flood Insurance Study. When the BFE has not been provided in a "Special Flood Hazard Area", it may be obtained from engineering studies available from a Federal or State or other source

using FEMA approved engineering methodologies. This elevation, when combined with the "Freeboard", establishes the "Regulatory Flood Protection Elevation".

"Building" see "Structure"

"Chemical Storage Facility" means a building, portion of a building, or exterior area adjacent to a building used for the storage of any chemical or chemically reactive products.

"Development" means any man-made change to improved or unimproved real estate, including, but not limited to, buildings or other structures, mining, dredging, filling, grading, paving, excavation or drilling operations, or storage of equipment or materials.

"Disposal" means, as defined in NCGS 130A-290(a)(6), the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste into or on any land or water so that the solid waste or any constituent part of the solid waste may enter the environment or be emitted into the air or discharged into any waters, including groundwaters.

"Elevated Building" means a non-basement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

"Encroachment" means the advance or infringement of uses, fill, excavation, buildings, permanent structures or development into a floodplain, which may impede or alter the flow capacity of a floodplain.

"Existing Manufactured Home Park or Manufactured Home Subdivision" means a manufactured home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including, at a minimum, the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete pads) was completed before the original effective date of the floodplain management regulations adopted by the community.

"Expansion to an existing manufactured home park or subdivision" means the preparation of the additional sites by the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including the installation of utilities, the construction of streets, and either final site grading or the pouring of concrete slabs.)

"Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

(1) the overflow of inland or tidal waters; and/or

(2) the unusual and rapid accumulation of runoff of surface waters from any source.

"Flood Boundary and Floodway Map (FBFM)" means an official map of a community, issued by the Federal Emergency Management Agency, on which the Special Flood Hazard Areas and the floodways are delineated. This official map is a supplement to and shall be used in conjunction with the Flood Insurance Rate Map (FIRM).

"Flood Hazard Boundary Map (FHBM)" means an official map of a community, issued by the Federal Emergency Management Agency, where the boundaries of the Special Flood Hazard Areas have been defined as Zone A.

"Flood Insurance" means the insurance coverage provided under the National Flood Insurance Program.

"Flood Insurance Rate Map (FIRM)" means an official map of a community, issued by the Federal Emergency Management Agency, on which both the Special Flood Hazard Areas and the risk premium zones applicable to the community are delineated.

"Flood Insurance Study (FIS)" means an examination, evaluation, and determination of flood hazards, corresponding water surface elevations (if appropriate), flood hazard risk zones, and other flood data in a community issued by the Federal Emergency Management Agency. The Flood Insurance Study report includes Flood Insurance Rate Maps (FIRMs) and Flood Boundary and Floodway Maps (FBFMs), if published.

"Flood Prone Area" see "Floodplain"

"Floodplain" means any land area susceptible to being inundated by water from any source.

"Floodplain Administrator" is the individual appointed to administer and enforce the floodplain management regulations.

"Floodplain Development Permit" means any type of permit that is required in conformance with the provisions of this ordinance, prior to the commencement of any development activity.

"Floodplain Management" means the operation of an overall program of corrective and preventive measures for reducing flood damage and preserving and enhancing, where possible, natural resources in the floodplain, including, but not limited to, emergency preparedness plans, flood control works, floodplain management regulations, and open space plans.

"Floodplain Management Regulations" means this ordinance and other zoning ordinances, subdivision regulations, building codes, health regulations, special purpose ordinances, and other applications of police power which control development in flood-prone areas. This term describes federal, state or local regulations, in any combination thereof, which provide standards for preventing and reducing flood loss and damage.

"Floodproofing" means any combination of structural and nonstructural additions, changes, or adjustments to structures, which reduce or eliminate flood damage to real estate or improved real property, water and sanitation facilities, structures, and their contents.

"Floodway" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot.

"Flood Zone" means a geographical area shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map that reflects the severity or type of flooding in the area.

"Floor" means the top surface of an enclosed area in a building (including basement), i.e., top of slab in concrete slab construction or top of wood flooring in wood frame construction. The term does not include the floor of a garage used solely for parking vehicles.

"Freeboard" means the height added to the Base Flood Elevation (BFE) to account for the many unknown factors that could contribute to flood heights greater that the height calculated for a selected size flood and floodway conditions, such as wave action, bridge openings, and the hydrological effect of urbanization on the watershed. The Base Flood Elevation plus the freeboard establishes the "Regulatory Flood Protection Elevation".

"Functionally Dependent Facility" means a facility which cannot be used for its intended purpose unless it is located in close proximity to water, such as a docking or port facility necessary for the loading and unloading of cargo or passengers, shipbuilding, or ship repair. The term does not include long-term storage, manufacture, sales, or service facilities.

"Hazardous Waste Facility" means, as defined in NCGS 130A, Article 9, a facility for the collection, storage, processing, treatment, recycling, recovery, or disposal of hazardous waste.

"Highest Adjacent Grade (HAG)" means the highest natural elevation of the ground surface, prior to construction, immediately next to the proposed walls of the structure.

"Historic Structure" means any structure that is:

(a) listed individually in the National Register of Historic Places (a listing maintained by the US Department of Interior) or preliminarily determined by the Secretary of Interior as meeting the requirements for individual listing on the National Register;

(b) certified or preliminarily determined by the Secretary of Interior as contributing to the historical significance of a registered historic district or a district preliminarily determined by the Secretary to qualify as a registered historic district;

(c) individually listed on a local inventory of historic landmarks in communities with a "Certified Local Government (CLG) Program"; or

(d) certified as contributing to the historical significance of a historic district designated by a community with a "Certified Local Government (CLG) Program"

Certified Local Government (CLG) Programs are approved by the US Department of the Interior in cooperation with the North Carolina Department of Cultural Resources through the State Historic Preservation Officer as having met the requirements of the National Historic Preservation Act of 1966 as amended in 1980.

"Levee" means a manmade structure, usually an earthen embankment, designed and constructed in accordance with sound engineering practices to contain, control, or divert the flow of water so as to provide protection from temporary flooding.

"Levee system" means a flood protection system which consists of a levee, or levees, and associated structures, such as closure and drainage devices, which are constructed and operated in accordance with sound engineering practices.

"Lowest Adjacent Grade (LAG)" means the elevation of the ground, sidewalk or patio slab immediately next to the building, or deck support, after completion of the building.

"Lowest Floor" means lowest floor of the lowest enclosed area (including basement). An unfinished or flood resistant enclosure, usable solely for parking of vehicles, building access, or limited storage in an area other than a basement area is not considered a building's lowest floor, provided that such an enclosure is not built so as to render the structure in violation of the applicable non-elevation design requirements of this ordinance.

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a "recreational vehicle".

"Manufactured Home Park or Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"Market Value" means the building value, not including the land value and that of any accessory structures or other improvements on the lot. Market value may be established by independent certified appraisal; replacement cost depreciated for age of building and quality of construction (Actual Cash Value); or adjusted tax assessed values.

"Mean Sea Level" means, for purposes of this ordinance, the National Geodetic Vertical Datum (NGVD) as corrected in 1929, the North American Vertical Datum (NAVD) as corrected in 1988, or other vertical control datum used as a reference for establishing varying elevations within the floodplain, to which Base Flood Elevations (BFEs) shown on a FIRM are referenced. Refer to each FIRM panel to determine datum used.

"National Geodetic Vertical Datum (NGVD)" as corrected in 1929 is a vertical control used as a reference for establishing elevations within the floodplain.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of the original version of the community's Flood Damage Prevention Ordinance and includes any subsequent improvements to such structures.

"New manufactured home park or subdivision means a manufactured" home park or subdivision for which the construction of facilities for servicing the lots on which the manufactured homes are to be affixed (including at a minimum, the installation of utilities, the construction. of streets, and either final site grading or the pouring of concrete slabs) is completed on or after August 5, 1980.

"Non-Encroachment Area" means the channel of a river or other watercourse and the adjacent land areas that must be reserved in order to discharge the base flood without cumulatively increasing the water surface elevation more than one (1) foot as designated in the Flood Insurance Study report.

"Post-FIRM" means construction or other development for which the "start of construction" occurred on or after the effective date of the initial Flood Insurance Rate Map for the area.

"Pre-FIRM" means construction or other development for which the "start of construction" occurred before the effective date of the initial Flood Insurance Rate Map for the area.

"Principally Above Ground" means that at least 51% of the actual cash value of the structure is above ground.

"Public Safety" and/or "Nuisance" means anything which is injurious to the safety or health of an entire community or neighborhood, or any considerable number of persons, or unlawfully obstructs the free passage or use, in the customary manner, of any navigable lake, or river, bay, stream, canal, or basin.

"Recreational Vehicle (RV)" means a vehicle, which is:

(a) built on a single chassis;

(b) 400 square feet or less when measured at the largest horizontal projection;

(c) designed to be self-propelled or permanently towable by a light duty truck; and

(d) designed primarily not for use as a permanent dwelling, but as temporary living quarters for recreational, camping, travel, or seasonal use.

"Reference feature" is the receding edge of a bluff or eroding frontal dune or, if such a feature is not present, the normal high water line or the seaward line of permanent vegetation if high water line cannot be identified.

"Reference Level" is the top of the lowest floor for structures within Special Flood Hazard Areas designated as Zone A1-A30, AE, A, A99 or AO. It can also be the bottom of the lowest horizontal structural member of the lowest floor, excluding the foundation system, for structures within all Special Flood Hazard Areas.

"Regulatory Flood Protection Elevation" means the "Base Flood Elevation" plus the "Freeboard". In "Special Flood Hazard Areas" where Base Flood Elevations (BFEs) have been determined, this elevation shall be the BFE plus two (2) feet of freeboard. In "Special Flood Hazard Areas" where no BFE has been established, this elevation shall be at least two (2) feet above the highest adjacent grade.

"Remedy a Violation" means to bring the structure or other development into compliance with State and community floodplain management regulations, or, if this is not possible, to reduce the impacts of its noncompliance. Ways that impacts may be reduced include protecting the structure or other affected development from flood damages, implementing the enforcement provisions of the ordinance or otherwise deterring future similar violations, or reducing Federal financial exposure with regard to the structure or other development.

"Riverine" means relating to, formed by, or resembling a river (including tributaries), stream, brook, etc.

"Salvage Yard" means any non-residential property used for the storage, collection, and/or recycling of any type of equipment, and including but not limited to vehicles, appliances and related machinery.

"Solid Waste Disposal Facility" means, as defined in NCGS 130A-290(a)(35), any facility involved in the disposal of solid waste.

"Solid Waste Disposal Site" means, as defined in NCGS 130A-290(a)(36), any place at which solid wastes are disposed of by incineration, sanitary landfill, or any other method.

"Special Flood Hazard Area (SFHA)" means the land in the floodplain subject to a one (1%) percent or greater chance of being flooded in any given year, as determined in Section 10.365 (b) of the *City of Graham Development Ordinances*.

"Start of Construction" includes substantial improvement, and means the date the building permit was issued, provided the actual start of construction, repair, reconstruction, rehabilitation, addition placement, or other improvement was within 180 days of the permit date. The actual start means either the first placement of permanent construction of a structure on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, or any work beyond the stage of excavation; or the placement of a manufactured home on a foundation. Permanent construction does not include land preparation, such as clearing, grading, and filling; nor does it include the installation of streets and/or walkways; nor does it include excavation for a basement, footings, piers, or foundations or the erection of temporary forms; nor does it include the installation on the property of accessory buildings, such as garages or sheds not occupied as dwelling units or not part of the main structure. For a substantial improvement, the actual start of construction means the first alteration of any wall, ceiling, floor, or other structural part of the building, whether or not that alteration affects the external dimensions of the building.

"Structure" means a walled and roofed building, a manufactured home, or a gas, liquid, or liquefied gas storage tank that is principally above ground.

"Substantial Damage" means damage of any origin sustained by a structure during any one-year period whereby the cost of restoring the structure to its before damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred. See definition of "substantial improvement". Substantial damage also means flood-related damage sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

"Substantial Improvement" means any combination of repairs, reconstruction, rehabilitation, addition, or other improvement of a structure, taking place during any one-year period for which the cost equals or exceeds 50 percent of the market value of the structure before the "start of construction" of the improvement. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. The term does not, however, include either:

(a) any correction of existing violations of State or community health, sanitary, or safety code specifications which have been identified by the community code enforcement official and which are the minimum necessary to assure safe living conditions; or,

(b) any alteration of a historic structure, provided that the alteration will not preclude the structure's continued designation as a historic structure.

"Substantially improved existing manufactured home park" means where the repair, reconstruction, rehabilitation or improvement of the streets, utilities and pads equals or exceeds 50 percent of the value of the streets, utilities and pads before the repair, reconstruction or improvement commenced.

"Variance" is a grant of relief from the requirements of this ordinance.

"Violation" means the failure of a structure or other development to be fully compliant with the community's floodplain management regulations. A structure or other development without the elevation certificate, other certifications, or other evidence of compliance required in Sections 10.366, 10.367, 10.368, 10.369, 10.370, 10.371, 10.372, 10.373, 10.374, 10.375, 10.376, 10.377, and 10.378 of the *City of Graham Development Ordinances* is presumed to be in violation until such time as that documentation is provided.

"Water Surface Elevation (WSE)" means the height, in relation to mean sea level, of floods of various magnitudes and frequencies in the floodplains of coastal or riverine areas.

"Watercourse" means a lake, river, creek, stream, wash, channel or other topographic feature on or over which waters flow at least periodically. Watercourse includes specifically designated areas in which substantial flood damage may occur.

Section 10.365 General provisions

(a) *LANDS TO WHICH THIS SECTION APPLIES.* This ordinance shall apply to all Special Flood Hazard Areas within the jurisdiction, including Extra-Territorial Jurisdictions (ETJs) if applicable, of the City of Graham and within the jurisdiction of any other community whose governing body agrees, by resolution, to such applicability.

(b) *BASIS FOR ESTABLISHING THE SPECIAL FLOOD HAZARD AREAS*. The Special Flood Hazard Areas are those identified under the Cooperating Technical State (CTS) agreement between the State of North Carolina and FEMA in its Flood Insurance Study (FIS) and its accompanying Flood Insurance Rate Maps (FIRM), for Alamance County September 6, 2006 which are adopted by reference and declared to be a part of this ordinance.

(c) *ESTABLISHMENT OF FLOODPLAIN DEVELOPMENT PERMIT*. A Floodplain Development Permit shall be required in conformance with the provisions of this ordinance prior to the commencement of any development activities within Special Flood Hazard Areas determined in accordance with Section 10.365 (b) of the *City of Graham Development Ordinance*.

(d) *COMPLIANCE*. No structure or land shall hereafter be located, extended, converted, altered, or developed in any way without full compliance with the terms of this ordinance and other applicable regulations.

(e) *ABROGATION AND GREATER RESTRICTIONS*. This ordinance is not intended to repeal, abrogate, or impair any existing easements, covenants, or deed restrictions. However, where this ordinance and another conflict or overlap, whichever imposes the more stringent restrictions shall prevail.

(f) *INTERPRETATION*. In the interpretation and application of this ordinance, all provisions shall be:

(1) considered as minimum requirements;

(2) liberally construed in favor of the governing body; and

(3) deemed neither to limit nor repeal any other powers granted under State statutes.

(g) *WARNING AND DISCLAIMER OF LIABILITY*. The degree of flood protection required by this ordinance is considered reasonable for regulatory purposes and is based on scientific and engineering consideration. Larger floods can and will occur. Actual flood heights may be increased by man-made or natural causes. This ordinance does not imply that land outside the Special Flood Hazard Areas or uses permitted within such areas will be free from flooding or flood damages. This ordinance shall not create liability on the part of the City of Graham or by any officer or employee thereof for any flood damages that result from reliance on this ordinance or any administrative decision lawfully made hereunder.

(h) *PENALTIES FOR VIOLATION*. Violation of the provisions of this ordinance or failure to comply with any of its requirements, including violation of conditions and safeguards established in connection with grants of variance or special exceptions, shall constitute a misdemeanor. Any person who violates this ordinance or fails to comply with any of its requirements shall, upon conviction thereof, be fined not more than $50.00 or imprisoned for not more than thirty (30) days, or both. Each day such violation continues shall be considered a separate offense. Nothing herein contained shall prevent the City of Graham from taking such other lawful action as is necessary to prevent or remedy any violation.

Section 10.366 ADMINISTRATION; Designation of Local Floodplain Administrator

The City Planner, hereinafter referred to as the "Floodplain Administrator", is hereby appointed to administer and implement the provisions of ARTICLE IX. FLOOD DAMAGE PREVENTION in the *City of Graham Development Ordinances*.

Section 10.367 Floodplain Development Application, Permit and Certification Requirements

(1) Application Requirements. Application for a Floodplain Development Permit shall be made to the floodplain administrator prior to any development activities located within Special Flood Hazard Areas. The following items shall be presented to the floodplain administrator to apply for a floodplain development permit:

(a) A plot plan drawn to scale which shall include, but shall not be limited to, the following specific details of the proposed floodplain development:

i) the nature, location, dimensions, and elevations of the area of development/disturbance; existing and proposed structures, utility systems, grading/pavement areas, fill materials, storage areas, drainage facilities, and other development;

ii) the boundary of the Special Flood Hazard Area as delineated on the FIRM or other flood map as determined in Section 10.365 (b) of the *City of Graham Development Ordinances*, or a statement that the entire lot is within the Special Flood Hazard Area;

iii) flood zone(s) designation of the proposed development area as determined on the FIRM or other flood map as determined in Section 10.365 (b) of the *City of Graham Development Ordinances*;

iv) the boundary of the floodway(s) or non-encroachment area(s) as determined in Section 10.365 (b) of the *City of Graham Development Ordinances*;

v) the Base Flood Elevation (BFE) where provided as set forth in Section 10.365 (b) of the *City of Graham Development Ordinances*; Section 10.368 (11 & 12) of the *City of Graham Development Ordinances*; or Section 10.373 of the *City of Graham Development Ordinances*;

vi) the old and new location of any watercourse that will be altered or relocated as a result of proposed development;

vii) certification of the plot plan by a registered land surveyor or professional engineer.

(b) Proposed elevation, and method thereof, of all development within a Special Flood Hazard Area including but not limited to:

i) Elevation in relation to mean sea level of the proposed reference level (including basement) of all structures;

ii) Elevation in relation to mean sea level to which any non-residential structure in Zone AE, A or AO will be flood-proofed; and

iii) Elevation in relation to mean sea level to which any proposed utility systems will be elevated or floodproofed;

(c) If floodproofing, a Floodproofing Certificate *(FEMA Form 81-65)* with supporting data and an operational plan that includes, but is not limited to, installation, exercise, and maintenance of floodproofing measures.

(d) A Foundation Plan, drawn to scale, which shall include details of the proposed foundation system to ensure all provisions of this ordinance are met. These details include but are not limited to:

i) The proposed method of elevation, if applicable (i.e., fill, solid foundation perimeter wall, solid backfilled foundation, open foundation on columns/posts/piers/piles/shear walls);

ii) Openings to facilitate equalization of hydrostatic flood forces on walls in accordance with Section 10.372(4)(c) of the *City of Graham Development Ordinances*, when solid foundation perimeter walls are used in Zones A, AO, AE, and A1-30;

(e) Usage details of any enclosed areas below the regulatory flood protection elevation.

(f) Plans and/or details for the protection of public utilities and facilities such as sewer, gas, electrical, and water systems to be located and constructed to minimize flood damage;

(g) Copies of all other Local, State and Federal permits required prior to floodplain development permit issuance (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.)

(h) Documentation for placement of Recreational Vehicles and/or Temporary Structures, when applicable, to ensure Section 10.372 (6 & 7) of the *City of Graham Development Ordinances* are met.

(i) A description of proposed watercourse alteration or relocation, when applicable, including an engineering report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map (if not shown on plot plan) showing the location of the proposed watercourse alteration or relocation.

(2) Permit Requirements. The Floodplain Development Permit shall include, but not be limited to:

(a) description of the development to be permitted under the floodplain development permit.

(b) The Special Flood Hazard Area determination for the proposed development per available data specified in Section 10.365 (b) of the *City of Graham Development Ordinances*.

(c) The regulatory flood protection elevation required for the reference level and all attendant utilities.

(d) The regulatory flood protection elevation required for the protection of all public utilities.

(e) All certification submittal requirements with timelines.

(f) A statement that no fill material or other development shall encroach into the floodway or non-encroachment area of any watercourse, as applicable.

(g) The flood openings requirements, if in Zones A, AO, AE or A1-30.

(h) Limitations of below BFE enclosure uses (if applicable). (i.e., Parking, Building Access and Limited Storage only).

(3) Certification Requirements.

(a) Elevation Certificates

i) An Elevation Certificate (FEMA Form 81-31) is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the elevation of the reference level, in relation to mean sea level. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder prior to the beginning of construction. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit.

ii) A final as-built Elevation Certificate (FEMA Form 81-31) is required after construction is completed and prior to Certificate of Compliance/Occupancy issuance. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of final as-built construction of the elevation of the reference level and all attendant utilities. The floodplain administrator shall review the certificate data submitted. Deficiencies detected by such review shall be corrected by the permit holder immediately and prior to Certificate of Compliance/Occupancy issuance. In some instances, another certification may be required to certify corrected as-built construction. Failure to submit the certification or failure to

make required corrections shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(b) Floodproofing Certificate

If non-residential floodproofing is used to meet the regulatory flood protection elevation requirements, a Floodproofing Certificate (FEMA Form 81-65), with supporting data and an operational plan, is required prior to the actual start of any new construction. It shall be the duty of the permit holder to submit to the floodplain administrator a certification of the floodproofed design elevation of the reference level and all attendant utilities, in relation to mean sea level. Floodproofing certification shall be prepared by or under the direct supervision of a professional engineer or architect and certified by same. The floodplain administrator shall review the certificate data and plan. Deficiencies detected by such review shall be corrected by the applicant prior to permit approval. Failure to submit the certification or failure to make required corrections shall be cause to deny a floodplain development permit. Failure to construct in accordance with the certified design shall be cause to withhold the issuance of a Certificate of Compliance/Occupancy.

(c) If a manufactured home is placed within Zone A, AO, AE, or A1-30 and the elevation of the chassis is more than 36 inches in height above grade, an engineered foundation certification is required per Section 10.372 (3) of the *City of Graham Development Ordinances*.

(d) If a watercourse is to be altered or relocated, a description of the extent of watercourse alteration or relocation; a professional engineer's certified report on the effects of the proposed project on the flood-carrying capacity of the watercourse and the effects to properties located both upstream and downstream; and a map showing the location of the proposed watercourse alteration or relocation shall all be submitted by the permit applicant prior to issuance of a floodplain development permit.

(e) Certification Exemptions. The following structures, if located within Zone A, AO, AE or A1-30, are exempt from the elevation/floodproofing certification requirements specified in items (a) and (b) of this subsection:

i) Recreational Vehicles meeting requirements of Section 10.372 (6) of the City of Graham Development Ordinance**s**;

ii) Temporary Structures meeting requirements of Section 10.372 (7) of the City of Graham Development Ordinances; and

iii) Accessory Structures less than 150 square feet meeting requirements of 10.372 (8) of the City of Graham Development Ordinances.

Section 10.368 Duties and Responsibilities of the Floodplain Administrator

The Floodplain Administrator shall perform, but not be limited to, the following duties:

(1) Review all floodplain development applications and issue permits for all proposed development within Special Flood Hazard Areas to assure that the requirements of this ordinance have been satisfied.

(2) Advise permittee that additional Federal or State permits (Wetlands, Endangered Species, Erosion and Sedimentation Control, Riparian Buffers, Mining, etc.) may be required, and require that copies of such permits be provided and maintained on file with the floodplain development permit.

(3) Notify adjacent communities and the North Carolina Department of Crime Control and Public Safety, Division of Emergency Management, State Coordinator for the National Flood Insurance Program prior to any alteration or relocation of a watercourse, and submit evidence of such notification to the Federal Emergency Management Agency (FEMA).

(4) Assure that maintenance is provided within the altered or relocated portion of said watercourse so that the flood-carrying capacity is not diminished.

(5) Prevent encroachments into floodways and non-encroachment areas unless the certification and flood hazard reduction provisions of Section 10.374 of the *City of Graham Development Ordinances* are met.

(6) Obtain actual elevation (in relation to mean sea level) of the reference level (including basement) and all attendant utilities of all new or substantially improved structures, in accordance with Section 10.367 (3) of the *City of Graham Development Ordinances*.

(7) Obtain actual elevation (in relation to mean sea level) to which all new and substantially improved structures and utilities have been floodproofed, in accordance with Section 10.367 (3) of the *City of Graham Development Ordinances*.

(8) Obtain actual elevation (in relation to mean sea level) of all public utilities in accordance with Section 10.367 (3) of the *City of Graham Development Ordinances*.

(9) When floodproofing is utilized for a particular structure, obtain certifications from a registered professional engineer or architect in accordance with Section 10.367 (3) and Section 10.372 (2) of the *City of Graham Development Ordinances*.

(10) Where interpretation is needed as to the exact location of boundaries of the Special Flood Hazard Areas (for example, where there appears to be a conflict between a mapped boundary and actual field conditions), make the necessary interpretation. The person contesting the location of the boundary shall be given a reasonable opportunity to appeal the interpretation as provided in Sections 10.366, 10.367, 10.368, 10.369, and 10.370 of the *City of Graham Development Ordinances*.

(11) When Base Flood Elevation (BFE) data has not been provided in accordance with Section 10.365 (b) of the *City of Graham Development Ordinances*, obtain, review, and reasonably utilize any Base Flood Elevation (BFE) data, along with floodway data or non-encroachment area data available from a Federal, State, or other source, including data developed pursuant to Section 10.373 (2)(b) of the *City of Graham Development Ordinances*, in order to administer the provisions of this ordinance.

(12) When Base Flood Elevation (BFE) data is provided but no floodway nor non-encroachment area data has been provided in accordance with Section 10.365 (b) of the *City of Graham Development Ordinances*, obtain, review, and reasonably utilize any floodway data or non-encroachment area data available from a Federal, State, or other source in order to administer the provisions of this ordinance.

(13) When the lowest ground elevation of a parcel or structure in a Special Flood Hazard Area is above the Base Flood Elevation, advise the property owner of the option to apply for a Letter of Map Amendment (LOMA) from FEMA. Maintain a copy of the Letter of Map Amendment (LOMA) issued by FEMA in the floodplain development permit file.

(14) Permanently maintain all records that pertain to the administration of this ordinance and make these records available for public inspection.

(15) Make on-site inspections of work in progress. As the work pursuant to a floodplain development permit progresses, the floodplain administrator shall make as many inspections of the work as may be necessary to ensure that the work is being done according to the provisions of the local ordinance and the terms of the permit. In exercising this power, the floodplain administrator has a right, upon presentation of proper credentials, to enter on any premises within the jurisdiction of the community at any reasonable hour for the purposes of inspection or other enforcement action.

(16) Issue stop-work orders as required. Whenever a building or part thereof is being constructed, reconstructed, altered, or repaired in violation of this ordinance, the floodplain administrator may order the work to be immediately stopped. The stop-work order shall be in writing and directed to the person doing the work. The stop-work order shall state the specific work to be stopped, the specific reason(s) for the stoppage, and the condition(s) under which the work may be resumed. Violation of a stop-work order constitutes a misdemeanor.

(17) Revoke floodplain development permits as required. The floodplain administrator may revoke and require the return of the floodplain development permit by notifying the permit holder in writing stating the reason(s) for the revocation. Permits shall be revoked for any substantial departure from the approved application, plans, or specifications; for refusal or failure to comply with the requirements of State or local laws; or for false statements or misrepresentations made in securing the permit. Any floodplain development permit mistakenly issued in violation of an applicable State or local law may also be revoked.

(18) Make periodic inspections throughout all special flood hazard areas within the jurisdiction of the community. The floodplain administrator and each member of his or her inspections department shall have a right, upon presentation of proper credentials, to enter on any premises within the territorial jurisdiction of the department at any reasonable hour for the purposes of inspection or other enforcement action.

(19) Follow through with corrective procedures of Section 10.369 of the *City of Graham Development Ordinances*.

(20) Review, provide input, and make recommendations for variance requests.

(21) Maintain a current map repository to include, but not limited to, the FIS Report, FIRM and other official flood maps and studies adopted in accordance with Section 10.365 of the *City of Graham Development Ordinances*, including any revisions thereto including Letters of Map Change, issued by FEMA. Notify State and FEMA of mapping needs.

(22) Coordinate revisions to FIS reports and FIRMs, including Letters of Map Revision Based on Fill (LOMR-F) and Letters of Map Revision (LOMR).

Section 10.369 Corrective Procedures

(1) Violations to be Corrected: When the floodplain administrator finds violations of applicable State and local laws, it shall be his or her duty to notify the owner or occupant of the building of the violation. The owner or occupant shall immediately remedy each of the violations of law cited in such notification.

(2) Actions in Event of Failure to Take Corrective Action: If the owner of a building or property shall fail to take prompt corrective action, the floodplain administrator shall give the owner written notice, by certified or registered mail to the owner's last known address or by personal service, stating:

(a) that the building or property is in violation of the Flood Damage Prevention Ordinance;

(b) that a hearing will be held before the floodplain administrator at a designated place and time, not later than ten (10) days after the date of the notice, at which time the owner shall be entitled to be heard in person or by counsel and to present arguments and evidence pertaining to the matter; and,

(c) that following the hearing, the floodplain administrator may issue an order to alter, vacate, or demolish the building; or to remove fill as appears appropriate.

(3) Order to Take Corrective Action: If, upon a hearing held pursuant to the notice prescribed above, the floodplain administrator shall find that the building or development is in violation of the Flood Damage Prevention Ordinance, they shall issue an order in writing to the owner, requiring the owner to remedy the violation within a specified time period, not less than sixty (60) calendar days. Where the floodplain administrator finds that there is imminent danger to life or other property, they may order that corrective action be taken in such lesser period as may be feasible.

(4) Appeal: Any owner who has received an order to take corrective action may appeal the order to the local elected governing body by giving notice of appeal in writing to the floodplain administrator and the clerk within ten (10) days following issuance of the final order. In the absence of an appeal, the order of the floodplain administrator shall be final. The local governing body shall hear an appeal within a reasonable time and may affirm, modify and affirm, or revoke the order.

(5) Failure to Comply with Order: If the owner of a building or property fails to comply with an order to take corrective action for which no appeal has been made or fails to comply with an order of the governing body following an appeal, the owner shall be guilty of a misdemeanor and shall be punished at the discretion of the court.

Section 10.370 Variance Procedures

(1) The Board of Adjustment as established by the City of Graham*)*, hereinafter referred to as the "appeal board", shall hear and decide requests for variances from the requirements of this ordinance.

(2) Any person aggrieved by the decision of the appeal board may appeal such decision to the Court, as provided in Chapter 7A of the North Carolina General Statutes.

(3) Variances may be issued for:

(a) the repair or rehabilitation of historic structures upon the determination that the proposed repair or rehabilitation will not preclude the structure's continued designation as a historic structure and that the variance is the minimum necessary to preserve the historic character and design of the structure.

(b) functionally dependent facilities if determined to meet the definition as stated in Section 10.364 of the *City of Graham Development Ordinances*, provided provisions of Section 10.370 (9) (b, c, and e) of the *City of Graham Development Ordinances* have been satisfied, and such facilities are protected by methods that minimize flood damages.

(c) any other type of development, provided it meets the requirements stated in this section.

(4) In passing upon variances, the appeal board shall consider all technical evaluations, all relevant factors, all standards specified in other sections of this ordinance, and:

(a) the danger that materials may be swept onto other lands to the injury of others;

(b) the danger to life and property due to flooding or erosion damage;

(c) the susceptibility of the proposed facility and its contents to flood damage and the effect of such damage on the individual owner;

(d) the importance of the services provided by the proposed facility to the community;

(e) the necessity to the facility of a waterfront location as defined under Section 10.364 of the *City of Graham Development Ordinances* as a functionally dependent facility, where applicable;

(f) the availability of alternative locations, not subject to flooding or erosion damage, for the proposed use;

(g) the compatibility of the proposed use with existing and anticipated development;

(h) relationship of the proposed use to the comprehensive plan and floodplain management program for that area;

(i) safety of access to the property in times of flood for ordinary and emergency vehicles;

(j) the expected heights, velocity, duration, rate of rise, and sediment transport of the floodwaters and the effects of wave action, if applicable, expected at the site; and

(k) the costs of providing governmental services during and after flood conditions including maintenance and repair of public utilities and facilities such as sewer, gas, electrical and water systems, and streets and bridges.

(5) A written report addressing each of the above factors shall be submitted with the application for a variance.

(6) Upon consideration of the factors listed above and the purposes of this ordinance, the appeal board may attach such conditions to the granting of variances as it deems necessary to further the purposes of this ordinance.

(7) Any applicant to whom a variance is granted shall be given written notice specifying the difference between the Base Flood Elevation (BFE) and the elevation to which the structure is to be built and that such construction below the Base Flood Elevation increases risks to life and property, and that the issuance of a variance to construct a structure below the Base Flood Elevation will result in increased premium rates for flood insurance up to $25 per $100 of insurance coverage. Such notification shall be maintained with a record of all variance actions, including justification for their issuance.

(8) The floodplain administrator shall maintain the records of all appeal actions and report any variances to the Federal Emergency Management Agency and the State of North Carolina upon request.

(9) Conditions for Variances:

(a) Variances shall not be issued when the variance will make the structure in violation of other Federal, State, or local laws, regulations, or ordinances.

(b) Variances shall not be issued within any designated floodway or non-encroachment area if the variance would result in any increase in flood levels during the base flood discharge.

(c) Variances shall only be issued upon a determination that the variance is the minimum necessary, considering the flood hazard, to afford relief.

(d) Variances shall only be issued prior to development permit approval.

(e) Variances shall only be issued upon:

i) a showing of good and sufficient cause;

ii) a determination that failure to grant the variance would result in exceptional hardship; and

iii) a determination that the granting of a variance will not result in increased flood heights, additional threats to public safety, or extraordinary public expense, create nuisance, cause fraud on or victimization of the public, or conflict with existing local laws or ordinances.

(10) A variance may be issued for solid waste disposal facilities, hazardous waste management facilities, salvage yards, and chemical storage facilities that are located in Special Flood Hazard Areas provided that all of the following conditions are met.

(a) The use serves a critical need in the community.

(b) No feasible location exists for the use outside the Special Flood Hazard Area.

(c) The reference level of any structure is elevated or floodproofed to at least the regulatory flood protection elevation.

(d) The use complies with all other applicable Federal, State and local laws.

(e) The City of Graham has notified the Secretary of the North Carolina Department of Crime Control and Public Safety of its intention to grant a variance at least thirty (30) calendar days prior to granting the variance.

Section 10.371 Provisions for Flood Hazard Reduction

GENERAL STANDARDS. In all Special Flood Hazard Areas the following provisions are required:

(1) All new construction and substantial improvements shall be designed (or modified) and adequately anchored to prevent flotation, collapse, and lateral movement of the structure.

(2) All new construction and substantial improvements shall be constructed with materials and utility equipment resistant to flood damage.

(3) All new construction and substantial improvements shall be constructed by methods and practices that minimize flood damages.

(4) Electrical, heating, ventilation, plumbing, air conditioning equipment, and other service facilities shall be designed and/or located so as to prevent water from entering or accumulating within the components during conditions of flooding. These include, but are not limited to, HVAC equipment, water softener units, bath/kitchen fixtures, ductwork, electric/gas meter panels/boxes, utility/cable boxes, appliances (washers, dryers, refrigerators, freezers, etc.), hot water heaters, and electric outlets/switches.

(5) All new and replacement water supply systems shall be designed to minimize or eliminate infiltration of floodwaters into the system.

(6) New and replacement sanitary sewage systems shall be designed to minimize or eliminate infiltration of floodwaters into the systems and discharges from the systems into flood waters.

(7) On-site waste disposal systems shall be located and constructed to avoid impairment to them or contamination from them during flooding.

(8) Any alteration, repair, reconstruction, or improvements to a structure, which is in compliance with the provisions of this ordinance, shall meet the requirements of “new construction” as contained in this ordinance.

(9) Nothing in this ordinance shall prevent the repair, reconstruction, or replacement of a building or structure existing on the effective date of this ordinance and located totally or partially within the floodway, non-encroachment area, or stream setback, provided there is no additional encroachment below the regulatory flood protection elevation in the floodway, non-encroachment area, or stream setback, and provided that such repair, reconstruction, or replacement meets all of the other requirements of this ordinance.

(10) New solid waste disposal facilities and sites, hazardous waste management facilities, salvage yards, and chemical storage facilities shall not be permitted, except by variance as specified in Section 10.370 (10) of the *City of Graham Development Ordinances*. A structure or tank for chemical or fuel

storage incidental to an allowed use or to the operation of a water treatment plant or wastewater treatment facility may be located in a Special Flood Hazard Area only if the structure or tank is either elevated or floodproofed to at least the regulatory flood protection elevation and certified according to Section 10.367 (3) of the *City of Graham Development Ordinances*.

(11) All subdivision proposals and other development proposals shall be consistent with the need to minimize flood damage.

(12) All subdivision proposals and other development proposals shall have public utilities and facilities such as sewer, gas, electrical, and water systems located and constructed to minimize flood damage.

(13) All subdivision proposals and other development proposals shall have adequate drainage provided to reduce exposure to flood hazards.

(14) All subdivision proposals and other development proposals shall have received all necessary permits from those governmental agencies for which approval is required by Federal or State law, including Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. 1334.

Section 10.372 Specific Standards

In all Special Flood Hazard Areas where Base Flood Elevation (BFE) data has been provided, as set forth in Section 10.365 or Section 10.368 (11 & 12) of the *City of Graham Development Ordinances*, the following provisions, in addition to Section 10.371 of the *City of Graham Development Ordinances*, are required:

(1) Residential Construction. New construction and substantial improvement of any residential structure (including manufactured homes) shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 10.364 of the *City of Graham Development Ordinances*.

(2) Non-Residential Construction. New construction and substantial improvement of any commercial, industrial, or other non-residential structure shall have the reference level, including basement, elevated no lower than the regulatory flood protection elevation, as defined in Section 10.364 of the *City of Graham Development Ordinances*. Structures located in A, AE and A1-30 Zones may be floodproofed to the regulatory flood protection elevation in lieu of elevation provided that all areas of the structure, together with attendant utility and sanitary facilities, below the regulatory flood protection elevation are watertight with walls substantially impermeable to the passage of water, using structural components having the capability of resisting hydrostatic and hydrodynamic loads and the effect of buoyancy. For AO Zones, the floodproofing elevation shall be in accordance with Section 10.376 of the *City of Graham Development Ordinances*. A registered professional engineer or architect shall certify that the standards of this subsection are satisfied. Such certification shall be provided to the Floodplain Administrator as set forth in Section 10.367 (3) of the *City of Graham Development Ordinances* , along with the operational and maintenance plans.

(3) Manufactured Homes.

(a) New or replacement manufactured homes shall be elevated so that the reference level of the manufactured home is no lower than the regulatory flood protection elevation, as defined in Section 10.364 of the *City of Graham Development Ordinances*.

(b) Manufactured homes shall be securely anchored to an adequately anchored foundation to resist flotation, collapse, and lateral movement, either by engineer certification, or in accordance with the most current edition of the State of North Carolina Regulations for Manufactured Homes adopted by the Commissioner of Insurance pursuant to NCGS 143-143.15. Additionally, when the elevation would be met by an elevation of the chassis thirty-six (36) inches or less above the grade at the site, the chassis shall be supported by reinforced piers or engineered foundation. When the elevation of the chassis is above thirty-six (36) inches in height, an engineering certification is required.

(c) All enclosures or skirting below the lowest floor shall meet the requirements of Section 10.372 (4) (a, b, & c) of the *City of Graham Development Ordinances*..

(d) An evacuation plan must be developed for evacuation of all residents of all new, substantially improved or substantially damaged manufactured home parks or subdivisions located within flood prone areas. This plan shall be filed with and approved by the floodplain administrator and the local Emergency Management coordinator.

(4) Elevated Buildings. Fully enclosed area, of new construction and substantially improved structures, which is below the lowest floor:

(a) shall not be designed or used for human habitation, but shall only be used for parking of vehicles, building access, or limited storage of maintenance equipment used in connection with the premises. Access to the enclosed area shall be the minimum necessary to allow for parking of vehicles (garage door) or limited storage of maintenance equipment (standard exterior door), or entry to the living area (stairway or elevator). The interior portion of such enclosed area shall not be finished or partitioned into separate rooms, except to enclose storage areas;

(b) shall be constructed entirely of flood resistant materials below the regulatory flood protection elevation;

(c) shall include, in Zones A, AO, AE, and A1-30, flood openings to automatically equalize hydrostatic flood forces on walls by allowing for the entry and exit of floodwaters. To meet this requirement, the openings must either be certified by a professional engineer or architect or meet or exceed the following minimum design criteria;

i) A minimum of two flood openings on different sides of each enclosed area subject to flooding;

ii) The total net area of all flood openings must be at least one (1) square inch for each square foot of enclosed area subject to flooding;

iii) If a building has more than one enclosed area, each enclosed area must have flood openings to allow floodwaters to automatically enter and exit;

iv) The bottom of all required flood openings shall be no higher than one (1) foot above the adjacent grade;

v) Flood openings may be equipped with screens, louvers, or other coverings or devices, provided they permit the automatic flow of floodwaters in both directions; and

vi) Enclosures made of flexible skirting are not considered enclosures for regulatory purposes, and, therefore, do not require flood openings. Masonry or wood underpinning, regardless of structural status, is considered an enclosure and requires flood openings as outlined above.

(5) Additions/Improvements.

(a) Additions and/or improvements to pre-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

i) not a substantial improvement, the addition and/or improvements must be designed to minimize flood damages and must not be any more non-conforming than the existing structure.

ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(b) Additions to post-FIRM structures with no modifications to the existing structure other than a standard door in the common wall shall require only the addition to comply with the standards for new construction.

(c) Additions and/or improvements to post-FIRM structures when the addition and/or improvements in combination with any interior modifications to the existing structure are:

i) not a substantial improvement, the addition and/or improvements only must comply with the standards for new construction.

ii) a substantial improvement, both the existing structure and the addition and/or improvements must comply with the standards for new construction.

(6) Recreational Vehicles. Recreational vehicles shall either:

(a) be on site for fewer than 180 consecutive days and be fully licensed and ready for highway use (a recreational vehicle is ready for highway use if it is on its wheels or jacking system, is attached to the site only by quick disconnect type utilities, and has no permanently attached additions); or

(b) meet all the requirements for new construction.

(7) Temporary Non-Residential Structures. Prior to the issuance of a floodplain development permit for a temporary structure, the applicant must submit to the floodplain administrator a plan for the removal of such structure(s) in the event of a hurricane, flash flood or other type of flood warning notification. The following information shall be submitted in writing to the floodplain administrator for review and written approval;

(a) a specified time period for which the temporary use will be permitted. Time specified may not exceed three months, renewable up to one year;

(b) the name, address, and phone number of the individual responsible for the removal of the temporary structure;

(c) the time frame prior to the event at which a structure will be removed (i.e., minimum of 72 hours before landfall of a hurricane or immediately upon flood warning notification);

(d) a copy of the contract or other suitable instrument with the entity responsible for physical removal of the structure; and

(e) designation, accompanied by documentation, of a location outside the Special Flood Hazard Area, to which the temporary structure will be moved.

(8) Accessory Structures. When accessory structures (sheds, detached garages, etc.) are to be placed within a Special Flood Hazard Area, the following criteria shall be met:

(a) Accessory structures shall not be used for human habitation (including working, sleeping, living, cooking or restroom areas);

(b) Accessory structures shall not be temperature-controlled;

(c) Accessory structures shall be designed to have low flood damage potential;

(d) Accessory structures shall be constructed and placed on the building site so as to offer the minimum resistance to the flow of floodwaters;

(e) Accessory structures shall be firmly anchored in accordance with Section 10.371 (1) of the *City of Graham Development Ordinances*;

(f) All service facilities such as electrical shall be installed in accordance with Section 10.371 (4) of the *City of Graham Development Ordinances*; and

(g) Flood openings to facilitate automatic equalization of hydrostatic flood forces shall be provided below regulatory flood protection elevation in conformance with Section 10.372 (4) (c) of the *City of Graham Development Ordinances*.

An accessory structure with a footprint less than 150 square feet that satisfies the criteria outlined above does not require an elevation or floodproofing certificate. Elevation or floodproofing certifications are required for all other accessory structures in accordance with Section 10.367 (3) of the *City of Graham Development Ordinances*.

(Section 10.372 amended by City Council 11/7/2006)

Section 10.373 Standards for Floodplains Without Established Base Flood Elevations

Within the Special Flood Hazard Areas designated as Approximate Zone A and established in Section 10.365 (b) of the *City of Graham Development Ordinances*, where no Base Flood Elevation (BFE) data has been provided by FEMA, the following provisions, in addition to Section 10.371 and Section 10.372 of the *City of Graham Development Ordinances*, shall apply:

(1) No encroachments, including fill, new construction, substantial improvements or new development shall be permitted within a distance of twenty (20) feet each side from top of bank or five times the width of the stream, whichever is greater, unless certification with supporting technical data by a registered professional engineer is provided demonstrating that such encroachments shall not result in any increase in flood levels during the occurrence of the base flood discharge.

(2) The BFE used in determining the regulatory flood protection elevation shall be determined based on one of the following criteria set in priority order:

(a) If Base Flood Elevation (BFE) data is available from other sources, all new construction and substantial improvements within such areas shall also comply with all applicable provisions of this ordinance and shall be elevated or floodproofed in accordance with standards in Section 10.368 (11 & 12) of the *City of Graham Development Ordinances*.

(b) All subdivision, manufactured home park and other development proposals shall provide Base Flood Elevation (BFE) data if development is greater than five (5) acres or has more than fifty (50) lots/manufactured home sites. Such Base Flood Elevation (BFE) data shall be adopted by reference per Section 10.365 (b) of the *City of Graham Development Ordinances* to be utilized in implementing this ordinance.

(c) When Base Flood Elevation (BFE) data is not available from a Federal, State, or other source as outlined above, the reference level shall be elevated to or above the regulatory flood protection elevation, as defined in Section 10.364 of the *City of Graham Development Ordinances*.

Section 10.374 Standards for Riverine Floodplains with BFE but Without Established Floodways or Non-Encroachment Areas

Along rivers and streams where BFE data is provided but neither floodway nor non-encroachment areas are identified for a Special Flood Hazard Area on the FIRM or in the FIS report, the following requirements shall apply to all development within such areas:

(1) Standards outlined in Section 10.371 and Section 10.372 of the *City of Graham Development Ordinances*; and

(2) Until a regulatory floodway or non-encroachment area is designated, no encroachments, including fill, new construction, substantial improvements, or other development, shall be permitted unless certification with supporting technical data by a registered professional engineer is provided demonstrating that the cumulative effect of the proposed development, when combined with all other existing and anticipated development, will not increase the water surface elevation of the base flood more than one foot at any point within the community.

Section 10.375 Floodways and Non-Encroachment Areas

Areas designated as floodways or non-encroachment areas are located within the Special Flood Hazard Areas established in Section 10.365 (b) of the *City of Graham Development Ordinances.* The floodways and non-encroachment areas are extremely hazardous areas due to the velocity of floodwaters that have erosion potential and carry debris and potential projectiles. The following provisions, in addition to standards outlined in Section 10.371 and Section 10.372 of the *City of Graham Development Ordinances*, shall apply to all development within such areas:

(1) No encroachments, including fill, new construction, substantial improvements and other developments shall be permitted unless it has been demonstrated that:

(a) the proposed encroachment would not result in any increase in the flood levels during the occurrence of the base flood, based on hydrologic and hydraulic analyses performed in accordance with standard engineering practice and presented to the floodplain administrator prior to issuance of floodplain development permit, or

(b) a Conditional Letter of Map Revision (CLOMR) has been approved by FEMA. A Letter of Map Revision (LOMR) must also be obtained upon completion of the proposed encroachment.

(2) If Section 10.375 (1) of the *City of Graham Development Ordinances* is satisfied, all development shall comply with all applicable flood hazard reduction provisions of this ordinance.

(3) No manufactured homes shall be permitted, except replacement manufactured homes in an existing manufactured home park or subdivision, provided the following provisions are met:

(a) the anchoring and the elevation standards of Section 10.372 (3) of the *City of Graham Development Ordinances*; and

(b) the no encroachment standard of Section 10.375 (1) of the *City of Graham Development Ordinances*.

(Section 10.375 amended by City Council 11/7/2006)

Section 10.376 Standards for Areas of Shallow Flooding (Zone AO)

Located within the Special Flood Hazard Areas established in Section 10.365 (b) of the *City of Graham Development Ordinances*, are areas designated as shallow flooding areas. These areas have special flood hazards associated with base flood depths of one (1) to three (3) feet where a clearly defined channel does not exist and where the path of flooding is unpredictable and indeterminate. In addition to Section 10.371 of the *City of Graham Development Ordinances*, all new construction and substantial improvements shall meet the following requirements:

(1) The reference level shall be elevated at least as high as the depth number specified on the Flood Insurance Rate Map (FIRM), in feet, plus a freeboard of two (2) feet, above the highest adjacent grade; or at least two feet above the highest adjacent grade plus a freeboard of two (2) feet if no depth number is specified.

(2) Non-residential structures may, in lieu of elevation, be floodproofed to the same level as required in Section 10.376 (1) of the *City of Graham Development Ordinances* so that the structure, together with attendant utility and sanitary facilities, below that level shall be watertight with walls substantially impermeable to the passage of water and with structural components having the capability of resisting hydrostatic and hydrodynamic loads and effects of buoyancy. Certification is required as per Section 10.367 (3) and Section 10.372 (2) of the *City of Graham Development Ordinances*.

(3) Adequate drainage paths shall be provided around structures on slopes, to guide floodwaters around and away from proposed structures.

Section 10.377 Legal Status Provisions, Effect on Rights and Liabilities Under the Existing Flood Damage Prevention Ordinance

This ordinance in part comes forward by re-enactment of some of the provisions of the flood damage prevention ordinance enacted August 5, 1980 as amended, and it is not the intention to repeal but rather to re-enact and continue to enforce without interruption of such existing provisions, so that all rights and liabilities that have accrued thereunder are reserved and may be enforced. The enactment of this ordinance shall not affect any action, suit or proceeding instituted or pending. All provisions of the flood damage prevention ordinance of the City of Graham enacted on August 5, 1980, as amended, which are not reenacted herein are repealed.

Section 10.378 Effect Upon Outstanding Building Permits

Nothing herein contained shall require any change in the plans, construction, size, or designated use of any development or any part thereof for which a building permit has been granted by the Chief Building Inspector before the time of passage of this ordinance; provided, however, that when construction is not begun under such outstanding permit within a period of six (6) months subsequent to the date of issuance of the outstanding permit, construction or use shall be in conformity with the provisions of this ordinance.

Sections 10.379 – 10.389 Reserved

ARTICLE X. SIGNS

Section 10.390 Definitions

For the purposes of this article, the following definitions shall apply:

Sign: Any words, lettering, parts of letters, pictures, figures, numerals, phrases, sentences, emblems, devices, designs, trade names or trademarks by which anything is made known, such as the designation of an individual, a firm, an association, a profession, a business, a commodity or a product, which are visible from any public way and used to attract attention.

Sign, dilapidated: An existing sign shall be considered dilapidated when it shows signs of being in disrepair, broken down, shabby or neglected, when it fails to be in the same form as originally constructed, or when it fails to perform its intended function of conveying a message. Conditions of dilapidation shall include, but not be limited to:

(1) Structural pole or support failure.

(2) Signs not being held vertically or as originally constructed.

(3) Borders falling off or already removed.

(4) Panels missing or falling off.

(5) Message falling off or in disrepair such that it cannot be interpreted by the motoring public.

(6) Signs which are overgrown by trees or other vegetation.

Signs, freestanding, adjacent to interstate highway: As used in this section, shall be defined as a sign located on the property that is located within five hundred (500) feet of the right-of-way of an interstate highway and contiguous with an interstate highway or a state-numbered highway which interchanges with an interstate highway. *Amended by City Council 4/2/2002.*

Signs, freestanding on-premises: As used in this section, shall be defined as a sign advertising a service, product, or offering which utilizes the property for the business and purpose advertised.

Sign, marquee/awning: A sign attached to and hanging under a marquee or awning.

Sign, outdoor: Any sign which advertises an establishment, service, commodity, goods or entertainment sold or offered on premises other than that on which such sign is located.

Sign, projecting. A sign attached to and supported by a building and extending beyond the building to which it is attached at a right angle.

Signs, temporary: A non-permanent sign designed to be displayed for a short period of time for the purpose of identifying or informing the public of a sale or “special” event. If a sign display area is permanent but the message displayed is subject to periodic changes, that sign shall not be regarded as temporary.

Sign, wall: A sign attached to or painted on a wall of a building, with the exposed display surface of the sign in a plane parallel to the plane of the wall to which it is attached or painted, and including signs affixed to or otherwise displayed on or through a facade window.

(Section 10.390 amended 1/6/2009)

Section 10.391 Intent

It is the intent of this section to authorize the use of signs whose types, sizes and arrangements are compatible with their surroundings, appropriate to the type and intensity of activity to which they pertain, expressive of the identity of individual properties or occupants or products or of the community as a whole, legible in the circumstances in which they are seen and appropriate to traffic safety.

Section 10.392 Scope generally

Unless specifically exempted, no sign visible from a public right-of-way, whether exterior to or interior to a structure, shall be erected, displayed or substantially altered except in accordance with the provisions of this article and until a permit has been issued by the building inspector.

Section 10.393 Exemptions

The following signs are exempt from regulation and permit requirements under this article, provided such signs comply with the provisions of Section 10.397 General Limitations:

(1) Signs bearing only property identification numbers and names, post office box numbers of occupants of the premises or other identification of premises not of a commercial nature, provided such signs are not illuminated and do not exceed two (2) signs per zoning lot or two (2) square feet in area per display surface.

(2) Flags and insignia of a government, when not displayed in connection with a commercial promotion.

(3) Legal notices; bankruptcy, estate and legal sale signs and traffic directional or regulatory signs erected by or on behalf of a governmental body

(4) Memorial signs or tablets and names and construction dates of buildings when cut into any masonry surface.

(5) Signs directing and guiding traffic and parking on private property, provided such signs are non-illuminated or indirectly illuminated, bear no advertising matter and do not exceed four (4) square feet in area per display surface.

(6) Real estate signs advertising the sale, rental or lease of the premises on which said signs are located, provided such signs do not exceed one sign per street frontage or one sign per four hundred (400) feet of street frontage, or six (6) square feet in area per display surface, and are removed immediately after sale, rental or lease of the premises.

(7) Construction site identification signs whose message is limited to identification of architects, engineers, contractors and other individuals or firms involved with the construction, the name of the building, the intended purpose of the building and the expected completion date, provided such signs do not exceed one sign per construction site or thirty-two (32) square feet in area per display

surface, are not erected prior to issuance of a building permit and are removed within seven (7) days of issuance of a certificate of occupancy. Construction signs in residential zones shall not be illuminated or reflectorized.

(8) Temporary political yard signs advertising candidates or issues, provided such signs do not exceed one sign per candidate per zoning lot or sixteen (16) square feet in area per display surface, are not erected prior to forty-five (45) days before the actual election day and are removed within seven (7) days after the election.

(9) Yard or garage sale signs announcing yard or garage sales, provided such signs do not exceed one sign per site of such sale or four (4) square feet in area per display surface, and are removed within seven (7) days of erection.

(10) Public event announcements by public or nonprofit organizations of special events or activities of interest to the general public, provided such signs do not exceed one sign per site of such events or activities and twelve (12) square feet in area per display surface, and are removed within fourteen (14) days of erection.

(11) Temporary signs announcing grand openings of new businesses only, provided such signs do not exceed thirty-two (32) square feet of display area per business site, and are removed within thirty (30) days after they are erected. Such signs shall not be electrified.

(12) Signs erected by the city or other governmental agencies, such as street signs, public service signs and historical markers, which contain no commercial advertising matter.

(13) Churches shall be permitted two (2) freestanding signs per zoning lot. Each sign shall not exceed thirty-two (32) square feet in area and six (6) feet in height. All other regulations of this article shall apply.

(14) Temporary signs identifying businesses or business events provided such signs are:

(a) Located on the business lot.

(b) Not to exceed sixteen (16) square feet in area per display surface.

(c) Not to exceed more than one (1) sign per street frontage or one (1) per one-hundred (100) feet of road frontage not to exceed (2) signs per street frontage.

(d) Not located less than one-hundred (100) feet from another temporary sign on same frontage.

(e) To be located outside of the right-of-way of any public street.

(f) Not located on residentially zoned lots.

(g) Erected not to exceed thirty (30) days in a ninety (90) day period per business.

(15) Signs that are not visible from a public way.

(16) Holiday decorations in season.

(Section 10.393 amended 5/6/2008, 1/6/2009)

Section 10.394 Reserved

(Section 10.394 deleted 11/5/2013)

Section 10.395 Permit generally

a. Applications for permits under this article shall be submitted on forms in the building inspector's office. Each application shall be accompanied by plans, which shall:

   (1) Indicate the proposed site by identifying the property by ownership, location and use.

   (2) Show the location of the sign on the lot in relation to property lines and buildings, zoning district boundaries, right-of-way lines and existing signs.

   (3) Show (drawing to scale) size, character, complete structural specifications and methods of anchoring and support.

b. If conditions warrant, the building inspector may present the plans to the planning board for their approval. He may also require such additional information as will enable a determination that such sign can or cannot be erected in conformance with this article.

c. A fee shall be charged to erect a sign. The amount of the fee shall be fixed from time to time by the city council and shall be kept on file in the office of city clerk

Section 10.396 Traffic safety precautions

Notwithstanding any other provision in this chapter, the following restrictions shall apply to signs in order to preserve the safety of pedestrian, bicycle and vehicular movements:

(1) No sign shall make use of the words "stop," "slow," "caution," "danger" or any other word, phrase, symbol or character in such manner as is reasonably likely to be confused with traffic directional and regulatory signs.

(2) No sign shall be erected so that by its location, color, nature or message it is likely to be confused with or obstruct the view of traffic signals or signs, or is likely to be confused with the warning lights of an emergency or public safety vehicle.

(3) Except as used to display time and temperature, no sign shall contain flashing lights.

(4) In all districts except the B-1 Business District, no fence', wall, shrubbery or other obstructions to vision between the heights of three (3) feet and sixteen (16) feet shall be permitted within twenty (20) feet of the intersections of the right-of-way lines of streets or of streets and railroads.

Section 10.397 General limitations

a. Except where specifically exempted by this chapter, all signs, including the supports, frames and embellishments thereto, shall not be located within any public right-of-way, nor shall any sign be

attached, affixed or painted on any utility pole, light standard, telephone or telegraph pole, any tree, rock or other natural object.

b. No sign shall obstruct any window, door, fire escape, stairway, ladder or opening intended to provide light, air, ingress or egress for any building, structure or lot.

c. No sign shall have more than two (2) display surfaces.

d. Illuminated signs may have either an exterior or interior source of illumination. Exterior illumination, where the source of illumination is provided by such devices as spotlights or floodlights, shall be placed so that it is not directly visible from any residential district, or from adjacent properties. Internal illumination means that the source of illumination is from within the sign itself. Neon tube illumination shall be prohibited except as internal illumination. All wiring, grounding, etc., for illuminated signs shall meet the requirements of the National Electrical Code.

e. Animated, rotating, flashing or other moving or apparently moving signs must display a static message for a minimum of twenty (20) seconds.

f. Devices consisting of banners, streamers, pennants, windblown propellers, strung light bulbs and similar installations shall be prohibited, except with the written permission of the city manager.

g. Mobile or portable signs (including A and T-shaped signs) shall be prohibited except for the uses specified in paragraphs (10), (11) and (14) of Section 10.393 Exemptions,

h. All signs shall be maintained in a state of good repair. No sign shall be continued which becomes structurally unsafe or endangers the safety of the public or property. When evidence of an unsafe sign is brought to the attention of the inspector, he shall order that such sign be made safe or be removed. A period of forty-eight (48) hours following receipt of the notice by the person owning or using the sign shall be used for compliance.

i. No sign shall be erected on the roof of any building.

j. No dilapidated sign may be ordered to be moved unless the condition continues to exist after thirty (30) days from the date the building inspector gives notice to the sign owner. Notice shall be complete upon the posting of such determination affixed to the affected sign. In addition, the building inspector shall, on the same date, mail a copy of such determination by certified mail, return receipt requested, to the person, firm, or corporation, if any, who listed the sign for ad valorem taxes. This requirement shall be satisfied upon mailing. If the sign has not been listed for ad valorem taxes for the preceding or current year of such determination, no notice shall be required to be mailed.

(Section 10.397 amended 1/6/2009, 6/1/2010)

Section 10.398 Residential districts

No sign shall be erected or displayed in any residential district except as allowed under Section 10.393 Exemptions or as provided below:

(1) Development identification signs containing the name only of a subdivision, multifamily development or planned development, provided such signs are limited to two freestanding signs at

public points of access to the development, ten (10) square feet in area per display surface and a maximum height of six (6) feet.

(2) Home occupation signs identifying a home occupation, provided such signs are not illuminated and are limited to one wall or one freestanding sign per lot and a maximum display surface area of three (3) square feet.

(3) Nonresidential signs identifying nonresidential uses permitted as a principal or special use in residential districts, provided such signs are limited to one freestanding or wall sign per zoning lot and eighteen (18) square feet in area per display surface. Where a freestanding sign is used, there must be a setback of at least twenty (20) feet from the right-of-way.

Section 10.399 O-1, B-1, B-2, B-3, I-1 and I-2 districts

(a) Generally. No sign shall be erected or displayed in the Office and Institutional District, the Neighborhood, General or Central Business District, the Light Industrial District or the Heavy Industrial District except as allowed under Section 10.393 Exemptions or as provided below for the type of sign and the zoning district in which it is located.

(b) Multiple uses. Where a zoning lot contains more than one principal use or establishment, the provisions below shall apply to the zoning lot as a whole, and the owners of the zoning lot shall be responsible for allocating permitted signs and display surface areas among the individual uses or establishments. The sign plan submitted for such zoning lot shall show all signs located or proposed thereon and shall be designed so that all signs are in harmony and consistent with each other.

(1) Freestanding signs. On-premises freestanding signs may be erected and displayed on a zoning lot in compliance with the maximum area per display surface and the maximum height limitations contained in Section 10.400 Area and Height of Signs provided:

a. The zoning lot on which a freestanding sign is located shall be accessible by automobile and contain off-street parking for the principal uses(s).

b. No sign shall obstruct the vision of motorists at the intersection of right-of-way lines of streets, or streets and railroad, or of streets and driveways. The zoning enforcement officer shall investigate each site before the placement of any sign to ensure proper vision. No sign shall be erected on or protrude onto any public right-of-way.

c. Freestanding signs shall be limited to two (2) signs per zoning lot with street frontage of one hundred (100) feet or more, and shall not be located closer than fifty (50) feet to any other freestanding sign on the same premises. On zoning lots adjacent to an Interstate highway, only one (1) freestanding sign up to 300 square feet shall be allowed and must be directed toward the Interstate. *(Amended 4/2/2002)*

d. No freestanding sign shall be permitted on the same street frontage along which there is a projecting sign.

e. Freestanding signs shall clear driveway and parking areas by a height of at least fourteen (14) feet and shall clear sidewalks and pedestrian paths by a height of at least nine (9) feet.

f. The message of freestanding signs shall be limited to the name(s) of the establishment(s) located on the zoning lot and/or the name of a multi-use development located thereon, except that freestanding signs identifying theaters or service stations may also identify the current presentations or fuel prices, as appropriate.

(2) Projecting signs. Projecting signs may be erected and displayed on a zoning lot in compliance with the maximum area per display surface limitations contained in Section 10.400 Area and Height of Signs, provided:

a. The building to which a projecting sign is attached shall be twenty (20) feet or more in width.

b. Projecting signs shall be limited to one sign per street frontage, and shall not be located closer than fifty (50) feet to any other projecting sign.

c. No projecting sign shall be permitted on the same street frontage along which there is a freestanding sign.

d. Projecting signs shall clear sidewalks and pedestrian paths by a height of at least ten (10) feet, shall project no more than five (5) feet from the building to which they are attached and shall not extend beyond the inner edge of the curbline.

e. No projecting sign shall extend above the soffit, parapet or eave line, as appropriate, of the building to which it is attached.

f. [Reserved.]

g. The message of projecting signs shall be limited to the name(s) of the establishment(s) located on the zoning lot and/or the name of a multi-use development located thereon.

(3) Wall signs. Wall signs may be erected and displayed on a zoning lot in compliance with the maximum percentage of facade coverage limitations contained in Section 10.400 Area and Height of Signs, provided:

a. Posters and paper signs displayed on or through windows are exempt.

b. Wall signs placed in the space between windows on different stories of a building shall not exceed in height two-thirds of the distance between the top of a window and the sill of the window above.

c. No wall sign shall protrude more than twelve (12) inches from the wall to which it is attached.

d. No wall sign shall extend above the soffit, parapet or eave line, as appropriate, of the building to which it is attached. If the building consists of more than two (2) stories, wall signs shall not extend above the second story.

e. Wall signs, or portions thereof, placed between window spandrels shall not exceed in height two-thirds of the height of the spandrel.

f. Wall signs shall not cover or interrupt major architectural features.

g. In industrial zones, wall signs on the side of buildings adjacent to lots zoned residential are permitted only when the building is at least fifty (50) feet from the side lot line of the residential lot.

h. Wall signs on the side of buildings in the 0-I Zone are not permitted.

(4) Marquee or awning signs,

a. Signs hung below a marquee or awning shall conform in size and appearance to existing signs under the same marquee or awning. Where there are no such existing signs under a marquee or awning, signs being hung under them shall meet the height and area requirements contained in Section 10.400 Area and Height of Signs.

b. Marquee and awning signs shall not be illuminated.

c. Signs below a marquee or awning shall not be less than nine (9) feet above the ground or sidewalk.

(5) Outdoor advertising signs.

a. Outdoor advertising signs are permitted only in the Light and Heavy Industrial Districts. In the General Business District, outdoor advertising signs are permitted only on property adjacent to Interstate 85, and such signs shall be directed toward traffic on Interstate 85.

b. No outdoor advertising sign shall be permitted closer than one hundred (100) feet to a lot zoned for residential purposes.

c. No sign shall be placed or constructed within one thousand (1,000) linear feet of another sign on the same side of the road.

d. Only one outdoor advertising sign shall be allowed for each two hundred (200) feet of lot frontage in single ownership.

e. Outdoor advertising signs attached to a building structure shall not be higher than the wall to which they are attached. Outdoor advertising signs shall not be mounted on the rooftop of any building.

f. Outdoor advertising signs may be illuminated, provided such illumination is placed and shielded so as to prevent the direct rays of illumination from being cast upon neighboring lots and/or vehicles approaching on a public way from any direction.

g. Outdoor advertising signs shall not be permitted within a five hundred (500) foot radius of the intersecting centerline within an interchange on a limited access highway.

h. In the industrial districts a fifty-foot setback from street rights-of-way is required, with the exception of property along Interstate 85.

i. Any sign with a changeable or movable face, electronic or otherwise, shall display a static message for a minimum of twenty (20) seconds, and shall have a dimmer system installed so as to automatically adjust the brightness based upon ambient light conditions.

k. Any nonconforming sign that is damaged or destroyed by a sudden act of God may be replaced to its original condition pursuant to the Code and may not be enlarged. The reconstruction or repairs must be completed within sixty (60) days of the sudden natural occurrence, which caused the damage or destruction.

l. Sign company must acquire notarized signature of land owner or land owner must sign permit

(Section 10.399 amended 8/2/2005)

Section 10.400 Area; height

The following regulations shall apply:

	Freestanding Signs		Projecting Signs	Wall Signs	Side Wall Signs Adjacent to Residential Lots	Marquee or Awning		Outdoor Advertising	
District	**Maximum Area Per Display Surface (Sq. Ft.)**	**Maximum Height (Feet)**	**Maximum Area Per Display Surface (Sq. Ft.)**	**Maximum Percentage of Facade Coverage**	**Maximum Area Per Display Surface (Sq. Ft.)**	**Maximum Height (Inches)**	**Maximum Length (Feet)**	**Maximum Area Per display Surface (Sq. Ft.)**	**Maximum Height (Feet)**
O-I	48/300*	10/50*	8	5	Not permitted	10	3	Not permitted	—
B-1	25/300*	14/50*	8	5	2	10	3	Not permitted	—
B-2	64/300*	20/50*	30	10	2	10	3	700*	40***
B-3	48/300*	16/50*	20	10	2	10	3	Not permitted	—
I-1	64/300*	20/50*	20	5	30	10	3	300**/700*	40***
I-2	64/300*	20/50*	20	5	30	10	3	300**/700*	40***
*Adjacent to an Interstate highway. See Section 10.399 (1)(c). **In areas not adjacent to Interstate 85. ***Measured from ground level or I-85 road level, whichever is higher.									

(Amended 11/7/2000, 4/2/2002)

Section 10.401 Computations

(a) The area of a display surface of a sign shall be computed as including the entire area, within a regular geometric form or combination of forms, comprising all the display area of the surface and including all of the elements of the matter displayed and the sign frame. Structural members not bearing advertising matter shall not be included in the computation of sign area.

(b) For the purpose of determining number of signs, a sign shall be considered to be a single display device containing elements organized, related and composed to form a unit. Where matter is displayed in a random matter without organized relationship of elements, each element shall be considered a single sign.

Sections 10.402-10.414 Reserved

ARTICLE XI. HIGHWAY CORRIDOR OVERLAY DISTRICTS

Section 10.415 Intent

The State of North Carolina General Statutes permit municipalities to establish zoning overlay districts (G.S. 160A-382). Within the zoning overlay district, additional requirements may be imposed over the underlying general use and special use zoning districts. The City of Graham recognizes zoning overlay districts offer the opportunity to develop growth management regulations that will guide development towards accomplishing the community goals of maintaining Graham's delightful atmosphere, improving the community's quality of life, safety, welfare, wellbeing, and aesthetic character.

Section 10.416 City of Graham Growth Management Plan 2000-2020

The *City of Graham Growth Management Plan 2000-2020* (Page 51) states, "Adopt an Overlay Zoning District for the Highway 54 and South Main Street corridors that would apply additional development standards to regulate building design and construction, site layout, landscaping, signage, and traffic patterns."

Section 10.417 Definitions

Backlit Sign: A sign consisting of a cabinet containing a light source surrounded by one or more translucent faces.

Knockout Backlit Sign: A sign with lighting that illuminates from within and only letters, illustrations and/or symbols are illuminated.

Monument Sign: A monument sign is mounted generally flush with the ground plane and may not be mounted on a pole, pylon, raised on a man-made berm, wall, or similar structure.

Technical Review Committee (TRC): The purpose of the TRC shall be to determine whether or not proposed developments meet the standards established in the *City of Graham Development Ordinances* and all other applicable regulations within the City of Graham and to provide guidance as how to provide for the betterment of public safety and welfare. The TRC is made up of the Planner, who acts as Chairman, all department heads and/or their designated representatives, the City of Graham Engineer, and the NCDOT District Engineer.

Section 10.418 Highway Corridor Overlay Districts Approval

Highway overlay districts shall be forwarded, with the recommendations of the Planning and Zoning Commission to the City Council for approval.

Section 10.419 Designation of Highway Corridor Overlay Districts

1.) South Main Street/Highway 87 Overlay District

2.) East Harden Street/Highway 54 Overlay District

Section 10.420 **Reserved** *(amended 11/1/2016)*

Section 10.421 **Alternative Compliance Using Conditional Office and Institutional Zoning or Conditional Business Zoning**

The City Council may waive one or more of the specific requirements applicable to sites located in a Highway Corridor Overlay District by approving a Conditional Office and Institutional District Zoning (as described in Section 10.128 of the *City of Graham Development Ordinances*) or a Conditional Business District Zoning (as described in Section 10.129 of the *City of Graham Development Ordinances*) request by the property owner. The applicant for any such wavier shall have the burden of showing that the proposed project, with such waiver granted will be as good as or better than a project developed in compliance with the Overlay District Regulations in terms of aesthetics, environmental compatibility and traffic considerations. In granting an approval of a rezoning to a Conditional Office and Institutional or Conditional Business District, the City Council may require additional conditions that will, in its opinion, assure that the use in its proposed location will be harmonious with the area. The City Council may modify the original plans to reflect such conditions which shall be entered into the minutes of the Public Hearing at which the Conditional Office and Institutional or Conditional Business Zoning is approved.

Sections 10.422-10.435 Reserved

DIVISION 1. SOUTH MAIN STREET/HIGHWAY 87 OVERLAY DISTRICT

Section 10.436 **Purpose**

The South Main Street/Highway 87 Overlay District, referred to in this division as the "Overlay District" is an aesthetically important thoroughfare for the City of Graham. Because the Overlay District starts at the Highway 87 southern boundary of the City Limits, many citizens and visitors will see this part of the City on a daily basis. In order to arrive at the central business district, or "Historic District Overlay Zone", from the City Limits, one must travel along the Overlay District. It is very important that the Overlay District is compatible with many of the design standards in the historic district since these two overlay zones are adjacent to one another. An easy transition shall occur between the overlay zones in order to create a more pleasing atmosphere.

The purposes of the Overlay District include:

1. Preserving and enhancing the overall image of the Overlay District and Historic District.

2. Encouraging development that compliments and expands the unique character of the Overlay District and its surrounding area.

3. Establishing Graham as a unique high quality community within the Triad by creating development that provides visual interest consistent with the community goals.

4. Enhancing the business economy through the creation of attractive commercial areas.

5. Preserving and enhancing property values through creation of high quality developments.

6. Implementing the goals, policies, and objectives recommendation of the *City of Graham Growth Management Plan 2000-2020*.

7. Promoting the overall health, safety, and welfare of the citizens, residents, workers, and business owners.

Section 10.437 Location + Applicability

The South Main Street Overlay District shall include all parcels that are currently adjacent to either side of South Main Street, beginning at the southern boundary of the Historic District Overlay District and extending south to the Graham City Limits as shown on "The Zoning Atlas of the City of Graham, North Carolina". If the Graham City Limits are extended in the future, the Overlay District boundary shall be subject to an extension.

Section 10.438 Uses Conform to Underlying District

The South Main Street Overlay District contains several underlying zoning districts and all proposed uses shall be permitted as indicated in Section 10.135, Table of Permitted Uses, with the exception that the uses listed in Section 10.440 shall be prohibited. The terms of this Division shall control and take precedence over conflicting terms of the underlying zoning districts found within this ordinance. Where this Division is silent as to a term, condition, or requirement, the requirements of this ordinance and/or the approved policies and procedures of the City shall control.

Section 10.439 Exemptions

The South Main Street Overlay District shall not apply to detached single family residential dwellings being used for residential purposes.

Section 10.440 Prohibited Uses

The following uses shall not be allowed in the South Main Street Overlay District:

Adult Entertainment; All Incinerators; Asphalt Mixing Plant; Vehicle assembling, painting, upholstering, rebuilding, reconditioning, body and fender work with outside storage that is visible from public right of way; Bars (as principal use); Campgrounds, commercial; Flea Market; Hazardous Waste Facilities; Jails; Junkyards, Salvage Yards; Landfill, Demolition Debris; Landfill, for Household and Commercial Waste; Manufactured Dwelling Park; Manufactured Home Sales; Medical Waste Operations; Pawnshops; Petroleum and Petroleum Products Storage, over 100,000 gallons; Racetracks for automobiles, motorcycles; Recycling Facility; Sexually Oriented Business; Shooting Range, Indoor; Shooting Range, Outdoor; Tattoo Business; Towers, Cellular and Digital Communications (excludes government uses); Towers, Radio and Television; Used Tire Sales; Utility Building Sales, Sales of Storage Sheds and Trailers.

Section 10.441 Building Standards

When architecture drawings are submitted to the City, the following design standards and prohibitions shall be required:

(a) Manufactured and mobile units shall be prohibited, except for temporary use during construction or for storage of materials during construction.

(b) Building facades visible from South Main Street shall be clad with brick or stone masonry, wood, stucco, or similar material. The facades of buildings located on corner lots that are visible from South Main Street and any other road shall be clad with brick or stone masonry, wood, stucco, or similar material. The use of textured vinyl siding or decorative, split-faced cinder blocks may be used but shall not exceed 25% of the visible side of the building. The use of cinder-block, smooth vinyl, and metal siding shall only be allowed on the side and rear of the building if not visible from South Main Street.

(c) All façade colors shall be of low reflectance, subtle, neutral, or earth tone colors. The use of high intensity colors, metallic colors, black, or fluorescent colors are prohibited. Building trim and accent areas may feature black and brighter colors, including primary colors. Roof colors shall be low reflectance and non-metallic.

(d) Roof pitches less than 3/12 will require a parapet wall.

(e) Street level windows should be untinted. Tinted glass with a minimum visual transmittance factor of 35 is permitted. Mirror or reflective glass is not permitted at any location.

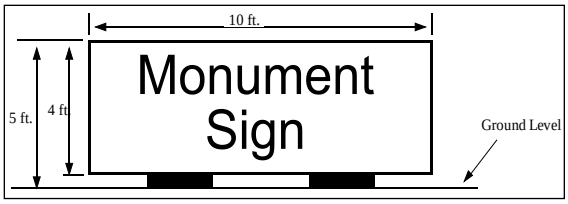
(f) Accessory structures and signage shall be of consistent design with the primary structure and be constructed of like or architecturally compatible materials.

(g) The use of decorative materials such as fountains, outdoor seating and benches, and statutes are encouraged in pedestrian and open space areas.

Section 10.442 Signage

All signage within the Overlay District shall conform to the following standards:

(a) Monument Signs:



(1) Monument signs shall exclusively display only the name, trademark, and registered logo.

(2) Monument fuel pricing signs shall display only the name, trademark, registered logo, or vehicular fuel product and prices.

(3) The area encompassed by the monument sign shall not exceed forty (40) square feet.

(4) No monument sign shall exceed five (5) feet in height.

(b) Walls Signs: The maximum total area of all allowable wall signs shall be equal to no more than ten percent (10%) of the area of the wall of which such sign is a part or to which each such sign is attached.

(c) Signs shall be located such that there is at every street intersection a clear line of sight, and all signs shall be located outside of the right-of-way of any public street.

(d) Prohibited Signs: In addition to signage prohibited in Article X of the *City of Graham Development Ordinances*, the following signs shall be prohibited in the Overlay District:

(1) Animated sign, nor moving or flashing signs, including changeable copy signs, except for ones that display exclusively time, date, and/or temperature.

(2) Portable signs, unless exempt by Section 10.393 Exemptions.

(3) Projecting or suspended signs from building or structure.

(4) Inflatable signs or tethered balloons.

(5) Backlit monument signage is not permitted except in knockout backlit signs.

(6) Beacons.

(7) Roof signs.

(8) Flags used as promotional devices of any type, including but not limited to the promotion of goods, services, business establishments, events, etc.

(9) Posters.

(10) Outdoor Advertising Signs shall be permitted only on properties in the Overlay District adjacent to Interstate 85-40. Such signs shall be directed toward traffic on Interstate 85-40.

(Section 10.442 amended 1/6/2009)

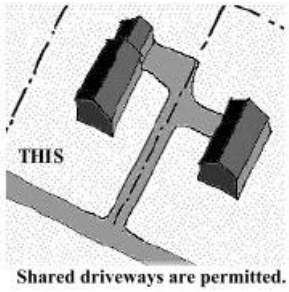
Section 10.443 Trees

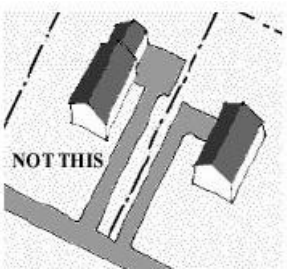
All issues involving trees in the South Main Street Overlay District shall conform to Article VII of the *City of Graham Development Ordinances*.

Section 10.444 Access Management and Parking Areas

(a) Standards

(1) Joint driveways are permitted and recommended. Property owners who wish to share driveways should record a driveway maintenance agreement between them. Commercial development should encourage internal access between facilities and avoid numerous curb cuts along highways.





(2) Normal Landscaping requirements in Article V of the *City of Graham Development Ordinances* will still apply to parking areas. In addition, landscaped areas shall be surrounded by a concrete curb or other material, such as landscape timbers, in order to protect the landscaped area and to define its borders.

(3) When the developer applies for a driveway permit, the City and NCDOT may require the addition of a deceleration lane if the land use has the potential to generate an excessive number of trips per peak hour.

Section 10.445 Building Orientation

(a) Standards

(1) Service entrances for shipping and receiving shall be oriented away from South Main Street.

(2) Buildings should be located on the site so that services (such as trash collection, dumpsters, outbuildings) are not visible from the street.

Section 10.446 Sidewalks

This section shall apply to future development that is located within the Overlay District. Sidewalks shall be installed by the developer along all abutting streets and built in compliance with the City of Graham Standards and Specifications. A grass planting between the sidewalk and curb shall be required.

Section 10.447 Utility Wiring

Wiring for utilities such as telephone, electrical, cable television, etc. or related functions shall be placed underground as determined by the Technical Review Committee.

Section 10.448 Screening/Buffering

The intent of a screen is to use plants and/or other landscape architectural elements to obscure views from corridor or adjacent properties. Facilities such as solid waste containers, electrical equipment, HVAC equipment etc., which are located on the lot, but which are not contained within the principal building shall be screened from public view by an acceptable means such as vegetation fencing, berming, etc. No chain link fence shall be permitted to fulfill this requirement. Mechanical equipment at ground level shall be placed on the rear or side of the building and away from buildings on adjacent sides. Mechanical equipment on rooftops shall be screened from the view of the public street through the use of parapet wall or other decorative feature. Solid waste containers and dumpsters shall be located to the side or rear of the principal structure.

Features and uses specified above and/or other required screens shall provide a visual obstruction from corridor and adjacent properties in conformance with the following standards:

(1) The screen may be composed of view-obscuring vegetation, wall, fence, or berm.

(2) The items may be used individually or in combination.

(3) The result shall be a screen that reaches an eight (8) foot height within three (3) years.

(4) Plants shall be at least three (3) feet tall at the time of installation.

(5) Additionally, screen area shall be sufficient size to allow for the mature growth of plant material.

(6) Dumpsters or trash handling areas shall always be screened from adjacent properties and from public view, with a minimum of six (6) foot high solid wooden fence or solid (and finished) masonry wall, with a solid and closeable gate.

(7) Mechanical equipment at ground level shall be placed in the rear yard and away from buildings on adjacent sides. It shall be screened from the public street by walls, fencing, and/or landscaping. Mechanical equipment on rooftops shall be screened from the view of the public street.

(8) A developer may choose to substantially screen from public view a parking area by utilizing an earthen berm, masonry wall, or other means of screening as approved by the Technical Review Committee.

(9) Fuel tanks shall be placed underground.

Sections 10.449-10.460 Reserved

DIVISION 2. EAST HARDEN STREET/HIGHWAY 54 OVERLAY DISTRICT

Section 10.461 Purpose

The East Harden Street/Highway 54 Overlay District, referred to in this division as the "Overlay District" is an aesthetically important thoroughfare for the City of Graham. It is intended to supplement, rather than replace the underlying zoning in this area. It does not address elements such as use or intensity (which are still controlled by the underlying zone), rather it addresses design elements such as signage, lighting, and access.

The purposes of the Overlay District requirements include:

1. Enhancing the overall image of the Highway 54 corridor by establishing minimum building and site plan design standards.

2. Encouraging highway development that compliments and expands on the unique character of the downtown and prevents creation of generic commercial strips.

3. Establishing the City of Graham as a unique, high quality community located between the Triangle and Triad by creating developments that provide visual interest consistent with community goals.

4. Enhancing the business economy through the creation of attractive commercial areas.

5. Preserving and enhancing property values through the creation of high quality developments.

6. Implementing the goals, policies, objectives, and recommendations of the City of Graham Growth Management Land Development Plan.

7. Promoting the overall health, safety, and welfare of the citizens, residents, workers, and business owners.

Section 10.462 Location + Applicability

The East Harden Street/Highway 54 Overlay District shall include all parcels that are adjacent to either side of East Harden Street, beginning at the eastern boundary of the City of Graham Downtown Historic District and extending east to and including the City of Graham's Extra Territorial Jurisdiction (ETJ) as show on "The Zoning Atlas of the City of Graham, North Carolina". If the Graham ETJ is extended in the future, the Overlay District boundary shall be subject to an extension. *(Section 10.462 amended by City Council on 1/5/2010)*

Section 10.463 Uses Conform to Underlying District

The East Harden Street/Highway 54 Overlay District contains several underlying zoning districts, and all proposed uses shall be permitted as indicated in Section 10.135, Table of Permitted Uses, with the exception that the uses listed in Section 10.465 shall be prohibited. The terms of this Division shall control and take precedence over conflicting terms of the underlying zoning districts found within this ordinance. Where this Division is silent as to a term, condition, or requirement, the requirements of this ordinance and/or the approved policies and procedures of the City shall control.

Section 10.464 Exemptions

The East Harden Street Overlay District shall not apply to detached single family residential dwellings being used for residential purposes.

Section 10.465 Prohibited Uses

The following uses shall not be allowed in the East Harden Street/Highway 54 Overlay District:

Adult Entertainment; All Incinerators; Asphalt Mixing Plant; Vehicle assembling, painting, upholstering, rebuilding, reconditioning, body and fender work with outside storage that is visible from public right of way; Bars (as principal use); Campgrounds, commercial; Flea Market; Hazardous Waste Facilities; Jails; Junkyards, Salvage Yards; Landfill, Demolition Debris; Landfill, for Household and Commercial Waste; Manufactured Dwelling Park; Manufactured Home Sales; Medical Waste Operations; Pawnshops; Petroleum and Petroleum Products Storage, over 100,000 gallons; Racetracks for automobiles, motorcycles; Recycling Facility; Sexually Oriented Business; Shooting Range, Indoor; Shooting Range, Outdoor; Tattoo Business; Towers, Cellular and Digital Communications (excludes government uses); Towers, Radio and Television; Used Tire Sales; Utility Building Sales, Sales of Storage Sheds and Trailers.

Section 10.466 Building Standards

When architecture drawings are submitted to the City, the following design standards and prohibitions shall be required:

(a) Manufactured and mobile units shall be prohibited, except for temporary use during construction or for storage of materials during construction.

(b) Building facades visible from East Harden Street shall be clad with brick or stone masonry, wood, stucco, or similar material. The facades of buildings located on corner lots that are visible from East Harden Street and any other road shall be clad with brick or stone masonry, wood, stucco, or similar material. The use of textured vinyl siding or decorative, split-faced cinder blocks may be used but shall not exceed 25% of the visible side of the building. The use of cinder-block, smooth vinyl, and metal siding shall only be allowed on the side and rear of the building if not visible from East Harden Street.

(c) All façade colors shall be of low reflectance, subtle, neutral, or earth tone colors. The use of high intensity colors, metallic colors, black, or fluorescent colors are prohibited. Building trim and accent areas may feature black and brighter colors, including primary colors. Roof colors shall be low reflectance and non-metallic.

(d) Roof pitches less than 3/12 will require a parapet wall.

(e) Street level windows should be untinted. Tinted glass with a minimum visual transmittance factor of 35 is permitted. Mirror or reflective glass is not permitted at any location.

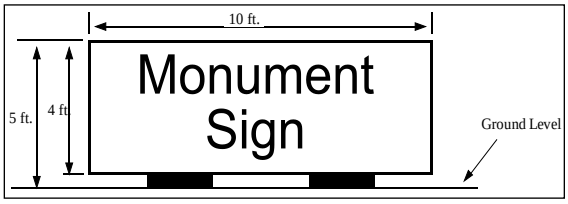
(f) Accessory structures and signage shall be of consistent design with the primary structure and be constructed of like or architecturally compatible materials.

(g) The use of decorative materials such as fountains, outdoor seating and benches, and statutes are encouraged in pedestrian and open space areas.

Section 10.467 Signage

All signage within the Overlay District shall conform to the following standards:

(a) Monument Signs:



(1) Monument signs shall exclusively display only the name, trademark, and registered logo.

(2) Monument fuel pricing signs shall display only the name, trademark, registered logo, or vehicular fuel product and prices.

(3) The area encompassed by the monument sign shall not exceed forty (40) square feet.

(4) No monument sign shall exceed five (5) feet in height.

(b) Walls Signs: The maximum total area of all allowable wall signs shall be equal to no more than ten percent (10%) of the area of the wall of which such sign is a part or to which each such sign is attached.

(c) Signs shall be located such that there is at every street intersection a clear line of sight, and all signs shall be located outside of the right-of-way of any public street.

(d) Prohibited Signs: In addition to signage prohibited in Article X of the *City of Graham Development Ordinances*, the following signs shall be prohibited in the Overlay District:

(1) Animated sign, nor moving or flashing signs, including changeable copy signs, except for ones that display exclusively time, date, and/or temperature.

(2) Portable signs, unless exempt by Section 10.393 Exemptions.

(3) Projecting or suspended signs from building or structure.

(4) Inflatable signs or tethered balloons.

(5) Backlit monument signage is not permitted except in knockout backlit signs.

(6) Beacons.

(7) Roof signs.

(8) Flags used as promotional devices of any type, including but not limited to the promotion of goods, services, business establishments, events, etc.

(9) Posters.

(10) Outdoor Advertising Signs shall be permitted only on properties in the Overlay District adjacent to Interstate 85-40. Such signs shall be directed toward traffic on Interstate 85-40.

(Section 10.467 amended 1/6/2009)

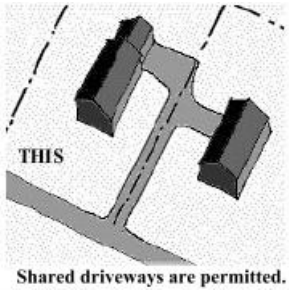
Section 10.468 Trees

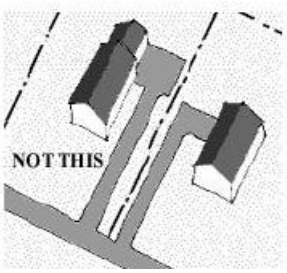
All issues involving trees in the East Harden Street Overlay District shall conform to Article VII of the *City of Graham Development Ordinances*.

Section 10.469 Access Management and Parking Areas

(a) Standards

(1) Joint driveways are permitted and recommended. Property owners who wish to share driveways should record a driveway maintenance agreement between them. Commercial development should encourage internal access between facilities and avoid numerous curb cuts along highways.





(2) Normal Landscaping requirements in Article V of the *City of Graham Development Ordinances* will still apply to parking areas. In addition, landscaped areas shall be surrounded by a concrete curb or other material, such as landscape timbers, in order to protect the landscaped area and to define its borders.

(3) When the developer applies for a driveway permit, the City and NCDOT may require the addition of a deceleration lane if the land use has the potential to generate an excessive number of trips per peak hour.

Section 10.470 Building Orientation

(a) Standards

(1) Service entrances for shipping and receiving shall be oriented away from Harden Street.

(2) Buildings should be located on the site so that services (such as trash collection, dumpsters, outbuildings) are not visible from the street.

Section 10.471 Sidewalks

This section shall apply to future development that is located within the Overlay District. Sidewalks shall be installed by the developer along all abutting streets and built in compliance with the City of Graham Standards and Specifications. A grass planting between the sidewalk and curb shall be required.

Section 10.472 Utility Wiring

Wiring for utilities such as telephone, electrical, cable television, etc. or related functions shall be placed underground as determined by the Technical Review Committee.

Section 10.473 Screening/Buffering

The intent of a screen is to use plants and/or other landscape architectural elements to obscure views from corridor or adjacent properties. Facilities such as solid waste containers, electrical equipment, HVAC equipment etc., which are located on the lot, but which are not contained within the principal building shall be screened from public view by an acceptable means such as vegetation fencing, berming, etc. No chain link fence shall be permitted to fulfill this requirement. Mechanical equipment at ground level shall be placed on the rear or side of the building and away from buildings on adjacent sides. Mechanical equipment on rooftops shall be screened from the view of the public street through the use of parapet wall or other decorative feature. Solid waste containers and dumpsters shall be located to the side or rear of the principal structure.

Features and uses specified above and/or other required screens shall provide a visual obstruction from corridor and adjacent properties in conformance with the following standards:

(1) The screen may be composed of view-obscuring vegetation, wall, fence, or berm.

(2) The items may be used individually or in combination.

(3) The result shall be a screen that reaches an eight (8) foot height within three (3) years.

(4) Plants shall be at least three (3) feet tall at the time of installation.

(5) Additionally, screen area shall be sufficient size to allow for the mature growth of plant material.

(6) Dumpsters or trash handling areas shall always be screened from adjacent properties and from public view, with a minimum of six (6) foot high solid wooden fence or solid (and finished) masonry wall, with a solid and closeable gate.

(7) Mechanical equipment at ground level shall be placed in the rear yard and away from buildings on adjacent sides. It shall be screened from the public street by walls, fencing, and/or landscaping. Mechanical equipment on rooftops shall be screened from the view of the public street.

(8) A developer may choose to substantially screen from public view a parking area by utilizing an earthen berm, masonry wall, or other means of screening as approved by the Technical Review Committee.

(9) Fuel tanks shall be placed underground.

Sections 10.474 – 10.485 Reserved

ARTICLE XII. STORMWATER ORDINANCE

DIVISION 1. GENERAL PROVISIONS

Section 10.486 Title

This ordinance shall be officially known as "The Phase II Stormwater Ordinance." It is referred to herein as "this ordinance."

Section 10.487 Authority

The City of Graham is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission thereunder; Session Law 2006-246; Chapter 160A, §§ 174, 185 and; as well as Chapter 113A, Article 4 (Sedimentation Pollution Control); Article 21, Part 6 (Floodway Regulation); Chapter 160A, Article 19 (Planning and Regulation of Development); Chapter 153A, Article 18.

Section 10.488 Findings

It is hereby determined that:

Development and *redevelopment* alter the hydrologic response of local watersheds and increases stormwater runoff rates and volumes, flooding, soil erosion, stream channel erosion, nonpoint and point source pollution, and sediment transport and deposition, as well as reducing groundwater recharge;

These changes in stormwater runoff contribute to increased quantities of water-borne pollutants and alterations in hydrology which are harmful to public health and safety as well as to the natural environment; and

These effects can be managed and minimized by applying proper design and well-planned controls to manage stormwater runoff from *development* sites.

Further, the Federal Water Pollution Control Act of 1972 ("Clean Water Act") and federal Phase II Stormwater Rules promulgated under it, as well as rules of the North Carolina Environmental Management Commission promulgated in response to federal Phase II requirements, compel certain urbanized areas, including this jurisdiction, to adopt the minimum stormwater controls such as those included in this ordinance.

Therefore, the Graham City Council establishes this set of water quality and quantity regulations to meet the requirements of state and federal law regarding control of stormwater runoff and discharge.

Section 10.489 Purpose

a) General. The purpose of this ordinance is to protect, maintain and enhance the public health, safety, environment and general welfare by establishing minimum requirements and procedures to control the adverse effects of increased post-*development* stormwater runoff and nonpoint and point

source pollution associated with new *development* and *redevelopment*. It has been determined that proper management of construction-related and post-*development* stormwater runoff will minimize damage to public and private property and infrastructure, safeguard the public health, safety, and general welfare, and protect water and aquatic resources.

b) Specific. This ordinance seeks to meet its general purpose through the following specific objectives and means:

(1) Establishing decision-making processes for *development* that protects the integrity of watersheds and preserve the health of water resources;

(2) Requiring that new *development* and *redevelopment* maintain the pre-*development* hydrologic response in their post-*development* state as nearly as practicable for the applicable design storm to reduce flooding, streambank erosion, nonpoint and point source pollution and increases in stream temperature, and to maintain the integrity of stream channels and aquatic habitats;

(3) Establishing minimum post-*development* stormwater management standards and design criteria for the regulation and control of stormwater runoff quantity and quality;

(4) Establishing design and review criteria for the construction, function, and use of *structural stormwater BMPs* that may be used to meet the minimum post-*development* stormwater management standards;

(5) Encouraging the use of better management and site design practices, such as the use of vegetated conveyances for stormwater and the preservation of greenspace, riparian buffers, and other conservation areas to the maximum extent practicable;

(6) Establishing provisions for the long-term responsibility for and maintenance of *structural and nonstructural stormwater BMPs* to ensure that they continue to function as designed, are maintained appropriately, and pose no threat to public safety;

(7) Establishing administrative procedures for the submission, review, approval and disapproval of *stormwater management plans*, for the inspection of approved projects, and to assure appropriate long-term maintenance.

Section 10.490 Applicability and Jurisdiction

a.) General. Beginning with and subsequent to its effective date, this ordinance shall be applicable to all *development* and *redevelopment*, including, but not limited to, site plan applications, planned unit developments, grading applications, and subdivision applications within the corporate limits and extraterritorial jurisdiction of the City of Graham, unless exempt pursuant to Subsection (b) of this Division, Exemptions, below.

b.) Exemptions

Development that cumulatively disturbs less than one acre and is not part of a larger common plan of *development* or sale is exempt from the provisions of this ordinance.

Redevelopment that cumulatively disturbs less than one acre and is not part of a larger common plan of *development* or sale is exempt from the provisions of this ordinance.

Development and *redevelopment* that disturb less than one acre are not exempt if such activities are part of a *larger common plan of development or sale*, even though multiple, separate or distinct activities take place at different times on different schedules.

Activities that are exempt from permit requirements of Section 404 of the federal Clean Water Act, as specified in 40 CFR 232 (primarily, ongoing farming and forestry activities) are exempt from the provisions of this ordinance.

c.) No **Development** *or* **Redevelopment** Until Compliance and Permit. No *development* or *redevelopment* shall occur except in compliance with the provisions of this ordinance or unless exempted. No *development* for which a permit is required pursuant to this ordinance shall occur except in compliance with the provisions, conditions, and limitations of the permit.

d.) Stormwater Map. The provisions of this ordinance shall apply within the areas designated on the map titled "Phase II Stormwater Map of City of Graham, North Carolina" ("the Stormwater Map"), which is adopted simultaneously herewith. The Stormwater Map and all explanatory matter contained thereon accompanies and is hereby made a part of this ordinance.

The Stormwater Map shall be kept on file by the Stormwater Administrator and shall be updated to take into account changes in the land area covered by this ordinance and the geographic location of all *structural BMP*s permitted under this ordinance. In the event of a dispute, the applicability of this ordinance to a particular area of land or BMP shall be determined by reference to the North Carolina Statutes, the North Carolina Administrative Code, and local zoning and jurisdictional boundary ordinances.

Section 10.491 Interpretation

a.) Meaning and Intent. All provisions, terms, phrases, and expressions contained in this ordinance shall be construed according to the general and specific purposes set forth in Section 10-489, Purpose. If a different or more specific meaning is given for a term defined elsewhere in The City of Graham's development ordinances, the meaning and application of the term in this ordinance shall control for purposes of application of this ordinance.

b.) Text Controls in Event of Conflict. In the event of a conflict or inconsistency between the text of this ordinance and any heading, caption, figure, illustration, table, or map, the text shall control.

c.) Authority for Interpretation. The Stormwater Administrator has authority to determine the interpretation of this ordinance. Any person may request an interpretation by submitting a written request to the Stormwater Administrator who shall respond in writing within 30 days. The Stormwater Administrator shall keep on file a record of all written interpretations of this ordinance.

d.) References to Statutes, Regulations, and Documents. Whenever reference is made to a resolution, ordinance, statute, regulation, manual (including the *Stormwater BMP Design Manual*), or document, it shall be construed as a reference to the most recent edition of such that has been finalized and published with due provision for notice and comment, unless otherwise specifically stated.

e.) Computation of Time. The time in which an act is to be done shall be computed by excluding the first day and including the last day. If a deadline or required date of action falls on a Saturday, Sunday, or holiday observed by the City of Graham, the deadline or required date of action shall be the next day that is not a Saturday, Sunday or holiday observed by the City of Graham. References to days are calendar days unless otherwise stated.

f.) Delegation of Authority. Any act authorized by this Ordinance to be carried out by the Stormwater Administrator of City of Graham may be carried out by his or her designee.

g.) Usage

(1) Mandatory and Discretionary Terms. The words "shall," "must," and "will" are mandatory in nature, establishing an obligation or duty to comply with the particular provision. The words "may" and "should" are permissive in nature.

(2) Conjunctions. Unless the context clearly indicates the contrary, conjunctions shall be interpreted as follows: The word "and" indicates that all connected items, conditions, provisions or events apply. The word "or" indicates that one or more of the connected items, conditions, provisions or events apply.

(3) Tense, Plurals, and Gender. Words used in the present tense include the future tense. Words used in the singular number include the plural number and the plural number includes the singular number, unless the context of the particular usage clearly indicates otherwise. Words used in the masculine gender include the feminine gender, and vice versa.

h.) Measurement and Computation. Lot area refers to the amount of horizontal land area contained inside the lot lines of a lot or site.

Section 10.492 Definitions

When used in this Ordinance, the following words and terms shall have the meaning set forth in this section, unless other provisions of this Ordinance specifically indicate otherwise.

1-year, 24-hour storm. A stormwater event with an intensity expected to be equaled or exceeded, on average, once in 12 months and with a duration of 24 hours. The 1-year, 24 hour storm produces approximately 3.0 inches of rain in the Graham area.

Built-upon area (BUA)*.* That portion of a ***development*** project that is covered by impervious or partially impervious surface including, but not limited to, buildings; pavement and gravel areas such as roads, parking lots, and paths; and recreation facilities such as tennis courts. "Built-upon area" does not include a wooden slatted deck, the water area of a swimming pool, or pervious or partially pervious paving material to the extent that the paving material absorbs water or allows water to infiltrate through the paving material.

Department. The North Carolina Department of Environment and Natural Resources.

Development. Any land disturbing activity which adds to or changes the amount of impervious or partially pervious cover on a land area or which otherwise decreases the infiltration of precipitation into the soil, other than rebuilding activity that does not qualify as redevelopment.

Division. The Division of Water Quality in the North Carolina **Department of Environment and Natural Resources**.

High-density project. Any project that exceeds the low density threshold for dwelling units per acre or built-upon area.

Larger common plan of development or sale. Any area where multiple separate and distinct construction or land disturbing activities will occur under one plan. A plan is any announcement or piece of documentation (including but not limited to a sign, public notice or hearing, sales pitch, advertisement, loan application, drawing, permit application, zoning request, or computer design) or physical demarcation (including but not limited to boundary signs, lot stakes, or surveyor markings) indicating that construction activities may occur on a specific plot.

Low-density project. A project that has no more than two dwelling units per acre or twenty-four percent ***built-upon area*** (BUA) for all residential and non-residential ***development***. A project with an overall density at or below the relevant low-density threshold, but containing areas with a density greater than the overall project density, may be considered low density as long as the project meets or exceeds the post-construction model practices for low-density projects, as defined in 0, and locates the higher density in upland areas and away from surface waters and drainageways to the maximum extent practicable.

Owner. The legal or beneficial owner of land, including but not limited to a mortgagee or vendee in possession, receiver, executor, trustee, or long-term or commercial lessee, or any other person or entity holding proprietary rights in the property or having legal power of management and control of the property. “Owner” shall include long-term commercial tenants; management entities, such as those charged with or engaged in the management of properties for profit; and every person or entity having joint ownership of the property. A secured lender not in possession of the property does not constitute an owner, unless the secured lender is included within the meaning of “owner” under another description in this definition, such as a management entity.

Redevelopment. Any development on previously-developed land other than a rebuilding activity that results in no net increase in built-upon area and provides equal or greater stormwater control than the previous development.

Runoff. The water from rain, snowmelt or irrigation that flows over the land surface and is not absorbed into the ground, instead flowing into streams or other surface waters or land depressions.

Stormwater BMP Design Manual. The Stormwater Best Management Practice Design Manual approved for use in Phase II jurisdictions by the *Division* for the proper implementation of the requirements of the federal Phase II stormwater program. All references herein to the ***Stormwater BMP Design Manual*** are to the latest published edition or revision.

Structural BMP. A physical device designed to trap, settle out, or filter pollutants from stormwater runoff; to alter or reduce stormwater runoff velocity, amount, timing, or other characteristics; to approximate the pre-development hydrology on a developed site; or to achieve any combination of these goals. Structural BMP includes physical practices such as constructed wetlands, vegetative practices, filter strips, grassed swales, and other methods installed or created on real property. “Structural BMP” is synonymous with “structural practice”, “stormwater control facility,” “stormwater control practice,” “stormwater treatment practice,” “stormwater management practice,” “stormwater

control measures," "structural stormwater treatment systems," and similar terms used in this ordinance.

Substantial progress. For the purposes of determining whether sufficient progress has been made on an approved plan, one or more of the following construction activities toward the completion of a site or subdivision plan shall occur: obtaining a grading permit and conducting grading activity on a continuous basis and not discontinued for more than thirty (30) days; or installation and approval of on-site infrastructure; or obtaining a building permit for the construction and approval of a building foundation. "Substantial progress" for purposes of determining whether an approved plan is null and void is not necessarily the same as "substantial expenditures" used for determining vested rights pursuant to applicable law.

Section 10.493 Stormwater BMP Design Manual

a.) Reference to *Stormwater BMP Design Manual.* The Stormwater Administrator shall use the policy, criteria, and information, including technical specifications and standards, in the ***Stormwater BMP Design Manual*** as the basis for decisions about stormwater permits and about the design, implementation and performance of ***structural and non-structural stormwater BMPs***.

The ***Stormwater BMP Design Manual*** includes a list of acceptable stormwater treatment practices, including the specific design criteria for each stormwater practice. Stormwater treatment practices that are designed, constructed, and maintained in accordance with these design and sizing criteria will be presumed to meet the minimum water quality performance standards of the Phase II laws.

b.) Relationship of ***Stormwater BMP Design Manual*** to Other Laws and Regulations. If the specifications or guidelines of the ***Stormwater BMP Design Manual*** are more restrictive or apply a higher standard than other laws or regulations, that fact shall not prevent application of the specifications or guidelines in the ***Stormwater BMP Design Manual***.

c.) Changes to Standards and Specifications. If the standards, specifications, guidelines, policies, criteria, or other information in the ***Stormwater BMP Design Manual*** are amended subsequent to the submittal of an application for approval pursuant to this ordinance but prior to approval, the new information shall control and shall be utilized in reviewing the application and in implementing this ordinance with regard to the application.

Section 10.494 Relationship to Other Laws, Regulations and Private Agreements

a.) Conflict of Laws. This ordinance is not intended to modify or repeal any other ordinance, rule, regulation or other provision of law. The requirements of this ordinance are in addition to the requirements of any other ordinance, rule, regulation or other provision of law. Where any provision of this ordinance imposes restrictions different from those imposed by any other ordinance, rule, regulation or other provision of law, whichever provision is more restrictive or imposes higher protective standards for human or environmental health, safety, and welfare shall control.

b.) Private Agreements. This ordinance is not intended to revoke or repeal any easement, covenant, or other private agreement. However, where the regulations of this ordinance are more restrictive or impose higher standards or requirements than such an easement, covenant, or other private agreement, the requirements of this ordinance shall govern. Nothing in this ordinance shall modify

or repeal any private covenant or deed restriction, but such covenant or restriction shall not legitimize any failure to comply with this ordinance. In no case shall the City of Graham be obligated to enforce the provisions of any easements, covenants, or agreements between private parties.

Section 10.495 Severability

If the provisions of any section, subsection, paragraph, subdivision or clause of this ordinance shall be adjudged invalid by a court of competent jurisdiction, such judgment shall not affect or invalidate the remainder of any section, subsection, paragraph, subdivision or clause of this ordinance.

Section 10.496 Effective Date and Transitional Provisions

a.) Effective Date. This ordinance shall become effective after the approval of both the City of Graham and the Division representing the State of North Carolina or July 1, 2007, whichever is the last to occur.

b.) Final Approvals, Complete Applications. All *development* and *redevelopment* projects which have obtained a vested right as specified in Section 10.255 of the Graham Development Ordinance, or projects for which complete and/or full applications were submitted and approved by the City of Graham prior to the effective date of this ordinance, and which remain valid, unexpired, unrevoked and not otherwise terminated at the time of *development* or *redevelopment* shall be exempt from complying with all provisions of this ordinance dealing with the control and/or management of post-construction runoff, but shall be required to comply with all other applicable provisions.

A phased development plan shall be deemed approved prior to the effective date of this ordinance if it has been approved by all necessary government units, it remains valid, unexpired, unrevoked and not otherwise terminated, and it shows:

(1) For the initial or first phase of development, the type and intensity of use for a specific parcel or parcels, including at a minimum, the boundaries of the project and a subdivision plan that has been approved.

(2) For any subsequent phase of development, sufficient detail so that implementation of the requirements of this ordinance to that phase of development would require a material change in that phase of the plan.

c.) Violations Continue. Any violation of provisions existing on the effective date of this ordinance shall continue to be a violation under this ordinance and be subject to penalties and enforcement under this ordinance unless the use, ***development***, construction, or other activity complies with the provisions of this ordinance.

DIVISION 2. ADMINISTRATION AND PROCEDURES

Section 10.497 Review and Decision-Making Entities

a.) Stormwater Administrator

(1) Designation. The Stormwater Administrator shall be the City Manager or his designee. The Stormwater Administrator shall administer and enforce this ordinance.

b.) Powers and Duties. In addition to the powers and duties that may be conferred by other provisions of the City of Graham code and other laws, the Stormwater Administrator shall have the following powers and duties under this ordinance:

(1) To review and approve, approve with conditions, or disapprove applications for approval of plans pursuant to this ordinance.

(2) To make determinations and render interpretations of this ordinance.

(3) To establish application requirements and schedules for submittal and review of applications and appeals, to review and make recommendations to the Graham City Council on applications for *development or redevelopment* approvals.

(4) To enforce the provisions of this ordinance in accordance with its enforcement provisions.

(5) To maintain records, maps, forms and other official materials as relate to the adoption, amendment, enforcement, and administration of this ordinance.

(6) To provide expertise and technical assistance to the Graham City Council, upon request.

(7) To designate appropriate other person(s) who shall carry out the powers and duties of the Stormwater Administrator.

(8) To take any other action necessary to administer the provisions of this ordinance.

(Section 10.497 amended 5/6/2008)

Section 10.498 Review Procedures

a.) Permit Required; Must Apply for Permit. A stormwater permit is required for all *development* and *redevelopment* unless exempt pursuant to this ordinance. A permit may only be issued subsequent to a properly submitted and reviewed permit application, pursuant to this section.

b.) Effect of Permit. A stormwater permit shall govern the design, installation, and construction of stormwater management and control practices on the site, including *structural BMPs* and elements of site design for stormwater management other than *structural BMPs*.

The permit is intended to provide a mechanism for the review, approval, and inspection of the approach to be used for the management and control of stormwater for the *development* or *redevelopment* site consistent with the requirements of this ordinance, whether the approach consists of *structural BMPs* or other techniques such as low-impact or low-density design. The

permit does not continue in existence indefinitely after the completion of the project; rather, compliance after project construction is assured by the maintenance provisions of this ordinance.

c.) Authority to File Applications. All applications required pursuant to this Code shall be submitted to the Stormwater Administrator by the land *owner* or the land *owner's* duly authorized agent.

d.) Establishment of Application Requirements, Schedule, and Fees

(1) Application Contents and Form. The Stormwater Administrator shall establish requirements for the content and form of all applications and shall amend and update those requirements from time to time. At a minimum, the stormwater permit application shall describe in detail how post-*development* stormwater runoff will be controlled and managed, the design of all stormwater facilities and practices, and how the proposed project will meet the requirements of this ordinance.

(2) Submission Schedule. The Stormwater Administrator shall establish a submission schedule for applications. The schedule shall establish deadlines by which complete applications must be submitted for the purpose of ensuring that there is adequate time to review applications, and that the various stages in the review process are accommodated.

e.) Permit Review Fees. The Graham City Council shall establish permit review fees as well as policies regarding refund of any fees upon withdrawal of an application, and may amend and update the fees and policies from time to time.

f.) Administrative Manual. For applications required under this Code, the Stormwater Administrator shall compile the application requirements, submission schedule, fee schedule, a copy of this ordinance, and information on how and where to obtain the Stormwater BMP Design Manual in an Administrative Manual, which shall be made available to the public.

Section 10.499 Submittal of Complete Application

Applications shall be submitted to the Stormwater Administrator pursuant to the application submittal schedule in the form established by the Stormwater Administrator, along with the appropriate fee established pursuant to this section.

An application shall be considered as timely submitted only when it contains all elements of a complete application pursuant to this ordinance, along with the appropriate fee. If the Stormwater Administrator finds that an application is incomplete, the applicant shall be notified of the deficient elements and shall be provided with an opportunity to submit a complete application. However, the submittal of an incomplete application shall not suffice to meet a deadline contained in the submission schedule established above.

a.) Review. Within 30 working days after a complete application is submitted, the Stormwater Administrator shall review the application and determine whether the application complies with the standards of this ordinance.

(1) Approval. If the Stormwater Administrator finds that the application complies with the standards of this ordinance, the Stormwater Administrator shall approve the application. The

Stormwater Administrator may impose conditions of approval as needed to ensure compliance with this ordinance. The conditions shall be included as part of the approval.

(2) Fails to Comply. If the Stormwater Administrator finds that the application fails to comply with the standards of this ordinance, the Stormwater Administrator shall notify the applicant and shall indicate how the application fails to comply. The applicant shall have an opportunity to submit a revised application.

(3) Revision and Subsequent Review. A complete revised application shall be reviewed by the Stormwater Administrator within 15 working days after its re-submittal and shall be approved, approved with conditions or disapproved.

If a revised application is not re-submitted within thirty (30) calendar days from the date the applicant was notified, the application shall be considered withdrawn, and a new submittal for the same or substantially the same project shall be required along with the appropriate fee for a new submittal.

One re-submittal of a revised application may be submitted without payment of an additional permit review fee. Any re-submittal after the first re-submittal shall be accompanied by a permit review fee additional fee, as established pursuant to this ordinance.

Section 10.500 Applications for Approval

a.) Concept Plan and Consultation Meeting. Before a stormwater management permit application is deemed complete, the Stormwater Administrator or developer may request a consultation on a concept plan for the post-construction stormwater management system to be utilized in the proposed *development* project. This consultation meeting should take place at the time of the sketch or preliminary plan of subdivision or other early step in the *development* process. The purpose of this meeting is to discuss the post-construction stormwater management measures necessary for the proposed project, as well as to discuss and assess constraints, opportunities and potential approaches to stormwater management designs before formal site design engineering is commenced. Other relevant resource protection plans should be consulted in the discussion of the concept plan.

To accomplish this goal, the following information should be included in the concept plan, which should be submitted in advance of the meeting:

(1) Existing Conditions / Proposed Site Plans. Existing conditions and proposed site layout sketch plans, which illustrate at a minimum: existing and proposed topography; perennial and intermittent streams; mapping of predominant soils from soil surveys (if available); boundaries of existing predominant vegetation; proposed limits of clearing and grading; and location of existing and proposed roads, buildings, parking areas and other impervious surfaces.

Existing and proposed topography shall be shown at two-foot contour intervals on the tract to be developed and a minimum of 100-feet beyond the property lines. All contour information shall be based on mean sea level and accurate to within one-half foot.

(2) Natural Resources Inventory. A written or graphic inventory of the natural resources at the site and surrounding area as it exists prior to the commencement of the project. This description

should include a discussion of soil conditions, forest cover, geologic features, topography, wetlands, and native vegetative areas on the site, as well as the location and boundaries of other natural feature protection and conservation areas such as lakes, ponds, floodplains, stream buffers and other setbacks (e.g., drinking water well setbacks, septic setbacks, etc.). Particular attention should be paid to environmentally sensitive features that provide particular opportunities or constraints for *development* and stormwater management.

(3) Stormwater Management System Concept Plan. A written or graphic concept plan of the proposed post-*development* stormwater management system including: preliminary selection and location of proposed structural stormwater controls; low impact design elements; location of existing and proposed conveyance systems such as grass channels, swales, and storm drains; flow paths; location of floodplain/floodway limits; relationship of site to upstream and downstream properties and drainages; and preliminary location of proposed stream channel modifications, such as bridge or culvert crossings.

b.) Stormwater Management Permit Application. The stormwater management permit application shall detail how post-*development* stormwater runoff will be controlled and managed and how the proposed project will meet the requirements of this ordinance, including Division 3, Standards. All such plans shall be prepared by a qualified registered North Carolina professional engineer, surveyor, soil scientist or landscape architect, and the engineer, surveyor, soil scientist or landscape architect shall perform services only in their area of competence,

The plans shall contain a signed and sealed statement certifying that the design of all stormwater management facilities and practices will control and treat the runoff from the from the first one inch of rain over the total drainage area, that the designs and plans are sufficient to comply with applicable standards and policies found in the *Stormwater BMP Design Manual*, and that the designs and plans ensure compliance with this ordinance.

The submittal shall include all of the information required in the submittal checklist established by the Stormwater Administrator. Incomplete submittals shall be treated pursuant to Section 10-499.

c.) As-Built Plans and Final Approval. Upon completion of a project, and before a certificate of occupancy shall be granted, the applicant shall certify, under seal, that the completed project is in accordance with the approved stormwater management plans and designs and with the requirements of this ordinance. The applicant shall submit all of the information required in the As-Built submittal checklist established by the Stormwater Administrator. A final inspection and approval by the Stormwater Administrator shall occur before the release of any performance securities.

d.) Other Permits. No certificate of compliance or occupancy shall be issued by the City of Graham without final as-built plans and a final inspection and approval by the Stormwater Administrator, except where multiple units are served by the stormwater practice or facilities, in which case the City of Graham may elect to withhold a percentage of permits or certificates of occupancy until as-built plans are submitted and final inspection and approval has occurred.

Section 10.501 Approvals

c.) Effect of Approval. Approval authorizes the applicant to go forward with only the specific plans and activities authorized in the permit. The approval shall not be construed to exempt the applicant from obtaining other applicable approvals from local, state, and federal authorities.

d.) Time Limit/Expiration. An approved plan shall become null and void if the applicant fails to make *substantial progress* on the site within two years after the date of approval.

Section 10.502 Appeals

Any aggrieved person affected by any decision, order, requirement, or determination relating to the interpretation or application of this ordinance and made by the Stormwater Administrator may file an appeal to the Board of Adjustment within 30 days. Such appeals shall be taken within times prescribed by the board of adjustment by general rule, by filing with the Stormwater Administrator and with the board of adjustment a notice of appeal specifying the ground thereof. The Stormwater Administrator shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken. The board of adjustment shall fix a reasonable time for the hearing of the appeal or other matter referred to it, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any party in interest may appear in person or by agent or attorney.

DIVISION 3. STANDARDS

Section 10.503 General Standards

All *development* and *redevelopment* to which this ordinance applies shall comply with the standards of this section. In addition to the Stormwater BMP Design Manual, the design and construction of stormwater improvements shall also be according to the City of Graham *Storm Sewer Design Manual* which requirements are hereby adopted and made a part of this Ordinance as if set out in full.

Section 10.504 Development Standards for Low-Density Projects

Low-density projects (no more than two dwelling units per acre or twenty-four percent built-upon area for all residential and non-residential development) shall comply with each of the following standards:

a.) Stormwater runoff from the *development* shall be transported from the *development* by vegetated conveyances to the maximum extent practicable.

b.) All ***built-upon area*** shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.

c.) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as a recorded deed restriction or protective covenants, to ensure that future *development* and *redevelopment* maintains the site consistent with the approved project plans.

Section 10.505 Development standards for High-Density Projects

High-density projects (any project that exceeds the low density thresholds for dwelling units per acre or built-upon area) shall implement structural stormwater management systems that comply with each of the following standards:

a.) Control and treat the runoff from the first one inch of rain;

b.) Runoff volume drawdown time shall be a minimum of 48 hours, but not more than 120 hours;

c.) Discharge the storage volume at a rate equal to or less than the predevelopment discharge rate for the one-year, 24-hour storm;

d.) All structural stormwater treatment systems used to meet the requirements of the program shall be designed to have a minimum of 85% average annual removal for Total Suspended Solids (TSS);

e.) General engineering design criteria for all projects shall be in accordance with 15A NCAC 2H .1008(c), as explained in the *Stormwater BMP Design Manual***;**

f.) All ***built-upon area*** shall be at a minimum of 30 feet landward of all perennial and intermittent surface waters as prescribed in Article XIII of the City of Graham Development Ordinance. A perennial or intermittent surface water shall be deemed present if the feature is approximately shown on either the most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture (USDA) or the most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS). An exception to this requirement may be allowed when surface waters are not present in accordance with the provisions of 15A NCAC 2B .0233 (3)(a) or similar site-specific determination made using *Division*-approved methodology.

g.) The approval of the stormwater permit shall require an enforceable restriction on property usage that runs with the land, such as recorded deed restrictions or protective covenants, to ensure that future *development* and *redevelopment* maintains the *site* consistent with the approved project plans.

Section 10.506 Standards for Stormwater Control Measures

a.) Evaluation According to Contents of ***Stormwater BMP Design Manual****.* All stormwater control measures and stormwater treatment practices (also referred to as Best Management Practices, or BMPs) required under this ordinance shall be evaluated by the Stormwater Administrator according to the policies, criteria, and information, including technical specifications and standards and the specific design criteria for each stormwater practice, in the ***Stormwater BMP Design Manual***. The Stormwater Administrator shall determine whether proposed BMPs will be adequate to meet the requirements of this ordinance.

b.) Determination of Adequacy; Presumptions and Alternatives. Stormwater treatment practices that are designed, constructed, and maintained in accordance with the criteria and specifications in the *Stormwater BMP Design Manual* will be presumed to meet the minimum water quality and quantity performance standards of this ordinance. Whenever an applicant proposes to utilize a practice or practices not designed and constructed in accordance with the criteria and specifications in the *Stormwater BMP Design Manual,* the applicant shall have the burden of demonstrating that the practice(s) will satisfy the minimum water quality and quantity performance standards of this ordinance. The Stormwater Administrator may require the applicant to provide the documentation, calculations, and examples necessary for the Stormwater Administrator to determine whether such an affirmative showing is made.

c.) Separation from Seasonal High Water Table. For BMPs that require a separation from the seasonal high-water table, the separation shall be provided by at least 12 inches of naturally occurring soil above the seasonal high-water table.

Section 10.507 Dedication of BMP's, Facilities, and Improvements

Unless otherwise approved, ownership of any existing or future stormwater management facilities shall remain with the owner of the property or a legally established property owner's association. Such facilities shall meet all the requirements of this ordinance and include adequate and perpetual access and sufficient area, by easement or otherwise, for inspection and regular maintenance.

Section 10.508 Variances

a.) Any person may petition the Board of Adjustment for a variance granting permission to use the person's land in a manner otherwise prohibited by this ordinance. To qualify for a variance, the petitioner must show all of the following:

(1) Unnecessary hardships would result from strict application of this ordinance.

(2) The hardships result from conditions that are peculiar to the property, such as the location, size, or topography of the property.

(3) The hardships did not result from actions taken by the petitioner.

(4) The requested variance is consistent with the spirit, purpose, and intent of this ordinance; will secure public safety and welfare; and will preserve substantial justice.

b.) The City of Graham may impose reasonable and appropriate conditions and safeguards upon any variance it grants.

c.) Statutory exceptions. Notwithstanding subdivision (a.) of this section, exceptions from the 30-foot landward location of built-upon area requirement as well as the deed restrictions and protective covenants requirements shall be granted in any of the following instances:

(1) When there is a lack of practical alternatives for a road crossing, railroad crossing, bridge, airport facility, or utility crossing as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and

sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

(2) When there is a lack of practical alternatives for a stormwater management facility; a stormwater management pond; or a utility, including, but not limited to, water, sewer, or gas construction and maintenance corridor, as long as it is located 15 feet landward of all perennial and intermittent surface waters and as long as it is located, designed, constructed, and maintained to minimize disturbance, provide maximum nutrient removal, protect against erosion and sedimentation, have the least adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practicable through the use of BMPs.

Section 10.509 Nutrient Sensitive Waters

In addition to the standards for stormwater handling set out in the *NCDENR Stormwater BMP Design Manual*, development and redevelopment shall be designed to implement the best stormwater practices that reduce nutrient loading, while still meeting the other requirements of this ordinance.

Section 10.510 Nutrient Application Management Program

a.) The City of Graham recommends anyone applying fertilizer for pay complete training provided by either the Cooperative Extension Service or the North Carolina Department of Environment and Natural Resources - Division of Water Quality. This training will provide participants with an understanding of the value and importance of proper management of nitrogen and phosphorus, the water quality impacts of poor nutrient management, and the ability to understand and properly carry out a nutrient management plan.

Section 10.511 On-site Wastewater Treatment Systems

For new development and redevelopment that includes the use of on-site wastewater treatment systems, a copy of the approved system permit issued by the Alamance County Environmental Health Department shall be provided to the Stormwater Administrator.

DIVISION 4. MAINTENANCE

Section 10.512 General Standards for Maintenance

a.) Function of BMPs As Intended. The *owner* of each *structural BMP* installed pursuant to this ordinance shall maintain and operate it so as to preserve and continue its function in controlling stormwater quality and quantity at the degree or amount of function for which the *structural BMP* was designed.

b.) Annual Maintenance Inspection and Report. The person responsible for maintenance of any *structural BMP* installed pursuant to this ordinance shall submit to the Stormwater Administrator an inspection report from one of the following persons performing services only in their area of competence: a qualified registered North Carolina professional engineer, surveyor, landscape architect, soil scientist, aquatic biologist, or person certified by the North Carolina Cooperative Extension Service for stormwater treatment practice inspection and maintenance. The inspection report shall contain all of the following:

(1) The name and address of the land *owner*;

(2) The recorded book and page number of the lot of each *structural BMP*;

(3) A statement that an inspection was made of all *structural BMP*s;

(4) The date the inspection was made;

(5) A statement that all inspected *structural BMP*s are performing properly and are in compliance with the terms and conditions of the approved maintenance agreement required by this ordinance; and

(6) The original signature and seal of the engineer, surveyor, or landscape architect. All inspection reports shall be on forms approved by the Stormwater Administrator. An original inspection report shall be provided to the Stormwater Administrator beginning one year from the date of as-built certification and each year thereafter on or before the date of the as-built certification.

(7) Each annual report shall include color photographs of each BMP.

Section 10.513 Operation and Maintenance Agreement

a.) In General. Prior to the conveyance or transfer of any lot or building site to be served by a *structural BMP* pursuant to this ordinance, and prior to issuance of any permit for ***development*** or *redevelopment* requiring a *structural BMP* pursuant to this ordinance, the applicant or *owner* of the site must execute an operation and maintenance agreement that shall be binding on all subsequent *owner*s of the site, portions of the site, and lots or parcels served by the *structural BMP*. Until the transference of all property, sites, or lots served by the *structural BMP*, the original *owner* or applicant shall have primary responsibility for carrying out the provisions of the maintenance agreement.

The operation and maintenance agreement shall require the *owner* or *owner*s to maintain, repair and, if necessary, reconstruct the *structural BMP*, and shall state the terms, conditions, and schedule of maintenance for the *structural BMP*. In addition, it shall grant to the City of Graham a right of entry in the event that the Stormwater Administrator has reason to believe it has become necessary to inspect, monitor, maintain, repair, or reconstruct the *structural BMP*; however, in no case shall the right of entry, of itself, confer an obligation on the City of Graham to assume responsibility for the *structural BMP*.

The operation and maintenance agreement must be approved by the Stormwater Administrator prior to plan approval, and it shall be referenced on the final plat and shall be recorded with the Alamance County Register of Deeds upon final plat approval. A copy of the recorded maintenance agreement shall be given to the Stormwater Administrator within fourteen (14) days following its recordation.

b.) Special Requirement for Homeowners' and Other Associations. For all *structural BMP*s required pursuant to this ordinance and that are to be or are owned and maintained by a homeowners' association, property owners' association, or similar entity, the required operation and maintenance agreement shall include all of the following provisions:

(1) Acknowledgment that the association shall continuously operate and maintain the stormwater control and management facilities.

(2) Establishment of an escrow account, which can be spent solely for sediment removal, structural, biological or vegetative replacement, major repair, or reconstruction of the *structural BMP*s. If *structural BMP*s are not performing adequately or as intended or are not properly maintained, the City of Graham, in its sole discretion, may remedy the situation, and in such instances the City of Graham shall be fully reimbursed from the escrow account. Escrowed funds may be spent by the association for sediment removal, structural, biological or vegetative replacement, major repair, and reconstruction of the *structural BMP*s, provided that the City of Graham shall first consent to the expenditure.

(3) Both developer contribution and annual sinking funds shall fund the escrow account. Prior to plat recordation or issuance of construction permits, whichever shall first occur, the developer shall pay into the escrow account an amount equal to fifteen (15) per cent of the initial construction cost of the *structural BMP*s. Two-thirds (2/3) of the total amount of sinking fund budget shall be deposited into the escrow account within the first five (5) years and the full amount shall be deposited within ten (10) years following initial construction of the *structural BMP*s. Funds shall be deposited each year into the escrow account. A portion of the annual assessments of the association shall include an allocation into the escrow account. Any funds drawn down from the escrow account shall be replaced in accordance with the schedule of anticipated work used to create the sinking fund budget.

(4) The percent of developer contribution and lengths of time to fund the escrow account may be varied by the City of Graham depending on the design and materials of the stormwater control and management facility.

(5) Granting to the City of Graham a right of entry to inspect, monitor, maintain, repair, and reconstruct *structural BMP*s.

(6) Allowing the City of Graham to recover from the association and its members any and all costs the City of Graham expends to maintain or repair the *structural BMP*s or to correct any operational deficiencies. Failure to pay the City of Graham all of its expended costs, after forty-five days written notice, shall constitute a breach of the agreement. In case of a deficiency, the City of Graham shall thereafter be entitled to bring an action against the association and its members to pay, or foreclose upon the lien hereby authorized by the agreement against the property, or both, in case of a deficiency. Interest, collection costs, and attorney fees shall be added to the recovery.

(7) A statement that this agreement shall not obligate the City of Graham to maintain or repair any *structural BMP*s, and the City of Graham shall not be liable to any person for the condition or operation of *structural BMP*s.

(8) A statement that this agreement shall not in any way diminish, limit, or restrict the right of the City of Graham to enforce any of its ordinances as authorized by law.

(9) A provision indemnifying and holding harmless the City of Graham for any costs and injuries arising from or related to the structural BMP, unless the City of Graham has agreed in writing to

assume the maintenance responsibility for the BMP and has accepted dedication of any and all rights necessary to carry out that maintenance.

Section 10.514 Inspection Program

Inspections and inspection programs by the City of Graham may be conducted or established on any reasonable basis, including but not limited to routine inspections; random inspections; inspections based upon complaints or other notice of possible violations; and joint inspections with other agencies inspecting under environmental or safety laws. Inspections may include, but are not limited to, reviewing maintenance and repair records; sampling discharges, surface water, groundwater, and material or water in BMPs; and evaluating the condition of BMPs.

If the *owner* or occupant of any property refuses to permit such inspection, the Stormwater Administrator shall proceed to obtain an administrative search warrant pursuant to G.S. 15-27.2 or its successor. No person shall obstruct, hamper or interfere with the Stormwater Administrator while carrying out his or her official duties.

Section 10.515 Performance Security for Installation and Maintenance

a.) Shall Be Required. The City of Graham shall, at its discretion, require the submittal of a performance security or bond with surety, cash escrow, letter of credit or other acceptable legal arrangement prior to issuance of a permit in order to ensure that the *structural BMP*s are

(1) installed by the permit holder as required by the approved stormwater management plan**,** and/or

(2) maintained by the *owner* as required by the operation and maintenance agreement.

b.) Amount

(1) Installation. The amount of an installation performance security shall be 125% of the total estimated construction cost of the BMPs approved under the permit. (*amended 1/5/2016)*

(2) Maintenance. The amount of a maintenance performance security shall be the present value of an annuity of perpetual duration based on a reasonable estimate of the annual cost of inspection, operation and maintenance of the BMPs approved under the permit, at a discount rate that reflects the jurisdiction's cost of borrowing minus a reasonable estimate of long term inflation.

c.) Uses of Performance Security

(1) Forfeiture Provisions. The performance security shall contain forfeiture provisions for failure, after proper notice, to complete work within the time specified, or to initiate or maintain any actions which may be required of the applicant or *owner* in accordance with this ordinance, approvals issued pursuant to this ordinance, or an operation and maintenance agreement established pursuant to this ordinance.

(2) Default. Upon default of the *owner* to construct, maintain, repair and, if necessary, reconstruct any *structural BMP* in accordance with the applicable permit or operation and maintenance

agreement, the Stormwater Administrator shall obtain and use all or any portion of the security to make necessary improvements based on an engineering estimate. Such expenditure of funds shall only be made after requesting the *owner* to comply with the permit or maintenance agreement. In the event of a default triggering the use of installation performance security, the City of Graham shall not return any of the unused deposited cash funds or other security, which shall be retained for maintenance.

(3) Costs in Excess of Performance Security. If City of Graham takes action upon such failure by the applicant or *owner*, the City may collect from the applicant or *owner* the difference between the amount of the reasonable cost of such action and the amount of the security held, in addition to any other penalties or damages due.

(4) Refund. Within sixty days of the final approval, the installation performance security shall be refunded to the applicant or terminated, except any amount attributable to the cost (plus 25%) of landscaping installation and ongoing maintenance associated with the BMPs covered by the security. Any such landscaping shall be inspected one (1) year after installation with replacement for compliance with the approved plans and specifications and, if in compliance, the portion of the financial security attributable to landscaping shall be released.

Section 10.516 Notice to *Owners*

a.) Recorded Deed and Indications on Plat. The applicable operations and maintenance agreement pertaining to every *structural BMP* shall be referenced on the final plat and shall be recorded with the Alamance County Register of Deeds upon final plat approval. If no subdivision plat is recorded for the site, then the operations and maintenance agreement shall be recorded with the Alamance County Register of Deeds so as to appear in the chain of title of all subsequent purchasers under generally accepted searching principles.

b.) Signage. Where appropriate in the determination of the Stormwater Administrator to assure compliance with this ordinance, *structural BMP*s shall be posted with a conspicuous sign stating who is responsible for required maintenance and annual inspection. The sign shall be maintained so as to remain visible and legible.

Section 10.517 Records of Installation and Maintenance Activities

The *owner* of each *structural BMP* shall keep records of inspections, maintenance, and repairs for at least five years from the date of creation of the record and shall submit the same upon reasonable request to the Stormwater Administrator.

Section 10.518 Nuisance

The *owner* of each stormwater BMP, whether *structural* or non-*structural BMP*, shall maintain it so as not to create or result in a nuisance condition.

Section 10.519 Maintenance Easement

Every *structural BMP* installed pursuant to this ordinance shall be made accessible for adequate maintenance and repair by a maintenance easement. This access maintenance easement shall have a minimum width of 20 feet, a maximum slope of 15%, be connected to public right-of-way, be cleared,

and be traversable by construction equipment. The easement shall be recorded and its terms shall specify who may make use of the easement and for what purposes.

DIVISION 5. ENFORCEMENT AND VIOLATIONS

Section 10.520 General

a.) Authority to Enforce. The provisions of this ordinance shall be enforced by the Stormwater Administrator, his or her designee, or any authorized agent of City of Graham. Whenever this section refers to the Stormwater Administrator, it includes his or her designee as well as any authorized agent of City of Graham.

b.) Violation Unlawful. Any failure to comply with an applicable requirement, prohibition, standard, or limitation imposed by this ordinance, or the terms or conditions of any permit or other ***development*** or *redevelopment* approval or authorization granted pursuant to this ordinance, is unlawful and shall constitute a violation of this ordinance.

c.) Each Day a Separate Offense. Each day that a violation continues shall constitute a separate and distinct violation or offense.

d.) Responsible Persons/Entities. Any person who erects, constructs, reconstructs, alters (whether actively or passively), or fails to erect, construct, reconstruct, alter, repair or maintain any structure, BMP, practice, or condition in violation of this ordinance shall be subject to the remedies, penalties, and/or enforcement actions in accordance with this section. Persons subject to the remedies and penalties set forth herein may include any architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that results in or constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists; or an *owner*, any tenant or occupant, or any other person, who has control over, or responsibility for, the use or *development* of the property on which the violation occurs.

For the purposes of this Ordinance, responsible person(s) shall include but not be limited to:

(1) Person Maintaining Condition Resulting In or Constituting Violation. An architect, engineer, builder, contractor, developer, agency, or any other person who participates in, assists, directs, creates, causes, or maintains a condition that constitutes a violation of this ordinance, or fails to take appropriate action, so that a violation of this ordinance results or persists.

(2) Responsibility for Land or Use of Land. The *owner* of the land on which the violation occurs, any tenant or occupant of the property, any person who is responsible for stormwater controls or practices pursuant to a private agreement or public document, or any person, who has control over, or responsibility for, the use, *development* or *redevelopment* of the property.

Section 10.521 Remedies and Penalties

The remedies and penalties provided for violations of this ordinance, whether civil or criminal, shall be cumulative and in addition to any other remedy provided by law, and may be exercised in any order.

a.) Remedies

(1) Withholding of Certificate of Occupancy. The Stormwater Administrator or other authorized agent may refuse to issue a certificate of occupancy for the building or other improvements constructed or being constructed on the site and served by the stormwater practices in question until the applicant or other responsible person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violations described therein.

(2) Disapproval of Subsequent Permits and ***Development*** Approvals. As long as a violation of this ordinance continues and remains uncorrected, the Stormwater Administrator or other authorized agent may withhold, and the Planning Board of the City of Graham may disapprove, any request for permit or *development* approval or authorization provided for by this ordinance or the Planning Board of the City of Graham for the land on which the violation occurs.

(3) Injunction, Abatements, etc. The City Council, may institute an action in a court of competent jurisdiction for a mandatory or prohibitory injunction and order of abatement to correct a violation of this ordinance. Any person violating this ordinance shall be subject to the full range of equitable remedies provided in the General Statutes or at common law.

(4) Correction as Public Health Nuisance, Costs as Lien, etc. If the violation is deemed dangerous or prejudicial to the public health or public safety and is within the geographic limits prescribed by North Carolina G.S. § 160A-193, the Stormwater Administrator, with the authorization of the City Council, may cause the violation to be corrected and the costs to be assessed as a lien against the property.

(5) Stop Work Order. The Stormwater Administrator may issue a stop work order to the person(s) violating this ordinance. The stop work order shall remain in effect until the person has taken the remedial measures set forth in the notice of violation or has otherwise cured the violation or violations described therein. The stop work order may be withdrawn or modified to enable the person to take the necessary remedial measures to cure such violation or violations.

b.) Civil Penalties. Violation of this ordinance may subject the violator to a civil penalty to be recovered in a civil action in the nature of a debt if the violator does not pay the penalty within 30 days after notice of the violation is issued by the Stormwater Administrator. Civil penalties may be assessed up to the full amount of penalty to which the City of Graham is subject for violations of its Phase II Stormwater permit.

c.) Criminal Penalties. Violation of this ordinance may be enforced as a misdemeanor subject to the maximum fine permissible under North Carolina law.

Section 10.522 Procedures

a.) Initiation/Complaint. Whenever a violation of this ordinance occurs, or is alleged to have occurred, any person may file a written complaint. Such complaint shall state fully the alleged violation and the basis thereof, and shall be filed with the Stormwater Administrator, who shall record the complaint. The complaint shall be investigated promptly by the Stormwater Administrator.

b.) Inspection. The Stormwater Administrator, or other authorized personnel, shall have the authority, upon presentation of proper credentials, to enter and inspect any land, building, structure, or premises to ensure compliance with this ordinance.

c.) Notice of Violation and Order to Correct. When the Stormwater Administrator finds that any building, structure, or land is in violation of this ordinance, the Stormwater Administrator shall notify, in writing, the property *owner* or other person violating this ordinance. The notification shall indicate the nature of the violation, contain the address or other description of the site upon which the violation is occurring, order the necessary action to abate the violation, and give a deadline for correcting the violation. If civil penalties are to be assessed, the notice of violation shall also contain a statement of the civil penalties to be assessed, the time of their accrual, and the time within which they must be paid or be subject to collection as a debt.

The Stormwater Administrator may deliver the notice of violation and correction order personally, by the City Police Department, City Planning Department, by certified or registered mail, return receipt requested, or by any means authorized for the service of documents by Rule 4 of the North Carolina Rules of Civil Procedure.

If a violation is not corrected within a reasonable period of time, as provided in the notification, the Stormwater Administrator may take appropriate action under this ordinance to correct and abate the violation and to ensure compliance with this ordinance.

d.) Extension of Time. A person who receives a notice of violation and correction order, or the *owner* of the land on which the violation occurs, may submit to the Stormwater Administrator a written request for an extension of time for correction of the violation. On determining that the request includes enough information to show that the violation cannot be corrected within the specified time limit for reasons beyond the control of the person requesting the extension, the Stormwater Administrator may extend the time limit as is reasonably necessary to allow timely correction of the violation, up to, but not exceeding 30 days. The Stormwater Administrator may grant 15-day extensions in addition to the foregoing extension if the violation cannot be corrected within the permitted time due to circumstances beyond the control of the person violating this ordinance. The Stormwater Administrator may grant an extension only by written notice of extension. The notice of extension shall state the date prior to which correction must be made, after which the violator will be subject to the penalties described in the notice of violation and correction order.

e.) Enforcement After Time to Correct. After the time has expired to correct a violation, including any extension(s) if authorized by the Stormwater Administrator, the Stormwater Administrator shall determine if the violation is corrected. If the violation is not corrected, the Stormwater Administrator may act to impose one or more of the remedies and penalties authorized by this ordinance.

f.) Emergency Enforcement. If delay in correcting a violation would seriously threaten the effective enforcement of this ordinance or pose an immediate danger to the public health, safety, or welfare, then the Stormwater Administrator may order the immediate cessation of a violation. Any person so ordered shall cease any violation immediately. The Stormwater Administrator may seek immediate enforcement, without prior written notice, through any remedy or penalty authorized by this article.

Sections 10.523 – 10.550 Reserved

DIVISION 6: ILLICIT DISCHARGE DETECTION AND ELIMINATION ORDINANCE

Section 10.551 Title

This ordinance shall be officially known as "The Phase II Stormwater Illicit Discharge Detection and Elimination Ordinance." It is referred to herein as "this ordinance."

Section 10.552 Authority

The City of Graham is authorized to adopt this ordinance pursuant to North Carolina law, including but not limited to Article 14, Section 5 of the Constitution of North Carolina; North Carolina General Statutes 143-214.7 and rules promulgated by the Environmental Management Commission there under; Session Law 2004-163; Chapter 160A, §§ 174, 185.

Section 10.553 Purpose

The purpose of this ordinance is to provide for the health, safety, and general welfare of the citizens of the City of Graham through the regulation of non-storm water discharges to the storm drainage system to the maximum extent practicable as required by federal and state law. This ordinance establishes methods for controlling the introduction of pollutants into the municipal separate storm sewer system (MS4) in order to comply with requirements of the National Pollutant Discharge Elimination System (NPDES) permit process. The objectives of this ordinance are:

(1) To regulate the contribution of pollutants to the municipal separate storm sewer system (MS4) by stormwater discharges by any user

(2) To prohibit Illicit Connections and Discharges to the municipal separate storm sewer system

(3) To establish legal authority to carry out all inspection, surveillance and monitoring procedures necessary to ensure compliance with this ordinance

Section 10.554 Definitions

For the purposes of this ordinance, the following shall mean:

Best Management Practices (BMPs): schedules of activities, prohibitions of practices, general good housekeeping practices, pollution prevention and educational practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants directly or indirectly to stormwater, receiving waters, or stormwater conveyance systems. BMPs also include treatment

practices, operating procedures, and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from raw materials storage.

Clean Water Act: The federal Water Pollution Control Act (33 U.S.C. § 1251 et seq.), and any subsequent amendments thereto.

Hazardous Materials: Any material, including any substance, waste, or combination thereof, which because of its quantity, concentration, or physical, chemical, or infectious characteristics may cause, or significantly contribute to, a substantial present or potential hazard to human health, safety, property, or the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

Illegal Discharge: Any direct or indirect non-storm water discharge to the storm drain system, except as exempted in Section 10-419 of this ordinance.

Illicit Connections: An illicit connection is defined as either of the following:

Any drain or conveyance, whether on the surface or subsurface, which allows an illegal discharge to enter the storm drain system including but not limited to any conveyances which allow any non-storm water discharge including sewage, process wastewater, and wash water to enter the storm drain system and any connections to the storm drain system from indoor drains and sinks, regardless of whether said drain or connection had been previously allowed, permitted, or approved by an authorized enforcement agency or,

Any drain or conveyance connected from a commercial or industrial land use to the storm drain system which has not been documented in plans, maps, or equivalent records and approved by an authorized enforcement agency.

Industrial Activity: Activities subject to NPDES Industrial Permits as defined in 40 CFR, Section 122.26 (b)(14).

Municipal Separate Storm Sewer System (MS4): Pursuant to 40 CFR 122.26(b)(8) means a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, inlets, piped storm drains, pumping facilities, retention and detention basins, natural and human-made or altered drainage channels, reservoirs, and other drainage structures or storm drains):

(i) Owned or operated by a city, town, county, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, that discharges to waters of the United States or waters of the State.

(ii) Designed or used for collecting or conveying stormwater;

(iii) Which is not a combined sewer; and

(iv) Which is not part of a Publicly Owned Treatment Works (POTW) as defined in 40 CFR 122.2

National Pollutant Discharge Elimination System (NPDES) Storm Water Discharge Permit: means a permit issued by the North Carolina Department of Environment and Natural Resources, Division of

Water Quality that authorizes the discharge of pollutants to waters of the State, whether the permit is applicable on an individual, group, or general area-wide basis.

Non-Storm Water Discharge: Any discharge to the storm drain system that is not composed entirely of storm water.

Person: means any individual, association, organization, partnership, firm, corporation or other entity recognized by law and acting as either the owner or as the owner's agent.

Pollutant: Anything which causes or contributes to pollution. Pollutants may include, but are not limited to: paints, varnishes, and solvents; oil and other automotive fluids; non-hazardous liquid and solid wastes and yard wastes; refuse, rubbish, garbage, litter, or other discarded or abandoned objects, ordinances, and accumulations, so that same may cause or contribute to pollution; floatables; pesticides, herbicides, and fertilizers; hazardous substances and wastes; sewage, fecal coli form and pathogens; dissolved and particulate metals; animal wastes; wastes and residues that result from constructing a building or structure; and noxious or offensive matter of any kind.

Premises: Any building, lot, parcel of land, or portion of land whether improved or unimproved including adjacent sidewalks and parking strips.

Storm Water: Any surface flow, runoff, and drainage consisting entirely of water from any form of natural precipitation, and resulting from such precipitation.

Stormwater Administrator: Unless otherwise designated by the Graham City Council, the Stormwater Administrator shall be the City Manager or his/her designee. The Stormwater Administrator shall administer and enforce this ordinance.

Stormwater Pollution Prevention Plan: A document which describes the Best Management Practices and activities to be implemented by a person or business to identify sources of pollution or contamination at a site and the actions to eliminate or reduce pollutant discharges to Stormwater, Stormwater Conveyance Systems, and/or Receiving Waters to the Maximum Extent Practicable.

Wastewater: means any water or other liquid, other than uncontaminated storm water, discharged from a facility.

Section 10.555 Illicit Discharges and Connections

(a) Illicit Discharges. No person shall cause or allow the discharge, emission, disposal, pouring, or pumping directly or indirectly to any stormwater conveyance, the waters of the State, or upon the land in manner and amount that the substance is likely to reach a stormwater conveyance or the waters of the State, any liquid, solid, gas, or other substance, other than stormwater; provided that non-stormwater discharges associated with the following activities are allowed and provided that they do not significantly impact water quality:

(1) Water line flushing;

(2) Landscape irrigation;

(3) Diverted stream flows;

(4) Rising ground waters;

(5) Uncontaminated ground water infiltration (as defined at 40 CFR 35.2005(20));

(6) Uncontaminated pumped ground water;

(7) Discharges from potable water sources;

(8) Foundation drains;

(9) Air conditioning condensation;

(10) Irrigation water;

(11) Flows from emergency firefighting;

(12) Springs;

(13) Water from crawl space pumps;

(14) Footing drains;

(15) Lawn watering;

(16) Individual residential car washing;

(17) Flows from riparian habitats and wetlands;

(18) Dechlorinated swimming pool discharges;

(19) Street wash water; and

(20) Other non-stormwater discharges for which a valid NPDES discharge permit has been approved and issued by the State of North Carolina, and provided that any such discharges to the municipal separate storm sewer system shall be authorized by The City of Graham.

Prohibited substances include but are not limited to: oil, anti-freeze, chemicals, animal waste, paints, garbage, and litter.

(b) Illicit Connections

(1) Connections to a stormwater conveyance or stormwater conveyance system that allow the discharge of non-stormwater, other than the exclusions described in section (a) above, are unlawful. Prohibited connections include, but are not limited to: floor drains, waste water from washing machines or sanitary sewers, wash water from commercial vehicle washing or steam cleaning, and waste water from septic systems.

(2) Where such connections exist in violation of this section and said connections were made prior to the adoption of this provision or any other ordinance prohibiting such connections, the property *owner* or the person using said connection shall remove the connection within one

year following the effective date of this ordinance. However, the one-year grace period shall not apply to connections which may result in the discharge of hazardous materials or other discharges which pose an immediate threat to health and safety, or are likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat.

(3) Where it is determined that said connection:

i. May result in the discharge of hazardous materials or may pose an immediate threat to health and safety, or is likely to result in immediate injury and harm to real or personal property, natural resources, wildlife, or habitat, or

ii. Was made in violation of any applicable regulation or ordinance, other than this section;

The Stormwater Administrator shall designate the time within which the connection shall be removed. In setting the time limit for compliance, the Stormwater Administrator shall take into consideration:

i. The quantity and complexity of the work,

ii. The consequences of delay,

iii. The potential harm to the environment, to the public health, and to public and private property, and

iv. The cost of remedying the damage.

(c) Spills. Spills or leaks of polluting substances released, discharged to, or having the potential to be released or discharged to the stormwater conveyance system, shall be contained, controlled, collected, and properly disposed. All affected areas shall be restored to their pre-existing condition.

Persons in control of the polluting substances immediately prior to their release or discharge, and persons owning the property on which the substances were released or discharged, shall immediately notify the Graham Fire Department of the release or discharge, as well as making any required notifications under state and federal law. Notification shall not relieve any person of any expenses related to the restoration, loss, damage, or any other liability which may be incurred as a result of said spill or leak, nor shall such notification relieve any person from other liability which may be imposed by State or other law.

(d) Industrial or Construction Activity Discharges. Any person subject to an industrial or construction activity NPDES storm water discharge permit shall comply with all provisions of such permit. Proof of compliance with said permit may be required in a form acceptable to the City of Graham prior to the allowing of discharges to the MS4.

Section 10.556 Right of entry

(a) Authority to Inspect. Whenever necessary to make an inspection to enforce any provision of this Ordinance, or whenever the Stormwater Administrator has cause to believe that there exists, or potentially exists, in or upon any premises any condition which constitutes a violation of this Ordinance, the Stormwater Administrator may enter such premises at all reasonable times to

inspect the same and to inspect and copy records related to storm water compliance. In the event the owner or occupant refuses entry after a request to enter and inspect has been made, the City is hereby empowered to seek assistance from any court of competent jurisdiction in obtaining such entry.

(b) Authority to Sample, Establish Sampling Devices, and Test. During any inspection as provided herein, the Stormwater Administrator may take any samples and perform any testing deemed necessary to aid in the pursuit of the inquiry or to record site activities.

Section 10.557 Enforcement

(a) Notice of Violation. Whenever the Stormwater Administrator finds that a person has violated a prohibition or failed to meet a requirement of this Ordinance, the Stormwater Administrator may order compliance by written notice of violation to the responsible person. Such notice may require without limitation:

(1) The performance of monitoring, analyses, and reporting;

(2) The elimination of illicit connections or discharges;

(3) That violating discharges, practices, or operations shall cease and desist;

(4) The abatement or remediation of storm water pollution or contamination hazards and the restoration of any affected property; and

(5) Payment of a fine to cover administrative and remediation costs; and

(6) The implementation of source control or treatment BMPs.

If abatement of a violation and/or restoration of affected property is required, the notice shall set forth a deadline within which such remediation or restoration must be completed. Said notice shall further advise that, should the violator fail to remediate or restore within the established deadline, the work will be done by the City or a contractor designated by the Stormwater Administrator and the expense thereof shall be charged to the violator.

The Stormwater Administrator may exercise any enforcement measure included in Division 5 of this Article.

(b) Violations Deemed a Public Nuisance. Illicit discharges and illicit connections which exist within the Graham City Limits and Extra-territorial Jurisdiction are hereby found, deemed, and declared to be dangerous or prejudiced to the public health or public safety and are found, deemed, and declared to be public nuisances and may be summarily abated or restored by the City at the violator's expense, and/or a civil action to abate, enjoin, or otherwise compel the cessation of such nuisance may be taken by the City.

Sections 10.558-10.569 Reserved

ARTICLE XIII. RIPARIAN BUFFER PROTECTION ORDINANCE

Section 10.570 Authority

This Ordinance is adopted pursuant to the authority vested in the City of Graham by the Session Laws and the General Statutes of North Carolina, particularly Session Law 2009-216 (House Bill 239), Session Law 2009-484 (Senate Bill 838), N.C Gen. Stat §153A-121, 153A-140, Chapter 153A, Article 18, N.C. Gen. Stat §160A-174, 160A-193, Chapter 160A, Article 19, and any special legislation enacted by the General Assembly for the City of Graham.

Section 10.571 Purpose and Intent

The purposes of the City of Graham in adopting the following Ordinance is to protect and preserve existing riparian buffers throughout the Jordan Watershed as generally described in Rule 15A NCAC 02B .0262 (Jordan Water Supply Nutrient Strategy: Purpose and Scope), in order to maintain their nutrient removal and stream protection functions. Additionally this Ordinance will help protect the water supply uses of Jordan Reservoir and of designated water supplies throughout the Jordan watershed.

Buffers adjacent to streams provide multiple environmental protection and resource management benefits. Forested buffers enhance and protect the natural ecology of stream systems, as well as water quality through bank stabilization, shading, and nutrient removal. They also help to minimize flood damage in flood prone areas. Well-vegetated streamside riparian areas help to remove nitrogen and prevent sediment and sediment-bound pollutants such as phosphorous from reaching the streams.

Section 10.572 Title

This Ordinance shall be known as the *City of Graham Riparian Buffer Protection Ordinance*.

Section 10.573 Jurisdiction

This Ordinance shall be applied to all land in the planning jurisdiction of the City of Graham.

Section 10.574 Applicability

This Ordinance applies to all landowners and other persons conducting activities in the area described in Section 10.573, with the exception of activities conducted under the authority of the State, the United States, multiple jurisdictions, or local units of government, and forest harvesting and agricultural activities. The NC Division of Water Quality shall administer the requirements of Rule 15A NCAC 02B .0267 and .0268 (Jordan Water Supply Nutrient Strategy: Protection of Existing Riparian Buffers and Mitigation of Existing Riparian Buffers, respectively) for these activities.

Section 10.575 Relation to Other Ordinances

The requirements of this Ordinance shall supersede all locally implemented buffer requirements stated in Rules 15A NCAC 02B .0214 through .0216 as applied to WS-II, WS-III, and WS-IV waters in the Jordan watershed. If the provisions of this ordinance otherwise conflict with the provisions of any other validly enforceable ordinance(s) or laws, the most stringent provisions shall control. This Ordinance is not intended to interfere with, abrogate, or annul any other ordinance, rule, regulation, or other provision of law.

Section 10.576 Riparian Area Protection within the Jordan Reservoir Watershed

A. Buffers Protected

The following minimum criteria shall be used for identifying regulated buffers:

1. This Ordinance shall apply to activities conducted within, or outside of with hydrologic impacts in violation of the diffuse flow requirements set out in Section 10.576(E) upon, 50-foot wide riparian buffers directly adjacent to surface waters in the Jordan watershed (intermittent streams, perennial streams, lakes, reservoirs and ponds), excluding wetlands.

2. Wetlands adjacent to surface waters or within 50 feet of surface waters shall be considered as part of the riparian buffer but are regulated pursuant to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

3. For the purpose of this Ordinance: a surface water is defined as being present if the feature is approximately shown on any of the following:

    a. The most recent version of the soil survey map prepared by the Natural Resources Conservation Service of the United States Department of Agriculture.

    b. The most recent version of the 1:24,000 scale (7.5 minute) quadrangle topographic maps prepared by the United States Geologic Survey (USGS).

    c. A map approved by the Geographic Information Coordinating Council and by the NC Environmental Management Commission. Prior to approving a map under this Item, the Commission shall provide a 30-day public notice and opportunity for comment. Alternative maps approved by the Commission shall not be used for buffer delineation on projects that are existing and ongoing within the meaning of Section 10.576.(C) of this Ordinance.

4. Where the specific origination point of a stream regulated under this Item is in question, upon request of the NC Division of Water Quality or another party, the City of Graham shall make an on-site determination. A City of Graham representative who has successfully completed the Division's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall establish that point using the latest version of the Division publication, *Identification Methods for the Origins of Intermittent and Perennial Streams,* available at h2o.enr.state.nc.us/ncwetlands/documents/NC_Stream_ID_Manual.pdf or from the NC Division of Water Quality - 401 Oversight Express Permitting Unit, or its successor. The City of Graham may accept the results of a site assessment made by another party who meets these criteria. Any disputes over on-site determinations made according to this Item shall be referred to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. The Director's determination is subject to review as provided in Articles 3 and 4 of G.S. 150B.

5. Riparian buffers protected by this Ordinance shall be measured pursuant to Section 10.576.(D) of this Ordinance.

6. Parties subject to this Ordinance shall abide by all State rules and laws regarding waters of the state including but not limited to Rules 15A NCAC 2B .0230 and .0231, Rules 15A NCAC 2H .0500, 15A NCAC 2H .1300, and Sections 401 and 404 of the Federal Water Pollution Control Act.

7. No new clearing, grading, or development shall take place nor shall any new building permits be issued in violation of this Ordinance.

B. Exemption Based on On–site Determination

When a landowner or other affected party including the Division believes that the maps have inaccurately depicted surface waters, he or she shall consult the City of Graham. Upon request, a City of Graham representative who has successfully completed the Division of Water Quality's *Surface Water Identification Training Certification* course, its successor, or other equivalent training curriculum approved by the Division, shall make an on-site determination. The City of Graham may also accept the results of site assessments made by other parties who have successfully completed such training. Any disputes over on-site determinations shall be referred to the Director of the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor, in writing. A determination of the Director as to the accuracy or application of the maps is subject to review as provided in Articles 3 and 4 of G.S. 150B. Surface waters that appear on the maps shall not be subject to these buffer requirements if a site evaluation reveals any of the following cases:

1. Man-made ponds and lakes that are not part of a natural drainage way that is classified in accordance with 15A NCAC 2B .0100, including ponds and lakes created for animal watering, irrigation, or other agricultural uses. (A pond or lake is part of a natural drainage way when it is fed by an intermittent or perennial stream or when it has a direct discharge point to an intermittent or perennial stream.)

2. Ephemeral streams.

3. The absence on the ground of a corresponding intermittent or perennial stream, lake, reservoir, or pond.

4. Ditches or other man-made water conveyances, other than modified natural streams.

C. Exemption when Existing Uses are Present and Ongoing

This Ordinance shall not apply to uses that are existing and ongoing; however, this Ordinance shall apply at the time an existing, ongoing use is changed to another use. Change of use shall involve the initiation of any activity that does not meet either of the following criteria for existing, ongoing activity:

1. It was present within the riparian buffer as of the effective date of this Ordinance and has continued to exist since that time. Existing uses shall include agriculture, buildings, industrial facilities, commercial areas, transportation facilities, maintained lawns, utility lines and on-site sanitary sewage systems, any of which involve either specific, periodic management of vegetation or displacement of vegetation by structures or regular activity. Only the portion of the riparian buffer occupied by the footprint of the existing use is exempt from this Ordinance. Change of ownership through purchase or inheritance is not a change of use. Activities necessary to maintain uses are allowed provided that the site remains similarly vegetated, no

impervious surface is added within 50 feet of the surface water where it did not previously exist as of the effective date of this Ordinance, and existing diffuse flow is maintained. Grading and revegetating Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised, the ground is stabilized and existing diffuse flow is maintained.

2. Projects or proposed developments that are determined by the City of Graham to meet at least one of the following criteria:

    a. Project requires a 401 Certification/404 Permit and these were issued prior to the effective date this Ordinance, and prior to the effective date of this Ordinance.

    b. Projects that require a state permit, such as landfills, NPDES wastewater discharges, land application of residuals and road construction activities, have begun construction or are under contract to begin construction and had received all required state permits and certifications prior to the effective date of this Ordinance;

    c. Projects that are being reviewed through the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor and that have reached agreement with DENR on avoidance and minimization by the effective date of this Ordinance; or

    d. Projects that are not required to be reviewed by the Clean Water Act Section 404/National Environmental Policy Act Merger 01 Process (published by the US Army Corps of Engineers and Federal Highway Administration, 2003) or its immediate successor if a Finding of No Significant Impact has been issued for the project and the project has the written approval of the City of Graham prior to the effective date of this Ordinance.

    e. Projects that have a vested right per North Carolina General Statutes § 160A-385.1.

D. Zones of the Riparian Buffer

The protected riparian buffer shall have two zones as follows:

1. Zone One shall consist of a vegetated area that is undisturbed except for uses provided for in the Table of Uses, Section 10.577.(B) of this Ordinance. The location of Zone One shall be as follows:

    a. For intermittent and perennial streams, Zone One shall begin at the top of the bank and extend landward a distance of 30 feet on all sides of the surface water, measured horizontally on a line perpendicular to a vertical line marking the top of the bank.

    b. For ponds, lakes and reservoirs located within a natural drainage way, Zone One shall begin at the normal water level and extend landward a distance of 30 feet, measured horizontally on a line perpendicular to a vertical line marking the normal water level.

2. Zone Two shall consist of a stable, vegetated area that is undisturbed except for uses provided for in the Table of Uses, Section 10.577(B) of this Ordinance. Grading and revegetating in Zone Two is allowed provided that the health of the vegetation in Zone One is not compromised.

Zone Two shall begin at the outer edge of Zone One and extend landward 20 feet as measured horizontally on a line perpendicular to the surface water. The combined width of Zones One and Two shall be 50 feet on all sides of the surface water.

E. Diffuse Flow Requirements

Diffuse flow of runoff shall be maintained in the riparian buffer by dispersing concentrated flow prior to its entry into the buffer and reestablishing vegetation as follows:

1. Concentrated runoff from new ditches or man-made conveyances shall be converted to diffuse flow at non-erosive velocities before the runoff enters Zone Two of the riparian buffer;

2. Periodic corrective action to restore diffuse flow shall be taken as necessary and shall be designed to impede the formation of erosion gullies; and

3. As set out in Sections 7.(D) and 8.(B) of this Ordinance, The Zones of the Riparian Buffer and Table of Uses respectively, no new stormwater conveyances are allowed through the buffers except for those specified in the Table of Uses, Section 10.577(B) of this Ordinance, addressing stormwater management ponds, drainage ditches, roadside ditches, and stormwater conveyances.

Section 10.577 Potential Uses and Associated Requirements

A. Approval for New Development

City of Graham shall issue an approval for new development only if the development application proposes to avoid impacts to riparian buffers defined in Section 10.576(A) of this Ordinance, or where the application proposes to impact such buffers, it demonstrates that the applicant has done the following, as applicable:

1. Determined the activity is exempt from requirements of this Ordinance;

2. Received an Authorization Certificate from the City of Graham pursuant to Section 10.578A of this Ordinance;

3. For uses designated as Allowable with Mitigation in the Table of Uses in Section 10.577.(B), received approval of mitigation plan pursuant to Section 10.578.(C) of this Ordinance; and

4. Received a variance pursuant to Section 10.578.(B).

B. Table of Uses

The following chart sets out potential new uses within the buffer, or outside the buffer with impacts on the buffer, and categorizes them as exempt, allowable, or allowable with mitigation. All uses not categorized as exempt, allowable, or allowable with mitigation are considered prohibited and may not proceed within the riparian buffer or outside the buffer if the use would impact the buffer, unless a variance is granted pursuant to Section 10.578(C) of this Ordinance, Variances. The requirements for each category are given in Section 10.577(C) of this Section following the Table of Uses.

*To qualify for the designation indicated in the column header, an activity must adhere to the limitations defined for it in a given listing as well as the requirements established in Section 10.577(C) of this Ordinance.

Use	Exempt*	Allowable*	Allowable with Mitigation*
Access trails: Pedestrian access trails leading to the surface water, docks, fishing piers, boat ramps and other water dependent activities:			
• Pedestrian access trails that are restricted to the minimum width practicable and do not exceed 4 feet in width of buffer disturbance, and provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the riparian buffer	X		
• Pedestrian access trails that exceed 4 feet in width of buffer disturbance, the installation or use results in removal of trees as defined in this Ordinance or impervious surface is added to the riparian buffer		X	
Airport facilities:			
• Airport facilities that impact equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X	
• Airport facilities that impact greater than 150 linear feet or one-third of an acre of riparian buffer			X
• Activities necessary to comply with FAA requirements (e.g. radar uses or landing strips)[1]		X	
Archaeological activities	X		
Bridges		X	
Canoe Access provided that installation and use does not result in removal of trees as defined in this Ordinance and no impervious surface is added to the buffer.	X		
Dam maintenance activities:			
• Dam maintenance activities that do not cause additional buffer disturbance beyond the footprint of the existing dam or those covered under the U.S. Army Corps of Engineers Nationwide Permit No. 3	X		
• Dam maintenance activities that do cause additional buffer disturbance beyond the footprint of the existing dam or those not covered under the U.S. Army Corps of Engineers Nationwide Permit No.3		X	
Drainage ditches, roadside ditches and stormwater conveyances through riparian buffers:			
• New stormwater flows to existing drainage ditches, roadside ditches, and stormwater conveyances provided flows do not alter or result in the need to alter the conveyance and are managed to minimize the sediment, nutrients and other pollution that convey to waterbodies.	X		

Use	Exempt*	Allowable*	Allowable with Mitigation*
• Realignment of existing roadside drainage ditches retaining the design dimensions, provided that no additional travel lanes are added and the minimum required roadway typical section is used based on traffic and safety considerations.		X	
• New or altered drainage ditches, roadside ditches and stormwater outfalls provided that a stormwater management facility is installed to control nutrients and attenuate flow before the conveyance discharges through the riparian buffer		X	
• New drainage ditches, roadside ditches and stormwater conveyances applicable to linear projects that do not provide a stormwater management facility due to topography constraints provided that other practicable BMPs are employed.			X
Driveway crossings of streams and other surface waters subject to this Ordinance:			
• Driveway crossings on single family residential lots that disturb equal to or less than 25 linear feet or 2,500 square feet of riparian buffer	X		
• Driveway crossings on single family residential lots that disturb greater than 25 linear feet or 2,500 square feet of riparian buffer		X	
• In a subdivision that cumulatively disturb equal to or less than 150 linear feet or one-third of an acre of riparian buffer		X	
• In a subdivision that cumulatively disturb greater than 150 linear feet or one-third of an acre of riparian buffer			X
Driveway impacts other than crossing of a stream or other surface waters subject to this Ordinance			X
Fences:			
• Fences provided that disturbance is minimized and installation does not result in removal of trees as defined in this Ordinance	X		
• Fences provided that disturbance is minimized and installation results in removal of trees as defined in this Ordinance		X	
Fertilizer application: one-time application to establish vegetation	X		
Grading and revegetation in Zone Two provided that diffuse flow and the health of existing vegetation in Zone One is not compromised and disturbed areas are stabilized until they are revegetated.	X		
Greenway / hiking trails designed, constructed and maintained to maximize nutrient removal and erosion protection, minimize adverse effects on aquatic life and habitat, and protect water quality to the maximum extent practical.		X	
Historic preservation	X		

Use	Exempt*	Allowable*	Allowable with Mitigation*
Maintenance access on modified natural streams: a grassed travel way on one side of the water body when less impacting alternatives are not practical. The width and specifications of the travel way shall be only that needed for equipment access and operation. The travel way shall be located to maximize stream shading.		X	
Mining activities: • Mining activities that are covered by the Mining Act provided that new riparian buffers that meet the requirements of Sections 7.(D) and 7.(E) of this Ordinance are established adjacent to the relocated channels • Mining activities that are not covered by the Mining Act OR where new riparian buffers that meet the requirements of Sections 7.(D) and 7.(E) of this Ordinance are not established adjacent to the relocated channels • Wastewater or mining dewatering wells with approved NPDES permit	 X	X 	 X
Piping of a stream allowed under a permit issued by the United States Army Corps of Engineers		X	
Playground equipment: • Playground equipment on single family lots provided that installation and use does not result in removal of vegetation • Playground equipment installed on lands other than single-family lots or that requires removal of vegetation	 X 	 X	
Ponds created by impounding streams and not used as stormwater BMPs: • New ponds provided that a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is established adjacent to the pond • New ponds where a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is NOT established adjacent to the pond		 X 	 X
Protection of existing structures, facilities and stream banks when this requires additional disturbance of the riparian buffer or the stream channel		X	
Railroad impacts other than crossings of streams and other surface waters subject to this Ordinance.			X
Railroad crossings of streams and other surface waters subject to this Ordinance: • Railroad crossings that impact equal to or less than 40 linear feet of riparian buffer • Railroad crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Railroad crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer	 X 	 X 	 X

Use	Exempt*	Allowable*	Allowable with Mitigation*
Recreational and accessory structures in Zone Two: • Sheds and gazebos in Zone Two, provided they are not prohibited under local water supply ordinance: o Total footprint less than or equal to 150 square feet per lot. o Total footprint greater than 150 square feet per lot. • Wooden slatted decks and associated steps, provided the use meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance: o Deck at least eight feet in height and no vegetation removed from Zone One. o Deck less than eight feet in height or vegetation removed from Zone One.		X X	 X X
Removal of previous fill or debris provided that diffuse flow is maintained and vegetation is restored	X		
Road impacts other than crossings of streams and other surface waters subject to this Ordinance			X
Road crossings of streams and other surface waters subject to this Ordinance: • Road crossings that impact equal to or less than 40 linear feet of riparian buffer • Road crossings that impact greater than 40 linear feet but equal to or less than 150 linear feet or one-third of an acre of riparian buffer • Road crossings that impact greater than 150 linear feet or one-third of an acre of riparian buffer	 X	 X	 X
Road relocation: Relocation of existing private access roads associated with public road projects where necessary for public safety: • Less than or equal to 2,500 square feet of buffer impact • Greater than 2,500 square feet of buffer impact		 X	 X
Stormwater BMPs: • Wet detention, bioretention, and constructed wetlands in Zone Two if diffuse flow of discharge is provided into Zone One • Wet detention, bioretention, and constructed wetlands in Zone One		 X	 X
Scientific studies and stream gauging	X		
Streambank or shoreline stabilization		X	
Temporary roads, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation: At the end of five years the restored buffer shall comply with the restoration criteria in Section 10.578(C)(7) of this Ordinance: • Less than or equal to 2,500 square feet of buffer disturbance • Greater than 2,500 square feet of buffer disturbance	 X	 X	

Use	Exempt*	Allowable*	Allowable with Mitigation*
• Associated with culvert installation or bridge construction or replacement.		X	
Temporary sediment and erosion control devices, provided that the disturbed area is restored to pre-construction topographic and hydrologic conditions immediately after construction is complete and replanted immediately with comparable vegetation, except that tree planting may occur during the dormant season. A one-time application of fertilizer may be used to establish vegetation. At the end of five years the restored buffer shall comply with the restoration criteria in Section 10.578.(C)(7) of this Ordinance:			
• In Zone Two provided ground cover is established within timeframes required by the Sedimentation and Erosion Control Act, vegetation in Zone One is not compromised, and runoff is released as diffuse flow in accordance with Section 10.576.(E) of this Ordinance.	X		
• In Zones one and two to control impacts associated with uses approved by the City of Graham or that have received a variance, provided that sediment and erosion control for upland areas is addressed, to the maximum extent practical, outside the buffer.		X	
• In-stream temporary erosion and sediment control measures for work within a stream channel that is authorized under Sections 401 and 404 of the Federal Water Pollution Control Act.	X		
• In-stream temporary erosion and sediment control measures for work within a stream channel.		X	
Utility, electric, aerial, perpendicular crossings of streams and other surface waters subject to this Ordinance[2,3,5]:			
• Disturb equal to or less than 150 linear feet of riparian buffer	X		
• Disturb greater than 150 linear feet of riparian buffer		X	
Utility, electric, aerial, other than perpendicular crossings[5]:			
• Impacts in Zone Two		X	
• Impacts in Zone One[2,3]:			X
Utility, electric, underground, perpendicular crossings[3,4,5]:			
• Disturb less than or equal to 40 linear feet of riparian buffer	X		
• Disturb greater than 40 linear feet of riparian buffer		X	
Utility, electric, underground, other than perpendicular crossings[4]:			
• Impacts in Zone Two	X		
• Impacts in Zone One1:	X		

Use	Exempt*	Allowable*	Allowable with Mitigation*
Utility, non-electric, perpendicular crossings of streams and other surface waters subject to this Ordinance[3,5]:			
• Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width	X		
• Disturb equal to or less than 40 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width		X	
• Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor equal to or less than 10 feet in width		X	
• Disturb greater than 40 linear feet but equal to or less than 150 linear feet of riparian buffer with a maintenance corridor greater than 10 feet in width			X
• Disturb greater than 150 linear feet of riparian buffer			X
Utility, non-electric, other than perpendicular crossings[4,5]:			
• Impacts in Zone Two	X		
• Impacts in Zone One			X
Vegetation management:			
• Emergency fire control measures provided that topography is restored	X		
• Mowing or harvesting of plant products in Zone Two	X		
• Planting vegetation to enhance the riparian buffer	X		
• Pruning forest vegetation provided that the health and function of the forest vegetation is not compromised	X		
• Removal of individual trees that are in danger of causing damage to dwellings, other structures or human life, or are imminently endangering stability of the streambank.	X		
• Removal of individual trees which are dead, diseased or damaged.	X		
• Removal of poison ivy	X		
• Removal of invasive exotic vegetation as defined in: *Smith, Cherri L. 1998. Exotic Plant Guidelines. Dept. of Environment and Natural Resources. Division of Parks and Recreation. Raleigh, NC. Guideline #30*	X		
Vehicular access roads leading to water-dependent structures as defined in 15A NCAC 02B .0202, provided they do not cross the surface water and have minimum practicable width not exceeding ten feet.		X	
Water dependent structures as defined in 15A NCAC 02B .0202 where installation and use result in disturbance to riparian buffers.		X	
Water supply reservoirs:			
• New reservoirs where a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is established adjacent to the reservoir		X	
• New reservoirs where a riparian buffer that meets the requirements of Sections 7.(D) and 7.(E) of this Ordinance is not established adjacent to the reservoir			X

Use	Exempt*	Allowable*	Allowable with Mitigation*
Water wells • Single family residential water wells • All other water wells	 X 	 X	
Wetland, stream and buffer restoration that results in impacts to the riparian buffers: • Wetland, stream and buffer restoration that requires NC Division of Water Quality approval for the use of a 401 Water Quality Certification • Wetland, stream and buffer restoration that does not require Division of Water Quality approval for the use of a 401 Water Quality Certification	 X 	 X	
Wildlife passage structures		X	

[1]Provided that:

- No heavy equipment is used in Zone One.
- Vegetation in undisturbed portions of the buffer is not compromised.
- Felled trees are removed by chain.
- No permanent felling of trees occurs in protected buffers or streams.
- Stumps are removed only by grinding.
- At the completion of the project the disturbed area is stabilized with native vegetation.
- Zones one and two meet the requirements of Sections 7.(D) and 7.(E)

[2]Provided that, in Zone One, all of the following BMPs for overhead utility lines are used. If all of these BMPs are not used, then the overhead utility lines shall require a no practical alternative evaluation by the City of Graham, as defined in Section 10.578(A).

- A minimum zone of 10 feet wide immediately adjacent to the water body shall be managed such that only vegetation that poses a hazard or has the potential to grow tall enough to interfere with the line is removed.
- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain where trees are cut.
- Riprap shall not be used unless it is necessary to stabilize a tower.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Active measures shall be taken after construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[3]Provided that poles or aerial infrastructure shall not be installed within 10 feet of a water body unless the City of Graham completes a no practical alternative evaluation as defined in Section 10.578.(A).

[4]Provided that, in Zone One, all of the following BMPs for underground utility lines are used. If all of these BMPs are not used, then the underground utility line shall require a no practical alternative evaluation by the City of Graham, as defined in Section 10.578.(A).

- Woody vegetation shall be cleared by hand. No land grubbing or grading is allowed.
- Vegetative root systems shall be left intact to maintain the integrity of the soil. Stumps shall remain, except in the trench where trees are cut.
- Underground cables shall be installed by vibratory plow or trenching.
- The trench shall be backfilled with the excavated soil material immediately following cable installation.
- No fertilizer shall be used other than a one-time application to re-establish vegetation.
- Construction activities shall minimize the removal of woody vegetation, the extent of the disturbed area, and the time in which areas remain in a disturbed state.
- Measures shall be taken upon completion of construction and during routine maintenance to ensure diffuse flow of stormwater through the buffer.
- In wetlands, mats shall be utilized to minimize soil disturbance.

[5]Perpendicular crossings are those that intersect the surface water at an angle between 75 degrees and 105 degrees.

C. Requirements for Categories of Uses

Uses designated in Section 10.577.(B) of this Section as exempt, allowable, and allowable with mitigation within a riparian buffer shall have the following requirements:

1. Exempt. Uses designated as exempt are permissible without authorization by the City of Graham provided that they adhere to the limitations of the activity as defined in Section 10.577.(B) of this Section, the Table of Uses. In addition, exempt uses shall be designed, constructed and maintained to minimize soil disturbance and to provide the maximum water quality protection practicable, including construction, monitoring, and maintenance activities.

2. Allowable. Uses designated as allowable may proceed provided that there are no practical alternatives to the requested use pursuant to Section 10.578.(A) of this Section. This includes construction, monitoring, and maintenance activities. These uses require written authorization from the City of Graham.

3. Allowable with Mitigation. Uses designated as allowable with mitigation may proceed provided that there are no practical alternatives to the requested use pursuant to Section 10.578(A) of this Section and an appropriate mitigation strategy has been approved pursuant to Section 10.578.(C). These uses require written authorization from the City of Graham.

Section 10.578 Permits Procedures, Requirements, and Approvals

A. Determination of No Practical Alternatives / Request for Authorization Certificate

1. Persons who wish to undertake uses designated as allowable or allowable with mitigation shall submit a request for a “no practical alternatives” determination to the City of Graham. The applicant shall certify that the project meets all the following criteria for finding “no practical alternatives”:

a. The basic project purpose cannot be practically accomplished in a manner that would better minimize disturbance, preserve aquatic life and habitat, and protect water quality;

b. The use cannot practically be reduced in size or density, reconfigured or redesigned to better minimize disturbance, preserve aquatic life and habitat, and protect water quality; and

c. Best management practices shall be used if necessary to minimize disturbance, preserve aquatic life and habitat, and protect water quality.

2. The applicant shall also submit at least the following information in support of their assertion of "no practical alternatives":

   a. The name, address and phone number of the applicant;

   b. The nature of the activity to be conducted by the applicant;

   c. The location of the activity, including the jurisdiction;

   d. A map of sufficient detail to accurately delineate the boundaries of the land to be utilized in carrying out the activity, the location and dimensions of any disturbance in riparian buffers associated with the activity, and the extent of riparian buffers on the land;

   e. An explanation of why this plan for the activity cannot be practically accomplished, reduced or reconfigured to better minimize disturbance to the riparian buffer, preserve aquatic life and habitat and protect water quality; and

   f. Plans for any best management practices proposed to be used to control the impacts associated with the activity.

3. Within 60 days of a submission that addresses Section 10.578.(A)(2) , the City of Graham shall review the entire project and make a finding of fact as to whether the criteria in Section 10.578.(A)(1) of this Section have been met. A finding of "no practical alternatives" shall result in issuance of an Authorization Certificate. Failure to act within 60 days shall be construed as a finding of "no practical alternatives" and an Authorization Certificate shall be issued to the applicant unless one of the following occurs:

   a. The applicant agrees, in writing, to a longer period;

   b. The City of Graham determines that the applicant has failed to furnish requested information necessary to the City of Graham decision;

   c. The final decision is to be made pursuant to a public hearing; or

   d. The applicant refuses access to its records or premises for the purpose of gathering information necessary to the City of Graham's decision.

4. The City of Graham may attach conditions to the Authorization Certificate that support the purpose, spirit and intent of this Ordinance.

5. Any appeals of determinations regarding Authorization Certificates shall be referred to the Director of the Division of Water Quality, c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

B. Variances

1. Requirements for Variances. Persons who wish to undertake prohibited uses may pursue a variance. The City of Graham Board of Adjustments may grant minor variances. For major variances, the City of Graham shall prepare preliminary findings and submit them to the Division of Water Quality, 401 Oversight Express Permitting Unit, or its successor for approval by the Environmental Management Commission. The variance request procedure shall be as follows:

   a. For any variance request, the City of Graham Board of Adjustments shall make a finding of fact as to whether there are practical difficulties or unnecessary hardships that prevent compliance with the riparian buffer protection requirements. A finding of practical difficulties or unnecessary hardships shall require that the following conditions are met:
      i. If the applicant complies with the provisions of this Ordinance, he/she can secure no reasonable return from, nor make reasonable use of, his/her property. Merely proving that the variance would permit a greater profit from the property shall not be considered adequate justification for a variance. Moreover, the City of Graham Board of Adjustments shall consider whether the variance is the minimum possible deviation from the terms of this Ordinance that shall make reasonable use of the property possible;
      ii. The hardship results from application of this Ordinance to the property rather than from other factors such as deed restrictions or other hardship;
      iii. The hardship is due to the physical nature of the applicant's property, such as its size, shape, or topography, such that compliance with provisions of this ordinance would not allow reasonable use of the property;
      iv. The applicant did not cause the hardship by knowingly or unknowingly violating this Ordinance;
      v. The applicant did not purchase the property after the effective date of this Ordinance, and then request a variance; and
      vi. The hardship is rare or unique to the applicant's property.

   b. The variance is in harmony with the general purpose and intent of the State's riparian buffer protection requirements and this Ordinance and preserves its spirit; and

   c. In granting the variance, the public safety and welfare have been assured, water quality has been protected, and substantial justice has been done.

2. Minor Variances

   A minor variance request pertains to activities that will impact only Zone Two of the riparian buffer. Minor variance requests shall be reviewed and approved based on the criteria in Section 10.578.(A)(1) through Section 10.578.(A)(3) by the City of Graham pursuant to G.S. 153A-Article 18, or G.S. 160A-Article 19. The City of Graham may attach conditions to the variance approval that support the purpose, spirit and intent of the riparian buffer protection program. Request for appeals to decisions made by the City of Graham shall be made in writing to the Director of

the Division of Water Quality c/o the 401 Oversight Express Permitting Unit, or its successor. The Director's decision is subject to review as provided in G.S. 150B Articles 3 and 4.

3. Major Variances

A major variance request pertains to activities that will impact any portion of Zone One or any portion of both Zones One and Two of the riparian buffer. If the City of Graham has determined that a major variance request meets the requirements in Section 10.578.(B)(1)) through 8.(C)(3), then it shall prepare a preliminary finding and submit it to the NC Environmental Management Commission c/o the Division of Water Quality, 401 Oversight Express Permitting Unit, or its successor, for approval. Within 90 days after receipt by the City of Graham, the Commission shall review preliminary findings on major variance requests and take one of the following actions: approve, approve with conditions and stipulations, or deny the request. Appeals from a Commission decision on a major variance request are made on judicial review to Superior Court.

C. Mitigation

1. This item shall apply to persons who wish to impact a riparian buffer in the Jordan watershed when one of the following applies:

   a. A person has received an Authorization Certificate pursuant to Section 10.578.(A) of this Ordinance for a proposed use that is designated as "allowable with mitigation;" or

   b. A person has received a variance pursuant to Section 10.578.(B) of this Ordinance and is required to perform mitigation as a condition of a variance approval.

2. Issuance of the Mitigation Approval. The City of Graham shall issue a mitigation approval upon determining that a proposal meets the requirements set out in this Ordinance. The approval shall identify at a minimum the option chosen, the required and proposed areas, and either the mitigation location or the offset payment amount as applicable.

3. Options for Meeting the Mitigation Requirement. The mitigation requirement may be met through one of the following options:

   a. Payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269 (Jordan Water Supply Nutrient Strategy: Riparian Buffer Mitigation Fees to the NC Ecosystem Enhancement Program) contingent upon acceptance of payments by the NC Ecosystem Enhancement Program, or to a private mitigation bank that complies with banking requirements of the US Army Corps of Engineers, currently set out at http://www.saw.usace.army.mil/WETLANDS/Mitigation/mitbanks.html or from the US Army Corps of Engineers, PO Box 1890, Wilmington, NC, 28402-1890, and the applicable trading criteria in Rule 15A NCAC 02B .0273;

   b. Donation of real property or of an interest in real property pursuant to Section 10.578.(C)(6) of this Ordinance; or

   c. Restoration or enhancement of a non-forested riparian buffer pursuant to the requirements of Section 10.578.(C)(7) of this Ordinance.

4. The Area of Mitigation. The City of Graham shall determine the required area of mitigation, which shall apply to all mitigation options identified in Section 10.578.(C)(3) of this Ordinance and as further specified in the requirements for each option set out in this Section, according to the following:

    a. The impacts in square feet to each zone of the riparian buffer shall be determined by the City of Graham by adding the following:
        i. The area of the footprint of the use causing the impact to the riparian buffer;
        ii. The area of the boundary of any clearing and grading activities within the riparian buffer necessary to accommodate the use; and
        iii. The area of any ongoing maintenance corridors within the riparian buffer associated with the use.

    b. The required area of mitigation shall be determined by applying the following multipliers to the impacts determined in Section 10.578.(4)(a) of this Ordinance to each zone of the riparian buffer:
        i. Impacts to Zone One of the riparian buffer shall be multiplied by three;
        ii. Impacts to Zone Two of the riparian buffer shall be multiplied by one and one-half; and
        iii. Impacts to wetlands within Zones One and Two of the riparian buffer that are subject to mitigation under 15A NCAC 2H .0506 shall comply with the mitigation ratios in 15A NCAC 2H .0506.

5. The Location of Mitigation. For any option chosen, the mitigation effort shall be located within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, and the same distance from the Jordan Reservoir as the proposed impact, or closer to the Reservoir than the impact, and as close to the location of the impact as feasible. Alternatively, the applicant may propose mitigation anywhere within the same subwatershed of the Jordan watershed, as defined in 15A NCAC 02B.0262, provided that the mitigation proposal accounts for differences in delivery of nutrients to the affected arm of Jordan Reservoir resulting from differences between the locations of the buffer impact and mitigation. Additional location requirements for the property donation option are enumerated in Section 10.578.(C)(6)(c)(i) of this Ordinance.

6. Donation of Property. Persons who choose to satisfy their mitigation determination by donating real property or an interest in real property shall meet the following requirements:

    a. The donation of real property interests may be used to either partially or fully satisfy the payment of a compensatory mitigation fee to the Riparian Buffer Restoration Fund pursuant to 15A NCAC 02B .0269. The value of the property interest shall be determined by an appraisal performed in accordance with Section 10.578.(C)(6)(d)(iv) of this Ordinance. The donation shall satisfy the mitigation determination if the appraised value of the donated property interest is equal to or greater than the required fee. If the appraised value of the donated property interest is less than the required fee calculated pursuant to 15A NCAC 02B .0269, the applicant shall pay the remaining balance due.

    b. The donation of conservation easements to satisfy compensatory mitigation requirements shall be accepted only if the conservation easement is granted in perpetuity.

    c. Donation of real property interests to satisfy the mitigation determination shall be accepted only if such property meets all of the following requirements:

i. In addition to the location requirements of Section 10.578.(C)(5) of this Ordinance, the property shall be located within an area that is identified as a priority for restoration in, or is otherwise consistent with the goals of, the *Basinwide Wetlands and Riparian Restoration Plan for the Cape Fear River Basin* developed by NC Division of Water Quality pursuant to G.S. 143-214.10;
ii. The property shall contain riparian buffers not currently protected by the State's riparian buffer protection program that are in need of restoration as defined in Section 10.578.(7)(d) of this Ordinance;
iii. The restorable riparian buffer on the property shall have a minimum length of 1000 linear feet along a surface water and a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;
iv. The size of the restorable riparian buffer on the property to be donated shall equal or exceed the area of mitigation responsibility determined pursuant to Section 10.578.(C)(4) of this Ordinance;
v. Restoration shall not require removal of man-made structures or infrastructure;
vi. The property shall be suitable to be successfully restored, based on existing hydrology, soils, and vegetation;
vii. The estimated cost of restoring and maintaining the property shall not exceed the value of the property minus site identification and transaction costs;
viii. The property shall not contain any building, structure, object, site, or district that is listed in the National Register of Historic Places established pursuant to Public Law 89-665, 16 U.S.C. 470 as amended;
ix. The property shall not contain any hazardous substance or solid waste;
x. The property shall not contain structures or materials that present health or safety problems to the general public. If wells, septic, water or sewer connections exist, they shall be filled, remediated or closed at owner's expense in accordance with state and local health and safety regulations;
xi. The property and adjacent properties shall not have prior, current, and known future land use that would inhibit the function of the restoration effort; and
xii. The property shall not have any encumbrances or conditions on the transfer of the property interests.

d. At the expense of the applicant or donor, the following information shall be submitted to the City of Graham with any proposal for donations or dedications of interest in real property:
i. Documentation that the property meets the requirements laid out in Section 10.578.(C)(6)(c) of this Ordinance;
ii. US Geological Survey 1:24,000 (7.5 minute) scale topographic map, county tax map, USDA Natural Resource Conservation Service County Soil Survey Map, and county road map showing the location of the property to be donated along with information on existing site conditions, vegetation types, presence of existing structures and easements;
iii. A current property survey performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the State Board of Registration for Professional Engineers and Land Surveyors in "Standards of Practice for Land Surveying in North Carolina." Copies may be obtained from the North Carolina State Board of Registration for Professional Engineers and Land Surveyors, 3620 Six Forks Road, Suite 300, Raleigh, North Carolina 27609;

iv. A current appraisal of the value of the property performed in accordance with the procedures of the North Carolina Department of Administration, State Property Office as identified by the Appraisal Board in the "Uniform Standards of Professional North Carolina Appraisal Practice." Copies may be obtained from the Appraisal Foundation, Publications Department, P.O. Box 96734, Washington, D.C. 20090-6734; and
v. A title certificate.

7. Riparian Buffer Restoration or Enhancement. Persons who choose to meet their mitigation requirement through riparian buffer restoration or enhancement shall meet the following requirements:

a. The applicant may restore or enhance a non-forested riparian buffer if either of the following applies:
   i. The area of riparian buffer restoration is equal to the required area of mitigation determined pursuant to Section 10.578.(C)(4) of this Ordinance; or
   ii. The area of riparian buffer enhancement is three times larger than the required area of mitigation determined pursuant to Section 10.578.(C)(4) of this Ordinance;

b. The location of the riparian buffer restoration or enhancement shall comply with the requirements in Section 10.578.(C)(5) of this Ordinance;

c. The riparian buffer restoration or enhancement site shall have a minimum width of 50 feet as measured horizontally on a line perpendicular to the surface water;

d. Enhancement and restoration shall both have the objective of establishing a forested riparian buffer according to the requirements of this Item. Enhancement shall be distinguished from restoration based on existing buffer conditions. Where existing trees are sparse, that is greater than or equal to 100 trees per acre but less than 200 trees per acre, a buffer may be enhanced. Where existing woody vegetation is absent, that is less than 100 trees per acre, a buffer may be restored;

e. The applicant shall first receive an Authorization Certificate for the proposed use according to the requirements of Section 10.578.(A) of this Ordinance. After receiving this determination, the applicant shall submit a restoration or enhancement plan for approval by the City of Graham. The restoration or enhancement plan shall contain the following:
   i. A map of the proposed restoration or enhancement site;
   ii. A vegetation plan. The vegetation plan shall include a minimum of at least two native hardwood tree species planted at a density sufficient to provide 320 trees per acre at maturity;
   iii. A grading plan. The site shall be graded in a manner to ensure diffuse flow through the riparian buffer;
   iv. A fertilization plan; and
   v. A schedule for implementation;

f. Within one year after the City of Graham has approved the restoration or enhancement plan, the applicant shall present proof to the City of Graham that the riparian buffer has been restored or enhanced. If proof is not presented within this timeframe, then the person

shall be in violation of both the State's and the City of Graham riparian buffer protection program;

g. The mitigation area shall be placed under a perpetual conservation easement that will provide for protection of the property's nutrient removal functions; and

h. The applicant shall submit annual reports for a period of five years after the restoration or enhancement showing that the trees planted have survived and that diffuse flow through the riparian buffer has been maintained. The applicant shall replace trees that do not survive and restore diffuse flow if needed during that five-year period.

Section 10.579 Compliance and Enforcement

A. Site Inspections

1. Agents, officials, or other qualified persons authorized by the City of Graham may periodically inspect riparian buffers to ensure compliance with this ordinance.

2. Notice of the right to inspect shall be included in the letter of approval of each variance and buffer authorization.

3. Authority to Enter Property and Conduct Investigations and Inspections. Authorized agents, officials or other qualified persons shall have the authority, upon presentation of proper credentials, to enter and inspect at reasonable times any property, public or private, for the purpose of investigating and inspecting the site of any riparian buffer. No person shall willfully resist, delay, or obstruct an authorized representative, employee, or agent of the City of Graham, while that person is inspecting or attempting to inspect a riparian buffer nor shall any person obstruct, hamper or interfere with any such representative while in the process of carrying out their official duties. The City of Graham shall have the power to conduct such investigations as deemed reasonably necessary to carry out the duties as prescribed in this Ordinance.

4. Notice of Violation

   a. If it is determined that a person has failed to comply with the requirements of this Ordinance, or rules, or orders adopted or issued pursuant to this Ordinance, a notice of violation shall be served upon that person. The notice may be served by any means authorized under G.S. 1A-1, rule 4. In the event service cannot be accomplished by registered or certified mail, it may be accomplished in any manner provided in rule (4)j of the North Carolina Rules of Civil Procedure.

   b. The notice shall specify the violation and inform the person of the actions that need to be taken to comply with this Ordinance, or rules or orders adopted pursuant to this Ordinance. The notice shall direct the person to correct the violation within a specified reasonable time. The notice shall inform the person that any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance is subject to the civil and criminal penalties and other enforcement actions as provided in this Ordinance.

5. Power to Require Statements. The City of Graham shall also have the power to require written statements, or the filing of reports under oath, with respect to pertinent questions relating to land-disturbing activities.

B. Civil Penalties

1. Assessment of Penalties. Any person who violates or fails to act in accordance with any of the provisions of this Ordinance or rules or orders adopted or issued pursuant to this Ordinance shall be subject to a civil penalty. A civil penalty for a violation may be assessed in an amount not to exceed ten thousand dollars ($10,000) per day. If any violation for which a penalty may be assessed is continuous, a civil penalty may be assessed for each day of the violation in an amount not to exceed twenty-five thousand dollars ($25,000) per day for as long as the violation occurs. Each day of a continuing violation shall constitute a separate violation under Section 10.579(B)(1).

2. Notice of Civil Penalty Assessment. The governing body of the City of Graham shall provide written notice of the civil penalty amount and the basis for the assessment to the person assessed. The notice of civil penalty assessment shall be served by any means authorized under G.S. 1A-1, Rule 4, and shall direct the violator to either pay the assessment or contest the assessment, within thirty (30) days after receipt of the notice of assessment by written demand for a hearing.

3. Hearing. A hearing on the civil penalty shall be conducted by the City of Graham City Council within 30 days after the date the written demand for the hearing is received by the City of Graham City Council. The conducting the hearing shall make its recommendation to the governing body of the City of Graham within 30 days after the date of the hearing.

4. Final Decision. The governing body shall issue a final decision on the civil penalty within 30 days of the recommended decision. A copy of the final decision shall be served on the violator by any means authorized under G.S. 1A-1, Rule 4.

5. Appeal of Final Decision. Appeal form the final decision of the governing body shall be to the Superior Court of the county in which the violation occurred. Any appeal must be filed with thirty days of receipt of the final decision. A copy of the appeal must be served on the (City manager/other appropriate person) by any means authorized under G.S. 1A-1, Rule 4.

6. Demand for Payment of Penalty. An assessment that is not contested is due when the violator is served with a notice of assessment. The civil penalty must be paid within 30 days or the assessment, if not appealed, or within 30 days after the conclusion of the administrative or judicial review of the assessment. If payment is not received within 30 days after demand for payment is made, the City of Graham may institute a civil action to recover the amount of the assessment. The civil action may be brought in the Superior Court where the violation occurred, or the violator's residence or principal place of business is located. Such civil actions must be filed within three (3) years of the date the assessment was due.

7. Use of Penalties. [Civil penalties collected pursuant to this Ordinance shall be credited to the general fund of the City of Graham as nontax revenue.]

C. Criminal Penalties

1. A violation of the provisions of this Ordinance or a rule or order adopted pursuant to this ordinance shall be punished as provided for in the North Carolina General Statutes for the violation of local ordinances. See. E.g., Section 14-4 of the North Carolina General Statutes. Violation may also be punishable under the provisions of Section 143-215.6B of the North Carolina General Statutes.

D. Injunctive Relief

1. Civil Action in Superior Court. Whenever the governing body of the City of Graham has reasonable cause to believe that any person is violating or threatening to violate this Ordinance or any rule or order adopted or issued pursuant to this Ordinance, it may, either before or after the institution of any other action or proceeding authorized by this Ordinance, institute a civil action in the name of the City of Graham for injunctive relief to restrain the violation or threatened violation. The action shall be brought in the Superior Court of Alamance County.

2. Order to Cease Violation. Upon determination by a court that an alleged violation is occurring or is threatened, the court shall enter any order or judgment that is necessary to abate the violation, to ensure that restoration is performed, or to prevent the threatened violation. The institution of an action for injunctive relief under this section shall not relieve any party to the proceedings from any civil or criminal penalty prescribed for violations of this Ordinance.

E. Compliance with Requirements. Any person engaged in new activities as defined by this Ordinance who fails to meet the requirements of this Ordinance shall be deemed in violation of this Ordinance.

Section 10.580 Severability

If any one or more sections or portions thereof of this Ordinance are held to be invalid or unenforceable, all other sections and portions thereof shall nevertheless continue in full force and effect.

Section 10.581 Effective Date

This Ordinance will become effective upon approval by the NC Environmental Management Commission and adoption by the City of Graham City Council.

Section 10.582 Revisions to this Ordinance

The City of Graham shall review any revisions to the Riparian Buffer Protection Ordinance made by the Environmental Management Commission and, within 60 days of receipt of the recommended revisions, submit draft amendments to the Commission for its consideration and comments. Within 90 days after receipt of the Commissions' comments, the City of Graham will incorporate amendments into this ordinance.

Section 10.583 Definitions

For the purpose of this Ordinance, these terms shall be defined as follows:

A. 'Access Trails' means pedestrian trails constructed of pervious or impervious surfaces and related structures to access a surface water, including boardwalks, steps, rails, and signage.

B. 'Airport Facilities' means all properties, facilities, buildings, structures, and activities that satisfy or otherwise fall within the scope of one or more of the definitions or uses of the words or phrases 'air navigation facility', 'airport', or 'airport protection privileges' under G.S. 63-1; the definition of 'aeronautical facilities' in G.S. 63-79(1); the phrase 'airport facilities' as used in G.S. 159-48(b)(1); the phrase 'aeronautical facilities' as defined in G.S. 159-81 and G.S. 159-97; and the phrase 'airport facilities and improvements' as used in Article V, Section 13, of the North Carolina Constitution, which shall include, without limitation, any and all of the following: airports, airport maintenance facilities, clear zones, drainage ditches, fields, hangars, landing lighting, airport and airport-related offices, aeronautic industrial facilities that require direct access to the airfield, parking facilities, related navigational and signal systems, runways, stormwater outfalls, terminals, terminal shops, and all appurtenant areas used or suitable for airport buildings or other airport facilities, and all appurtenant rights-of-way; restricted landing areas; any structures, mechanisms, lights, beacons, marks, communicating systems, or other instrumentalities or devices used or useful as an aid, or constituting an advantage or convenience to the safe taking off, navigation, and landing of aircraft, or the safe and efficient operation or maintenance of an airport or restricted landing area; easements through, or interests in, air space over land or water, interests in airport hazards outside the boundaries of airports or restricted landing areas, and other protection privileges, the acquisition or control of which is necessary to ensure safe approaches to the landing areas of airports and restricted landing areas, and the safe and efficient operation thereof and any combination of any or all of such facilities. Notwithstanding the foregoing, the following shall not be included in the definition of 'airport facilities':

   1. Satellite parking facilities;

   2. Retail and commercial development outside of the terminal area, such as rental car facilities; and

   3. Other secondary development, such as hotels, industrial facilities, free-standing offices and other similar buildings, so long as these facilities are not directly associated with the operation of the airport, and are not operated by a unit of government or special governmental entity such as an airport authority, in which case they are included in the definition of 'airport facilities'.

C. 'Channel' means a natural water-carrying trough cut vertically into low areas of the land surface by erosive action of concentrated flowing water or a ditch or canal excavated for the flow of water.

D. 'DBH' means diameter at breast height of a tree measured at 4.5 feet above ground surface level.

E. 'Development' means the same as defined in Rule 15A NCAC 2B .0202(23).

F. ‘Ditch or canal’ means a man-made channel other than a modified natural stream constructed for drainage purposes that is typically dug through inter-stream divide areas. A ditch or canal may have flows that are perennial, intermittent, or ephemeral and may exhibit hydrological and biological characteristics similar to perennial or intermittent streams.

G. ‘Ephemeral stream’ means a feature that carries only stormwater in direct response to precipitation with water flowing only during and shortly after large precipitation events. An ephemeral stream may or may not have a well-defined channel, the aquatic bed is always above the water table, and stormwater runoff is the primary source of water. An ephemeral stream typically lacks the biological, hydrological, and physical characteristics commonly associated with the continuous or intermittent conveyance of water.

H. ‘Existing development’ means development, other than that associated with agricultural or forest management activities, that meets one of the following criteria:

1. It either is built or has established a vested right based on statutory or common law as interpreted by the courts, for projects that do not require a state permit, as of the effective date of either local new development stormwater programs implemented under Rule 15A NCAC 2B .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) or, for projects requiring a state permit, as of the applicable compliance date established in Rule 15A NCAC 2B .0271 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development), Items (5) and (6); or

2. It occurs after the compliance date set out in Sub-Item (4)(d) of Rule .0265 (Jordan Water Supply Nutrient Strategy: Stormwater Management for New Development) but does not result in a net increase in built-upon area.

I. ‘Greenway / Hiking Trails’ means pedestrian trails constructed of pervious or impervious surfaces and related structures including but not limited to boardwalks, steps, rails, and signage, and that generally run parallel to the shoreline.

J. ‘High Value Tree’ means a tree that meets or exceeds the following standards: for pine species, 14-inch DBH or greater or 18-inch or greater stump diameter; or for hardwoods and wetland species, 16-inch DBH or greater or 24-inch or greater stump diameter.

K. ‘Intermittent stream’ means a well-defined channel that contains water for only part of the year, typically during winter and spring when the aquatic bed is below the water table. The flow may be heavily supplemented by stormwater runoff. An intermittent stream often lacks the biological and hydrological characteristics commonly associated with the continuous conveyance of water.

L. ‘Jordan nutrient strategy’ or ‘Jordan water supply nutrient strategy’ means the set of Rules 15A NCAC 2B .0262 through .0273 and .0311(p).

M. ‘Jordan Reservoir’ means the surface water impoundment operated by the US Army Corps of Engineers and named B. Everett Jordan Reservoir, as further delineated for purposes of the Jordan nutrient strategy in Rule 15A NCAC 2B .0262(4).

N. ‘Jordan watershed’ means all lands and waters draining to B. Everett Jordan Reservoir.

O. New Development' means any development project that does not meet the definition of existing development set out in this Ordinance.

P. 'Perennial stream' means a well-defined channel that contains water year round during a year of normal rainfall with the aquatic bed located below the water table for most of the year. Groundwater is the primary source of water for a perennial stream, but it also carries stormwater runoff. A perennial stream exhibits the typical biological, hydrological, and physical characteristics commonly associated with the continuous conveyance of water.

Q. "Perennial waterbody" means a natural or man-made basin, including lakes, ponds, and reservoirs, that stores surface water permanently at depths sufficient to preclude growth of rooted plants. For the purpose of the State's riparian buffer protection program, the waterbody must be part of a natural drainage way (i.e., connected by surface flow to a stream).

R. 'Shoreline stabilization' is the in-place stabilization of an eroding shoreline. Stabilization techniques which include "soft" methods or natural materials (such as root wads, or rock vanes) may be considered as part of a restoration design. However, stabilization techniques that consist primarily of "hard" engineering, such as concrete lined channels, riprap, or gabions, while providing bank stabilization, shall not be considered stream restoration.

S. 'Stream restoration' is defined as the process of converting an unstable, altered or degraded stream corridor, including adjacent riparian zone and flood-prone areas to its natural or referenced, stable conditions considering recent and future watershed conditions. This process also includes restoring the geomorphic dimension, pattern, and profile as well as biological and chemical integrity, including transport of water and sediment produced by the stream's watershed in order to achieve dynamic equilibrium. 'Referenced' or 'referenced reach' means a stable stream that is in dynamic equilibrium with its valley and contributing watershed. A reference reach can be used to develop natural channel design criteria for stream restoration projects.

T. Stream" means a body of concentrated flowing water in a natural low area or natural channel on the land surface.

U. 'Stump diameter' means the diameter of a tree measured at six inches above the ground surface level.

V. "Surface waters" means all waters of the state as defined in G.S. 143-212 except underground waters

W. "Tree" means a woody plant with a DBH equal to or exceeding five inches or a stump diameter exceeding six inches.

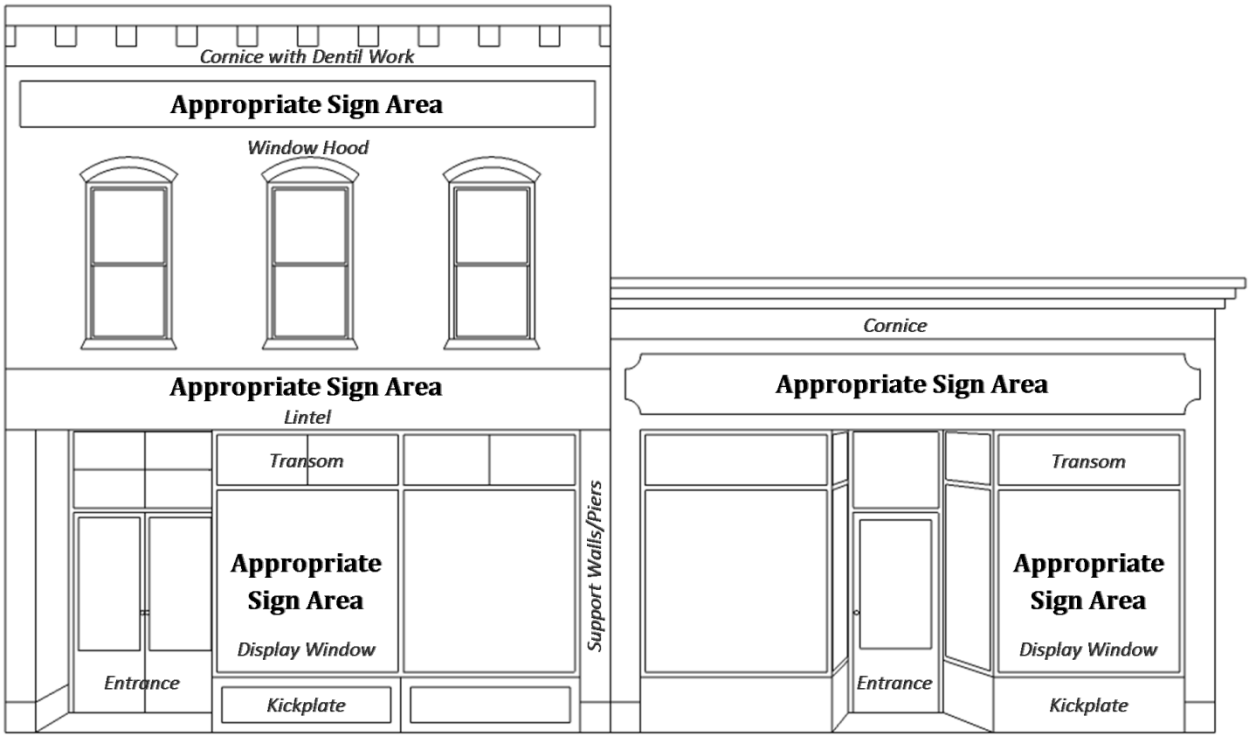
X. 'Temporary road' means a road constructed temporarily for equipment access to build or replace hydraulic conveyance structures such as bridges, culverts, pipes or water dependent structures, or to maintain public traffic during construction.

APPENDIX A. HISTORIC DISTRICT DESIGN GUIDELINES FOR SIGNS

These guidelines are to be used by the City of Graham Staff to approve sign permits within the Courthouse Square Historic District. The items listed below are additional guidelines to "Article X, Signs" in the City of Graham Development Ordinance. Issuance of a sign permit cannot be denied without first being considered by the City of Graham Historic Resources Commission.

- Signs should be compatible with the structure in size, scale, style, material, and graphics.
- The location of new signs on commercial buildings should conform to the appropriate placement of signs on historic buildings (see attached figure).
- Storefront signs should be designed and located so that they do not obstruct architectural details of buildings.
- Storefront signs should be attached in a manner that does not cause damage or major alteration to the historic elements of a building.
- Translucent plastic signs, which have lighting within the sign (i.e. internally illuminated signs) are prohibited.
- Neon tubing and neon tubing signs are prohibited.
- Freestanding signs should be installed appropriately, such as on well landscaped ground bases or low standards.
- Flush mounted wall signs should be installed in appropriate locations that do not conceal architectural features or details.
- Signs for historic commercial buildings should be placed in locations originally intended for signage such as the top of the storefront or on windows, doors, or awnings.
- Fluorescent or Dayglow colors are prohibited.

Figure 1. Sign Location in Relation to Architectural Features



(Added as "Appendix A" and amended by City Council on 1/8/2013)

APPENDIX B. HISTORIC DISTRICT DESIGN GUIDELINES FOR OUTDOOR DISPLAYS, DINING AND OTHER TEMPORARY ENCROACHMENTS

These guidelines are to be used by City of Graham staff to approve permits for outdoor displays, dining and other temporary encroachments within the Courthouse Square Historic District. The guidelines described below are in addition to those prescribed in the Code of Ordinances. Any applicant who proposes an outdoor display, dining or other temporary encroachment that does not meet the guidelines described below may apply for a Certificate of Appropriateness.

- All outdoor furniture, lighting, barriers, fixtures and other decorative materials should be made of the same complimentary quality materials.
- Landscaping and planters are encouraged to enhance the appearance of outdoor dining areas.

Awnings, Umbrellas and Upholstered Surfaces

- Awnings, umbrellas and all upholstered surfaces must be made of canvas or a similar woven material that meets all local, state and federal safety and fire standards. Vinyl or plastic is prohibited. Metal awnings may be permitted with a Certificate of Appropriateness.
- Only burgundy, hunter green or a closely related color shall be approved for awnings, umbrellas or other upholstered surfaces. These shall be solid colored or striped.
- Multiple awnings on one building should have a consistent design and material and be complimentary in color and pattern.
- The placement of awnings should not obstruct major architectural features.
- Awnings should be compatible with the structure in size, scale and style.
- Awnings should generally be mounted within the window or entry opening, directly on the frame. If this is not possible, they should be attached just outside the opening. On masonry structures, attachments for awnings should be made in the mortar joints and not in the brick itself.
- Flat panel, shed or slanted awnings are encouraged. Barrel shaped awnings or canopies are not appropriate.
- Retractable and roll-down awnings are encouraged.
- Awnings on upper floors shall project no further than three (3) feet from the face of the building, should be no higher than half the height of the window opening, and should fill the width of the window opening but not extend past it.

Furniture

- All outdoor furniture, including tables, chairs, umbrella bases and poles, benches, trash receptacles and other street furniture, should be compatible with the historic character of the district in size, scale, material and color.
- All outdoor furniture must have a uniform or complimentary design, color and material. It may be colored or of a natural unpainted material (i.e. wood or metal). White plastic or any fluorescent or other strikingly bright or vivid colors are prohibited.

Lighting

- Lighting fixtures and poles should be compatible in scale and materials with the structure, landscape and neighboring setting.
- It is not appropriate to introduce period lighting fixtures from an era earlier than the historic building in an attempt to create a false historic appearance.

Barriers or Delineators

- Barriers or delineators should be made of wrought iron or wood. Metal may also be appropriate. Planters may be made of other suitable materials but may not be made of plastic.
- The style of the barrier or delineator should complement the architecture of the building façade and the style of the outdoor dining furniture.

APPENDIX C. STREET STANDARDS

These standards should be applied, to the greatest extent possible, to all new street construction or reconstruction.

GENERAL STANDARDS AND REQUIREMENTS

(a) Street lights shall be installed at 500 foot intervals and where major streets intersect.

(b) All streets and/or alleys shall intersect at right angles as nearly as possible.

(c) Each corner of every intersection of streets and/or alleys shall be provided with a sight area in the shape of a triangle, said triangle to be formed by connecting each end of a sight line with the property line, at a point a minimum of fifteen (15) feet from the intersection of street and/or alley lines. When the property line in the vicinity of an intersection is curved or when streets intersect at other than right angles, the location of the sight line shall be as approved by the TRC.

(d) No streets shall intersect so that the point of intersection shall be closer than one hundred fifty (150) feet to a main line railroad right-of-way.

(e) All streets shall be at a grade with the railroad at any railroad crossing for at least fifty (50) feet on each side thereof.

(f) A horizontal curve of reasonably long radius should be used where a deflection angle of more than ten (10) degrees in the alignment of a street occurs. The centerline radius of curvature for streets seventy (70) feet or more in width should be not less than three hundred (300) feet, and on all other streets, not less than one hundred fifty (150) feet except when good cause is shown for deviation.

(g) Vertical curves should connect all changes in grade and be designed in accordance with the North Carolina Department of Transportation Division of Highways Minimum Design Criteria for Subdivision Roads.

(h) Dead-end streets shall terminate in a circular area with a minimum diameter of eighty-one (81) feet for the paved area, unless the TRC recommends approval of an equally safe and convenient form of turning such as a "Y" or "T".

(i) The right-of-way line should be located at least two feet behind the sidewalk, or as otherwise required by the TRC where no sidewalk is provided, to allow for City utilities. The right-of-way should be centered on the centerline of the street.

LOCAL RESIDENTIAL STREETS

Local residential streets provide direct access to residential land uses. Sidewalks are required. The green zone should include grass, landscaping and street trees; natural or structured stormwater BMPs, such as swales, may be permitted in this area with TRC approval. The shared vehicle and parking zone provides mobility and accessibility for motor vehicles and bicycles, with low volumes and low speeds (posted and design speeds of 25mph).

Residential Narrow *(amended 5/3/2016)*

Sidewalks are required on one side of the street but are encouraged on both sides of the street. Parking on the street will be prohibited, with ample on-site parking. Residential Narrow may only be permitted by TRC if all of the following conditions are met:

- Driveways must be 50' apart; shared driveways are permitted
- Trash trucks must be able to make all intersection turns in Autoturn.
- Trash cans must be placed on one side of the roadway
- Less than 100 total households load onto the roadway
- Parking is prohibited on both sides of the roadway
- There is sufficient on-site simultaneously accessible parking for three vehicles per dwelling unit
- There is more than one connection to the street for redundant emergency access routes (e.g. not a dead-end street)
- There are alternative, parallel routes available.

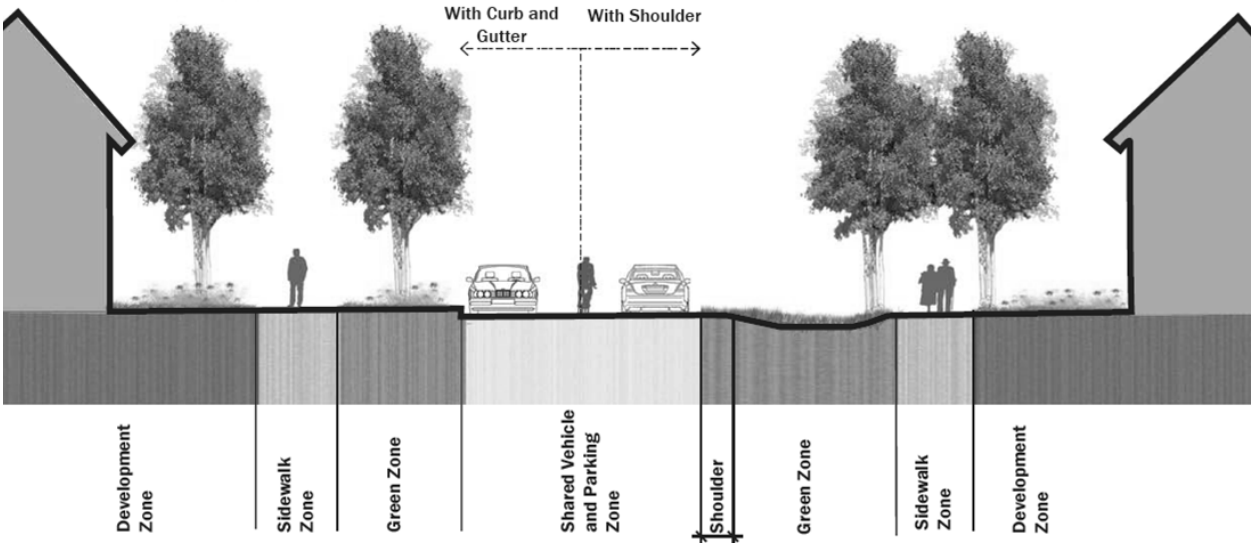
Residential Medium

Intended for use where the predominant character is low- to medium-density residential land uses. Sidewalks are required on one side of the street and are highly encouraged on both sides of the street. Parking will be infrequent; parking on the street will occur more frequently than with the Residential Narrow street, but most parking should be accommodated on-site. Residential Medium is the default local residential street.

Residential Wide

Intended for use where the predominant character is medium- to high-density residential land uses. Sidewalks are required on both sides of the streets, but may be provided on only one side of the street if permitted by the TRC where no development is proposed on one side of the street. Parking is offered in a separate zone because it is expected that there will be much more demand for on-street parking in these higher-density areas. Residential Wide must be used if both of the following conditions are met:

- Net densities along the street are at or above 8 dwelling units per acre, and
- There is insufficient on-site parking for 2.5 vehicles per dwelling unit.



	Shared Vehicle and Parking Zone[2,3]					Typical Right-of-Way[8]
	With Curb and Gutter	**With Shoulder[4]**	**Sidewalk Zone[5]**	**Green Zone[5,6]**	**Shoulder[4,7]**	
Residential Narrow	24’	20’	5’	4’	6’	47’
Residential Medium	27’	26’	5’	4’	6’	50’
Residential Wide	35’	not permitted	6’	4’	not permitted	60’

Notes

1. All dimensions are minimum widths.
2. Measured from back-of-curb (BOC) to BOC for curb and gutter sections and from edge of pavement (EOP) to EOP for shoulder sections.
3. A median is typically not appropriate, but may be allowable if approved by the TRC.
4. A shoulder may be permitted only with TRC approval.
5. Where unique physical constraints prevent a green zone at least four feet wide, and with TRC approval, the sidewalk may be placed at the back-of-curb, provided that the minimum width of the sidewalk shall be increased by one foot and only standard curb and gutter shall be allowed.
6. Where street trees are provided, the green zone must be at least seven feet.
7. Shoulder zone typically has grass. Width may be reduced to four feet with TRC approval for unique physical constraints, provided that the green zone is seven feet wide.
8. The right-of-way width may be reduced, with TRC approval, if the sidewalk is to be located in a sidewalk and utility easement, and may be increased if wider or additional roadway elements are provided, such as street trees, a median or wide swale.
9. Maximum grade shall be 8%.

LOCAL COMMERCIAL AND INDUSTRIAL STREETS

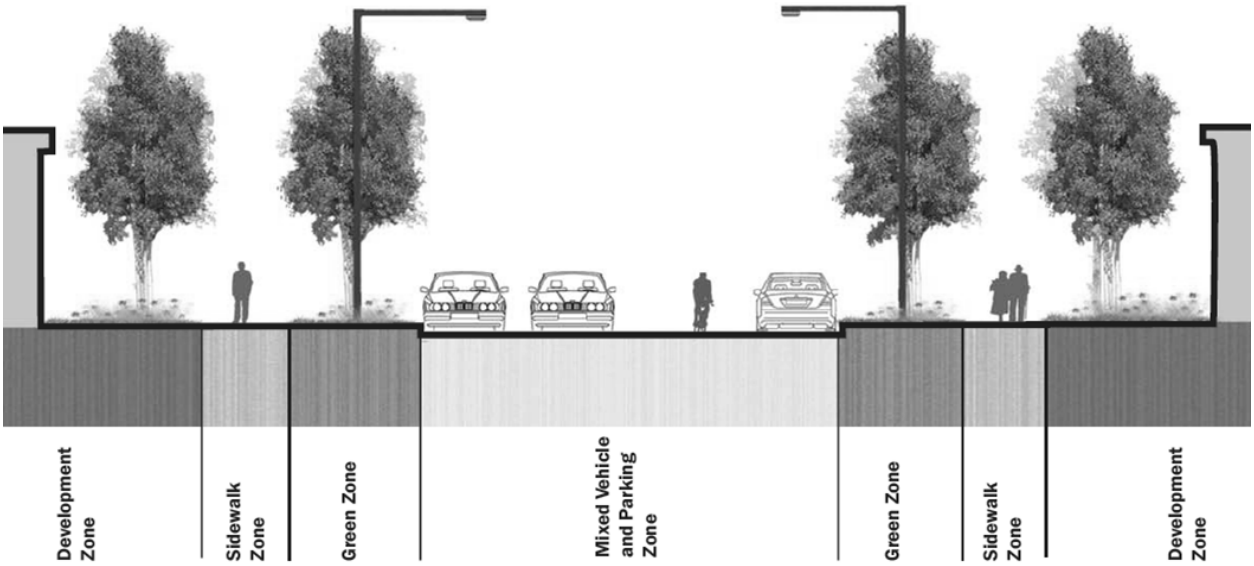
Local commercial and industrial streets provide direct access to commercial, office, industrial and mixed land uses. Sidewalks are required. The green zone should include grass, landscaping and street trees; natural or structured stormwater BMPs may be permitted in this area with TRC approval. The mixed vehicle and parking zone provides mobility and accessibility for motor vehicles and bicycles, with low volumes and low speeds (posted and design speeds of 25mph).

Commercial Medium and Commercial Wide

Local commercial streets provide direct access to commercial, office or mixed land uses, and apply to developments ranging from very pedestrian-oriented retail locations to business parks. In areas where off-street parking is available in sufficient quantity and proximity, the Commercial Medium street is appropriate to help maintain low speeds. Commercial Wide streets should be used where there is limited off-street parking nearby, short-term visitors are likely, and there is, therefore, a high demand for on-street parking. For both, sidewalks are required on both sides of the street.

Industrial

Local industrial streets provide direct access to predominantly industrial or warehouse/distribution land uses, with their design geared toward the operational requirements of large volumes of trucks while also recognizing that other modes and complementary land uses should be accommodated. Sidewalks are required on one side of the street but are encouraged on both sides.



	Mixed Vehicle and Parking Zone[2,3]				Typical Right-of-Way[6]
	Total Travelway	**Parking**	**Sidewalk Zone[4]**	**Green Zone[4,5]**	
Commercial Medium	27’	one side	5’	4’	50’
Commercial Wide	41’	both sides	6’	4’	65’
Industrial	35’	one side	5’	4’	57’

Notes

1. All dimensions are minimum widths.
2. Measured from back-of-curb (BOC) to BOC.
3. A median is typically not appropriate, but may be allowable if approved by the TRC.
4. Where unique physical constraints prevent a green zone at least four feet wide, and with TRC approval, the sidewalk may be placed at the back-of-curb, provided that the minimum width of the sidewalk shall be increased by one foot and only standard curb and gutter shall be allowed.
5. Where street trees are provided, the green zone must be at least seven feet.
6. The right-of-way width may be reduced, with TRC approval, if the sidewalk is to be located in a sidewalk and utility easement, and may be increased if wider or additional roadway elements are provided, such as street trees, a median or wide swale.
7. Maximum grade shall be 7%.

AVENUES

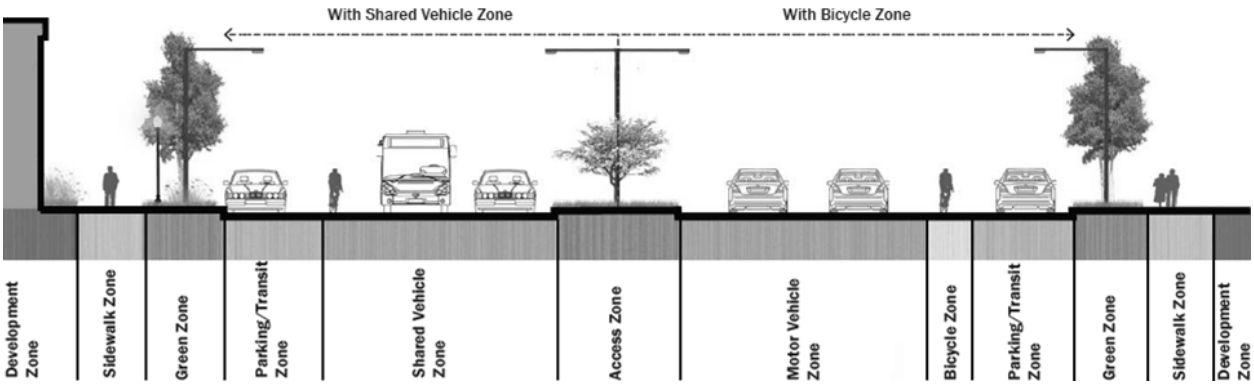
Avenues serve a diverse set of functions in a wide variety of land uses. They may function as arterials or collectors but at low to moderate speeds, providing access from neighborhoods to commercial areas, between areas of the city and, in some cases, through residential neighborhoods. Development along avenues may include a wide range of land uses, including single family, multi-family, commercial, mixed use, institutional or industrial uses, in a range of densities. Avenues are designed to provide a balance of service for all modes of transport, including vehicles, bicyclists, pedestrians and transit.

Example of an avenue with bike lane, on-street parking and a median.

Since avenues serve so many functions and contexts, there are a number of potential cross-sections and design teams should carefully consider the following design elements:

Example of an avenue through a residential neighborhood.

- **Posted speed** of 25-30 mph preferred, with 35 mph allowable. **Design speed** of 30-40 mph; slightly higher than the posted speed, but not so high as to encourage speeding.
- **Number of through lanes** may be: one in each direction (2-lane); one in each direction plus an intermittently landscaped or (on short blocks) back-to-back turning lane (3-lane); two in each direction (4-lane); or, two in each direction plus an intermittently landscaped turning lane (5-lane).
- **Bicycle lanes** are desirable and are especially important when there are few other options for bicycle network continuity. Wide outside lanes may also be considered under constrained conditions.
- **On-street parking** is desirable in areas with front-facing development, especially retail development.
- **Green zones** should be provided to separate pedestrians from vehicles and to enhance the streetscape. Even in constrained situations, the green zone and street trees should be the design priority, with any deviations from the preferred width justified and documented. The green zone may include landscaping, street trees, lighting, street furniture, hardscaping and related pedestrian/bike/transit amenities.
- **Pedestrian lighting** should be considered at mid-block crossings and near locations where nighttime pedestrian activity is likely.
- **Block length** should not exceed 600’ to provide more frequent and accessible opportunities for crossings and to enhance connectivity for all modes.
- **Utilities** should be placed underground whenever possible. Every attempt should be made, even with underground placement, to avoid or minimize conflicts with street trees.



	Shared Vehicle/Motor Vehicle Zone *(lane width)*[2,3,4]	Sidewalk Zone[5]	Green Zone[6]	Parking/ Transit Zone[2,7]	Bicycle Zone[2,3,8]	Access Zone[4,9]
Avenue	10’	6’	7’	8’	4’	variable

Notes

1. All dimensions are minimum widths.
2. The gutter pan is not considered part of any minimum width, with the exception of the parking/transit zone.
3. If bicycle lanes are not possible, shared lanes may be allowed by the TRC. For a shared lane, the outside lane should be a minimum of 14’ wide.
4. For median-divided avenues with only one lane in each direction, lanes should be 14’ wide.
5. In areas that are currently or are planned to be pedestrian-oriented retail or mixed-use development, a minimum eight-foot sidewalk should be provided.
6. Where a seven-foot wide green zone cannot be provided, the following guidelines apply. If the green zone is less than five feet, trees should not be planted, but shrubbery or ground cover may be acceptable. Even in constrained conditions, the green zone should never be less than four feet. Sight distance should be considered in the location and spacing of trees within the green zone. In highly urban conditions, sidewalk amenities should be placed in the green zone. Natural or structured stormwater BMPs may be permitted in this area with TRC approval.
7. Parking is an option. The width may vary depending on the type of parking. Angle parking is allowed, with reverse angle parking preferred. Wherever full-time, dedicated on-street parking is provided, curb extensions should be provided at intersections to shorten the crossing distance for pedestrians.
8. Five-foot bicycle lanes are preferred. Bicycle lanes located next to on-street parking should be six feet wide. Steep grades may call for wider bicycle lanes.
9. The access zone is optional and may include either an intermittently landscaped turn lane or a median. Medians are not typical but may be provided, primarily in residential areas; they should be at least eight-feet wide and landscaped, including trees given sight distance considerations.
10. Maximum grade shall be 6%.