

## ARTICLE IX

### ZONING DISTRICTS AND ZONING PROVISIONS

#### 9-1 ZONING DISTRICTS

In order to achieve the purposes of this Ordinance as set forth, all property within the jurisdiction of Shelby is divided into districts with the designations and purposes listed in Sections 9-1.1 through 9-1.6. The minimum lot size specified for each zoning district in the descriptions below is the *general* requirement. Where public water and/or public sewer service is not available, a *larger* minimum lot size may be required by the Cleveland County Health Department, particularly if the lot is located within a designated public water supply watershed. See Article X for specific requirements for properties located within a watershed protection overlay district.

##### 9-1.1 Residential Districts

###### (A) R20 Residential District

The R20 Residential District is primarily intended to accommodate very low density single-family detached dwellings, modular homes, two-family dwellings, and manufactured homes on individual lots in areas that generally do not have access to public water supplies and are dependent upon septic tanks for sewage disposal. Maximum densities within the R20 District are approximately 2 dwelling units per gross acre for single-family and two-family dwellings. Manufactured home parks are permitted within the R20 District by conditional use permit. Nonresidential uses permitted within this district include customary accessory, recreational, educational, and institutional land uses that are compatible with the low density residential character of the R20 District.

###### (B) R10 Residential District

The R10 Residential District is primarily intended to accommodate low density moderate density single-family detached dwellings and modular homes at a maximum density of approximately 4 dwelling units per gross acre. Public water and sewer service is generally available in areas zoned as R10. Nonresidential uses permitted within this district include customary accessory, recreational, educational, and institutional land uses that are compatible with the low density residential character of the R10 District.

###### (C) R8 Residential District

The R8 Residential District is primarily intended to accommodate moderate density single-family detached dwellings, modular homes, and two-family dwellings. Maximum densities within the R8 District include approximately 5 dwelling units per gross acre. Public water and sewer service is generally available in areas zoned as R8. Nonresidential uses permitted within this district include customary accessory, recreational, educational, and institutional land uses that are compatible with the low density residential character of the R8 District.

###### (D) R6 Residential District

The R6 Residential District is primarily intended to accommodate a variety of high density single-family detached dwellings, modular homes, apartments, townhomes, and condominiums. Maximum densities within the R6 District range from approximately 7 dwelling units per gross acre for single-family detached dwellings to over 19 dwellings per gross acre for multifamily dwellings. Public water and sewer service is generally available in areas zoned as R6. Nonresidential uses permitted within this district include customary accessory, recreational, educational, and institutional land uses that are compatible with the high density residential character of the R6 District.

**(E) RR Rural Residential District**

The RR Rural Residential District is primarily intended to accommodate very low density single-family detached dwellings and modular homes in rural areas within the city's extraterritorial jurisdiction that generally do not have access to public water supplies and are dependent upon septic tanks for sewage disposal. Maximum densities within the RR District are approximately 2 dwelling units per gross acre. Manufactured home parks and manufactured homes on individual lots are not permitted within the RR District. Nonresidential uses permitted within this district include customary accessory, recreational, educational, and institutional land uses that are compatible with the low density residential character of the RR District.

**9-1.2 Residential-Office District**

**(A) RO Residential-Office District**

The RO Residential-Office District is primarily intended to accommodate high density multifamily residences; offices; public and institutional; business, professional, and personal services; and limited support retail businesses. Permitted residential uses include single-family detached dwellings, modular homes, apartments, townhomes, and condominiums. Public water and sewer service is generally available in areas zoned as RO. One of the objectives of this district is to encourage land uses that serve as an adequate buffer between intensive nonresidential uses and residential uses.

**9-1.3 Business Districts**

**(A) NB Neighborhood Business District**

The NB Neighborhood Business District is established as a district in which to allow small, limited retail service land uses that provide goods and services primarily to surrounding residential neighborhoods. Permitted residential uses include single-family detached dwellings, modular homes, apartments, townhomes, and condominiums. Residential uses are permitted at the same density and according to the same dimensional requirements as the R6 Residential District. The major objectives of this district are to encourage the location of convenience retail establishments, professional services, and professional offices so as to be as compatible as possible with surrounding lower density residential uses; discourage intensive land uses which require large amounts of land area; and limit the location of large vehicular traffic-generating uses to major streets.

**(B) CB Central Business District**

The CB Central Business District is primarily intended to accommodate a wide variety of commercial activities, particularly those that are pedestrian-oriented, in an intensive development pattern in the city's central business district (CBD). The regulations of this district are intended to preserve the general character and integrity of the current development in the CBD; encourage land uses which provide for a multi-purpose CBD including retail, offices, professional and personal services, entertainment, institutional uses, and living space; encourage land uses which do not require large amounts of outdoor use areas; encourage common or shared off-street parking; and encourage the continued use of land for governmental activities. Multifamily residential uses are permitted at the same density and according to the same dimensional requirements as the R6 Residential District.

**(C) GB General Business District**

The GB Business District is established as a district in which to accommodate a wide range of retail; business, professional, and personal services; office; and limited wholesale and warehousing uses. Areas zoned as GB are generally located on the fringe of the central business district and along major highway corridors. Residential uses are permitted at the same density and according to the same dimensional requirements as the R6 Residential District.

**(D) GB2 General Business District**

The GB2 General Business District is established as a district in which the permitted uses are identical to the GB District *except* that billboards (outdoor advertising signs) are not permitted in the GB2 District.

**(E) CPD Corridor Protection District**

The CPD Corridor Protection District has as its major objectives to promote a sensitive conversion of vacant land to more urban uses; support development that is compatible with and enhances the visual attractiveness of the area; promote well-planned, economically viable development; ensure safe and efficient traffic flow; and avoid uncoordinated, strip development patterns. Residential uses are permitted at the same density and according to the same dimensional requirements as the R6 Residential District.

**9-1.4 Industrial Districts**

**(A) LI Light Industrial District**

The LI Light Industrial District is primarily intended to accommodate limited manufacturing, warehousing, wholesaling, and related commercial and service activities which have little or no adverse impact upon adjoining residential, business, and industrial properties. The preservation of land for light industrial use is a major objective of the LI District. The LI District is intended to provide appropriate locations for light industrial uses in areas that are not adversely impacted by general or heavy industrial uses. Other land uses allowed within the LI District should be limited to those uses that support light industrial uses. Generally, retail and heavy commercial uses should be avoided in the LI District.

**(B) GI General Industrial District**

The GI General Industrial District is primarily intended to accommodate a wide range of assembling, fabricating, manufacturing uses, and support retail and service uses. The GI District is established for the purpose of providing appropriate locations and development regulations for uses that may require special measures to ensure compatibility with adjoining residential or business properties.

#### **9-1.5 Conditional Use Districts**

In addition to the general use zoning districts established in Sections 9-1.1 through 9-1.4, a corresponding Conditional Use District, bearing the designation 'CUD', may be established in accordance with the provisions of Section 8-7, Conditional Use District Rezoning. Accordingly, the following Conditional Use Districts may be designated upon approval by the City Council of a petition by the property owners to establish a Conditional Use District:

R20(CUD), R10(CUD), R8(CUD), R6(CUD), RR(CUD), RO(CUD),  
CB(CUD), NB(CUD), GB(CUD), GB2(CUD), CPD(CUD), LI(CUD),  
and GI(CUD).

All regulations which apply to a general use zoning district also apply to the corresponding conditional use district. All other regulations which may be offered by the property owner and approved by the City Council as part of the rezoning process shall also apply.

#### **9-1.6 Overlay Districts**

Overlay Districts establish certain area regulations that are in addition to those of the underlying general use or conditional use districts. Property within a designated overlay district may be used in a manner permitted in the underlying general use or conditional use district only if and to the extent such use is also permitted in the applicable overlay district.

##### **(A) FHO Flood Hazard Overlay District**

The FHO Flood Hazard Overlay District is intended to set forth regulations which will protect people and property from the hazards of flooding. These regulations are specified in Section 10-2.

##### **(B) AO Airport Overlay District (*Reserved*)**

The use of land within the Shelby Municipal Airport approach surface zones, horizontal surface zones, conical surface zones, and transitional surface zones established by Airport Zoning Ordinance in Appendix B of the City of Shelby Municipal Code shall be in accordance with such airport zoning ordinance.

##### **(C) WPO Watershed Protection Overlay Districts**

The Watershed Protection Overlay Districts are intended to establish regulations for the protection of public drinking water supplies. The watershed protection overlay districts consist of two separate districts: the WCA Overlay District and the WPA Overlay District.

- (1) The **WSIV Critical Area Overlay District (WCA)** consists of that portion of the First Broad River public water supply watershed designated by the NC Environmental Management Commission which is located within the Shelby planning jurisdiction and which is located one-half mile upstream from a

public water supply intake located directly in the First Broad River or the ridge line of the watershed, whichever comes first.

- (2) The **WSIV Protected Area Overlay District (WPA)** consists of those portions of the First Broad River public water supply watersheds designated by the NC Environmental Management Commission which are located within the Shelby planning jurisdiction and which are located within 10 miles upstream from and draining to the public water supply intake on the First Broad River or to the ridge line of the watershed, whichever comes first.

The boundaries of the areas included in the watershed overlay districts are delineated on the official Zoning Map as defined in Section 9-2. Supplementary watershed overlay district standards are delineated in Section 10-1.

#### **(D) Manufactured Housing Overlay Districts**

The Manufactured Housing Overlay Districts are intended to provide for alternative housing opportunities by allowing the placement of manufactured homes within specific defined areas which overlay the R10, R8, and R6 general zoning districts. Such overlay districts are designated R10MH, R8MH, and R6MH. The Manufactured Housing Overlay Districts are established pursuant to Article 19, Section 160A-383.1 (e) of the North Carolina General Statutes. Supplementary Manufactured Housing Overlay District standards are outlined in Section 10-7.

### **9-2 ESTABLISHMENT OF OFFICIAL ZONING MAP**

#### **9-2.1 Official Zoning Map**

The Shelby Planning and Zoning Jurisdiction is hereby divided into zones, or districts, as established in Section 9-1. The official zoning map is the latest copy of the digitized zoning map as produced and maintained by the Shelby Community Development Department.

#### **9-2.2 Map Certification**

The Official Zoning Map shall be identified by the signature of the Mayor, attested by the City Clerk, and shall bear the seal of the City of Shelby, together with the effective date of this Ordinance.

#### **9-2.3 Map Changes**

If changes are made in district boundaries or other matters portrayed on the Official Zoning Map, such changes shall be entered on the Official Zoning Map. Amendments to the Official Zoning Map shall be made utilizing the same procedures that apply to text amendments, as set forth in Article VIII. Specific public hearing notice requirements are, however, delineated in Article VIII for map amendments.

#### **9-2.4 Unauthorized Changes**

No changes in zoning district boundaries shall be made on the Official Zoning Map, except in conformance with the procedures set forth in this Ordinance. Any unauthorized change shall be considered a violation of this Ordinance.

### **9-2.5 Map Location**

Regardless of the existence of purported copies of the Official Zoning Map which may from time to time be made or published, the Official Zoning Map, which shall be located in the Shelby Community Development Department, shall be the final authority as to the current zoning of property within the City's planning jurisdiction.

### **9-2.6 Map Damage and Replacement**

In the event that the Official Zoning Map becomes damaged, destroyed, lost or difficult to interpret because of the nature or number of changes and additions, the City Council may by resolution adopt a replacement Official Zoning Map which shall supersede the prior Official Zoning Map. Unless the prior Official Zoning Map has been lost, or has been totally destroyed, the prior map or any significant remaining parts thereof, shall be preserved, together with all available records pertaining to its adoption or amendment.

### **9-2.7 Replacement of Official Zoning Map**

The new Official Zoning Map may correct drafting or other errors or omissions in the prior Official Zoning Map, but no such correction shall have the effect of amending the original Official Zoning Map or any subsequent amendment thereof. The replacement Official Zoning Map shall be identified by the signature of the Mayor, be attested by the City Clerk, and bear the seal of the City of Shelby.

## **9-3 PERMITTED USES**

### **9-3.1 Permitted Use Table**

**(A) Table of Permitted Uses:** Within each zoning district indicated on the Official Zoning Map and subject to all requirements and conditions specified in this Ordinance, land, buildings, and structures shall only be used and buildings and structures shall only be erected which are intended or designed to be used for uses listed in the Table of Permitted Uses, Table 9-3-1. In the appropriate columns of Table 9-3-1 uses permitted by right in the various districts are indicated by a 'Z', uses permitted by right subject to meeting additional development standards a set forth in Article XI (Development Standards) are indicated with a 'D', uses requiring a Conditional Use Permit from the Board of Adjustment are indicated by an 'C', and uses requiring a Special Use Permit from the City Council are indicated by a 'S'. A blank space in the table indicates that the use is not permitted.

*Insert Table of Permitted Uses*

**(B) Formulation of Permitted Use Table**

- (1) The *Standard Industrial Classification Manual - 1987* was utilized in the preparation of this table and shall be referred to as a guide for purposes of interpretation by the Zoning Administrator. SIC codes are used to refer to SIC Classifications. Entries with 0000 in the Reference SIC column do not correspond to any classification in the *SIC Manual*.
- (2) When a use is not listed in the Permitted Use Table, the Zoning Administrator shall classify it with that use in the table most similar to it. The *SIC Manual* shall serve as a guide in classifying any unlisted use. If the Zoning Administrator should determine that a use is not listed and is not similar to a use in the Permitted Use Table, then said use is prohibited.
- (3) Rental and leasing of any commodity shall be permitted under the same classification and in the same districts as are sales of that commodity, unless rental or leasing of that commodity is listed separately in the Permitted Use Table.
- (4) If an industrial plant or facility involves two (or more) manufacturing activities with different SIC codes on the same zone lot, the industrial plant shall be permitted only in those zoning districts where the more restricted activity is permitted. (For example, an industrial plant preparing canned peanuts and also manufacturing the cans is allowed in those zoning districts permitting can manufacturing.)

**9-3.2 Permissible Uses Not Requiring Permits**

Notwithstanding any other provisions of this Ordinance, no zoning, special use, or conditional use permit is necessary for the following uses:

- (A) Streets.
- (B) Electric power, telephone, telegraph, cable television, gas, water, and sewer lines, wires or pipes, together with supporting poles or structures, located within a public right of way.
- (C) Any accessory building with a building dimension of 12 feet or less.
- (D) Farm buildings except for buildings on a bona fide farm used for nonfarm purposes and buildings used for feeder/breeder operations.

**9-3.3 Change in Use**

- (A) A substantial change in use of property occurs whenever the essential character or nature of the activity conducted on a lot changes. This occurs whenever:
  - (1) The change involves a change from one principal use category to another.
  - (2) If the original use is a combination use, the relative proportion of space devoted to the individual principal uses that comprise the combination use changes to such an extent that the parking requirements for the overall use

are altered.

- (3) If the original use is a combination use, the mixture of types of individual principal uses that comprise the combination use changes.
  - (4) If the original use is a planned unit development, the relative proportions of different types of dwelling units change.
  - (5) If there is only one business or enterprise conducted on the lot (regardless of whether that business or enterprise consists of one individual principal use or a combination use), that business or enterprise moves out and a different type of enterprise moves in (even though the new business or enterprise may be classified under the same principal use or combination use category as the previous type of business). For example, if there is only one building on a lot and a florist shop that is the sole tenant of that building moves out and is replaced by a clothing store, that constitutes a change in use. However, if the florist shop were replaced by another florist shop, that would not constitute a change in use since the type of business or enterprise would not have changed. Moreover, if the florist shop moved out of a rented space in a shopping center and was replaced by a clothing store, that would not constitute a change in use since there is more than one business on the lot and the essential character of the activity conducted on that lot (shopping center-combination use) has not changed.
- (B) A mere change in the status of property from unoccupied to occupied or vice-versa does not constitute a change in use. Whether a change in use occurs shall be determined by comparing the two active uses of the property without regard to any intervening period during which the property may have been unoccupied, unless the property has remained unoccupied for more than 180 consecutive days or has been abandoned.
- (C) A mere change in ownership of a business or enterprise or a change in the name shall not be regarded as a change in use.

#### **9-3.4 Combination Uses**

- (A) When a combination use comprises two or more principal uses that require different types of permits (zoning, special use, or conditional use), then the permit authorizing the combination use shall be:
- (1) A special use permit if any of the principal uses combined requires a special use permit.
  - (2) A conditional use permit if any of the principal uses combined requires a conditional use permit.
  - (3) A zoning permit in all other cases.
- (B) When a combination use consists of a single-family detached residential subdivision that is not a planned unit development and two-family or multi-family uses, the total density permissible on the entire tract shall be determined by having the developer indicate on the plans the portion of the total lot that will be developed for each

purpose and calculating the density for each portion as if it were a separate lot.

### **9-3.5 Prohibited Uses**

Within certain overlay districts some uses are specifically prohibited. The following uses are prohibited in the overlay districts listed.

- (A) WSIV Critical Area Overlay District: The following uses are prohibited:
  - (1) New landfills;
  - (2) New sites for land application of residuals; and
  - (3) New sites for land application of petroleum-contaminated soils.
- (B) WSIV Protected Area Overlay District: The following uses are prohibited:
  - (1) No uses are prohibited.
- (C) FHO Flood Hazard Overlay District: The following uses are prohibited in designated floodways:
  - (1) Buildings, including manufactured homes; and
  - (2) Any use that would cause any increase in base flood levels.
- (D) AO Airport Overlay District (*Reserved*):

### **9-4 DENSITY AND DIMENSIONAL REQUIREMENTS**

Within the zoning districts as shown on the Official Zoning Map all of the following requirements shall be complied with:

#### **9-4.1 Residential Districts**

Density and Dimensional Requirements:

- (A) The density and dimensional requirements for the Residential and Residential-Office Districts are found in Table 9-4-1.

**Table 9-4-1 Table of Density and Dimensional Requirements  
Residential Districts and Residential-Office District**

	<b>Districts</b>					
	R20	R10	R8	R6	RR	RO
<b>Minimum Lot Size (Sq. Ft.)</b>						
Single-Family						
Minimum Development Area	20,000	10,000	8,000	6,000	20,000	6,000
Minimum Square Feet Per DU	20,000	10,000	8,000	6,000	20,000	6,000
Two-Family Dwelling						
Minimum Development Area	30,000	NA	12,000	8,000	30,000	8,000
Minimum Square Feet Per DU	15,000	NA	6,000	4,000	15,000	4,000
Multi-family Dwelling						
1 <sup>st</sup> Multi-family Dwelling Unit	NA	NA	NA	8,000	NA	8,000
Each Additional Apartment Dwelling Unit	NA	NA	NA	2,000	NA	2,000
Each Additional Townhouse Dwelling Unit	NA	NA	NA	2,500	NA	2,500
Each Additional Condominium Dwelling Unit	NA	NA	NA	3,000	NA	3,000
Permissible Nonresidential Use	20,000	10,000	8,000	6,000	20,000	6,000
<b>Minimum Lot Width (Ft.)</b>						
Single-Family Dwelling	90	70	60	50	90	50
Two-Family Dwelling	90	NA	75	70	90	70
Multi-Family Dwelling	NA	NA	NA	80	NA	80
Permissible Nonresidential Use	100	85	75	60	100	60
<b>Minimum Lot Frontage (Ft.)</b>	25	25	25	25	25	25
<b>Minimum Building Setback (Ft.)<sup>1</sup></b>						
Single-Family Dwelling:						
Front Yard	<b>40</b>	<b>25</b>	<b>20</b>	<b>15</b>	<b>40</b>	<b>15</b>
Side Yard	<b>15</b>	<b>10</b>	<b>8</b>	<b>5</b>	<b>15</b>	<b>5</b>
Rear Yard <sup>2</sup>	<b>25</b>	<b>15</b>	<b>15</b>	<b>15</b>	<b>25</b>	<b>15</b>
Two –Family Dwelling:						
Front Yard	50	NA	30	30	50	30
Side Yard	15	NA	10	10	15	10
Rear Yard <sup>2</sup>	40	NA	25	25	40	30
Multi-family Dwelling:						
Front Yard	NA	NA	NA	30	NA	30
Side Yard	NA	NA	NA	10	NA	10
Rear Yard <sup>2</sup>	NA	NA	NA	30	NA	30
Permissible Nonresidential Use:						
Front Yard	50	40	30	25	50	25
Side Yard	15	12	10	8	15	8
Rear Yard <sup>2</sup>	40	30	25	20	40	20
<b>Maximum Building Height</b>						
Single-Family Dwelling	35	35	35	35	35	35
Two-Family Dwelling	35	NA	35	35	35	35
Multi-Family Dwelling	NA	NA	NA	50	NA	50
Permissible Nonresidential Use	50	50	50	50	50	50
<b>Maximum Built-Upon Area<sup>3</sup></b>						
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<sup>1</sup>All building setbacks shall increase one foot for every foot in height in excess of thirty-five feet. Corner lots in R20 districts add 5 feet on the street side that is not the front yard. Corner lots in R10, R8, R6, and RO districts add 10 feet on the street side that is not the front yard.

<sup>2</sup>Through lots shall have front yard setbacks from all adjoining streets and side property setbacks. A rear setback shall not be required for

through lots.

<sup>3</sup>For property located within a watershed protection overlay district, see Section 10-1 for additional maximum built-upon area requirements.

**Notes:** Setback distances shall be measured from the street right-of-way line or property line to a point on the lot that is the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it nor a building part allowed to encroach into a setback (see Section 9-6.3). See Section 9-6.8 for calculating setback distance for situations where no street right-of-way exists. Minimum lot width is measured at the building setback line.

(B) Cluster Development:

- (1) Cluster Option: Cluster development may be used in any residential or residential-office zoning district which permits single-family uses if the tract to be developed is five acres or larger in area and is served by a public sanitary sewer system.
- (2) Development Standards: The objective of the cluster option is to place the single-family detached houses in a development closer together and on smaller lots than would normally be permitted by the zoning district in which the development is located, and to place land which would otherwise have been included in private lots into public dedication or common area. The total number of lots permissible within a cluster development shall not exceed the maximum number of lots allowed if the tract were subdivided into the size of lots required by Table 9-4-1.
  - (a) When cluster development is employed, all lot size and other dimensional requirements for single-family detached dwellings are decreased to comply with all requirements of a smaller lot zoning district as delineated in Table 9-4-2.

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**Table 9-4-2  
Cluster Development**

Zoning District of Proposed Cluster Development	Single-family Lots and Detached Dwellings in Cluster Developments Must Meet the Density and Dimensional Requirements of This District
R20, RR	R10
R10	R8
R8	R6
R6, RO	R6 except that the minimum lot area may be decreased to 4,500 square feet

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- (b) The sum of those areas placed into common area as open space, or those areas dedicated as public open space in excess of any required dedication for such purposes, shall not be less than fifteen percent of the total area of the development.
  - (c) Common areas shall be located within the development to:
    - (i) Preserve stands of trees, natural vegetation, lakes, steep slopes, historic sites or other significant features;
    - (ii) Provide common green space in the development for

aesthetic purposes and pedestrian use;

- (iii) Provide space for common recreation facilities and meeting places; or
  - (iv) Provide buffering from adjacent land uses of higher intensity.
  - (d) Common area for open space shall be of usable dimensions and shall be accessible to all homeowners in the development by means of sidewalks or walking trails.
  - (e) Homeowners or property owners associations responsible for the maintenance and control of common access shall be established pursuant to Section 15-5.
  - (f) Any open space areas proposed for public dedication shall follow the applicable procedural requirements established by Shelby.
  - (3) Cluster Development in Watershed Protection Overlay Districts: Cluster development within all watershed overlay protection districts is allowed provided that the provisions of Section 10-1.5 are met.
- (C) Zero Side Setback:
- (1) Zero Side Setback Option: Zero side setback development may be used in any district which permits single-family uses if the development contains ten or more contiguous lots and is served by a public sanitary sewer system. Zero side setbacks and proposed building locations must be delineated on the approved subdivision plat.
  - (2) Development Standards:
    - (a) Setbacks of zero feet are permitted only where the lots on both of the affected lot lines are part of a zero side setback development.
    - (b) A wall and roof maintenance easement (five feet along one-story walls, ten feet along two-story walls) shall be provided on the opposite side of the zero setback lot line.
    - (c) Whenever one side setback is zero, the minimum setback on the opposite side of the same lot shall be twice the minimum side setback required by this Ordinance for the zoning district in which the development is located.

#### **9-4.2 Nonresidential Districts**

- (A) Dimensional Requirements for Non-Residential Districts: Dimensional requirements for nonresidential districts are shown in Table 9-4-3.

**Table 9-4-3**  
**Table of Density and Dimensional Requirements**  
**Nonresidential Districts**

	NB	CB	GB	GB2	CPD	LI	GI
Minimum Lot Area <sup>1</sup>	--	--	--	--	--	--	--
Building Setback (FT) <sup>2</sup>							
Front Yard	30	0	30	30	30	30	30
Side Yard <sup>3</sup>	5	0	5	5	5	0	0
Rear Yard	0	0	0	0	0	0	0
Maximum Built-Up Area (%) <sup>1</sup>	0 <sup>4</sup>	0 <sup>4</sup>	0 <sup>4</sup>	0 <sup>4</sup>	0 <sup>4</sup>	0 <sup>4</sup>	0 <sup>4</sup>
Maximum Building Height (FT) <sup>5</sup>	50 <sup>5</sup>	0 <sup>5</sup>					

<sup>1</sup>For property located within a watershed protection overlay district, see Section 10-1 for minimum lot area and built-upon area requirements. See note # 1 below for residential uses.

<sup>2</sup>Whenever a lot in a nonresidential district has a common boundary line with a lot in a residential district and the property line setback applicable to the residential lot is greater than that applicable to the nonresidential lot, then the lot in the nonresidential district shall be required to comply with the property line setback applicable to the adjoining residential lot.

<sup>3</sup>Through lots shall have front yard setbacks from all adjoining streets and side property setbacks. A rear setback shall not be required for through lots.

<sup>4</sup>If located outside of a watershed protection overlay district and if public water and sewer service is available, there is no maximum built-upon area requirement. See Section 10-1 for maximum built-upon area requirements for lots located within a watershed protection overlay district.

<sup>5</sup> Whenever a lot has a common boundary line with a lot in a residential district, the building setback shall increase one foot for every foot in building height between 35 feet and 80 feet. No additional building setback is required for buildings greater than 80 feet in height.

**Notes:**

1. Permitted residential dwellings in nonresidential districts shall comply with the R6 density and dimensional requirements outlined in Table 9-4-1.
2. Setback distances shall be measured from the street right-of-way line or property line to a point on the lot that is the nearest extension of any part of the building that is substantially a part of the building itself and not a mere appendage to it nor a building part allowed to encroach into a setback (see Section 9-6.3).
3. Whenever a greater building setback is required by the NC Building Code, such greater setback shall be applicable.
4. See Section 9-6.8 for calculating setback distance for situations where no street right-of-way exists.

- (B) Whenever a greater building setback is required by the NC Building Code, such greater setback shall be applicable.

## **9-5 ACCESSORY USES, BUILDINGS AND STRUCTURES**

The following requirements are for customary accessory buildings and structures. Other accessory buildings and structures containing specific accessory uses listed in Table 9-3-1 (Permitted Use Table) may have additional development requirements found in Article XI, Development Standards.

### **9-5.1 Setback Requirements**

- (A) Front Yard: No encroachment in the front yard setback is permitted.
- (B) Side and Rear Yard: If the gross floor area (GFA) of the accessory structure or building is less than six hundred square feet, the structure or building may be located five feet from a side or rear line. If the GFA is six hundred square feet or greater, it must meet the setback requirements of the principal building(s).

### **9-5.2 Location**

- (A) All Districts: Accessory structures and buildings may be in front of the principal structure but in no case may they encroach in the front yard building setback.
- (B) All Districts: No accessory structure or building except utility substations shall be erected in any easements.

### **9-5.3 Height**

The height of all accessory structures and buildings shall comply to the zoning district in which it is located.

### **9-5.4 Accessory Use Area**

Any non-residential accessory use in a residential zoning district shall not exceed twenty-five percent of any of the following measures: building volume, floor area, land area, or any other appropriate measure of usage.

### **9-5.5 Parking of Recreational Vehicles in Residential Areas**

The parking of recreational vehicles (RV's) in the driveways of residential dwellings shall be considered an accessory use but in no case shall such RV's be occupied as temporary or permanent dwellings.

### **9-5.6 Exception for Water-dependent Accessory Structures**

Water-dependent accessory structures such as piers, boathouses, docks, etc. are not required to conform to the setback requirements of Section 9-5.1.

### 9-5.7 Fences and Walls

Fences are permitted in required setbacks according to Subsection 9-6.3 (Encroachments Into Required Setbacks), provided the requirements of this subsection are met.

- (A) Nothing in this subsection shall preclude the installation of temporary fences around construction works, erected or maintained pursuant to the NC Building Code or Soil Erosion and Sedimentation Control requirements.
- (B) The following fence types are permitted in all zoning districts:
  - (1) Masonry or stone walls;
  - (2) Ornamental iron;
  - (3) Chain-link or chain-link panel or slat weave;
  - (4) Wood; or
  - (5) Similar materials.
- (C) The following fence types are prohibited:
  - (1) Fences constructed primarily of barbed or razor wire, except for the purpose of enclosing livestock;
  - (2) Fences carrying electrical current, except for the purpose of enclosing livestock;
  - (3) Fences constructed of readily flammable material such as paper, cloth, or canvas;
  - (4) Fences topped with barbed wire or metal spikes in residential districts, except those serving a public institution for public safety or security purposes; and
  - (5) Fences constructed of concertina wire.
- (D) Fences shall be maintained in a safe manner plumb (vertical) to the ground. Fences no longer maintained in a safe manner through neglect, lack of repair, manner of construction, method of placement, or otherwise shall be repaired, replaced, or demolished.
- (E) Fence Height
  - (1) Residential Uses: No fence shall exceed four feet in height within fifteen feet of any public or private street right-of-way. Otherwise, no fence shall exceed eight feet in height.
  - (2) Recreational, Agricultural, and Mining Uses: No fence shall exceed eight feet in height unless the fence observes the required principal building setbacks or is at least fifteen feet from all property lines. Otherwise, no fence shall exceed twelve feet in height.

- (3) Commercial, Industrial, Institutional, Office, or Other Nonresidential Uses: No fence shall exceed eight feet in height unless the fence observes the required principal building setbacks or is at least fifteen feet from all property lines.
  - (4) Exceptions: Fence height limitations do not apply to fences built in conjunction with electric or gas substations; municipal solid waste disposal facilities; water or sewage treatment plants or facilities; municipal water storage facilities; public correctional and mental institutions; military facilities; or hazardous or radioactive waste storage or disposal facilities.
  - (5) Measurements:
    - (a) Fence height shall be measured at the highest point, not including columns or posts, of the fence section as measured from the grade on the side nearest the abutting property or street.
    - (b) Columns or posts shall not extend more than eighteen inches above the built height of the fence. Columns or posts shall be separated by a horizontal distance of at least four feet, except at gates.
    - (c) As measured in subsection a. above, any retaining wall or berm below the fence shall be considered as part of the overall height of the fence. Safety railings required by the NC Building Code shall not be included in height measurements.
- (F) Other Fence Requirements
- (1) Obstruction of View: No fence shall be placed or retained in such a manner as to obstruct vision at any intersection with public or private streets.
  - (2) Obstruction of Access: No fence shall block access from doors or windows. Fences shall be located at least two feet from building walls except where fences project from a building wall.
  - (3) Obstruction of Drainageway: Fence construction shall not alter or impede the natural flow of water in any stream, creek, drainage swale, or ditch.
  - (4) Orientation of Barbed Wire: On fences topped with barbed wire, the bottom strand must be at least six feet above grade.
  - (5) Within Utility Easements: No fence shall be located within an utility easement without review and approval by the electric utility provider and the City Engineer.
  - (6) Within Required Planting Areas: The setback of fences within a required planting area shall be subject to the approval of a landscaping plan.

## **9-6 SUPPLEMENTARY DIMENSIONAL REQUIREMENTS**

### **9-6.1 Structures Permitted Above Height Limits**

Except as otherwise prohibited by this Ordinance, the height limitations of this Ordinance shall not apply to public buildings, church spires, belfries, cupolas and domes not intended for residential purposes, or to monuments, water towers, observation towers, power

transmission towers, silos, grain elevators, chimneys, smokestacks, derricks, conveyors, flag poles, radio, television and communication towers, masts, aerials and similar structures, provided such structures meet the required NC Building Code.

**9-6.2 Prevailing Front Yard Setback**

Where fifty percent or more of the lots in a recorded subdivision on the same side of the street as the lot in question are developed with less than the required front yard setbacks, the average setback of the two principal buildings nearest that lot shall be observed as the required minimum setback.

**9-6.3 Encroachments into Required Setbacks**

(A) Encroachments Permitted in Required Setback: The following are permitted in required setbacks 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) At grade patios, play equipment or outdoor furniture, ornamental entry columns and gates, flag poles, lamp posts, address posts, HVAC equipment, mailboxes, outdoor fire places, public utility wires and poles, pumps or wells, and fences or retaining walls;

(3) Handicapped ramps.

(4) Water-dependent structures.

(B) Structures Permitted in Required Setbacks: The following structures may encroach into any required setback:

- (1) Cornices, steps, 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 feet into any required setback, but in no case shall be closer than three feet to any property line; and
- (2) Porches and decks may encroach into the required front and rear setbacks as follows:

Porch or Deck Type	Yard	Maximum Encroachment	Maximum Area
Covered or Uncovered	Street	3 feet	35 Sq. Ft.
Uncovered only	Rear	50% of setback	-

(C) Canopy Projections: Gas station and convenience store pump island canopies may be located in the front setback provided that no equipment or part of a canopy is located closer than 12 feet to a street right-of-way.

**9-6.4 Easement and Right-of-Way Encroachments**

(A) Utility Easements: In addition to the lines, boxes, structures, and substation buildings

for which utility easements are intended, fences without foundations may be located within utility easements.

- (B) Drainage Maintenance and Utility Easements: Water-related improvements, such as boat docks, may be placed or constructed within drainage maintenance and utility easements with the approval of the utility provider having jurisdiction over the easement.
- (C) The repair and replacement of an encroachment structure damaged by the utility provider is the responsibility of the person(s) owning the encroachment structure.
- (D) Public Street Rights-of-Way: No structure nor landscaping plantings may be placed within a public street right-of-way without the express approval of the public entity having jurisdiction over the right-of-way.

#### **9-6.5 Setbacks from Thoroughfares**

Where proposed street alignments have been established, in accordance with an adopted Thoroughfare Plan, building setbacks shall be measured from the future right-of-way line of the proposed street.

#### **9-6.6 Setbacks from Private Streets**

Building setbacks from approved private streets shall be the same distance as specified in Table 9-4-1 or Table 9-4-3 but shall be measured from the private street right-of-way, private street easement, or the boundary line of the common area reserved for the private street.

#### **9-6.7 Setbacks on Flag Lots**

Flag Lots: The 'flagpole' portion of this type of lot shall not be used to calculate building setbacks.

#### **9-6.8 Setbacks Where No Rights-of-Way Exist**

In situations where no street right-of-way exists, the setback from the street shall be calculated by adding 30 feet to the applicable front yard setback required in Table 9-4-1 or Table 9-4-3.

### **9-7 GENERAL LOT REQUIREMENTS**

#### **9-7.1 Principal Buildings Per Lot**

Every building hereafter erected or moved shall be located on a buildable lot; and in no case shall there be more than one principal residential building and its accessory buildings on a lot except as provided below.

- (A) **Nonresidential Group Development:** Two or more principal nonresidential buildings are permitted on a lot pursuant to a site plan approved by the Zoning Administrator, provided that an access driveway is maintained to each building in passable condition for service and emergency vehicles. Buildings must be separated at least twenty feet apart.
- (B) **Residential Group Development:** Two or more principal buildings are permitted in a multi-family development pursuant to a site plan approved by the Zoning

Administrator, provided that an access driveway is maintained to each building in passable condition for service and emergency vehicles. Buildings must be separated at least twenty feet apart.

- (C) **Manufactured Home Park:** More than two principal buildings are permitted in a manufactured home park pursuant to a site plan approved in accordance with the provisions of Section 11-1.44.
- (D) **Two or More Single-family Dwellings on a Single Tract:** Two or more principal single-family residences are permitted on a single, unsubdivided tract pursuant to a site plan approved by the Zoning Administrator, provided that the tract contains sufficient lot area, lot width, and building setbacks for each dwelling. Location of the dwellings on the single tract shall be such that, in the event that the tract is subdivided, each dwelling unit will be situated on a freestanding lot that meets all of the dimensional requirements for the district in which located.

## 9-7.2 Street Access Requirements

- (A) **Access to Public Street Required:** Every lot shall abut and have direct access to a publicly maintained street, except as provided for in this Section. No building or structure shall be constructed, erected, or placed on a lot that does not abut and have direct access to a publicly maintained street, except as provided in this Section.
- (B) **Dead-End Streets:** For purposes of this Section the terminus of a dead-end street does not provide the required access to a publicly maintained street unless that terminus is a circular turnaround or other turnaround approved and constructed in conformance with Article XV (Subdivisions: Procedures and Standards).
- (C) **Single-Family Detached Cluster Development:** Private streets may be used to meet access requirements for lots in single-family detached cluster developments and for single-family lots in planned unit developments, provided the development as a whole abuts and has direct access to a publicly maintained street.
- (D) **Townhouse and Condominium Developments:** Individual parcels shall have right of access through common areas containing private streets and/or private drives at least twenty-four feet in width leading to a publicly maintained street. Individual parcels may have direct access to a publicly maintained street with approval from the City Engineer.
- (E) **Manufacturing Home Park:** Manufactured home park lots or spaces developed in accordance with Section 11-1.44.
- (F) **Nonresidential Group Development:** Individual parcels, whether leased or sold, in a group development shall have shared rights of access along private streets and/or along private drives at least twenty-four feet in width leading to a publicly maintained street. Maintenance of all private streets and private drives shall be a mandatory responsibility, running with the land, exercised by a single entity which shall be composed of one landowner, an Owners' Association, or all owners acting collectively pursuant to a binding agreement.
- (G) **Exceptions:** Special-purpose lots may provide access via easement in accordance with Section 9-9 (Special Purpose Lots) and lots meeting the access requirements of

Section 15-7.2(F).

### 9-7.3 Group Development

- (A) **Parking and Landscaping:** A nonresidential group development shall be treated as a single lot for purposes of providing required off-street parking and required planting yards, even if outparcels for sale are included within the development.
- (1) If the entire development meets the total off-street parking requirement, it is not required that each parcel provide all the required parking for the use thereon.
  - (2) If required buffer yards are provided along the development perimeter, including street frontages, and requirements for parking lot planting are met, buffer yards are not required along property lines and lease lines between two parcels within the group development.
- (B) **Plat and Notice Requirements:** If the owner of a development elects to organize it in an group development, a plat shall be recorded displaying a prominent note identifying it as such and explaining that the property must be developed with common driveways and off-street parking and be subject to a common signage plan and a common landscaping plan. The note shall further state that should the property cease function as a group development, the property will then be in violation of this Ordinance and shall be retrofitted with conventional parking and landscaping, even if doing so requires the removal of previously installed improvements.
- (C) **Uniform Design Plan:** Exterior building materials, roof pitches, colors, awnings, signs, and outdoor lighting used in a group development shall be coordinated so as to provide a uniform design scheme for the entire development. The uniform design plan shall be submitted for review at the time of site plan submission. The uniform design plan shall include drawings, specifications, dimensions, and maps.

### 9-7.4 Water and Sewage Disposal Requirements

Every lot shall be served by a water supply system and a sewage disposal system that (i) is adequate to accommodate the reasonable needs of the proposed use of the lot and (ii) complies with all applicable City of Shelby and county health department regulations.

## 9-8 LOT SIZE REDUCTION PROHIBITIONS

### 9-8.1 Single Lot

No lot shall be reduced in size so that noncompliance with respect to any frontage, building coverage, area, built-upon area, width, setback, parking, buffer yard, or signage requirement of this Ordinance is created, nor shall any existing nonconformity or violation be increased.

### 9-8.2 Buildable Lot

Where two or more contiguous lots in one ownership collectively form a buildable lot, that lot shall not be reduced in size so that noncompliance with respect to any frontage, building coverage, area, built-upon area, width, setback, parking, buffer yard, or signage requirement of this Ordinance is created, nor shall any existing nonconformity or violation be increased. An Instrument of Combination (or similar document or procedure) shall be prepared and

recorded where two or more contiguous lots in one ownership collectively form a buildable lot.

### **9-8.3 Exemption**

These prohibitions shall not apply to county, municipal or state acquisition of land.

## **9-9 SPECIAL PURPOSE LOTS**

Requirements of this Article with respect to street frontage, minimum lot area, and minimum lot dimensions shall not apply to lots for family or church cemeteries, sewer lift stations, and similar utility uses. Such lots shall comply with the requirements below.

### **9-9.1 Minimum Size**

The special purpose lot shall be permitted only after the Zoning Administrator has determined that the proposed lot has sufficient dimensions to accommodate the intended use and, where required by this Ordinance, buffer yards.

### **9-9.2 Access Easement**

If the special purpose lot does not have direct access to a public street, an easement for ingress and egress with a minimum width of 20 feet shall be platted.

### **9-9.3 Platting**

The subdivision to create the lot shall be approved in accordance with Article XV (Subdivisions: Procedures and Standards). The Final Plat shall label the lot as a 'Special Purpose Lot for use as \_\_\_\_\_.'

## **9-10 PLANNED UNIT DEVELOPMENTS**

### **9-10.1 Purpose and Intent**

The Planned Unit Development (PUD) District is designed to: encourage the master planning of development for larger tracts of land and to coordinate such development so as to manage the impacts of the development on the provision of City services and infrastructure; encourage creativity and innovation in the design of developments, including the layout of land uses and open space that promote high standards in design and construction, and further the purposes of the Comprehensive Land Use Plan; provide for more efficient use of land including the reduction of land area disturbed for utility lines and motor vehicle access; permit special consideration of property with outstanding natural or topographical features such as rock outcroppings, areas of special flood hazard, slopes, major tree groupings, significant vegetation, or important view corridors and scenic vistas; facilitate use of the most appropriate construction techniques in the development of land; and, to provide for any individual land use not otherwise specified elsewhere in this UDO.

The PUD District is not intended for use with subdivisions or projects which can be developed under the General Use Districts of this UDO, other than the PUD District, as a matter of right or by requesting approval of a development plan or a special exception use. The minimum site sizes to accommodate a PUD District shall be no less than two (2) acres.

## 9-10.2 Permitted Uses, Development Standards and Minimum Requirements

### (A) Permitted Uses.

Permitted uses, including primary uses and special exception uses, in the PUD District shall be any use or range of uses specified in the PUD Master Plan filed with the petition for zoning map change. Permitted uses, by way of example, may include any residential, commercial / mixed use or industrial use, or any individual use or combination of uses deemed appropriate for the real estate.

Accessory uses, home occupations or temporary uses, unless otherwise specified in the PUD Master Plan, shall be permitted consistent with the General Regulations applicable to the residential, commercial / mixed use or industrial districts, based upon which district the permitted use is first permitted as a primary use according to the intensity of the districts listed in this UDO.

### (B) Development Standards.

Every PUD Master Plan shall specify development standards applicable to each permitted use in the PUD. Development standards applicable to a PUD shall be either:

- (1) Those development standards specified in the PUD Master Plan filed with the petition for zoning map change; or,
- (2) If a development standard has not been specified in the PUD Master Plan, the applicable development standard shall be that which is specified in the district in which the use is first permitted as a primary use, according to the intensity of districts listed in this UDO.

If the petitioner does not want a development standard from the first district in which a use is permitted to be applicable, then the PUD Master Plan shall contain a statement to such effect.

### (C) Minimum Requirements.

- (1) Open Space.

Each PUD shall include a minimum of ten (10) percent of the total acreage of the project as playground, plaza, square, park, parkway open space, or stream buffers developed in compliance with the UDO.

- (2) Landscape Buffer

No portion of a greenbelt or landscape buffer required as part of a PUD shall be included as part of any lot or used to comply with the open space requirements of the Section above. Such greenbelt or landscape buffer shall be indicated on the final plat, which shall include information regarding ownership, maintenance and use limitations.

(3) PUD Criteria.

Each PUD shall represent a use or development pattern which is not available under any individual district as a matter of right or by requesting approval of a development plan or a special exception use.

By way of example, a PUD shall represent a use or development pattern not attainable under the provisions of: Article 9-1.1 - Residential Districts by approval of a development plan; or, Article 9-1.3: Business Districts by approval of a Special Exception Use or an Accessory Use.

### **9-10.3 Procedure for Approval of a Planned Unit Development**

The general review and approval process for a PUD consists of the following elements:

- Pre-Application Concept Plan Meeting; and,
- Zoning Map Change to a PUD District and PUD Master Plan Approval.

#### **(A) Pre-Application Concept Plan Review**

Before filing a petition for a zoning map change to a PUD District accompanied by a PUD Master Plan, the Petitioner shall contact Staff and schedule a pre-application conference to discuss the proposed planned unit development. The Petitioner shall provide the following information for the proposed planned unit development at the pre-application conference:

- (1) Site and location of the parcel proposed for development.
- (2) Proposed gross density of the planned unit development and net density of the individual parcels within the planned unit development.
- (3) A concept plan showing the general land uses proposed, including approximate location and acreage.
- (4) A schematic description of utility and transportation related improvements.

At the pre-application conference, Staff will outline the applicable requirements and approval procedures of the Town.

After meeting with Staff and obtaining any comments, Staff may have to offer, the Petitioner may modify the proposed Concept Plan and either schedule a second pre-application meeting with Staff, or file a petition for zoning map change accompanied by a PUD Master Plan.

Notwithstanding anything contained in this UDO to the contrary, neither the Staff's review of the proposed Concept Plan submitted for review nor Staff's comments to the Petitioner relating thereto shall be considered a denial, approval or decision concerning the proposed Concept Plan.

#### **(B) Filing Petition for Zoning Map Change and PUD Master Plan**

All petitions for zoning map change to the PUD District shall contain a PUD Master

Plan that satisfies the requirements of the City of Shelby and shall specify the development standards that will apply to the real property that is included in the petition.

The review procedure for a PUD District zoning map change request consist of:

- (1) File a petition for zoning map change to a PUD District along with a PUD Master Plan.
- (2) Initial review by staff.
- (3) Developers conference with staff at which time basic comment will be shared with the developer and a review schedule will be established.
- (4) Additional review and comment by staff.
- (5) Review, recommendation and determination

**(C) Review Procedures and Recommendation by the Planning Board.**

- (1) Procedures.

Except as supplemented by this Section, the procedures to be followed for the review, recommendation and approval or disapproval of a zoning map change to the PUD District and the approval or disapproval of a PUD Master Plan shall be the same as those specified in Article VIII – Amendments of this UDO for the filing of a zoning map change.

- (2) Special PUD District Zoning Map Change Procedures.

The PUD District zoning map change and PUD Master Plan approval request shall be forwarded to the Planning Board for review and recommendation consistent with the procedures for other requests for a zoning map change.

- (3) Recommendation.

In its determination of the appropriateness of the proposed PUD and whether to recommend approval or disapproval of the PUD District zoning map change and PUD Master Plan to the City Council, the Planning Board shall be guided by the extent to which the proposal:

- (a) Accomplishes the intent of the Planned Unit Development District set forth in Section 9-10.1, above; and,
- (b) Provides for the protection or provision of the following site features and amenities:
  - (i) Protection and preservation of natural site features, including, but not limited to, slopes, streams, natural water features, wetlands and areas of special flood hazard;
  - (ii) Protection and preservation of wooded areas, individual trees of significant size, or other environmentally sensitive features;

- (iii) Development of common open space and recreational areas (passive or active) accessible to the residents or users of the PUD by way of sidewalks, footpaths, walkways or bikeways;
- (iv) Efficient utilization of the land, including the reduction of land area disturbed for utility lines and motor vehicle access;
- (v) Creation of innovative residential and business environments;
- (vi) Protection and preservation of important view corridors, and scenic vistas;
- (vii) Diversity and originality in lot layout or site design;
- (viii) Utilization of individual building designs which achieve an enhanced relationship between the development and the land;
- (ix) Relationship to surrounding properties;
- (x) Conformance with the Comprehensive Land Use Plan; and,
- (xi) Extent to which the development proposed by the PUD can be developed under the general use districts of this UDO, other than the PUD District, as a matter of right.

**(D) Preliminary Plan Approval**

A Petitioner may file for preliminary plan approval of a plat in the manner set forth in Article 4 Permits and Procedures of this UDO simultaneously with the petition for zoning map change and PUD Master Plan approval. Any preliminary plan application so filed may be considered by the City Council on the same agenda as the petition for zoning map change and PUD Master Plan, provided, however, such preliminary plan shall only be considered if City Council adopts the zoning map change to the PUD District and approves the PUD Master Plan. In the event that a PUD District and PUD Master Plan is denied, the preliminary plan shall be deemed withdrawn from consideration.

**(E) Effect of PUD District and PUD Master Plan**

Upon approval of a zoning map change for a PUD and a PUD Master Plan, the PUD Master Plan shall be the general use district for the subject real estate and shall have the same regulatory impact on the development of the real estate as any other general use district of this UDO would have on any other parcel of real estate, provided, however, if commitments have been made, the approval of a zoning map change for a PUD and a PUD Master Plan shall be considered a conditional use district for the subject real estate and shall have the same regulatory impact on the development of the real estate as any other conditional use district of this UDO would have on any other parcel of real estate.

**(F) Retention of PUD Master Plan**

Upon approval of a zoning map change for a PUD and a PUD Master Plan, the Planning Director shall mark and sign the PUD Master Plan as approved. The Director shall retain one (1) copy of the approved PUD Master Plan in the offices of the Department of Planning and Zoning for use in the administration of the PUD, and return one (1) copy of the approved PUD Master Plan to the Petitioner and all owners.

**9-10.4 Modification of PUD Master Plan**

**(A) Procedure for Modification of PUD Master Plan.**

A Petitioner desiring to make a modification to a PUD Master Plan which has already received approval from the City Council shall submit a request to the Planning Director, in writing, which shall:

- (1) Identify the proposed modification to the PUD Master Plan;
- (2) Detail the reasons for making the proposed modification to the PUD Master Plan; and,
- (3) Include a copy of all portions of the PUD Master Plan elements proposed to be modified.

The Director shall review the proposed modification to the PUD Master Plan, consult with the City's Civil Engineer and the Director of Parks and Recreation, and provide a determination, in writing, to the Petitioner. Any determination shall be made in accordance with the regulations set forth below.

**(B) Minor Modifications to a PUD Master Plan Which May Be Approved By The Director.**

Minor amendments to a PUD Master Plan which has already received approval from the City Council and which do not involve:

- (1) An increase in height, area, bulk, gross density or intensity of land uses;
- (2) The designation of additional land uses;
- (3) The reduction in the depth of perimeter yards or reduction in the Plant Unit Value
- (4) of landscape buffers or screening;
- (5) The addition of driveways or access points to the proposed PUD; or,
- (6) Reduction in the amount of parking spaces for any use below the minimum number required by this UDO, may be authorized by the Planning Director without a public hearing in its continuing administration of the PUD if, in the determination of the Director, the requested minor amendments do not adversely impact the purpose or intent of the PUD.

Such minor modifications authorized by the Director shall be reported, in writing, to both the Planning Board and City Council.

**(C) Disapproval of Modifications to a PUD Master Plan by the Director.**

If the Planning Director determines that the proposed modification to a PUD Master Plan is of such a nature as to:

- (1) Adversely impact adjacent properties,
- (2) Adversely impact the purpose or intent of the PUD; or,
- (3) If the proposed modification includes:
  - (a) An increase in gross density of a residential land use;
  - (b) An increase in height, area, bulk of any land use;
  - (c) An increase in intensity of a non-residential land use;
  - (d) The designation of additional land uses;
  - (e) The reduction in the depth of perimeter yards or the plant unit value of landscape buffers or screening;
  - (f) The addition of driveways or access points; or,

The Petitioner shall be required to file a new petition for zoning map change, including a modified PUD Master Plan in the manner described in Article 9-10.3 – Procedure for Approval of a Planned Unit Development of this UDO.

**(D) Appeal of Director's Determination.**

In the case of a minor modification disapproved by the Planning Director, the Petitioner may appeal such disapproval, in writing, by submitting a letter to the Planning Director within thirty (30) days of being notified of such determination.

All appeals of a minor modification determination by the Director shall be set for consideration at the next available regularly scheduled meeting of the Zoning Board of Adjustment as set forth in Article 4 of the City of Shelby Unified Development Ordinance. Consideration of such an appeal need not be conducted at a public hearing.

**9-10.5 Phasing of Development.**

The development of a planned unit development shall be phased so as to minimize any potential detrimental impact from the development of the secondary uses proposed in the planned unit development on the development of the remaining portions of the planned unit development in conformance with the approved PUD Master Plan or surrounding properties in conformance with the Comprehensive Land Use Plan. Detrimental impacts may include, but are not limited to visual impacts or the perceptions of the area resulting from the secondary uses.

In a primarily residential planned unit development, development of the non-residential portions of the planned unit development shall be designed and phased to ensure that the impacts of the non-residential development do not interfere with the development of the remaining residential portions of the planned unit development in conformance with the approved PUD Master Plan or surrounding properties in conformance with the Comprehensive Land Use Plan.

In a primarily commercial / mixed use or industrial planned unit development, development of the residential portions of the planned unit development shall be designed and phased to ensure that the impacts of the residential development do not interfere with the development of the remaining commercial / mixed use or industrial portions of the planned unit development in conformance with the approved PUD Master Plan or surrounding properties in conformance with the Comprehensive Land Use Plan.

### **9-10.6 Dedication and Maintenance of Common Open Space**

#### **(A) Dedication of Common Open Space.**

All open space proposed as part of a PUD Master Plan shall be dedicated on a recorded final plat, or other legally binding perpetual agreements, and completed prior to the issuance of a certificate of UDO compliance for:

- (1) A residential PUD, or portion thereof – more than fifty (50) percent of the dwelling units included in the PUD District;
- (2) A commercial / mixed use or industrial PUD, or portion thereof – more than fifty (50) percent of the total land area designated for commercial / mixed use or industrial uses in the PUD District; or,
- (3) If the approved PUD Master Plan divides the planned unit development into phases, more than fifty (50) percent of the dwelling units or the total land area designated for commercial / mixed use or industrial uses in the phase of the planned unit development in which the open space is located.

#### **(B) Maintenance of Common Open Space.**

Petitioner shall file documentary assurances with the City Council that the permanent dedication and continuous maintenance of open space, common areas or recreation areas shall be made in accordance with the PUD Master Plan approved by the City Council, and that the open space, common areas and recreation areas shall be made available to the residents and users of the overall subdivision or project in the PUD at a reasonable and non-discriminatory rate of charge, prior to obtaining final plat approval. Such documentary assurances shall be incorporated into the final plat that is recorded in the Office of the Registrar of Deeds of Cleveland County or otherwise provided for through legally binding perpetual agreements as approved by the City Council. Such open space shall perpetually run with the PUD and shall not be developed or separated from the overall subdivision or project in the PUD at a later date (unless no development of any portion of the PUD which is benefited by the open space, common areas or recreation areas has occurred and the entire area subject to the PUD is presented for zoning map change).

## **9-10.07 Approvals Prior to Construction**

### **(A) Approvals Required.**

Preliminary plan approval and UDO permit approval pursuant to the applicable sections of this UDO, shall be a prerequisite for any development or construction activity in a PUD.

### **(B) Timeline for Obtaining Approvals.**

Petitioner shall have a period of up to eighteen (18) months from the date of the approval of the petition for zoning map change and PUD Master Plan in which to file for preliminary plan approval, in total or in phases, for approval by the City Council. The City Council shall review the preliminary plan for consistency with the PUD Master Plan approved in connection with the petition for zoning map change. If a preliminary plan approval is filed for in phases, each subsequent phase shall be filed for within eighteen (18) months of the approval of the prior phase.

### **(C) Expiration of PUD Master Plan and Subdivision Approval.**

In the event that preliminary plan approval is not obtained for all or a portion of the PUD within the time frames outlined above, the PUD Master Plan shall be deemed to have expired for that portion of the PUD that has not received preliminary plan approval, except for the location and density of proposed land uses depicted on such PUD Master Plan. Once a PUD Master Plan has expired for any portion of the PUD, no development shall occur within the expired portions of the PUD until: (i) a new PUD Master Plan is approved as set forth in Article 9.03 of this document and, (ii) a preliminary plan approval as required by this Article has been obtained.

A preliminary plan approval shall expire eighteen (18) months after the date of approval unless a final plat has been recorded, in total or in phases, for the use or development of the property. Once a preliminary plan has expired for any portion of the PUD, no development shall occur within the expired portions of the PUD until a new preliminary plan, as required by this Article, has been approved. If final plats are approved in phases, each subsequent final plat shall be filed for within eighteen (18) months of the approval of the final plat for the immediately previous phase.

### **(D) Extensions of Time.**

Extensions of time, in six (6) month increments not to exceed a total of eighteen (18) months, for obtaining preliminary plan approval or final plat approval may be granted by the Director if requested in writing on or before the eighteen (18) month anniversary of approval of the PUD Master Plan and for good cause shown. In the event that the Planning Director disallows a requested extension, the Petitioner may appeal said determination regarding an extension of time to the City Council within thirty (30) days of being notified of such determination.