

Proposed LUMO Text Amendment: Create new Section 3.5.5

Note: A public hearing on this proposal is scheduled for May 11, 2009. It is anticipated that an updated LUMO text amendment will be submitted to the Town Council in late May 2009 that incorporates refinements based on the May 11 public hearing and other public comments, advisory board comments, additional technical reports, further staff analysis, and further discussions between the Town Council and University Board of Trustees. It is anticipated that a second public hearing on the updated proposed amendment will be conducted on June 15, 2009.

Section 3.5.5 University-1 District *[new]*

(a) Purpose and intent

The purpose and intent of the University-1 district (U-1) is to establish procedural and substantive standards for the Town Council's review and approval of development on large tracts of land where the predominant uses are to be public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility, and/or open space uses.

The objective of the U-1 district is to allow for orderly and sustainable growth and major new development while mitigating impacts to nearby neighborhoods, the community, and the environment. A key feature of this district is the concurrent review of a rezoning application and an initial proposed development agreement within such district that allows the property owner, immediate neighbors, and community to understand the type and intensity of development being proposed, the timing of that development, the potential impacts of the development, the mitigation measures that will be implemented to address those impacts, and the commitments of both the developer and the Town regarding public facilities and services needed to support the proposed development. A development agreement that is approved by ordinance as a legislative decision of the Town Council pursuant to G.S. 160A-400.22 is an integral component of the U-1 zoning district.

(b) Overview of development review procedures

Procedures in this zoning district are designed to facilitate:

1. Articulation of a long-term development plan that provides a context for more detailed intermediate and short term plans and projects;
2. Articulation of detailed plans that involve multiple buildings over an extended time period on a defined portion of the zoning district that is subject to an individual development agreement;
3. Identification of the infrastructure needs and impacts related to the development specified in a development agreement;
4. Provision of measures to mitigate the negative impacts of development in the development agreement and to promote sustainability of approved development, with the mitigation implemented in a manner appropriate with the pace of development; and
5. Provision of predictability and certainty as to the type, intensity, and design of development set out in a Town Council-approved development agreement.

Applicants proposing that property be zoned U-1 must submit a long-range development plan and supporting analysis at the time of petition for rezoning to this district. Upon approval by the Town Council of a development agreement in this district, site development permits for individual buildings are to be issued by the Town Manager, following a determination by the Town Manager that such individual building projects do not violate the Town Council-approved development agreement.

For development proposed within the U-1 zoning district that is not included in a Town Council-approved development agreement, but is a minor modification according to the provisions of this Section, the Town Manager may approve a change to the development agreement and issue a site development permit.

Except as specifically authorized as a permitted use under Section 3.5.5(f)(3), development proposed within this zoning district that is not included in a Town Council-approved development agreement and/or that cannot be considered a minor modification to a development agreement shall be considered to be a special use and subject to the Special Use Permit standards and procedural requirements of section 4.5 of this appendix. In the alternative, the applicant may apply to the Town Council for an amendment to the development agreement.

The terms used within this Section have the same meaning and scope as provided by this Appendix and state law. Provided, however, that to the extent a Council-approved and owner-executed development agreement define a term to have a different meaning or scope, that meaning and scope shall apply as specified in the development agreement.

(c) Minimum Requirements

Only areas with a minimum of twenty-five (25) contiguous acres of developable property (as defined by G.S. 160A-400.23) under common ownership or management may be placed in a U-1 zoning district.

An application for rezoning to a U-1 district may only be initiated by the owner of the property to be rezoned or a duly authorized agent of the owner.

An application for rezoning to a U-1 district must, in addition to all other requirements of this ordinance, include:

1. A long-range plan for the development of the entire area proposed to be included in the district.
2. An ecological assessment of the entire area proposed to be included in the district.
3. A proposed development agreement for a discrete portion (of not less than twenty-five developable acres) of the land to be placed in the district.

The Town Manager may specify forms and reasonable requirements related to these mandated materials to be submitted with a rezoning petition.

(d) Long-range Development Plan

When an application for a rezoning to this district is submitted, the developer shall submit a long-range development plan that depicts all development anticipated for a period of not less than fifty years to provide an opportunity for the Town Council, Town Manager and citizens to see the developer's current plans at a conceptual level for long-term development of all property within the proposed zoning district. This long-range plan is necessary to provide a context for individual development agreements for development within the district. The long-range plan shall represent a good faith depiction of the developer's intentions relative to overall development of the site. It is not, however, submitted for Town approval and shall not be deemed to create a binding commitment on behalf of the developer or the Town.

The long-range development plan shall be submitted to the Town Manager prior to or concurrently with the submission of an application to rezone property into this district. An updated long-range development plan shall also be submitted with all applications for approval of a development agreement within the district or for approval of major amendments of a development agreement within the district.

(e) Development Agreement

A proposed development agreement in this district must include all provisions mandated by state law and shall at a minimum include:

1. A legal description of the property subject to the agreement and the names of its legal and equitable property owners.

2. The duration of the agreement.
3. The development uses permitted on the property, including population densities and building types, intensities, placement on the site, and design.
4. A description of public facilities that will service the development, including who provides the facilities, the date any new public facilities, if needed, will be constructed, and a schedule or triggering points to assure public facilities are available concurrent with the impacts of the development.
5. A description, where appropriate, of any reservation or dedication of land for public purposes and any provisions to protect environmentally sensitive property.
6. A description of all local development permits approved or needed to be approved for the development of the property together with a statement indicating that the failure of the agreement to address a particular permit, condition, term, or restriction does not relieve the developer of the necessity of complying with the law governing their permitting requirements, conditions, terms, or restrictions.
7. A description of any conditions, terms, restrictions, or other requirements determined to be necessary by the Town Council for the public health, safety, or welfare.
8. A description, where appropriate, of any provisions for the preservation and restoration of historic structures.
9. A development schedule, including commencement dates and interim completion dates at no greater than five year intervals, provided, however, the failure to meet a commencement or completion date shall not, in and of itself, constitute a material breach of the development agreement pursuant to G.S. 160A-400.27 but must be judged based upon the totality of the circumstances.

The development agreement may provide that the entire proposed development or any phase of it be commenced or completed within a specified period of time. The development agreement may include other defined performance standards to be met by the applicant and/or its successors in interest.

(f) Permitted uses and dimensional standards

(1) Uses within the area included within a development agreement. The predominant uses are to be public or private development for college/university, research activity, civic, hospital, clinics, cultural, and/or related or support functions with integrated supporting housing, general business, convenience business, office-type business, recreation, utility, and/or open space uses. Uses that may be approved within a development agreement in this district include all uses allowed within the OI-4 district as permitted uses, special uses, or accessory uses. The maximum floor area, density of development, building heights and general locations, other attributes of development intensity, and design guidelines for the development permitted shall be as provided in a Town Council-approved development agreement.

A large central cogeneration/utility plant may only be approved within a development agreement in this district upon approval of a conditional use permit by the Town Council. For the purposes of this section, a large central cogeneration/utility plant includes any facility designed to produce steam, heat, electric power, chilled water, or cooling for other buildings and that is designed to or has the capacity to serve more than two million square feet of building space. The process established by Section 4.5.3 of this Appendix shall be followed in the consideration of this conditional use permit and Sections 4.5.4 and 4.5.5 of this Appendix shall apply to modification, expiration, and revocation of this conditional use permit. The Town Council shall not approve that permit unless each of the following findings is made:

1. That the use is located, designed, and proposed to be operated so as to maintain or promote the public health, safety, and general welfare;
2. That the use is located, designed, and proposed to be operated so as to maintain or enhance the value of contiguous property, or that the use is a public necessity;
3. That the use conforms with the general plans for the physical development of the Town as embodied in the Comprehensive Plan; and
4. That the use conforms with the applicable terms of the development agreement.

(2) Uses subject to a special use permit. Uses that may be approved as special uses in this district outside the boundary or terms of a Town Council-approved development agreement (including proposed uses for property formerly covered by a development agreement that has expired or been terminated) are limited to those uses allowed within the OI-4 district as permitted uses, special uses, or accessory uses as set forth in Table 3.7-1 (Use Matrix). These special uses shall be subject to the dimensional requirements for the OI-4 district as set forth in Table 3-8.1 (Dimensional Matrix) and the perimeter transition area requirements applicable in the OI-4 district.

(3) Permitted uses outside a development agreement. Uses that may be approved as permitted uses within the zoning district but outside the boundary area or terms of a Town Council-approved development agreement are:

- Community gardens;
- Local farmers markets;
- Recreational facility, non-profit;
- Trails, greenways, and recreational land;
- Public use facilities;
- Solar power collection arrays;
- Radio, television, or wireless transmitting and/or receiving facilities, provided the total height of an antenna-supporting structure is not more than 120 feet and there is a 500 foot or more setback from the property line;
- Wind turbines designed to produce 100kW or less, provided the total height is not more than 120 feet, there is a minimum ground clearance of 30 feet from rotors, and there is a 500 foot or more setback from the property line. Wind turbines designed to produce 100kW or less may also be located on rooftops.

These permitted uses shall require a zoning compliance permit pursuant to Section 4.9 of this appendix and, as is provided for OI-3 and OI-4 districts in Table 3.7-1 (Use Matrix), shall not require a special use permit based on the floor area of the proposed development.

(4) Existing conditions. Existing uses, structures, and conditions within a U-1 zoning district as of the effective day property is placed in this district may be continued as specified by this section. All existing uses of land that do not involve the use of a building can be continued as they exist as of the effective date the property is zoned U-1 and can be changed to any use permitted by Section 3.5.5(f)(1). Any existing building within the U-1 district can be used for the use in effect as of the effective date property is zoned U-1 and can be changed to any use permitted pursuant to a development agreement as authorized by Section 3.5.5(f)(1). Any existing building being used for a use permitted by this Appendix or by an applicable development agreement may be expanded to the extent that the Town Manager finds that the expansion is exempt from the Transportation Impact Analysis requirements of Section 5.8(g) of this Appendix. Any new construction, development, or site improvements associated with continuation of existing conditions shall be consistent with the terms of all applicable development agreements in effect within the district.

(g) Development Standards

Development in the U-1 zoning district shall be designed to provide a mix of uses within all major phases of the development that are integrated, interrelated and linked by pedestrian ways, bikeways, and/or other transportation systems. Development agreements shall, to the extent practical and consistent with applicable laws and regulations, include measures to encourage reduction of automobile use and promote alternative modes of transportation; to provide sustainable building design and land uses; to mitigate adverse environmental impacts; to promote conservation of non-renewable energy resources; to exceed minimally accepted practices; and to achieve visual continuity in the siting and scale of buildings.

Specifically, a development agreement in this district shall at a minimum address the following:

1. Plan consistency. The proposed development shall be generally consistent with the long range development plan for the district submitted by the owner. The development shall be generally consistent with the adopted comprehensive plan for the Town.
2. Transportation. Proposed development shall be accompanied by reasonable measures to mitigate transportation impacts that are caused by the development. Proposed development shall address parking, transit, traffic, road, greenway, bikeway, and pedestrian access.
3. Fiscal impact. Proposed development shall be accompanied by reasonable measures to mitigate any adverse fiscal impacts for the Town; provided that, pursuant to GS160A-400.20(b), the Town may not impose any tax or fee not authorized by otherwise applicable law.
4. Housing. Proposed development shall be accompanied at appropriate times by on-site housing to mitigate the impacts that are caused by the development. Such housing shall address student and/or workforce housing needs. A range of housing availability and price levels shall be provided within each major phase and area of the proposed development.
5. Noise and lighting. Noise and lighting levels from proposed development shall not exceed those allowed by Town ordinances or the provisions of the development agreement, whichever are more stringent.
6. Environment. Proposed development shall seek to minimize impacts on natural site features and shall be accompanied by reasonable measures to mitigate those impacts. Proposed development shall address preservation of open land and natural areas, management of stormwater quality and quantity, energy generation and use, preservation of solar access, solar orientation of buildings, air quality, sustainable water and wastewater management, protection of stream buffers, soil erosion and sedimentation control, landscape and vegetation protection.
7. Public utilities and services. Proposed development shall assure that there are adequate public utilities and services and shall be accompanied by reasonable measures to assure the availability of such services concurrent with the creation of the need for the services. There shall be a general demonstration that police, fire, emergency, water, sewer, school, recreation, and other necessary utilities and public services will be available to accommodate the proposed development.

The development agreement shall provide for regular monitoring, reporting, and evaluation of the effectiveness of the development standards.

(h) Amendments and modifications to development agreements

A development agreement may be amended or canceled by mutual consent of the parties to the agreement or by their successors in interest.

The applicant may propose a major amendment or minor modification to any Town Council-approved development agreement. Upon receipt of a proposed adjustment, the Town Manager shall consider the following criteria in making the determination as to whether a proposed adjustment is a major amendment or a minor modification to a development agreement:

1. A substantial change in the boundaries of the development agreement shall constitute a major amendment. Any single proposed increase or decrease in the area of land subject to the development agreement approved by the Town Council of more than 5% shall be considered substantial. A cumulative increase of 15% or more in the land area subject to the development agreement shall be considered substantial.
2. A substantial change in the floor area or number of parking spaces shall constitute a major amendment. Any single proposed increase or decrease in new floor area or number of parking spaces of more than a 5% in a development agreement approved by the Town Council shall be considered substantial. A cumulative increase of 15% or more in the floor area or number of parking spaces subject to the development agreement shall be considered substantial. Provided, under no circumstances shall a change in floor area of less than 1,000 sq. ft. or fewer than ten parking spaces be deemed either a major amendment or minor modification and such changes shall be reported by the applicant to the Town Manager.

3. Changes that would substantially affect pedestrian, bicycle, or vehicular access or circulation beyond the boundaries of the development agreement shall constitute a major amendment.
4. Substantial change in the amount or location of open space within the boundaries of a development agreement shall constitute a major amendment. Any single change that increases or decreases the amount of open space by more than 5% shall be considered substantial. A cumulative increase or decrease in the amount of open space by 15% or more or a substantial change in the location of designated open space shall be considered substantial.

Notwithstanding the above, some proposed changes to a Town-Council approved development agreement that do not meet the threshold to constitute a major amendment may in the judgment of the Town Manager, because of size, perimeter location or transportation impacts, merit public review. In the event the Manager makes such a determination he may submit the proposed minor modification at a Town Council meeting to allow an opportunity for Council review and citizen comment. Unless the other party to the development agreement agrees otherwise, such a review shall not extend the time period allowed for a decision by the Manager on the minor modification or convert the change from a minor modification into a major amendment.

The Town Manager shall determine whether a proposed adjustment to a Town Council-approved development agreement is a major amendment or a minor modification within fifteen (15) working days of receipt of a proposed adjustment and shall promptly notify the Town Council and applicant of that determination. If the proposed action is determined to be a major amendment, the Town Manager shall require the filing of an application for approval of the amendment, following procedures outlined in Section 3.5.5(h) of this Appendix.

In the event State or federal law is changed after a development agreement has been entered into and the change prevents or precludes compliance with one or more provisions of the development agreement, the Town Council may modify the affected provisions, upon a finding that the change in State or federal law has a fundamental effect on the development agreement. In so doing, the procedures set forth for original approval of the development agreement shall be followed.

Except for grounds specified in G.S. 160A-385.1(e), the Town shall not apply subsequently adopted ordinances or development policies to the development that is subject to the approved development agreement.

(i) Procedure for review of development agreements, amendments, and modifications

(1) Application submittal requirements. Applications for approval of a development agreement, a major amendment to a previously approved development agreement, and a minor modification to a previously approved development agreement within a U-1 zoning district shall be submitted to the Town Manager. The Town Manager shall prescribe the form(s) of applications as well as any other material as the Town Manager may reasonably require to determine compliance with this section.

(2) Process for review.

A. Informal consultation. Prior to submission of a proposed development agreement or a major amendment to a previously approved development agreement within this district, the applicant shall consult with the Town Manager and Town Council regarding the proposed development. The applicant is encouraged to engage in active discussion and collaboration with the Town staff, Town Council, Town advisory boards, neighbors, and the community in the preparation of a proposed development agreement or amendment and plans for development.

B. Draft agreement. A draft development agreement and long-range development plan for the activity to be addressed in the development agreement shall be submitted to the Town Manager prior to the submission of a formal development agreement. The Manager and applicant shall present the draft agreement to the Planning Board, such other advisory boards as deemed appropriate by the Town Council, and the Town Council for review and comment. The Manager and applicant shall also present the draft agreement in informal public information sessions for public review and comment. A formal application for approval of a development agreement may

be submitted upon completion of the review, comment, and revision of the draft development agreement.

C. Initial development agreement. Applications for approval of an initial development agreement within this zone shall be processed concurrently with the petition for rezoning to the U-1 district. The public hearing on the initial development agreement shall be noticed and held concurrently with the hearing on the proposed rezoning. Notice of the public hearing before the Town Council on the proposed development agreement shall follow the same notice requirements as are applicable for hearings on proposed zoning atlas amendments. The public notice shall include the location of the property covered by the proposed development agreement, the development uses proposed on the property, and the place a copy of the proposed development agreement may be obtained or reviewed. The Town Council's public hearing on the proposed development agreement shall be open to the public and all interested persons shall be given the opportunity to present comments. The Town Council shall take action on an application for an initial development agreement within this zone concurrently with action on the application for rezoning to this district. The initial development agreement may be applicable to all or part of the land within the district, provided the initial development agreement must be applicable to no less than twenty-five (25) developable acres.

D. Subsequent development agreements and major amendments. Subsequent new development agreements within this zoning district and major amendments of a previously approved development agreement shall be considered using the following process:

1. Upon receipt of an application for approval, the Town Manager shall review the proposal for completeness. The Town Manager shall determine within fifteen (15) working days whether the application is complete and shall promptly notify the Town Council and applicant of that determination. If the application is determined to be incomplete, a notice of the deficiencies in the mandatory items to be included in a proposed agreement or major amendment shall be provided to the applicant with the notice of the Town Manager's determination. If the application is determined to be complete, the Town Manager shall notify the applicant of that determination and shall prepare a report on the proposed agreement or major amendment.

2. The Town Manager shall submit a complete proposed agreement or major amendment and the Town Manager's report to the Planning Board for review and comment. The Planning Board shall review the application and the Town Manager's report and shall submit to the Town Council a written recommendation regarding the proposed agreement or amendment. The Planning Board shall submit its recommendation within thirty-five (35) calendar days of the meeting at which the Town Manager's report is submitted to it or within such further time consented to in writing by the applicant or by Town Council resolution. If the Planning Board fails to prepare its recommendation to the Town Council within this time limit, or extensions thereof, the Town Council may consider the proposed agreement without a comment or recommendation from the Planning Board.

3. The Town Council shall hold a public hearing on a proposed subsequent development agreement or major amendment to a previously approved development agreement. Notice of the date, time, and place of the public hearing before the Town Council shall follow the same published, mailed, and posted notice requirements as are applicable for hearings on proposed zoning atlas amendments. The public notice shall include the location of the property covered by the proposed development agreement, the development uses proposed on the property, and the place a copy of the proposed development agreement may be obtained or reviewed. The Town Council's public hearing on the proposed agreement or major amendment shall be open to the public and all interested persons shall be given the opportunity to present comments.

5. The Town Council shall issue a decision on a proposed subsequent development agreement or major amendment to a previously approved development agreement within one hundred twenty (120) calendar days of the date of the Town Manager's determination that a complete application was submitted or such further time as mutually agreed to by the applicant and the Town.

E. Minor modifications to a previously approved development agreement may be approved by the Town Manager as long as such changes continue to be in substantial compliance with the approving action of the Town Council and all other applicable requirements and result in a configuration of buildings/development that is generally consistent with the Town Council-approved development agreement. The Town Manager shall not have the authority to approve changes that constitute a major amendment of a Town Council-development agreement.

F. The time periods referenced in this subsection shall not run during any period in which the applications for subsequent development agreements or major amendment to a previously approved development agreement have been returned to the applicant for substantial modification or analysis. The time periods set forth in this subsection may also be modified by mutual consent of the applicant and the Town Council.

(j) Actions after decision on a development agreement

(1) Recording approval. If the application for approval of a development agreement or major amendment is approved or approved with conditions, the Town Manager shall execute the development agreement or amendment in accord with the action of the Town Council. The applicant shall then execute the development agreement or amendment and record the development agreement or amendment in the office of the applicable County Register of Deeds within fourteen (14) days after the Town enters into the development agreement. The burdens of the development agreement are binding upon, and the benefits of the agreement shall inure to, all successors in interest to the parties to the agreement.

(2) Individual site development permits. After an executed development agreement is recorded, the Town Manager may then accept applications for individual site development permits for specific buildings/development that the applicant proposes to build within the physical boundaries covered by the agreement. No construction work on any such building/development identified in the agreement may begin until a site development permit has been issued. The Town Manager shall prescribe the form(s) of applications as well as any other material the Town Manager may reasonably require to determine compliance with the agreement. The Town Manager shall approve or deny of the individual site development permit application within fifteen (15) working days of the Manager's determination that the individual site development plan application is complete. The Town Manager shall approve the application upon finding it is substantially consistent with and does not violate any term of the agreement and shall deny approval upon finding the application is not substantially consistent with or violates a term of the agreement. If the application is denied, the Town Manager shall specify the grounds for finding that it is inconsistent or in violation and refer the applicant to the Special Use Permit process described in Section 4.5 of this appendix. Alternatively, the applicant may modify the site development permit application or apply for a major amendment to the development agreement. Provided, under no circumstances shall a change in floor area of less than 1,000 sq. ft. or fewer than ten parking spaces be deemed either a minor modification or major amendment of the development agreement nor require approval or modification of an individual site development permit; such changes shall be reported by the applicant to the Town Manager.

(3) Expiration, abandonment, revocation of development agreement. The term of the development agreement shall be set forth in the agreement and shall not exceed a term of twenty (20) years. The development agreement shall also contain specific provisions relative to default or termination of the agreement.

(4) Periodic review and amendment of the development agreement. The Town Manager shall at least every twelve (12) months conduct a review of the development agreement at which time the applicant or its successors in interest must demonstrate good faith compliance with the terms of the development agreement. The Town Manager shall promptly report the results of this review to the Town Council. If, as a result of this periodic review, the Town Council finds and determines that the applicant or its successors in interest has committed a material breach of the terms or conditions of the agreement, the Town Manager shall serve notice in writing, within a reasonable time not to exceed thirty (30) working days after the periodic review, upon the applicant or its successors in interest setting forth with reasonable particularity the nature of the breach and the evidence supporting the finding and

determination, and providing the applicant or their successors in interest a reasonable time in which to cure the material breach. If the applicant or its successors in interest fail to cure the material breach within the time given, then the Town Council unilaterally may terminate or modify the development agreement pursuant to G.S. 160A-400.27(c); provided, the notice of termination or modification may be appealed to the board of adjustment in the manner provided by G.S. 160A-388(b). Thereafter the applicant or its successors in interest may pursue any other rights and remedies available at law or in equity. If the Town Council elects to unilaterally modify the Agreement, the applicant or its successors in interest may elect for the development agreement to be terminated rather than accede to the development agreement with the modifications unilaterally made by the Town Council.