Town of Hilton Head Island
Planning Commission
LMO Rewrite Committee Meeting
August 22, 2013
8:30 a.m.
Benjamin M. Racusin Council Chambers

AGENDA

As a Courtesy to Others Please Turn Off All Cell Phones and Pagers during the Meeting.

1. **Call to Order**
2. **Freedom of Information Act Compliance**
   Public notification of this meeting has been published, posted, and mailed in compliance with the Freedom of Information Act and the Town of Hilton Head Island requirements.
3. **Approval of the Agenda**
4. **Approval of the Minutes –** August 14, 2013 A.M. Meeting and August 14, 2013 P.M. Meeting
5. **Unfinished Business**
   a. Develop direction for consultant related to the subdivision of property (specifically the provision of access and other infrastructure)
6. **New Business**
   a. Discussion of Draft Chapter 7 - Nonconformities
7. **Adjournment**

Please note that a quorum of Town Council may result if four (4) or more of Town Council members attend this workshop.

TOWN OF HILTON HEAD ISLAND

Planning Commission Draft

LMO REWRITE COMMITTEE MEETING

August 14, 2013 Minutes

8:30a.m. – Benjamin M. Racusin Council Chambers

Committee Members Present:	Chairman Tom Crews, Vice Chairman Quick, David Ames, David Bachelder, Irv Campbell, Chris Darnell, Jim Gant, Walter Nester, Kim Likins, *Ex-Officio* and Charles Cousins, *Ex-Officio*
Committee Members Absent:	None
Planning Commissioners Present:	None
Town Staff Present:	Teri Lewis, LMO Official Lavarn Lucas, Fire Chief Joheida Fister, Fire Marshal Scott Liggett, Director Public Project & Facilities/Chief Engineer Kathleen Carlin, Administrative Assistant

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1) CALL TO ORDER

Chairman Crews called the meeting to order at 8:30a.m.

2) FREEDOM OF INFORMATION ACT

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

3) APPROVAL OF THE AGENDA

The committee **approved** the agenda as presented by general consent.

4) APPROVAL OF THE MINUTES

The committee **approved** the August 8, 2013 meeting minutes as presented by general consent.

Chairman Crews welcomed the public and presented introductory comments regarding today's New Business item. Chairman Crews then requested that Ms. Teri Lewis make her presentation on behalf of staff.

5) NEW BUSINESS

A. **Discussion of access and infrastructure issues related to the subdivision of property**

Ms. Lewis introduced the project consultants from Clarion & Associates, Mr. Craig Richardson and Mr. Stephen Sizemore. Ms. Lewis stated that at the beginning of the LMO Rewrite process, the committee had requested that Town Council add a discussion of access and infrastructure issues related to the subdivision of property to their directives to the committee. Town Council

agreed to add this item to the committee's goals. The consultants are meeting with the committee and the public today in order to gain a better understanding of the access and infrastructure issues related to the subdivision of property.

Ms. Lewis stated that staff would like to receive input from the committee and the public so that the consultants can go back and draft some new language that will address some of the issues that will be discussed today. Ms. Lewis stated that the committee will hold a second meeting on this same subject at 6:00p.m this evening.

Ms. Lewis stated that Fire Chief Lavarn Lucas and Mr. Scott Liggett are here today to discuss infrastructure issues including roadways for emergency access, sewer and water. Ms. Lewis then requested that Chief Lucas make his presentation to the committee.

Chief Lucas made an overhead visual presentation on existing dirt roads and concerns with infrastructure requirements related to emergency access. The island has 91 narrow dirt roads that are privately owned and inadequate for the safe passage of emergency vehicles. Chief Lucas reviewed a number of photographs of unpaved roads showing large ruts, large potholes, and large trees growing over the roads. The roads are not wide or safe enough to be used by fire trucks and rescue vehicles. The poor road conditions cause a delay in emergency response to the public and they also cause damage to the fire trucks and emergency vehicles.

Chief Lucas stated that it will be important for future roads to be built to a standard known as All Weather Access. The existing dirt roads need to be better maintained for safe access by Fire & Rescue vehicles. Needed improvements include the grading of streets and the trimming of branches that hang over the roads.

Chief Lucas and Mr. Irv Campbell discussed improvements in water availability over the years and the availability of fire hydrants in Mr. Campbell's neighborhood. Improvements in the availability of water still need to be made in the Ward 1 neighborhoods.

Mr. Scott Liggett presented statements regarding the history of dirt roads on the island. The Town maintains an inventory of roads without an easement or benefit of right of way. Mr. Liggett, the committee, and a couple of members of the public discussed Beaufort County's dirt road paving program. Mr. Liggett stated that establishing rights of way is often complicated by multiple property owners.

Mr. Campbell stated the need for greater consideration and flexibility by the Town for native island property owners who are trying to deal with many the issues associated with subdividing their property. The existing requirements for infrastructure are not fair to the property owners and need to be made more flexible. The committee discussed Mr. Campbell's concerns with infrastructure requirements. The committee requested that the consultants comment on this issue.

Mr. Craig Richardson stated that multiple issues are involved in the discussion. One option that is used in some other communities is bond construction. The property owner agrees to put in road requirements at the time of development instead of at the time of subdividing the property. This option carries some liability. From an administration standpoint the requirement of infrastructure after property is subdivided is often difficult to monitor. A tight relationship with the Administration is needed for this and many local governments have a problem with it affecting one property owner. The timing issue is a very important issue to consider.

Mr. Richardson stated that another issue is safety requirements on access, fire safety, and EMS safety. Mr. Richardson stated that some communities have an Ombudsman offering technical assistance to the property owner from beginning to end of the development project.

Vice Chairman Quick presented statements regarding the Town's position on safety standards for roads. The committee stated that they cannot do anything about existing dirt roads; the committee will need to consider the future subdivision of land and decide what the infrastructure requirements will be. Ms. Lewis and Mr. Cousins presented additional statements regarding the Town's position on this issue.

Chief Lucas and the committee discussed the minimum required width for roads to ensure safe passage by fire and rescue vehicles. The minimum required width is 20-ft. plus 5-ft. on each side for right-of-way requirements.

Fire Marshal Joheida Fister presented statements regarding the 600-ft. distance requirement for the fire hydrants in new residential neighborhoods. Ms. Fister and the committee discussed minimum requirements for All Weather Surfaces (4-inches of compacted material with 6-inches of gravel on top). The surface has to be able to support a fire truck. The surface does not have to be asphalt.

Chairman Crews and Mr. Nester discussed the difference between a fee simple title and an easement. Mr. Nester stated that the difference is irrelevant – the benefit of an easement is that you are not changing the property line. Ms. Lewis discussed the differences between a minor and a major subdivision. A minor subdivision is 5 or fewer lots. A major subdivision is greater than 5 lots. Ms. Lewis stated that cost is the main concern associated with the requirement for infrastructure when a parcel is subdivided in a minor subdivision.

Mr. Nester stated that many of the Town's requirements are also State requirements. The Town has to comply with State requirements regarding the subdivision of land. There is a requirement for public access and there are other requirements. The committee and staff also discussed concerns with landlocked parcels, which are illegal parcels.

Mr. Thomas Barnwell, Jr., presented statements regarding his own professional experience in developing both single and multi-family property on the island. It is a difficult and time consuming endeavor. Mr. Barnwell stated that additional technical assistance from the Town will be needed by members of the community.

Mr. Perry White presented statements in concern of excessive regulations by the Town on private land. The Town needs to do away with some of the requirements because more flexibility is needed. The Town needs a better understanding of the needs of the Native Island community. Mr. White stated that many property owners cannot manage the financial cost of maintaining privately owned roads.

The committee and Mr. White discussed possible approaches in solving some of these problems. The Town needs to work better with individual property owners with regard to property easements, rights of way, and road maintenance. The Town needs to do a better job at communicating with property owners.

Council Member Mrs. Likins presented statements with regard to Town Council's efforts to work with Beaufort County.

Mr. Craig Richardson stated that today's discussion has been a good one. The issues are important and have many layers to consider. Chairman Crews reminded the public that the committee will continue their discussion at this evening's 6:00p.m meeting. Chairman Crews thanked the committee, the staff, and members of the public for attending the meeting.

7) ADJOURNMENT

The meeting was adjourned at 10:40a.m.

Submitted by:	Approved by:
_____	_____
Kathleen Carlin	Tom Crews
Administrative Assistant	Chairman

DRAFT

TOWN OF HILTON HEAD ISLAND

Planning Commission Draft

LMO REWRITE COMMITTEE MEETING

August 14, 2013 Minutes

6:00p.m. – Benjamin M. Racusin Council Chambers

Committee Members Present:	Chairman Tom Crews, Irv Campbell, Chris Darnell, Jim Gant, Walter Nester, and Charles Cousins, *Ex-Officio*
Committee Members Absent:	Vice Chairman Quick, David Ames, David Bachelder, and Kim Likins, *Ex-Officio*
Town Council Members Present:	Marc Grant
Planning Commissioners Present:	Alex Brown
Town Staff Present:	Teri Lewis, LMO Official Lavarn Lucas, Fire Chief Scott Liggett, Director Public Project & Facilities/Chief Engineer Kathleen Carlin, Administrative Assistant

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1) CALL TO ORDER

Chairman Crews called the meeting to order at 6:00p.m.

2) FREEDOM OF INFORMATION ACT

Public notification of this meeting has been published, posted and mailed in compliance with the Freedom of Information Act and Town of Hilton Head Island requirements.

3) APPROVAL OF THE AGENDA

The committee **approved** the agenda as presented by general consent.

Chairman Crews welcomed the public and presented introductory comments. Chairman Crews stated that the committee, staff, and the consultants are holding a second public meeting today to discuss access and infrastructure issues related to the subdivision of property.

At the beginning of the LMO Rewrite process, the LMO Rewrite Committee had requested that Town Council add a discussion of access and infrastructure issues related to the subdivision of property to the committee's goals. Town Council agreed to add this item to the committee's goals. The consultants are meeting with the committee and the public today in order to gain a better understanding of the access and infrastructure issues related to the subdivision of property.

Following this introduction, Chairman Crews requested that Ms. Teri Lewis make her presentation on behalf of staff.

4) NEW BUSINESS

A. **Discussion of access and infrastructure issues related to the subdivision of property**

Ms. Lewis introduced the project consultants from Clarion & Associates, Mr. Craig Richardson and Mr. Stephen Sizemore. Ms. Lewis stated that staff would like to receive input from the committee and the public so that the consultants can go back and draft some new language that will address some of the issues that will be discussed today.

Ms. Lewis stated that Fire Chief Lavarn Lucas and Mr. Scott Liggett are here today to discuss infrastructure issues including roadways for emergency access, sewer and water. Ms. Lewis then requested that Chief Lucas make his presentation to the committee.

Chief Lucas made an overhead visual presentation on existing dirt roads and concerns with infrastructure requirements related to emergency access. The island has 91 narrow dirt roads that are privately owned and inadequate for the safe passage of emergency vehicles. Chief Lucas reviewed a number of photographs of unpaved roads showing large ruts, large potholes, and large trees growing over the roads. The roads are not wide enough or safe enough to be used by fire trucks and rescue vehicles. The poor road conditions cause a delay in emergency response to the public and they cause damage to fire trucks and emergency vehicles. Many times there is no real ownership of the roads so the problem is very complicated.

Chief Lucas stated that it will be important for future roads to be built to a standard known as All Weather Access. The existing dirt roads need to be better maintained for safe access by Fire & Rescue vehicles. Needed improvements include the grading of streets and the trimming of branches that hang over the roads.

An unidentified member of the public and Chief Lucas commented on the percentage of fire and rescue calls made to properties located on unpaved roads. Mrs. Dot Law and Chief Lucas discussed turning over the ownership of private roads to the County for maintenance. Mrs. Dot Law and Chief Lucas also discussed the responsibility for maintenance of privately owned roads.

Mr. Scott Liggett presented statements regarding the history of dirt roads on the island. Mr. Liggett and a member of the public discussed Ned Court in particular. The Town maintains an inventory of roads without an easement or benefit of right of way. Mr. Liggett and a couple of members of the public discussed Beaufort County's dirt road paving program. Mr. Liggett stated that the establishment of rights of way is often complicated by multiple property owners.

Mr. Craig Richardson presented statements regarding the differences between minor subdivisions and major subdivisions. The committee will need to decide a number of issues for minor subdivisions including All Weather Access for roads and water access. The issues are: (1) Safety Standards; (2) timing issue for the installation of infrastructure; (3) technical assistance to the smaller landowner - Ombudsman. The timing issue is related to bond construction. The property owner agrees to put in road requirements at the time of development instead of at the time of subdividing the property. This option carries some liability. From an administration standpoint the requirement of infrastructure after property is subdivided is often difficult to monitor. A tight relationship with the Administration is needed for this and many local governments have a problem with it affecting one property owner.

Mr. Richardson discussed regulatory issues including safety requirements on access, fire safety, and EMS safety. Mr. Richardson stated that some communities have an Ombudsman offering technical assistance to the property owner from beginning to end of the development project.

Chairman Crews presented statements regarding the need to simplify the process in the LMO. The assignment of a staff member to assist the land owner from the beginning to the end of a project would be helpful. Chairman Crews presented statements regarding State requirements that need to be complied with. We need to understand what the LMO can do and cannot do to address some of the concerns being discussed today. Safety standards island-wide need to be addressed when subdividing property.

Chief Lucas and the committee discussed the minimum requirements for the width of roads to ensure safe passage by fire and rescue vehicles. The minimum required width is 20-ft. plus 5-ft. on each side for right-of-way requirements. The staff and the committee discussed minimum requirements for All Weather Surfaces (4-inches of compacted material with 6-inches of gravel on top). The surface has to be able to support a fire truck. The surface does not have to be asphalt.

Mr. Campbell stated the need for greater consideration and flexibility by the Town for native island property owners who are trying to deal with many the issues associated with subdividing their property. The existing requirements for infrastructure are not fair to the property owners and need to be made more flexible. The committee discussed Mr. Campbell's concerns with infrastructure requirements.

Mr. Campbell discussed the financial concerns of families who would like to sell parcels of their land to family members. The infrastructure requirements are too severe and the Town needs to be more reasonable in these situations. The committee stated that they understand the problem but a solution is not easy. There seems to be three possible variations for a road: (1) dirt road; (2) add rock for a rock road; (3) blacktop the roads and add curbs. Mr. Campbell stated his concern with rock roads and drainage problems.

Mr. Scott Liggett presented statements regarding the Town's drainage program island-wide. The flooding does not occur as it once did. Mr. Campbell stated that his neighborhood was not reviewed as part of the drainage program.

Mr. Cousins stated that the LMO allows other types of roads besides paved roads. There are options in the LMO to address different types of roads.

Mr. Alex Brown presented statements regarding the subdivision of property. Mr. Brown and the consultant discussed the timing issue associated with infrastructure being required at the time of development. Mr. Craig Richardson presented statements based on his experience with this issue. The Administration can be very difficult particularly when dealing with one property owner.

Mrs. Ruth Germany and the staff discussed the required width of roads in a small subdivision particularly as related to safe passage of fire and rescue vehicles. Mr. Nester presented statements regarding other infrastructure requirements. Ms. Lewis also presented comments on setback and buffer requirements on behalf of staff.

Mr. Curtis Barnwell presented statements in support of the comments provided by Mr. Irv Campbell. Mr. Barnwell presented statements in concern of the restrictions and financial burden

placed on Native Island communities. Mr. Cousins stated that the problem is a financial one rather than a regulatory one.

Mr. Gant suggested that the consultants research the issue to see if we can find other communities who have been able to address the timing issue so that you have a reasonable chance of commitment when you need it. Mr. Nester presented statements in concern of legal issues associated with the subdivision of land. The timing issue becomes an unfunded liability for the Town. Mr. Campbell and Mr. Nester discussed the issue from a State level requirement.

The Town has to comply with State requirements regarding the subdivision of land. There is a requirement for public access and there are other requirements. The committee and staff also discussed concerns with landlocked parcels, which are illegal parcels.

Mrs. Louise Cohen presented statements in support of better regulations for the subdivision of land in Native Island communities. The regulations for infrastructure are too much of a burden on most members of the community.

Council Member Marc Grant discussed the community's concern with the restrictions and requirements on subdividing property.

Mr. Curtis Barnwell discussed the possibility of the community's involvement in addressing dirt road conditions. Mr. Darnell presented statements regarding minimum right of way requirements. Mr. Campbell and Mr. Cousins presented additional comments on the issue. Mr. Cousins presented statements regarding the need to better educate Town Council on this issue. The committee and several members of the public presented statements regarding roads located in Bluffton. Mr. Campbell, the rest of the committee, and several members of the public presented additional comments regarding the Beaufort County's dirt road paving program.

Following final comments, Chairman Crews thanked the committee, the staff, and members of the public for attending this evening's meeting.

7) ADJOURNMENT

The meeting was adjourned at 7:40a.m.

Submitted by:	Approved by:
_____	_____
Kathleen Carlin	Tom Crews
Administrative Assistant	Chairman

DRAFT

TOWN OF HILTON HEAD ISLAND

Community Development Department

TO: LMO Rewrite Committee
FROM: Teri Lewis, *LMO Official*
DATE: August 16, 2013
SUBJECT: Review of Draft Chapter 7 - Nonconformities

At the meeting on August 22nd the committee will review draft LMO **Chapter 7 - Nonconformities.**

Copies of the relevant chapter are included for your review prior to the meeting.

From the LMO Rewrite Committee Final Report

Town Council Directive:

- Address nonconformities
  - Evaluate policy on nonconformities
  - Develop framework to facilitate improvement of existing nonconforming sites

Committee's LMO Revision Objectives:

- Create an environment that enables improvement of existing non-conforming properties.
- Minimize nonconforming uses through a more comprehensive integrated zoning approach that reduces specificity of uses and has fewer districts and employs a mix of uses.
- Improve communication on what property owners can do to improve nonconforming site features.
- Implement incentives to reduce or eliminate nonconforming site features.
- Provide education and brochure to improve communication with property owners.

Consultant Tasks:

- Consider using flexible regulations and identify incentives to reduce the number of nonconformities and encourage redevelopment of nonconforming sites/structures/features.

General Notes about Chapter 7 – Nonconformities

- Throughout the discussions that the committee has had related to their review of the other chapters, nonconformities have always been mentioned. The majority of the development that the Island will continue to experience is likely to be redevelopment rather than new development. This means taking a look at nonconforming sites and figuring out a balance

that encourages them to redevelop while trying to bring some parts of the site or structure into conformance.

- The committee has mentioned several times that they expect the changes to the nonconforming chapter to provide the ease and flexibility for nonconforming properties; a review of the proposed nonconforming chapter finds that:
    - The majority of the chapter remains the same as it exists today; and
    - Some language has been added related to the percentage of value of remodeling costs – this seems very confusing and more difficult than the current ordinance.
- Overall it does not appear that the changes to this chapter meet the goals of the committee.

Chapter 16-7: Nonconformities

COMMENTARY:

Chapter 16-7, Nonconformities, carries forward Chapter 7, Nonconformities, of the current LMO, with refinements to clarify language and add flexibility provisions. The refinements are noted in the text. The Chapter includes five sections:

Section 16-7-101, General Provisions, contains the general standards applicable to all nonconformities.

Section 16-7-102, Nonconforming Uses, addresses the standards for nonconforming uses of land.

Section 16-7-103, Nonconforming Structures, includes the standards for nonconforming structures.

Section 16-7-104, Nonconforming Signs, includes standards for nonconforming signs.

Section 16-7-105, Nonconforming Site Features, establishes rules for when development with certain nonconforming site features must bring those nonconforming site features into compliance with the standards of the Ordinance.

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Chapter 16-7: Nonconformities

Sec. 16-7-101. General Provisions

A. Purpose[446]

The zoning regulations and development standards established by this Ordinance are designed to guide the future development of land within the Town by encouraging and regulating site development and appropriate groupings of compatible and related uses that promote and protect the public health, safety, and general welfare. The continued existence of nonconformities is generally inconsistent with the purpose and intent of this Ordinance and in some instances adversely affects the character of development on the island and the value of nearby property. The gradual elimination or lessening of these nonconformities is generally desirable. This Chapter provides for the regulation of legal nonconforming uses, structures, signs, and site features, and specifies those circumstances and conditions under which such nonconformities are allowed to continue and redevelop.

B. Applicability[447]

This Chapter applies to uses, structures, signs, and site features that were made nonconforming by initial adoption of this Ordinance or a subsequent amendment to this Ordinance. It also applies to uses, structures, signs, and site features that were a lawful nonconformity under a provision of a previously applicable ordinance of the Town and that remain nonconforming with one or more provisions of this Ordinance, even if the type or extent of nonconformity is different. If land or a structure is vacant or unused before adoption of this Ordinance, or subsequent amendment thereto, it shall be conclusively presumed that the use of the land or structure is subject to the provisions of this Ordinance, or the subsequent amendment.

C. Authority to Continue[448]

Lawful nonconformities are allowed to continue in accordance with the regulations of this Chapter.

D. Burden of Proof in Determining Nonconformity Status[449]

The burden of establishing that a nonconformity is a legal nonconformity as defined by this Ordinance shall, in all cases, be upon the owner of the land upon which the nonconformity is located, not the Town or any other person.

E. Change of Tenancy or Ownership[450]

No change of title or possession or right to possession of land shall be construed to prevent the continuance of a lawful nonconformity.

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[446] This subsection generally carries forward Sec. 16-7-101 of the current LMO, with modest changes to clarify language.
[447] The language in this subsection replaces the language in Sec. 16-7-102 of the current LMO on the applicability of the nonconformity chapter. This is done to more clearly explain to what the Chapter applies: nonconforming uses, structures, signs, and site features.
[448] This subsection carries forward Sec. 16-7-103 of the current LMO, with minor changes to clarify language.
[449] This subsection carries forward Sec. 16-7-104 of the current LMO, with minor changes to clarify language.
[450] This is a new subsection that clarifies a change in ownership does not change the status of a legal nonconformity.

F. Repairs and Maintenance[451]

1. Repairs and normal maintenance required to keep legal nonconforming uses, structures, or site features in a safe condition are permitted, provided that no alterations may be made except those allowed by this Chapter, or as required by law or ordinance.
2. This Chapter shall not be construed to prevent strengthening or repair of a structure in compliance with the order of a public official whose duties include protecting the public safety.

G. Waiver by Official[452]

The Official may waive any provision of Sec. 16-7-103, Nonconforming Structures, or Sec. 16-7-105, Nonconforming Site Features, upon a determination that:

1. The proposed expansion, enlargement or extension does not encroach further into any required buffers or setbacks or increase the impervious area; and
2. The proposed expansion, enlargement, or extension does not occupy a greater footprint than the existing nonconforming site feature or structure; and
3. The proposed expansion, enlargement, or extension does not result in an increase in density greater than allowed by this Ordinance, or the existing density, whichever is greater; and
4. The applicant agrees to eliminate nonconformities or provide site enhancements that the Official determines are feasible in scope and brings the site into substantial conformance with the provisions of this Ordinance (e.g. meeting open space, buffer, or impervious area requirements); and
5. The proposed expansion, enlargement or extension would not have a significant adverse impact on surrounding properties or the public health, safety and welfare; and
6. If a nonconforming structure is proposed to be relocated on the same site, the relocated structure is brought into conformance to the extent deemed practicable by the Official.

H. Discontinuance or Abandonment[453]

1. A legal nonconforming use which has been discontinued for a period of 18 consecutive months shall not be re-established. Any structure or land, or structure and land in combination which was formerly devoted to a legal nonconforming use which has been discontinued for a period of 18 consecutive months, shall not again be devoted to any use other than a use that is allowed in the zoning district in which the land is located. A conforming use shall not be permitted to revert back to a nonconforming use.

[451] This subsection carries forward Sec. 16-7-105 of the current LMO.
[452] This subsection carries forward Sec. 16-7-106 of the current LMO. Pursuant to the discussion on pp. 26-27 of the Response to LMO Rewrite Committee Comments, it should work with the other flexibility provisions added in the draft LMO to remove obstacles to redevelopment (e.g., restructuring and revision of the zoning district; modifications to the street and adjacent use buffer and setback standards; modifications to the off-street parking standards; the use of tree canopy retention concepts for tree protection; the addition of alternative compliance provisions in the development standards; the administrative adjustment; and revisions to the redevelopment overlay district).
[453] This subsection carries forward Sec. 16-7-107 of the current LMO, with minor changes to clarify language.

2. A legal nonconforming use shall be considered discontinued immediately if it is replaced by a conforming use on the land and thereafter the nonconforming use shall not be re-established.
3. A legal nonconforming structure that has been abandoned for a period of 18 consecutive months may not be re-occupied unless the structure is brought into full conformity with this Ordinance.
4. A legal nonconforming structure shall be considered abandoned immediately if it is replaced by a conforming structure. Thereafter the nonconforming structure shall not be re-established.
5. Discontinuance of a legal nonconforming use or abandonment of a legal nonconforming structure shall be deemed to exist upon the occurrence of any one or more of the following, for a period of 18 consecutive months:
   a. Failure to take all necessary steps to resume a legal nonconforming use; or
   b. Utility services, such as water, gas, and electricity to the property are disconnected; or
   c. Removal of equipment or fixtures which are necessary for the operation of a legal nonconforming use; or
   d. Structures that have fallen into disrepair as defined by Section 9-8-10 of the Municipal Code; or
   e. Signs advertising a legal nonconforming use are removed.

I. Expansion, Enlargement, or Extension[454]

For purposes of this Chapter only, the terms "expansion", "enlargement" or "extension" refer to any increase in the size of a legal nonconforming structure, or site feature. The footprint of any existing nonconforming site feature or structure may be maintained as long as the applicant receives a waiver as provided in Sec. 16-7-101.G, Waiver by Official. The following are exclusions to this section:

1. Expansion, enlargement, or extension associated with a nonconforming use; and
2. Replacement of a nonconforming site feature with a nonconforming structure; and
3. The demolition or modification of an existing nonconforming structure with the intent to rebuild or remodel the structure in accordance with an approved Zoning Map Amendment for the Redevelopment Overlay (R-O) District (see Sec. 16-3-106.K); and
4. Nonconforming signs.

Sec. 16-7-102. Nonconforming Uses

A. Expansion[455]

A legal nonconforming use shall not be enlarged, expanded, or extended to occupy a greater area of land or floor area than was occupied on the date it became a legal

[454] This carries forward Sec. 16-7-108 of the current LMO.
[455] NOTE TO STAFF: This subsection carries forward Sec. 16-7-201 of the current LMO, but clarifies that an accessory use or structure existing on the site at the time the principal use became nonconforming may not be enlarged, nor may a new accessory use or structure be established. OKAY?

nonconforming use. An existing accessory use or structure on the site of a nonconforming use may not be expanded, nor may a new accessory use or structure be established.

B. Relocation[456]

A legal nonconforming use may not be moved, in whole or in part, to any other portion of the parcel of land on which it is located, or to another parcel of land, unless the use will be in conformance with the use regulations of the district into which it is moved.

C. Change in Use[457]

A legal nonconforming use may not be changed to another use unless the proposed new use is permitted in the district in which the land is located.

D. Accessory Use[458]

A use that is accessory to a legal nonconforming use shall not continue after the legal nonconforming use has ceased or been abandoned or discontinued, unless it conforms to all provisions of this Ordinance.

Sec. 16-7-103. Nonconforming Structures

A. Expansion, Relocation or Redevelopment[459]

A legal nonconforming structure shall not be expanded, enlarged, relocated, or redeveloped, in whole or in part, unless the structure conforms with the provisions of this Ordinance.

B. Damage or Destruction of Nonconforming Structure[460]

A legal nonconforming structure that is damaged or destroyed by means not covered by Chapter 16-9: Disaster Recovery, may be repaired, reconstructed, or rebuilt only in accordance with the following requirements.

1. Single-Family and Duplex Exception

a. A single-family or duplex dwelling unit existing within the Town that is damaged or destroyed, and is either permitted in the district in which it is located, or is a legally established nonconforming use in that district, may be rebuilt, restored or repaired consistent with the requirements of Title 15 of the Municipal Code.

b. If any such dwelling unit is a legally established nonconforming structure as to a development standard under this Ordinance, then the rebuilding, restoration or repair shall comply with the development standards of this Ordinance to the extent deemed reasonably practical by the Official. In such circumstances, the applicant shall make every effort to eliminate the nonconformities and bring

[456] This subsection carries forward Sec. 16-7-202 of the current LMO, with minor changes to clarify language.
[457] NOTE TO STAFF: To provide more flexibility, some communities include a provision that allows a nonconforming use to be changed to another nonconforming use that is more conforming (discussed on pp. 26-27 of the Response to LMO Rewrite Committee Comments). Is it appropriate to add such a provision here?
[458] This provision carries forward Sec. 16-7-204 of the current LMO, with minor changes to clarify language.
[459] This subsection carries forward Sec. 16-7-301 of the current LMO.
[460] This subsection carries forward Sec. 16-7-302 of the current LMO, with minor changes to clarify language.

the site into substantial conformance with the development standards of this Ordinance.

2. Structure Less Than 50 Percent Destroyed

a. A building permit may be issued to rebuild, restore, or repair a legal nonconforming structure within 18 months of damage or destruction of not more than 50 percent of its appraised fair market value immediately prior to the damage.

b. Such appraisal, undertaken and submitted to the Town at the owner's expense, may be challenged by the Town on the basis of its own appraisal. The Town shall notify the applicant within 15 days of its intent to obtain another appraisal. The Board of Zoning Appeals shall have final determination authority in the case of any dispute.

c. If the reconstruction is delayed through litigation or other cause beyond the control of the owner, the time of such delay shall not be considered when computing the 18-month period.

3. Structure More Than 50 Percent Destroyed

a. A legal nonconforming structure damaged or destroyed to the extent of 50 percent or more of its appraised fair market value immediately prior to the damage shall not be repaired or replaced except in accordance with the requirements of this Ordinance.

b. Such appraisal, undertaken and submitted to the Town at the owner's expense, may be challenged by the Town on the basis of its own appraisal. The Town shall notify the applicant within 15 days of its intent to obtain another appraisal. The Board of Zoning Appeals shall have final determination authority in the case of any dispute.

c. This provision shall not be construed or enforced to deprive a unit owner in a horizontal property regime from rebuilding in the event the members of the regime vote for and fully fund, through insurance or otherwise, the total restoration of the project. The Town shall require a surety to insure full performance of the restoration project when regime insurance is not sufficient to fully cover the costs of reconstruction.

Sec. 16-7-104. Nonconforming Signs[461]

A. Enlargement or Expansion[462]

A lawful nonconforming sign shall not be enlarged or structurally altered in any way that increases the extent of the nonconformity.

[461] The provisions on nonconforming signs are separated from the provisions on nonconforming site features (they are currently together in Chapter 7, Article IV-Other Nonconformities, in the current LMO). No substantive changes are made to the current provisions, except that provisions on abandonment and damage or destruction are added.
[462] NOTE TO STAFF: This is a new subsection that sets down the general rule that a nonconforming sign cannot be enlarged or expanded. This is the current rule established in Sec. 16—7-402 of the current LMO.

B. Maintained in Good Condition[463]

A lawful nonconforming sign shall be maintained in good and working condition in accordance with Sec. 16-5-113.C.2.f. Painting, repair, and refinishing of the sign face or sign structure is permitted, as long as the appearance of the sign is maintained and complies with the approved Sign Permit.

C. Change to Nonconforming Sign Shall Comply with this Ordinance[464]

If a legal nonconforming sign is changed in any way (its dimensional standards, message, or any other element) because of a change in use, change in business name or location, or for any other reason, the sign shall comply with Sec. 16-5-113,Sign Standards. Any modification that fails to comply with Sec. 16-5-113 shall render the prior Sign Permit void and shall result in the sign being in violation of this Ordinance.[465]

D. Repair, Reconstruction, or Replacement After Damage or Destruction[466]

Repair, reconstruction, or replacement of a damaged or destroyed legal nonconforming sign shall be subject to the same provisions applicable to the repair, reconstruction, or replacement of a damaged or destroyed legal nonconforming structure in Sec. 16-7-103.B, Damage or Destruction of Nonconforming Structure.

E. Off-Premises, Commercial, Multi-Tenant, and Directory Signs[467]

All legally conforming off-premise, commercial, multi-tenant, and directory signs visible from any arterial street shall be removed by July 2, 1999.

Sec. 16-7-105. Nonconforming Site Features[468]

A. Purpose

The purpose of this section is to cause certain lawful nonconforming site features to be brought into compliance with the standards of this Ordinance as part of remodeling or expansion of an existing development.

[463] This subsection carries forward Sec. 16-7-402 B. 1 of the current LMO, with minor changes to clarify language.
[464] NOTE TO STAFF: To provide more flexibility to their nonconformities sign provisions, some communities allow nonconforming signs to change their message, if the business on the site they are located change. Is this something that should be allowed in the Town? (It is mentioned on pp26-27 of the Response to LMO Committee Comments).
[465] This subsection consolidates Sec.16—7-402 B. 2 and 3 of the current LMO, with edits to consolidate the provisions and clarify language.
[466] NOTE TO STAFF: This is a new subsection that applies the same rule for damage or destruction to nonconforming structures to nonconforming signs. OKAY?
[467] NOTE TO STAFF: This subsection carries forward Sec. 16-7-402 B.4 of the current LMO. OKAY?
[468] NOTE TO STAFF: The provisions on nonconforming site features are separated from the provisions on nonconforming signs (they are placed together in Chapter 7, Article IV-Other Nonconformities, in the current LMO), and placed in their own section. This section on nonconforming site features is modified in several ways. First, the site features subject to the section are specifically identified. Second, a sliding scale standard is applied to nonconforming site features to require conformance based on the degree of expansion or remodeling that occurs. Finally, and to provide a safety valve to allow for redevelopment when it is demonstrated the sliding scale standards cannot be met, there is a provision that allows compliance "to the maximum extent practicable," a defined term.

B. Applicability[469]

1. General

For the purposes of this Chapter and section, the term "nonconforming site features" includes the following site features to the extent they fail to comply with the standards in the referenced sections.

a. Lack of or inadequate adjacent street or use buffer width or screening (Sec. 16-5-103);

b. Lack of or inadequate number or dimensions of parking spaces (Sec. 16-5-106.D-E);

c. Lack of or inadequate parking lot landscaping (Sec. 16-5-106.G);

d. Fence or wall height (Sec. 16-5-112.C);

e. Lack of or inadequate screening for particular uses (Sec. 16-4-102.A.7, Sec. 16-4-103.E, and Sec. 16-4-104.D).

2. Applicability

If an application is filed for a development approval or permit for the remodeling or expansion of a structure and the development site contains one or more nonconforming site features identified in paragraph 1 above, and either (a) the value of the proposed remodeling or improvements totals at least 25 percent of the assessed value of the existing structure(over a continuous five-year period), or (b) the additions or expansions (over a continuous five-year period) increase the gross square footage of the structure or use area by 15 percent, the applicant shall be required to address the nonconforming site feature in accordance with this section.

3. Administrative Guidelines

The Official may develop administrative guidelines to assist in the implementation of this section, including guidelines for the resolution of conflicts when it may not be possible for one or more types of nonconforming site features to be brought into compliance with the requirements of this section because of particular site constraints or impacts on adjacent sites.

C. Interior and Exterior Remodeling of Structures

1. Remodeling Costs 25 Percent or Less of Structure Value

Remodeling of a structure in any continuous five-year period that costs 25 percent or less of the current assessed value of the structure shall not require any upgrading of the nonconforming site features identified in paragraph B.1 above.

[469] NOTE TO STAFF: As discussed earlier, this subsection modifies the provisions in Sec. 16-7-401 B. of the current LMO by specifically identifying the site features that are subject to this section. If a site feature and the relevant standards are not identified here, the provisions in this section do not apply. OKAY?

2. Remodeling Costs More Than 25 Percent But Less Than 75 Percent of Structure Value

Remodeling of a structure in any continuous five-year period that costs more than 25 percent, but less than 75 percent, of the current assessed value of the structure shall require nonconforming site features identified in paragraph B.1 above to be upgraded towards compliance with the standards of this Ordinance by a corresponding percentage of full compliance, up to achievement of 100 percent compliance.

Example: Under this Ordinance's minimum off-street parking space standards, an existing building, if built today, would be required to provide at least 40 off-street parking spaces, but the building site only includes 20 spaces. If the building is remodeled such that the cost of remodeling equals 30 percent of the building's assessed value, the remodeling project must add 12 parking spaces (30% x 40 required spaces). This increases the development's degree of compliance with off-street parking standards from 50 percent (20 of 40 required spaces) to 80 percent (32 of 40 required spaces). A subsequent remodeling whose cost also equals 30 percent of building value might seem to call for the addition of another 12 spaces (30% x 40 required spaces), but actually only 8 new spaces would be required to achieve 100% compliance (32 + 8 = 40 spaces).

3. Remodeling Costing 75 Percent or More of Structure Value

Remodeling of a structure in any continuous five-year period that costs 75 percent or more of the current assessed value of the structure shall require all nonconforming site features identified in subsection A,1 to be upgraded to achieve 100 percent compliance with the standards of this Ordinance.

4. When Two or Fewer Parking Spaces Required

When this subsection calls for a remodeling project to install two or fewer additional off-street parking spaces, such additional off-street parking is not required to be installed.

5. Determination of Building Costs and Structure Value

For purposes of determining if upgrading of nonconforming site features is required by this subsection, the cost of the remodeling shall be as shown on the approved Building Permit application. Assessed value shall be based on the most recently available Beaufort County tax rolls.

D. Additions and Expansions

1. Additions and Expansions Less Than 15 Percent

Additions or expansions to a structure in any continuous five-year period (measured at the beginning of the five-year period)that increase the gross square footage of the structure or use area by 15 percent or less shall not require any upgrading of the nonconforming site features identified in paragraph B.1.

2. Additions and Expansions Between 15 and 50 Percent

Additions or expansions to a structure in any continuous five-year period that increase the gross square footage of the structure (measured at the beginning of the five-year period) by more than 15 percent but no more than 50 percent shall require nonconforming site features identified in paragraph B.1 to be installed or upgraded towards compliance with the standards of this Ordinance by a corresponding percentage of full compliance, up to achievement of 100 percent compliance.

Example: Under this Ordinance's minimum off-street parking space standards, an existing building, if built today, would be required to provide at least 40 parking spaces, but the site only contains 20 spaces. If the building is expanded by 30 percent of its gross floor area, the expansion project must add 12 parking spaces (30% x 40 required spaces), increasing compliance from 50 percent (20 of 40 required spaces) to 80 percent (32 of 40 required spaces). A subsequent addition whose size also equals 30 percent of existing building size might seem to call for addition of another 12 spaces (30% x 40 required spaces), but actually only 8 new spaces would be required to achieve 100% compliance (32 + 8 = 40 spaces).

3. Additions and Expansions Greater Than 50 Percent

Additions or expansions to a structure in any continuous five-year period that increase the gross square footage of the structure or use area (measured at the beginning of the five-year period) by more than 50 percent shall require all nonconforming site features identified in subsection A.1 to be installed or upgraded to achieve 100 percent compliance with the standards of this Ordinance.

E. Compliance to Maximum Extent Practicable on Constrained Site[470]

Where full compliance with standards applicable to any of the nonconforming site features identified in paragraph B.1 is precluded by a lack of sufficient developable area due to the size of the site, the layout of existing development, or the presence of significant wetlands, floodplains, watercourses, or other significant environmental constraints on development, the applicant shall bring the nonconforming site features into compliance with applicable standards to the maximum extent practicable, as determined by the Official.

[470] As discussed above, this is a new subsection that recognizes bringing up nonconforming site features to full compliance with applicable standards sometimes may not be possible or practicable on developed sites. This provision provides a way to adapt to such constraints while ensuring that nonconforming site features are eliminated as much as reasonably possible.

S. Administrative Adjustment[134]

1. Purpose

An Administrative Adjustment is intended to allow minor variations, or adjustments, to certain dimensional or numerical standards of this Ordinance based on specific criteria, with the intent of allowing minor modifications where application of a standard creates practical difficulties in allowing development that otherwise advances the purposes served by the standards of this Ordinance and the Comprehensive Plan, and is compatible with surrounding development. An Administrative Adjustment is also intended to provide limited flexibility, in specific areas, to allow alternative design that is better than that afforded by strict application of certain dimensional or numerical standards. The purpose of this subsection is to establish procedures and standards for review of applications for Administrative Adjustments.

2. Applicability

Administrative Adjustments may be requested, reviewed, and approved in accordance with this subsection concurrently with the review and approval of an application for a Development Plan Review (see Sec. 16-2-103.G) or Small Residential Development Review (see Sec. 16-2-103.H). An Administrative Adjustment may be approved only for the standards identified in Table 16-2-103.S.2, Allowable Administrative Adjustments, up to the limits set forth in the table for the zoning district within which the adjustment is requested.

[134] As described in the Code Assessment and the Response to LMO Rewrite Committee Comments on the Code Assessment, the administrative adjustment is a review procedure intended to allow the Official to approve prescribed adjustments or modifications to certain numerical standards (e.g., for parking, adjacent use setbacks and buffers, street setbacks and buffers, height) where doing so would avoid practical difficulties in allowing development that otherwise conforms to the purposes served by the deviated standard and provides some benefit to the community. Based on the draft LMO, the administrative adjustments proposed include adjustments to:

- Street setbacks and buffers:
  - Up to 30 percent reduction in the SMU District except on Highway 278 if (1) demonstrated no reasonable options exist to lay-out an allowed use in a way that complies with LMO standards, and (2) opacity level of buffer is comparable to that of required buffer.
  - Up to 20 percent reduction in the IL and RD Districts if (1) demonstrated no reasonable options exist to lay-out an allowed use in a way that complies with LMO standards, and (2) opacity level of buffer is comparable to that of required buffer.
  - Up to 15 percent reduction in all other districts.
- Adjacent use setbacks and buffers:
  - Up to a 10% reduction in all districts.
- Parking space requirements:
  - Up to a 15 percent reduction in IM-X Coligny and COM-MX Districts; and
  - Up to 10 percent reduction in all other districts.
- Building height:
  - Up to 10 percent increase in all districts.

TABLE 16-2-103.S.2: ALLOWABLE ADMINISTRATIVE ADJUSTMENTS		
ADJUSTED STANDARD	**DISTRICTS**	**ALLOWABLE ADJUSTMENT AND SPECIAL CRITERIA**
Minimum setback requirements for monopole telecommunication towers (see Sec. 16-4-102.A.7.b.iv.05(E)-(I)[135]	All Residential districts and I-MX-Coligny, COM-MX, WMU, and SMU Districts	Up to 35% reduction if demonstrated (1) the tower could not fall on adjacent structures, and (2) the tower meets the wind-load rating to survive Class V hurricane winds
Minimum adjacent street setback requirements (see Sec. 16-5-103.D) and adjacent street buffer requirements (see Sec. 16-5-103.G)	SMU District	Up to30% reduction in setback distance, buffer width, and planting rate for buffer screening, except on Highway 278, if demonstrated (1) there are no reasonable options to design and locate allowed development in way that complies with LMO standards, and (2) opacity level of buffer is comparable to that of required buffer
	IL District	Up to 20%, reduction in setback distance, buffer width, and planting rate for buffer screening if demonstrated (1) there are no reasonable options to design and locate allowed development in way that complies with LMO standards, and (2) opacity level of buffer is comparable to that of required buffer
	RD District	Up to 20%, reduction in setback distance, buffer width, and planting rate for buffer screening if demonstrated (1) there are no reasonable options to design and locate allowed development in way that complies with LMO standards, and (2) opacity level of buffer is comparable to that of required buffer
	All other districts	Up to 15% reduction in setback distance, buffer width, and planting rate for buffer screening
Minimum adjacent use setback requirements (see Sec. 16-5-103.E) and adjacent use buffer requirements (see Sec. 16-5-103.H)	All districts	Up to 10% reduction in setback distance, buffer width, and planting rate for buffer screening
Minimum number of parking spaces (see Sec. 16-5-106.D.1)	I-MX Coligny District	Up to 15% reduction
	COM-MX District	Up to 15% reduction
	All other districts	Up to 10% reduction
Maximum building height (see district standards in Chapter 16-3: Zoning Districts	All districts	Up to 10% increase

3. Administrative Adjustment Procedure

a. Pre-Application Conference

Not Applicable.

b. Application Submittal

Applicable (see Sec. 16-2-102.C).

[135] This proposed administrative adjustment responds to the Greater Island Council Telecommunications Taskforce's identification of the need to allow for reductions in tower setbacks. The Taskforce notes that the current LMO's hardship variance process does not provide the latitude to allow such reductions and this has become an impediment to an acceptable level of communications coverage on the island. To avoid the LMO's hardship variance process, the Taskforce suggested locating telecommunication facility standards outside the LMO, or amending the LMO's variance provisions to allow setback variances (which might raise some legal issues). We suggest instead that the LMO allow setbacks for new monopole telecommunication towers in residential and mixed-use zoning districts to be reduced by up to 35 percent as an Administrative Adjustment, subject to the general Administrative Adjustment standards and special criteria requiring demonstration that the tower could not fall on adjacent structures and meets the applicable wind-load rating associated with Class V hurricane winds. Additional criteria can be added if necessary.

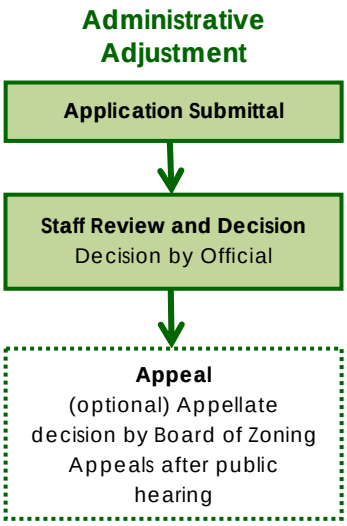
c. Staff Review and Action

Applicable to a decision by the Official (see Sec. 16-2-102.D). The Official's decision shall be based on the adjustment limits and special criteria in Table 16-2-103.S.2, Allowable Administrative Adjustments, and the review standards in Sec. 16-2-103.S.4, Administrative Adjustment Review Standards, and shall be one of the following:

i. Approval of the Administrative Adjustment;

ii. Approval of the Administrative Adjustment subject to conditions of approval; or

iii. Denial of the Administrative Adjustment.



d. Public Hearing Scheduling and Notice

Not applicable.

e. Advisory Body Review and Recommendation

Not applicable.

f. Decision-Making Body Review and Decision

Not applicable.

g. Appeal

Applicable. The decision of the Official on an Administrative Adjustment may be appealed by an aggrieved person to the Board of Zoning Appeals, in accordance with the standards set forth in Sec. 16-2-103.U, Appeal of Official's Decision to Board of Zoning Appeals.

4. Administrative Adjustment Review Standards

An Administrative Adjustment shall be approved only for the standards identified in Table 16-2-103.S.2, Allowable Administrative Adjustments, up to the limits set forth in the table for the zoning district within which the adjustment is requested, and subject to any applicable special criteria in Table 16-2-103.S.2, and the following standards:

a. The administrative adjustment is consistent with the character of development on surrounding land.

b. The result of development proposed by the administrative adjustment is consistent with the purpose and intent of the standard(s) adjusted.

c. The administrative adjustment either:

i. Is required to compensate for some unusual aspect of the site or the proposed development; or

ii. Supports an objective or goal from the purpose and intent statements of the zoning district in which it is located; or

iii. Results in improved site conditions for a development with nonconforming site features.

d. The administrative adjustment will not pose a danger to the public health or safety;

e. Any adverse impacts are mitigated; and

f. The site is not subject to a series of multiple, incremental, administrative adjustments that result in a reduction in development standards by the maximum allowed.

5. Effect of Approval

Approval of an Administrative Adjustment authorizes only the particular adjustment of standards authorized by the approval. It does not exempt the applicant from the responsibility to obtain all other permits or development approvals required by this Ordinance and any other applicable laws, and does not indicate that the development for which the Administrative Adjustment is granted should receive approval of other permits and development approvals under this Ordinance unless the relevant and applicable portions of this Ordinance or any other applicable laws are met. An approved Administrative Adjustment, including any condition of approval, shall run with the land, unless it expires, and shall be binding on the landowners and their successors and assigns, and shall not be affected by a change in ownership.

6. Expiration

Approval of an Administrative Adjustment shall expire at the time of expiration of the approved Development Plan or Small Residential Development with which it is associated.

7. Amendment

An Administrative Adjustment may be amended only in accordance with the procedures and standards for its original approval.

K. Redevelopment Overlay (R-O) District[190]

1. Purpose[191]

The purpose of the Redevelopment Overlay (R-O) District is to implement the Comprehensive Plan by providing sufficient flexibility to the development and design standards in Chapter 16-5: Development and Design Standards, to allow development with nonconforming structures and site features to redevelop consistent with the island character.

2. Applicability[192]

a. A landowner of a parcel of land who proposes to redevelop may apply to have the parcel of land rezoned R-O District in accordance with Sec. 16-2-103.C, Zoning Map Amendment (Rezoning), and this section. For the purposes of this section, redevelopment is defined as the renovation of a previously developed site to the density allowed under this Ordinance, or the existing density, whichever is greater. Cosmetic changes to the exterior of the structure and interior renovations do not qualify as redevelopment.

b. The following parcels of land may apply to have the land rezoned R-O District:

i. A parcel of land that contains a nonconforming structure or site feature; or

ii. A conforming parcel that redevelops in conjunction with a parcel that contains a nonconforming structure or site feature.

c. A parcel of land that is located in a RSF district does not qualify and is not eligible to have the land rezoned R-O District.

3. Procedure[193]

An R-O District classification shall only be approved in accordance with the procedures in Sec. 16-2-103.C.2, Zoning Map Amendment (Rezoning) Procedure, and the standards in Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards, and the requirements of this section.

4. Additional R-O District Standards

In addition to the review standards in Sec. 16-2-103.C.3, Zoning Map Amendment (Rezoning) Review Standards, redevelopment proposed to be classified to a R-O District may modify the dimensional, development, and design standards of this Ordinance in accordance with Table 16-3-106.K.4, Additional R-O District Standards, if compensating public benefits are provided pursuant to Sec. 16-3-106.K.5, Compensating Public Benefits.

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190 This subsection generally carries forward Article XI-Redevelopment Floating Zone, of the current LMO. It renames it Redevelopment Overlay (R-O) District, coordinates the restrictions and limitations with the new Administrative Adjustment (see Sec. 16-2-103.S), and adds some requirements that compensation public benefits be provided for the modifications allowed (consistent with the discussion on p. 28 of the Response to LMO Rewrite Committee Comments).

191 This paragraph carries forward Sec. 16-4-1101 of the current LMO, with changes to clarify language.

192 This paragraph carries forward Sec. 16-4-1102 of the current LMO, with changes to clarify language. It does not change who may apply for an R-O District classification.

193 This paragraph carries forward Sec. 16-4-1103 of the current LMO, but changes provisions to reference the rezoning procedures in the LMO draft.

TABLE 16-3-106.K.4: ADDITIONAL R-O DISTRICT REVIEW STANDARDS	
STANDARD	**ALLOWABLE MODIFICATION**
Uses (see base district standards in this chapter)	Only uses allowed in the base district are allowed, except for legal nonconforming uses. Legal nonconforming uses are allowed to continue in accordance with the requirements of this section.
Maximum density (see base district standards in this chapter)	May not exceed maximum density of base district, or if a legal nonconforming use or structure, existing density. A nonconforming use that exceeds maximum density may change use if the impacts of the proposed use on infrastructure, surrounding properties, and the adequacy of the site improvements (like parking and stormwater) are evaluated, and it is determined it is appropriate to allow the current density to be carried forward in the proposed redevelopment.
	Nonconforming square footage may be converted to another use if the density of the proposed use is based on square footage and the proposed use is permitted within the zoning district where the property is located.
Maximum building height (see base district standards in this chapter)	A structure that is nonconforming because of height may be rebuilt to legally nonconforming height if determined practicable. Decision may be based on ability to recapture density of development and height of surrounding buildings.
Maximum impervious cover (see base district standards in this chapter)	Shall not exceed maximum requirements of Ordinance, except for legal nonconforming site feature, which may maintain existing coverage. In no case shall impervious cover exceed 80 % of site
Minimum adjacent street setback requirements (see Sec. 16-5-103.D) and adjacent street buffer requirements (see Sec. 16-5-103.G)	Up to50% reduction in setback distance, buffer width, and planting rate for buffer screening
Minimum adjacent use setback requirements (see Sec. 16-5-103.E) and adjacent use buffer requirements (see Sec. 16-5-103.H)	Up to 50% reduction in setback distance, buffer width, and planting rate for buffer screening
Maximum adjacent street setback angles (see Sec. 16-5-103.D) and adjacent use setback angles (see Sec. 16-5-103.E)	May be increased based on the height of the structure and setback distance, but may not exceed a 75 degree angle
Minimum open space requirement (see Sec. 16-5-104)	Shall not exceed minimum requirements of Ordinance, except for legal nonconforming site feature which may maintain existing open space. In no case shall open space be less than 20% of site
Minimum number of parking spaces (see Sec. 16-5-106.D.1)	Up to 50% reduction, if it is demonstrated off-street parking can be adequately addressed.[194]
Parallel parking spaces (see Sec. 16-5-106.D.7)	The number of parallel parking spaces may be increased
Compact parking spaces (see Sec. 16-5-106.D.8)	Compact parking spaces may be increased to the number that existed on the site as a nonconforming site feature prior to redevelopment

[194] This is a new provision. It is based on the standards proposed in the administrative adjustment procedure, which allows minor reductions in off-street parking to be reviewed and approved by the Official.

TABLE 16-3-106.K.4: ADDITIONAL R-O DISTRICT REVIEW STANDARDS	
STANDARD	**ALLOWABLE MODIFICATION**
Parking space dimensions (see Sec. 16-5-106.E.1)	Regular parking spaces that are no less than 8.5 feet by 18 feet, or compact spaces that are no less than 8.5 feet by 15 feet may be reconstructed to the same size that existed as a legal nonconforming site feature prior to the proposed redevelopment
	Width of parking spaces adjoining a median at the end of a row of parking may be reduced to nine feet, or what existed on the site before redevelopment if the parking space dimensions at the time were a legal nonconforming site feature
Maximum number of parking spaces between landscaped medians in a row of parking and maximum width of landscaped medians in parking lots (see Sec. 16-5-106.G.3)	May be modified
Maximum off-site parking spaces (see Sec. 16-5-106.H.4.a)	Up to 75% of required parking spaces may be provided off-site, if it is demonstrated safe and convenient access is provided to the development served by the off-site parking[195]
Pedestrian access to shared parking (see Sec. 16-5-106.H.3.b) and off-site parking (see Sec. 16-5-106.H.4.c)	Access to shared or off-site parking may cross an arterial street if it is determined there is adequate and safe pedestrian ingress and egress to the development served by the off-premise parking [196]
On-street parking (see Sec. 16-5-106.H.6)	May be approved if determined appropriate
Minimum existing tree canopy retention (see Sec. 16-6-104.F.2)	A legal nonconforming site that does not comply with the minimum existing tree canopy retention percentage may be allowed to redevelop without the minimum amount of existing tree canopy retention if it is determined all reasonable steps have been taken to meet the required amount of existing tree canopy retention on the site, and the landowner deposits a tree mitigation fee in a Town-administered tree replacement fund in lieu of providing additional tree canopy. (see Sec. 16-6-104.M)

5. Compensating Public Benefits[197]

One or more of the following compensating benefits may be offered as a means of ensuring the modifications to the dimensional, development, and design standards proposed for the R-O District and the redevelopment site results in development that is consistent with the goals and objectives of the dimensional, development, and design standards modified, and the base district where the proposed redevelopment is located:

a. Architectural design that exceeds any minimum standards established in this Ordinance;

b. Provision of environmentally-sustainable and energy-efficient building design;

[195] This provision is modified from the current provisions in Sec. 16-4-1104 I.J. 2 since shared parking provisions are added to Sec. 16-5-106.H.3, Shared Parking, of the draft LMO.
[196] This provision is modified from the current provisions in Sec. 16-4-1104 I.J. 2 based on the additional alternative parking compliance provisions added to Sec. 16-5-106.H.3, Shared Parking, and Sec. 16-5-106.H.4, Off-Site Parking of the draft LMO.
[197] Consistent with the discussion on p. 28 of the Response to LMO Rewrite Committee Comments, this subsection adds a requirement that compensation public benefits be provided as part of the R-O District approval that mitigate the modifications allowed.

c. Provision of one or more green building incentives (See Sec. 16-5-102, Incentives for Green Building Practices in RD District);

d. Provision of passive or active open space and related improvements, beyond the open space standards of this Ordinance;

e. Permanent protection of scenic views or access to waterfront areas;

f. Public parks and recreational facilities;

g. Public trails and trail linkages;

h. Cultural or historic facilities deeded to the Town or qualified not-for-profit agencies; or

i. Other public benefits found to be appropriate.

6. Minor Amendment

a. A minor amendment to an approved R-O District shall be reviewed and, if appropriate, approved by the Official. A minor amendment shall be an amendment that does not make the site nonconforming to the adopted development and design standards approved as part of the R-O District. A minor amendment shall not further relax a development or design standard or other design criteria that has been modified by the approved R-O District.

b. Disapproval of a request for a proposed minor amendment to an R-O District by the Official may be appealed within 14 calendar days of the decision to the Board of Zoning Appeals.

7. Expiration

An R-O District Map Amendment (Rezoning) shall not expire, but the amended Official Zoning Map is subject to further amendment or repeal, in accordance with the map amendment procedures set forth in Sec. 16-2-103.C, Zoning Map Amendment (Rezoning).