

3.11.4.7. Administration of Form Districts

- A. **Zoning Compliance Permit.** Where required by this Sec. 3.11, a zoning compliance permit consistent with Land Use Management Ordinance, Sec. 4.9, is required.
- B. **Special Use Permit.** Where required by this Sec. 3.11, a special use permit consistent with Land Use Management Ordinance, Sec. 4.5, is required.
- C. **Form District Permit**
 - 1. **Review Required**
 - a. It is unlawful to begin any excavation, removal of soil, clearing of a site, or placing of any fill on lands contemplated for development, or to begin any construction, moving or alteration of any building or other structure, including accessory structures and signs, until the Town Manager has issued a Form District Permit for such action, certifying that the development complies with the applicable provisions of this Section. Form District permits are not required for minor modifications such as ordinary repairs, interior upfits or other renovations which do not increase or decrease floor area by more than 5% of the permitted amount or 2,500 square feet, whichever is greater. A Zoning Compliance Permit or other permits may be required for such changes.
 - b. It is unlawful to change the type of use or type of occupancy of any land or structure, or to extend any use on any lot on which exists a nonconforming use, until the Town Manager has issued a Form District Permit for such action, certifying that the intended use complies with the applicable provisions of this Section.
 - 2. **Site Specific Vesting Plan.** For the purposes of the Land Use Management Ordinance, a Form District Permit constitutes a site specific vesting plan.
 - 3. **Application Submittal Requirements.** Applications for a Form District Permit are submitted to the Town Manager. The Town Manager will prescribe the forms on which applications are made. The Town Manager will prescribe any material that may reasonably be required to determine compliance with this Section and the Land Use Management Ordinance, with sufficient copies for necessary referrals and records. No application may be

accepted by the Town Manager unless it complies with such submittal requirements. Applications that are not complete will be returned to the applicant, with a notation of the deficiencies in the application.

- a. An urban design assessment is required as part of a complete application, providing a preliminary determination of whether elements of the proposed development meet the urban design intent of the Blue Hill District. Urban design assessments will be prepared by consultants under contract with the town and the costs of the analyses will be included in the development application fees.
 - b. Traffic impacts of proposed new development and redevelopment shall be considered in the review of applications. A traffic impact analysis as provided for in Sec. 5.8.1.G is required to identify and quantify the traffic impacts of proposed developments, and to identify facility improvements necessary to maintain acceptable levels of service. A traffic impact analysis is required for Form District Permit review, unless affirmatively exempted by the town manager.
- 4. **Action on the Application**
 - a. The applicant must meet with the Town prior to filing of the Form District Permit application to determine whether new right-of-way or public easement will be required for the development, in accordance with the Regulating Plan, Sec. 3.11.2.2. If new rights-of-way or public easements are required, the proposed dedication shall be shown on the Form District Permit application, and the final dedication shall be recorded prior to the issuance of a Building Permit. Prior to issuance of a Form District Permit, a phasing schedule shall be approved by the Town Manager that addresses necessary public improvements by the applicant and right-of-way and public easement improvements to be constructed by the Town.
 - b. The Town Manager will take final action on the application. Final action on an application will be based solely on findings as to compliance with all applicable provisions of this Section

3.11 and the Land Use Management Ordinance, including all applicable conditions of an approved major or minor subdivision, and must be one of the following:

- i. Approval of application; or
 - ii. Approval of application subject to reasonable conditions to ensure compliance with applicable regulations and conditions; or
 - iii. Denial of application.
- c. Final action must be taken within 75 working days of the acceptance of an application or 15 working days from approval of a Certificate of Appropriateness (whichever is later), or within such further time consented to by written notice from the applicant or by Town Council resolution. The Town Manager must reach a decision on a complete or otherwise actionable application within the prescribed time limit, or any extension.

5. Actions Subsequent to Decision

- a. In the case of approval or approval with conditions, the Town Manager will issue the Form District Permit. In the case of denial of an application, the Town Manager must notify the applicant of the reasons for such denial.
- b. Where engineering construction permits are required by the Town Code of Ordinances, such permit may not be issued prior to issuance of the Form District Permit.
- c. Where a building permit is required by Chapter 5 of the Land Use Management Ordinance, or a sign permit is required, such permits may not be issued prior to issuance of the Form District Permit and engineering construction permit required for the development.

6. **Appeal of Decision.** A decision by the Town Manager in granting or denying a Form District Permit may be appealed to the Board of Adjustment in accord with the provisions of the Land Use Management Ordinance, Section 4.11.

7. **Modification of Form District Permits.** The Town Manager may approve a minor modification of a Form District Permit administratively. A change from what is included in an approved Form District

Permit will be considered a major modification under the following circumstances:

- a. A change of use is proposed.
- b. An increase in the number of dwelling units is proposed.
- c. A change in floor area is proposed, resulting in an increase of more than five (5) percent of the permitted amount or two thousand five hundred (2,500) square feet, whichever is greater.
- d. The change would render a building approved under a Form District Permit out of substantial conformance as defined in subsection 3.11.4.8.8.

Any other changes may be approved by the Town Manager or the Town Manager's designee and shall not constitute a major modification. The application fee for a modification to a Form District Permit is established by the Council as part of the budget process.

8. Performance and Maintenance Guarantees

- a. Conditions attached to an approval of a Form District Permit may include the following:
 - i. A condition requiring the applicant to provide performance guarantees and/or maintenance guarantees deemed necessary to ensure compliance with the requirements of this Section and the conditions of permit approval.
 - ii. A condition permitting the applicant to provide performance guarantees in lieu of actual completion of required improvements prior to use or occupancy of the development authorized by the Form District Permit, provided the delayed completion of such improvements is determined to be compatible with the public health, safety and welfare.
- b. Such performance guarantees and maintenance guarantees must be satisfactory as to their form and manner of execution, and as to the sufficiency of their amount in securing the satisfactory construction, installation, or maintenance of the required improvements.
- c. The condition requiring or permitting a performance guarantee must specify a

reasonable time period within which required improvements must be completed. Such time period must be incorporated in the performance guarantee. The length of such time period may not exceed 2 years from the date the Form District Permit is issued.

- d. No performance guarantee will be released until certification of the satisfactory completion of all required improvements covered by such performance guarantee has been submitted to and approved by the Town Manager.
- e. If the required improvements covered by a performance guarantee are not completed in accordance with the terms of the performance guarantee, the obligor will be liable to the Town for the reasonable cost of the improvements not completed and the Town may, either prior to or after the receipt of the proceeds, complete such improvements.

9. Expiration and Revocation of Form District Permit Approvals

- a. **Starting Time Limit.** If the use, construction, or activity authorized by approval of an application for a Form District Permit or modification of Form District Permit is not started within 12 months of the date of approval, or within such further time stipulated in the approval, the approval will expire and any Town permit issued pursuant to the approval will be void. The Town Manager may grant a single extension of the starting time limit for up to 12 months, unless he/she determines that paramount considerations of health, the general welfare, or public safety require re-approval. The Town Manager will determine whether the use, construction, or activity has started.
- b. **Completion Time Limit.** If all construction and actions authorized or required by a Form District Permit or modification of Form District Permit are not completed by the completion date stipulated in the permit or modification, the permit holder may request an extension of the completion time limit from the Town Manager. The Town Manager may grant extensions of the time limit for periods of up to 12 months if he/she determines that:

- i. The permit holder submitted the request within 60 days of the completion date;
 - ii. The permit has proceeded with due diligence and good faith; and
 - iii. Conditions have not changed so substantially as to warrant reconsideration of the approved development.
- c. The Town Manager will determine whether or not all construction and actions authorized or required have been completed.

10. Revocation of Form District Permit

- a. If any conditions of a Form District Permit or modification of Form District Permit, including completion time limits, or requirements of this Section applicable to the permit or modification are violated, the Town Manager may revoke the permit or modification.
- b. The Town Manager may reinstate a revoked Form District Permit or modification of Form District Permit if he/she determines that:
 - i. The holder of the revoked permit or modification submitted a request for reinstatement within 90 days of the revocation;
 - ii. The violations that were the cause of the revocation have been corrected; and
 - iii. The development fully complies with all conditions of the permit or modification and all applicable requirements of this Section and the Land Use Management Ordinance.
- c. Certificate of Occupancy. No building or structure for which a Form District Permit has been issued may be used or occupied until, after final inspection, a certificate of occupancy has been issued indicating compliance with the provisions of this Section, the Land Use Management Ordinance, and all other state and local laws, including conditions of the Form District Permit and all other required permits.

D. Certificate of Appropriateness

1. Review Required

- a. No exterior portion of any building or related structure (including structured parking visible from the public realm, masonry walls, fences, light fixtures, steps and pavement), or any above-ground utility structure or stormwater control measure at grade may be erected, altered, restored or moved within the Form District until an application for a certificate of appropriateness as to the aesthetic quality of exterior architectural features and accessory utility features has been approved, based upon the criteria and standards established in this Sec. 3.11. The above requirements do not apply to the demolition of any buildings or structures or routine maintenance of structures.
- b. For purposes of this Section 3.11, "exterior architectural features" shall include the architectural style, general design, and general arrangement of the exterior of a building or other structure, including the following: kind and texture of the building material, type and style of all windows and doors, orientation and treatment of building entrances, building elements as described in Sec. 3.11.2.6, type and style of light fixtures, quality of associated streetscape environment, quality and activation of pedestrian connectivity routes, quality and activation of associated outdoor amenity spaces, screening of associated vehicular and services areas, cohesive design aesthetic for all buildings and structures on the site, and appropriate transitions to surrounding development.

Accessory utility features further includes the screening of transformers and cabinet structures, as well as the appearance of visible stormwater control measures at grade. Review should give consideration toward the hierarchy of street-facing façades as they relate to the different frontage types. For development along streets with Type C Frontage requirements, the Community Design Commission shall review and approve

certificates of appropriateness consistent with 3.11.4.2.C.2.a.

- c. A certificate of appropriateness shall be issued prior to the issuance of a Form District Permit, zoning compliance permit or any other permit granted for purposes of constructing or altering buildings or structures.
- d. The Town and all public utility companies shall be required to obtain a certificate of appropriateness prior to initiating any changes in the character of structures and buildings on property owned or franchised by the Town of Chapel Hill or public utility companies, excluding street paving, sidewalks, utility installations, lighting, walls, fences, regulatory signs, other traffic control measures and devices, and utility distribution systems located in public right-of-way.
- e. A certificate of appropriateness application may be reviewed and approved by the Town Manager according to specific review criteria contained in state law and guidelines approved by the Community Design Commission when the application is determined to involve minor work. Minor works are defined as those exterior changes that do not involve any substantial alterations. Such minor works shall be limited to those listed in the Community Design Commission's Rules of Procedure, or a successor document. No application involving minor work may be denied without the formal action of the Commission. Ordinance requirements for notification of affected property owners must be met for all applications.

2. Certain Changes Not Prohibited

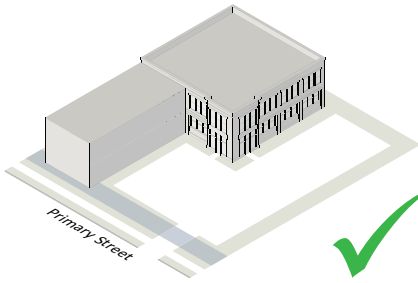
- a. Nothing in this Section shall be construed to prevent the ordinary maintenance or repair of any exterior architectural feature in the Form District that does not involve a change in design, material, or outer appearance, or to prevent the construction, reconstruction, alteration, restoration, moving, or demolition of any feature that the Building Inspector or similar official certifies is required by the public safety because of unsafe or dangerous condition.

- b. On the basis of preliminary sketches or drawings and other supporting data, the Town Manager may exempt from requirements for a certificate of appropriateness projects involving the ordinary maintenance or repair of any exterior architectural feature that does not involve a change in design, material, or outer appearance. The Town Manager must notify the Community Design Commission of all such exemptions.
- 3. Application Submittal Requirements**
- a. Applications for a Certificate of Appropriateness are submitted to the Town Manager. The Town Manager will prescribe the forms on which applications are made. The Town Manager will prescribe any material that may reasonably be required to determine compliance with this Section and the Land Use Management Ordinance, with sufficient copies for necessary referrals and records. No application may be accepted by the Town Manager unless it complies with such submittal requirements. Applications that are not complete will be returned to the applicant, with a notation of the deficiencies in the application.
 - b. Prior to approval or denial of an application for a certificate of appropriateness by the Community Design Commission, the Commission must take such action as may reasonably be required to inform the owners of any property likely to be materially affected by the application, and will give the applicant and such owners an opportunity to be heard.
 - c. In cases where the Commission deems it necessary, it may hold an administrative hearing concerning the application.
- 4. Action on the Application**
- a. Within 100 working days of the acceptance of an application, or within such further time consented to by written notice from the applicant, the Town Manager or the Community Design Commission shall issue a Certificate of Appropriateness, issue a Certificate of Appropriateness with conditions, or deny the application.
 - b. Such action must be an administrative decision based upon the criteria and standards established in this Sec. 3.11. The Design Guidelines shall serve as a reference for the Community Design Commission's review.
 - c. Failure to take final action on an application within the prescribed time limit, or extensions, will result in the issuance of a Certificate of Appropriateness for the application submitted.
 - d. The Town Manager or the Community Design Commission may impose such reasonable conditions with the issuance of a Certificate of Appropriateness as will ensure that the spirit and intent of Section 3.11 are achieved.
- 5. Actions Subsequent to Decision.** The Town Manager will notify the applicant of a decision in writing, and file a copy of it with the Town's Planning Department. If the application is denied, the notice must include the reasons for such action.
- 6. Appeal of Decision.** A decision by the Community Design Commission on an application for a certificate of appropriateness may be appealed to the Board of Adjustment in accordance with the provisions of Land Use Management Ordinance Section 4.10.
- 7. Submittal of New Application.** If the Community Design Commission denies an application for a certificate of appropriateness, a new application affecting the same property may be submitted only if substantive change is made in plans for the proposed construction, reconstruction or alteration.
- 8. Modification of Certificate of Appropriateness.** The community design commission may review and approve a major modification of a certificate of appropriateness. A major modification is defined as any change that exceeds "minor work" as it is defined in subsection 3.11.4.7.D.1.e. Any change considered "minor work" shall be deemed a minor modification and may be reviewed and approved by the town manager. The application fee for a modification to a certificate of appropriateness is established by the council as part of the budget process.

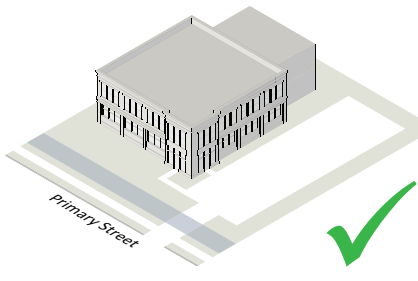
E. **Nonconforming Build-to Requirement.** The nonconforming provisions of the Land Use Management Ordinance apply to this Section. The following standards clarify the application of the Land Use Management Ordinance nonconforming provisions to the build-to zone requirements of this Section. Expansion of an existing building is required to meet the build-to zone requirements, except as permitted in the following situations.

1. **Additions.** Expansion of an existing building which is unable to meet the build-to requirement of this Section must comply with the following nonconforming provisions:

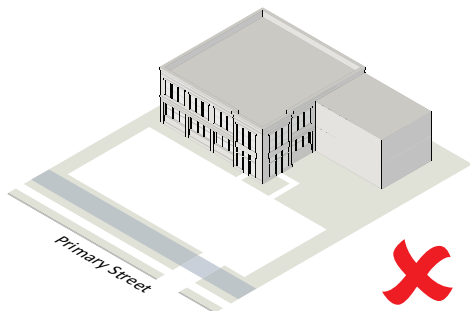
a. **Front: Addition.** Any addition to the front must be placed in the build-to zone. The addition does not have to meet the build-to zone percentage for the lot.



b. **Rear: Addition.** Rear additions are permitted. The intent is to ensure a building addition does not increase the degree on the nonconformity in relation to the build-to zone.

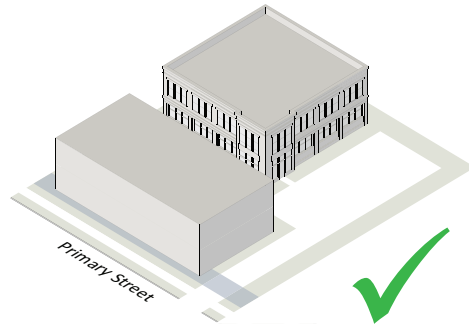


c. **Side: Addition.** Side additions are not permitted

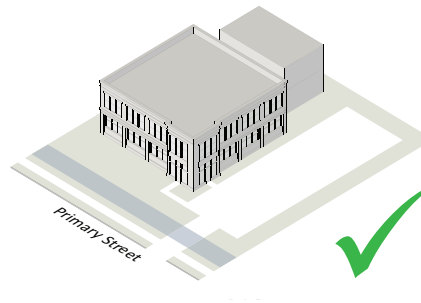


2. **New Buildings.** Where a new building is being constructed on a lot or site with an existing building on it that doesn't meet the build-to requirement, the following nonconforming provisions apply.

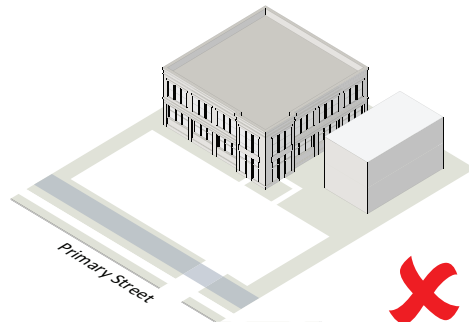
a. **Front: New Building.** All new buildings must be placed in the build-to zone until the build-to zone percentage for the lot has been met.



b. **Rear: New Building.** New buildings located outside of the build-to zone are not permitted until the build-to zone percentage for the lot has been met.



c. **Side: New Building.** New buildings located outside of the build-to zone are not permitted until the build-to zone percentage for the lot has been met.



F. Phased Redevelopment.

1. **Build-Out Plan.** Where appropriate for demonstrating the phased redevelopment of a site, the applicant may submit a build-out plan conveying the overall general intent and system of development as part of the application for a Form District Permit and Certificate of Appropriateness. A build-out plan shall be required when a proposed improvement would not meet the standards of Section 3.11 except in the context of construction of a future improvement. The build-out plan shall include the following information:
 - a. The boundary of the site subject to phased redevelopment.
 - b. The type and location of improvements within the site, with sufficient detail to demonstrate overall compliance with Section 3.11.
 - c. A phasing plan.
 - d. Proposed interim treatments at the boundaries of phases, as necessary to provide buffering and screening between initial and subsequent phases.
 - e. Proposed alternative improvements to be made if a subsequent phase is delayed.
2. **Design Alternative.** The Community Design Commission may approve buildings and related structures not meeting the standards of Section 3.11 as a design alternative, where a build-out plan identifies a sequence of improvements that will bring all phases into conformance with Section 3.11 and provides adequate buffering and screening between phases. Such approval may include buildings and building additions located outside the build-to zone; however, no structure shall be approved in a location that would significantly restrict the ability of future buildings to meet build-to zone requirements.

3.11.4.8. Defined Terms

A. General Provisions

1. General Meaning of Words and Terms

- a. All words and terms used have their commonly accepted and ordinary meaning unless they are specifically defined in Section 3.11.4.9 or the context in which they are used clearly indicates to the contrary.
- b. When vagueness or ambiguity is found to exist as to the meaning of any word or term used, any appropriate canon, maxim, principle or other technical rule of interpretations or construction used by the courts of this state may be employed to resolve vagueness and ambiguity in language.

2. Graphics, Illustrations and Photographs. The graphics, illustrations and photographs used to visually explain certain provisions of Section 3.11.4.9 are for illustrative purposes only.

- B. Defined Terms.** The following terms are defined for the purpose of this Section. Terms not defined may be defined in Appendix A. If there is a conflict between a definition in Appendix A and this Section, the definition in this Section will be used.

Addition (to an existing building) means any walled and roofed expansion to the perimeter of a building in which the addition is connected by a common load-bearing wall other than a fire wall. Any walled and roofed addition which is connected by a fire wall or is separated by independent perimeter load-bearing walls is “new construction.”

Attic means habitable or uninhabitable space within a building situated within the structure of a pitched roof and above the uppermost regular story.

Block length means the distance between two intersections or an intersection and the terminus of a road.

Buildable means land area that is suitable and available for development unconstrained by physical layout, topography, regulatory factors, existing or planned public facilities, utilities and the like.

Building depth means the largest total dimension of a building footprint measured perpendicular to the primary frontage.

Building width means the largest total dimension of a building footprint measured parallel to the primary frontage.

Building Façade means the face of a building that delineates the edge of conditioned floor space.

Day means one calendar day. Working Day means a day that the Town of Chapel Hill is open during normal business hours. This excludes weekends and observed holidays.

Gross Floor Area means the sum in square feet of the horizontal area of all floors of the building measured from the exterior walls or from the centerline when 2 buildings or units abut. Gross floor area includes basement floor area when more than 50% of the basement height is above the established curb level or above the finished lot grade level where the curb level has not been established. Elevator shafts, stairwells, floor space used for mechanical equipment, attics, balconies and mezzanines, enclosed porches, and floor area devoted to accessory uses is included in the calculation of gross floor area. However, the following is not included: any space devoted exclusively to on-site parking; or outdoor loading, display, storage, utility service areas; and uninhabited enclosed space on tops of roofs; or attic space having head room of less than 7'-6".

Ground Floor means the floor of a building that is at or nearest to the level of the ground around the building. Does not include the floor of a basement.

Improved Site Area means the sum of the horizontal area of the outside portion of the site and includes any space devoted to on-site parking; outdoor loading, display, storage, utility service, decorative areas and landscaped areas that are part of the original site plan approval.

Pedestrian Connectivity means a publically accessible route between buildings that allows pedestrians to move from one (1) side of a building or lot to another through a privately owned or publicly dedicated area. The route must connect to or allow future connection to other such routes, sidewalks, greenways, or

thoroughfares. Pedestrian connectivity may include a through-street or alley, and may be designed as a trail, greenway or other similar passage. Vehicular use may be allowed as desired by the applicant, provided that the design of the pedestrian route prioritizes pedestrian movements.

Public Realm means the streetscape or any other non-vehicular, publically accessible area located along the designated frontage of a street, alley shared between sites, or non-vehicular thoroughfare.

Raceway means an enclosed channel of metal or nonmetallic materials designed expressly for holding wires or cables associated with illuminating a sign.

Right-of-way means a fee simple dedication of private property or an easement, whereby public access and utility easements are granted.

Sidewalk clear zone means an area of the sidewalk equivalent to the minimum required width for which pedestrians have a safe and adequate place to walk free of any obstructions. Any entryways, doors, door swings, outdoor dining, sandwich boards, benches, lighting or other streetscape features shall be placed outside of the clear zone.

Street-facing façade means a building façade which directly abuts an arterial, collector, local or district street.

Thoroughfare means a route provided for the purposes of creating connectivity and/or establishing blocks, to include all types of streets, alleys, and non-vehicular paths and greenways with a defined right-of-way.

Substantial conformance means conformance which leaves a reasonable margin for minor modification provided that: such modification is consistent with and does not materially alter the character of the approved development including the uses, layout and relationship to adjacent properties depicted on the approved Form District Permit or Certificate of Appropriateness; such modification does not increase or decrease floor area by more than 5% of the permitted amount or 2,500 square feet (whichever is greater); such modification is consistent with any proffered or imposed conditions that govern development of the site; and, such modification is

in accordance with the requirements of the Town of Chapel Hill Land Use Management Ordinance.

This Section means Section 3.11 of the Land Use Management Ordinance.

Upper Story means any story above the ground story or floor.

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